

PARLIAMENT OF THE
COMMONWEALTH OF AUSTRALIA

37th Parliament

THE NATIONAL CRIME AUTHORITY
AND
JAMES MCCARTNEY ANDERSON

A Report by the Parliamentary Joint Committee on the
National Crime Authority

March 1994

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CHAPTER 1

CONDUCT OF THE INQUIRY

Members Involved in the Conduct of the Inquiry

1.1 This report is the work of those who were members of the Committee in 1991 and 1992. (The changes in the Committee's membership during the course of the Anderson inquiry are set out on page iii above.) As explained later in this chapter, it was during that period that the course of the inquiry was determined, the documentary evidence was gathered and all the witnesses were heard. Those who became members of the Committee after that period did not have the same opportunity to become involved in the inquiry, and in particular to hear the witnesses. Therefore they did not consider that they were in a position to make any significant contribution to the Committee's report.

Terms of Reference

1.2 On 28 November 1990 the Senate resolved:

that, pursuant to paragraph 55(1)(e) of the *National Crime Authority Act 1984*,¹ the following matter be referred to the Parliamentary Joint Committee on the National Crime Authority: The relationship between the National Crime Authority and James McCartney Anderson, and whether the Authority has properly performed its statutory functions in respect of James McCartney Anderson.

1.3 In the period 1984-88, Anderson provided information to the Authority, gave formal statements to it for use in evidence, appeared as a prosecution witness in proceedings resulting from Authority investigations, and was provided with witness protection at Authority expense.

Advertising the Inquiry

1.4 On 15 December 1990, the Committee advertised in the *Sydney Morning Herald*, *The Age* and the *Australian* inviting interested persons and organisations to make submissions on this matter. One submission was received.

1. Subsection 55(1) of the *National Crime Authority Act 1984* sets out the duties of the Committee. Paragraph 55(1)(e) provides for the Committee 'to inquire into any question in connection with its duties which is referred to it by either House of the Parliament, and to report to that House upon that question'.

Appointment of an Adviser

1.5 The Committee decided to appoint a legal adviser to assist it during the inquiry. The person engaged was Mr John Basten of the New South Wales Bar. The Committee records its appreciation to Mr Basten, who became a Queen's Counsel in late 1992, for his assistance.

Obtaining Relevant Documents

1.6 The Committee wrote to the Authority on 13 May 1991 seeking relevant material. In response, the Authority provided: transcripts of Anderson's evidence in court proceedings arising from Authority investigations; a chronology of its relationship with Anderson; a report setting out the various aspects of that relationship; responses to specific questions from the Committee; transcripts of Authority hearings at which Anderson appeared; formal statements given by him to the Authority; and an extract from the Authority's report on one of its investigations in which Anderson was involved.

1.7 In providing this material, the Authority noted that the Committee would no doubt wish to obtain further details of some aspects of the relationship, and said it would do its best to assist. The Committee sought further documents in September 1991. Correspondence and discussion took place between the Committee and the Authority on how the Committee's request might best be met. The Authority provided further documents from its files in March 1992. To assist the Committee select relevant witnesses, the Authority identified the Authority Members and staff who were concerned at each stage and with each aspect of its relationship with Anderson.

1.8 Further material was provided in May 1992, including transcripts of interviews of Anderson by Authority investigators. Between August and November 1992, further documents were provided in response to requests from the Committee. Whenever requested, the Authority has provided the documents sought by the Committee, although there was difficulty at early stages in identifying all the documents relevant to the inquiry. In many of the documents supplied, names said not to be directly relevant to the Committee's inquiry have been blacked out.

1.9 The Committee also obtained many relevant documents from sources other than the Authority. Amongst these were internal police documents and transcripts of some of the legal proceedings in which Anderson has appeared as a party or as a witness. Some documents from non-Authority sources were obtained by summons.²

2. *ie.* pursuant to the Committee's power to order the production of papers and records: see the resolution of the House of Representatives, 10 May 1990, para. (k), House of Representatives, *Votes and Proceedings*, p. 43. The Senate agreed to this resolution: Senate, *Journals*, 11 May 1990, p. 55.

1.10 To provide comparative material on the appropriate relationship between a law enforcement agency and its criminal informers, the Committee sought copies of relevant rules and guidelines in force with the New South Wales Police, the Victoria Police, the Australian Federal Police and other Commonwealth law enforcement agencies. The material on criminal informers was provided on a confidential basis. The Committee expresses its appreciation to the agencies concerned.

The Committee's Hearings

1.11 The Committee held hearings on 8 days between August and December 1992. A total of 20 witnesses appeared. Witnesses were largely drawn from amongst those who were at the Authority in 1984-88, but included eight persons who had never worked at the Authority. James McCartney Anderson appeared before the Committee. The Committee decided that all hearings should be held *in camera*, due to the sensitivity of the matters expected to be covered.

1.12 The main events in the Authority's relationship with Anderson occurred in the years 1984 to 1988. The Committee recognised that memories of relevant events would have faded. Only one Authority witness from that period was still at the Authority, and thus still in a position to refresh his memory from Authority files. However, the Authority assisted the Committee by making the relevant files available to the ex-Authority witnesses, so they could, if they wished, refresh their memories. Most of these witnesses took up this offer.

Effect of the 1993 Election

1.13 With the dissolution of the House of Representatives on 8 February 1993, Committee membership automatically terminated,³ and the Anderson reference lapsed. The Committee was reconstituted with changed membership in May 1993 shortly after the commencement of the 37th Parliament.⁴ On 26 May 1993, the Senate referred the Anderson matter to the Committee again. The terms of reference were identical to those of the 28 November 1990 reference, set out in para. 1.2 above.

Scope of the Committee's Report

1.14 The Authority's dealings with Anderson concerned primarily its investigations into the alleged criminal activities of Abraham Gilbert Saffron. However, the relationship did extend to other investigations. These investigations, and hence these aspects of the relationship, are not discussed in this report for the following reasons:

3. NCA Act, s. 53(4)(a).

4. See page iii above for the Committee's membership in the 36th and 37th Parliaments.

- they were peripheral to the core of the relationship between Anderson and the Authority, which was the Saffron investigations;
- it appears to the Committee that the issues arising from the Authority's relationship with Anderson can be addressed adequately by focusing on the Saffron investigations, and no additional issues arise out of the other investigations;
- there is still a need to keep aspects of these other investigations confidential to avoid the risk of prejudice to personal safety or reputation, or to the operations of law enforcement agencies. In contrast, the Committee can be far more open about the Saffron investigations as these have been largely completed, trials held and appeals heard.

1.15 Although the Committee is able to be far more open about the relationship in the context of the Saffron investigations, there are still some areas on which the Committee received oral and documentary evidence containing 'sensitive' material - that is, material the disclosure of which might create a risk of prejudice to personal safety or reputation, or to the operations of law enforcement agencies. The Committee's report does not disclose all the details in these areas. However, the Committee does not consider that this prevents the report from covering all relevant issues.

1.16 The Committee has largely avoided disclosing the identity of individual witnesses in describing the evidence it received. It has used the phrase 'Authority witnesses' to refer to those who were at the Authority at the relevant time and who gave evidence. The Authority employs multi-disciplinary teams to carry out investigations. The police component of these teams is made up of officers seconded to the Authority. For simplicity, in this report the Committee uses the phrase 'Authority staff' to include both those directly employed by the Authority and those seconded to it.

1.17 Persons referred to in this report are generally referred to by surname only, without use of titles. This method has been adopted for the sake of economy. The Committee intends no discourtesy.

1.18 During its inquiry, the Committee received some general criticisms about the organisation and management of the Authority during the period 1984-88. It also received some criticisms of the Authority's overall management of the Saffron investigations. This report refers to these criticisms only to the extent that they relate directly to Anderson's relationship with the Authority. The more general criticisms of the Authority's management have been dealt with in previous reports by the

Committee's predecessors.⁵ The Committee's predecessor in the 35th Parliament examined specific criticisms of the management of the Saffron investigations as part of its continuous monitoring of the Authority.

Structure and Functions of the NCA

1.19 The following brief description of salient aspects of the Authority is provided for readers unfamiliar with it. Other readers may prefer to go to the beginning of the next chapter.

1.20 The Authority commenced operation on 1 July 1984. The legislation creating the Authority contained a 'sunset' provision under which the Authority would cease to exist on 30 June 1989.⁶ The then Prime Minister announced in June 1987 that the sunset provision would be repealed, giving the Authority a permanent existence.⁷ Some observers believed that, prior to this announcement, the Authority was under some pressure to achieve quick, high-profile results, so as to ensure its continued existence.

1.21 The Authority consists of a Chairperson and at least two Members.⁸ Justice D.G. Stewart was the Chairperson from 1 July 1984 until 30 June 1989. Individual Members have been given responsibility for particular investigations, as a matter of administrative convenience.

1.22 The Authority is not empowered to deal with all types of crime. Its functions are restricted to dealing with 'relevant criminal activity', which is defined as involving a 'relevant offence'. This latter term is defined to mean:

an offence:

- (a) that involves 2 or more offenders and substantial planning and organization;
- (b) that involves, or is of a kind that ordinarily involves, the use of sophisticated methods and techniques;
- (c) that is committed, or is of a kind that is ordinarily committed, in conjunction with other offences of a like kind; and
- (d) that involves theft, fraud, tax evasion, currency violations, illegal drug dealings, illegal gambling, obtaining financial benefit by vice engaged in by others, extortion, violence, bribery or corruption of, or by, an officer of the Commonwealth, an officer of a State or an officer of a Territory,

5. See Parliamentary Joint Committee on the National Crime Authority, *The National Crime Authority - An Initial Evaluation*, May 1988; *Who is to Guard the Guards?: An Evaluation of the National Crime Authority*, November 1991.

6. *National Crime Authority Act 1984*, s. 63.

7. 'PM pledges new NCA mandate', *The Age*, 24 June 1987, p. 20. The sunset clause was repealed by the *Crimes Legislation Amendment Act 1988*, s. 6.

8. NCA Act, s. 7(1).

bankruptcy and company violations, harbouring of criminals, forging of passports, armament dealings or illegal importation or exportation of fauna into or out of Australia, or that involves matters of the same general nature as one or more of the foregoing, or that is of any other prescribed kind;

but:

(e) ...

(f) ... and

(g) does not include an offence that is not punishable by imprisonment or is punishable by imprisonment for a period of less than 3 years.⁹

1.23 The Authority has two functions relevant to the present inquiry. These are:

- collecting and analysing intelligence relating to relevant criminal activity, and disseminating it to law enforcement agencies; and
- investigating relevant criminal activities with the aim of assembling admissible evidence and furnishing that evidence to the relevant prosecution authority, for example, the Commonwealth Director of Public Prosecutions if the offence is one against Commonwealth law.¹⁰

During the period of its relationship with Anderson, the Authority was giving primary emphasis to its investigatory function.¹¹

1.24 The Authority has no power to bring prosecutions itself. The Authority's *Annual Report* 1986-87, p. 20 explained:

Broadly speaking, the Authority's relationship with prosecuting agencies concerning particular cases is twofold, viz:

- admissible evidence is assembled and furnished to the prosecuting agency. The Authority may at the same time make recommendations that certain charges be preferred. Further action, if any, then becomes a matter for the prosecuting agency. It may accept the Authority's recommendations (if any) and prefer all or some of the charges which may have been recommended; it may prefer other charges; it may ask the Authority to undertake further inquiries into some aspects of the matter; or it may decide that the evidence is insufficient to prefer any charges; or
- as a result of an investigation, police officers attached to the Authority themselves arrest and charge people. This may occur because those charged are caught in the act (of trafficking in drugs, for example), or because, there being evidence of an offence having been committed, there

9. NCA Act, s. 4.

10. NCA Act, s. 11.

11. See Parliamentary Joint Committee on the National Crime Authority, *The National Crime Authority - An Initial Evaluation*, May 1988, pp. 46-47.

is some suspicion that the persons concerned may go to ground or leave the country. In some circumstances charges may be preferred without the prosecuting agency having been consulted, but the action taken by the Authority does not preclude the prosecuting agency from varying the charges or indeed withdrawing them. Even in circumstances where Authority officers have made arrests, the Authority does not prosecute.

... After the matter has passed to the prosecuting agency, the Authority continues to have an involvement. Subject to decisions made by the prosecuting agency, police officers or other Authority staff give evidence, provide documents and the like. The relationship between the Authority and prosecuting agencies is not, however, that of a normal solicitor-client. Prosecuting agencies have independent powers and responsibilities and cannot be directed by the Authority as to how they carry out those responsibilities (the reverse is, of course, also true). Final decisions as to the charges and the conduct of the case are matters for them. During the prosecution process, the Authority endeavours to keep in touch with prosecuting agencies to monitor progress and to have relevant staff available to provide assistance.

1.25 The Authority does not have the power to grant any indemnity to a person providing evidence - i.e. to promise that the evidence provided will not be used in a prosecution against the provider.

1.26 Authority investigations are of two types, special and general. The former involves the investigation of matters specifically referred to the Authority. References are given to the Authority by an appropriate Commonwealth, State or Territory Minister, according to whether the matter investigated constitutes a breach of Commonwealth, State or Territory law. An Inter-Governmental Committee on which all the relevant Ministers sit has to approve references involving State or Territory law, and has to be consulted about references involving Commonwealth law.

1.27 When investigating matters referred to it, the Authority has available to it special powers, including the power to summon witnesses and to obtain documents. The NCA Act provides in section 10 that the Authority may request that a particular matter be referred to it. Before a reference is granted, subsection 9(2) of the NCA Act requires that consideration must be given to whether ordinary police methods of investigation into the matter are likely to be effective.

1.28 No reference is required for the Authority to conduct general investigations. However, the Authority's special investigative powers cannot be used in the course of such investigations.

1.29 Section 34 of the NCA Act empowers the Authority to arrange for the protection of those providing information to it if, by so doing, their safety is put at risk.

CHAPTER 2

ANDERSON, SAFFRON AND THE NCA REFERENCE UNDER WHICH SAFFRON WAS INVESTIGATED

Anderson's Links with Saffron

2.1 A brief sketch of the backgrounds of Saffron, Anderson and their relationship is necessary to provide the context to the Authority's relationship with Anderson. The Committee has included as Appendix 2 to its report a secretariat paper which gives greater detail on these matters.

2.2 Abraham Gilbert Saffron was born in Sydney in 1919 and his career had been a subject of continuing interest to both law enforcement authorities and the media for decades prior to 1984.¹ The South Australian Parliament was told in 1978 that police regarded Saffron as a key figure in organised crime in Australia.² Among the allegations against him, it was claimed that he was involved in bribery of police, liquor offences, prostitution and tax evasion. Rumours also existed that he was involved with illegal drugs, blackmail and other major crimes. Sydney's Kings Cross district had long been one of the focal points of Saffron's activities.³ His relationship with Anderson developed in the context of these activities.

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1. Published material on Saffron is extensive. For summaries of his career, see for example, David Hickie, *The Prince and the Premier*, Angus & Robertson, Sydney, 1985, pp. 116-20; David Wilson and Lindsay Murdoch, *Big Shots: A Who's Who in Australian Crime*, Sun Books, Melbourne, 1985, pp. 95-105; Marian Wilkinson, 'Who is Abe Saffron?', *National Times*, 9-15 May 1982, pp. 8-11; and Malcolm Brown, 'The Life and Times of Abe Saffron', *Sydney Morning Herald*, 14 November 1983, p. 9, 15 November 1983, p. 9 and 16 November 1983, p. 9.
 2. South Australia, House of Assembly, *Hansard*, 7 March 1978, p. 1973. This was said in the course of a Ministerial Statement by the Attorney-General during which he tabled documents on Saffron and described in some detail the allegations made over the years against him.
 3. eg. see Commonwealth-New South Wales Joint Task Force on Drug Trafficking, *Report, Volume 2: Nugan Hand (Part 1)*, June 1982, AGPS, Canberra, 1982, pp. 421-22.

[Saffron] is a man who by reputation has for many years dominated the Kings Cross vice scene. He has been described in the Parliament of this State and elsewhere as 'Mr Sin' and is reputedly involved in vice and other questionable activities in other states of this country. There is no doubt that he is an extremely wealthy man and that the real extent of his wealth and his activities are carefully hidden behind complex corporate structures embracing in excess of 60 companies. It is also clear that neither the State nor Federal Police is able to define Saffron's activities.

2.3 Anderson was born in Scotland in 1930 and came to Australia in the latter part of the 1950s. He became the manager and licensee of the Venus Room, a licensed bar and grill in Kings Cross, in 1969. The business was owned by a Saffron-controlled company. The relationship between the two men extended to other similar businesses in the area over the next few years.⁴ The exact nature of the relationship was unclear. It was described at different times by Saffron or Anderson as that of employer-employee, of landlord-tenant, or as a partnership. However, it was clear that Saffron was the senior figure. In practice, Anderson looked after the day-to-day running of the businesses, supervising staffing and daily accounting procedures, and sorting out problems that arose such as violence on the premises.

2.4 Over the period 1979-81 the association between Saffron and Anderson ended. Anderson attempted to pursue an independent business career following the break-up. However, he was unsuccessful and was declared bankrupt in September 1983, with debts exceeding assets by \$451,670. Anderson became very hostile towards Saffron after their relationship ended, claiming that Saffron owed him a large amount of money. By 1983, Anderson was publicly accusing Saffron of criminal offences and receiving media publicity.

2.5 In September and October 1983 Anderson gave evidence at the inquest into the 1975 disappearance of a Kings Cross political activist and newspaper proprietor, Juanita Nielsen. In his evidence, Anderson alleged, amongst other things, that Saffron had been involved in widespread corrupt payments to police to ensure that they did not enforce licensing laws against premises in which he had an interest,⁵ and in defrauding the revenue of tax and licence fees over a long period.⁶ Anderson disclosed his detailed knowledge of, and role in maintaining, the double sets of books used by the various businesses in which he and Saffron were linked to achieve the fraud.⁷ These 'black' and 'white' books were to become important in the Authority investigation which led to the successful prosecution of Saffron for tax fraud. At the

4. For details, see *The Queen v Saffron* (1988) 17 NSWLR at pp. 403-05 (Hope JA).

5. A subsequent inquiry concluded that there was no evidence available to substantiate any of the allegations made by Anderson against the serving and former officers whom he named: NSW Police, Deputy Commissioner John Perrin, 'Submission to the Commissioner: Allegations made by James McCartney Anderson at the inquest into the disappearance of Juanita Joan Nielsen alleging misconduct by certain Police Officers in association with Sydney businessman Abraham Saffron', 14 February 1984, para. 67.

6. NSW, Glebe Coroner's Court, Inquest touching the suspected death of Juanita Joan Nielsen, B.J. Wilson, Coroner, transcript of proceedings (hereinafter Nielsen inquest, transcript), 29 September 1983, pp. 2212-13, 2215, 2228-30, 30 September 1983, pp. 2283-84. Saffron denied involvement: *ibid.*, 1 November 1983, pp. 3650, 3677.

7. *eg.* see Nielsen inquest, transcript, 11 October 1983, pp. 2597-2622 and 26 October 1983, pp. 3314-15.

inquest it was disclosed that the books had, through Anderson and an intermediary, passed into the possession of Commonwealth agencies.⁸

2.6 In November 1983, Anderson alleged before a parliamentary committee that prostitution had been carried on openly in premises controlled by Saffron.⁹ He also accused Saffron of being 'involved in the drug industry on the financial side'.¹⁰ At his bankruptcy proceedings in April 1984, Anderson repeated his allegations about Saffron's involvement in tax fraud, bribery of police and prostitution.¹¹

Other Aspects of Anderson's Background

2.7 Anderson has apparently never been convicted of a criminal offence. However, he has been the subject of police attention on many occasions. He was committed for trial for manslaughter in 1970, but the charge was not proceeded with. An unsuccessful attempt was made in 1971 to extradite him to Singapore on counterfeit currency charges. In 1972 a charge of possession of stolen goods was dismissed. Police investigating a fire in a Kings Cross club in 1973 apparently suspected that Anderson might have deliberately started it. In 1984, Anderson was acquitted on a charge of larceny brought against him in 1979. A charge that he offered a bribe to police not to proceed with the larceny matter was dismissed in 1985.

2.8 By 1984 there were allegations on police intelligence files that Anderson, amongst other things, had tried to hire someone in about 1981 to kill Saffron, had links with people involved in cocaine trafficking, had taken undeclared Australian income overseas to be 'laundered', and had associations with known criminals. The strength of these allegations was largely untested, and it is possible that some of them arose from efforts to discredit Anderson's allegations against Saffron.

2.9 After three months of taking evidence, the Coroner at the inquest into Nielsen's 1975 disappearance found insufficient evidence to support a *prima facie* case against anyone for abducting or killing her. The inquest jury found that Nielsen was dead but could not say how, when or where she died. The jury added a rider to its finding: 'There is evidence to show that the police inquiries were inhibited by an atmosphere

8. Nielsen inquest, transcript, 4 October 1983, p. 2333; 11 October 1983, pp. 2597-2601; 25 October 1983, p. 3246. See also New South Wales, Select Committee of the Legislative Assembly upon Prostitution, transcript of evidence, 14 November 1983, p. 53; and New South Wales, Legislative Assembly, *Hansard*, 2 April 1987, p. 10,024.

9. New South Wales, Select Committee of the Legislative Assembly upon Prostitution, transcript of evidence, 14 November 1983, p. 60.

10. *ibid.*, p. 64. The context makes it clear that illegal drugs are being referred to.

11. Examination of James McCartney Anderson under section 69 of the Bankruptcy Act, transcript of proceedings, 17 April 1984, pp. 37-39, 74-78.

of corruption, real or imagined, that existed at the time'.¹² However, police involved in investigating the matter continued to regard Anderson as someone who might have been involved, although Anderson has always denied any involvement. At the inquest, a police officer stated that Anderson had been 'a regular police informant' in the early 1970s.¹³

2.10 Anderson alleged that there had been threats on his life and attempts to kill him. His appearance as a witness in various matters in 1983 and 1984 had shown that he could be a very unhelpful and difficult witness. Some of the testimony he gave, his behaviour under cross-examination and his reluctance to assist in providing evidence to substantiate his allegations had all served to undermine his credibility.

Seeking a Reference to Investigate Saffron

2.11 The Government envisaged that the Costigan Royal Commission¹⁴ would wind up once the Authority was established. The Authority was expected to take up at least some of Royal Commission's unfinished investigations. In July and August 1984, the Royal Commission passed summaries of 42 matters to the Authority with the recommendation that the Authority should them follow up.

2.12 One of the 42 matters involved Saffron. The Royal Commission had not actively investigated Saffron, apart from looking at his apparent connection with a tax avoidance scheme marketed by the firm of Ward, Knight and Dunn. However, an Authority document indicates that the Royal Commission had collected 12,749 pages of file material on Saffron and his companies.

2.13 Much of this material had come from other law enforcement agencies, but its reliability had generally not been assessed by the Royal Commission. As one witness told the Committee: 'The Saffron allegations were so many and wide that you would wonder that there were enough hours in the day for one man to get around to being responsible for all that'. Nonetheless, Royal Commission staff thought Saffron's activities definitely merited investigation, especially his alleged involvement with illegal drugs.

2.14 What was claimed to be an edited version of the Royal Commission's summary on Saffron (code named 'Gomorrah') was published in the *National Times* of 14-20 September 1984. It read as follows:

12. Quoted in Evan Whitton, *Can of Worms: A citizen's reference book to crime and the administration of justice*, Fairfax Library, Sydney, 1986, p. 313.

13. Nielsen inquest, transcript, 30 August 1983, p. 752.

14. Royal Commission on the Activities of the Federated Ship Painters and Dockers Union; Commissioner: Mr Frank Costigan QC. The Royal Commission was established in 1980.

Gomorrah is notorious. He has been so for the past 30 years, if not longer. His activities span most areas of crime. He is heavily involved in vice, and may aptly be described as '... obtaining financial benefit from vice engaged in by others . . .' per the definition of 'relevant offence' in the National Crime Authority (NCA) Act. He controls prostitutes. He produces and imports pornography, and distributes it around Australia. He has engaged in blackmail relying upon sexual indiscretions of others. He operates gambling establishments. Not only for the profits that may be derived, but also for the power it gives him over the unsuccessful gambler. There are cases of gambling debts being the device by which he has corrupted bank managers, financiers and others in positions of influence.

Despite his protests of innocence, he is involved in drug trafficking. He imports. He distributes. He employs men who use violence to maintain his control and authority. His organisation is a myriad of corporations. He uses people as agents or nominees, and shields himself from the criminal activity so that if it is detected, he will escape. Should this fail, he corrupts law enforcement officers so as to protect himself and his organisation. The profits derived from these activities are protected from tax as if they were legitimate, making use of the latest fraudulent device as readily as the legitimate.

He is now in his waning years. There are reports that his successors are already in place, and that his power is ebbing. If so, it is in no way a measure of effective law enforcement. To the contrary, he has escaped all endeavours or law enforcement agencies to bring him to book. Not the least of those he has escaped is the Australian Taxation Office.

The Costigan Commission (Costcom) has collected Australian Federal Police holdings on Gomorrah and has attended to the collation of approximately 60 per cent. The holdings are very large. In the AFP alone, it seemed that every division was conducting its own investigation. There will be like holdings with all State police forces in Australia. They should all be collected and collated. The Tax Office has vast holdings, and totally inadequate resources to handle them.

The first step in dealing with this man is the combination of all of these resources, the collation and analysis of all the material. The taxation material is essential. To gather that material, a special reference under the Act is required. However, once exercised to seize the taxation material, it will not be necessary to again resort to it for some substantial time. It will take months to collate. Thereafter, the NCA is urged to conduct a massive investigation of his assets, with a view to taking direct taxation action against him. This should permit a major inroad to be made into his organisation, with beneficial results in the other areas of criminal activity. To achieve this, a small task force of tax officers and accountants is required. The offence chosen (out of many available) as the relevant offence is conspiracy to defraud the revenue, and this should be the starting point.

Gomorrah engages in substantial planning in the execution of his schemes, not least his taxation evasion. Documents in possession of Costcom reveal that he requested from a merchant bank elaborate plans to allow the disposal of several of his companies to the bottom of the harbour. This is indicative of the planning generally undertaken by him, and his advisers. Gomorrah's organisation is substantial. The Costcom computer will produce, on request, a network revealing the corporate structures through which he works. There are hundreds of companies and businesses recorded. His methods and techniques vary from the crude to the sophisticated. The taxation frauds are generally those concocted by the likes [of?] the merchant bank, and are as sophisticated as they may make them (which is often very sophisticated).

Drug dealings are conducted in such a way that surveillance of couriers and purchasers, while revealing connection in one of his establishments, never reveals a person receiving

or supplying. The drugs are always 'left' in an empty room, to be collected later after ensuring the coast is clear. So too with all other activities. There are many other substantive offences of a like kind (being relevant offences under the Act) committed in conjunction with tax fraud. These include:

- (a) drug importation and distribution.
- (b) bribery and corruption.
- (c) compelling persons by threats or drugs to engage in prostitution.
- (d) operation of illegal gambling, especially casino type operations. And so on.

2.15 Saffron had come to the attention of the Commonwealth-New South Wales Joint Task Force on Drugs because of a transaction by him with the Nugan Hand group of companies. In its report, the Joint Task Force commented on the complexity of Saffron's operations, and the lack of success on the part of police in penetrating this complexity: 'Such being the case it is not practicable for the Task Force as part of the Nugan Hand inquiry to delve into the affairs of Saffron in any serious attempt to clarify the Nugan Hand transaction'.¹⁵

2.16 P.D. Cummins QC was appointed in August 1984 by the Attorney-General to advise the Authority in its decisions in relation to the 42 matters.¹⁶ The Authority's *Annual Report 1984-85*, p. 10 describes what followed.

The Authority received detailed advice arising out of the examination undertaken by Mr Cummins and other senior Authority officers and staff in respect of each of the 42 matters. Acting upon that advice, it resolved to take action with respect to all of the 42 matters save three ... The action taken concerning the 39 remaining matters was as follows. The Authority has obtained five references and investigations being undertaken in connection with these references as at 30 June 1985 had taken up matters which had been the subject of ten of the 42 Costigan Royal Commission summaries. The Authority resolved to continue ordinary investigations pursuant to section 11(1)(b) of the [NCA] Act in four matters. It resolved to coordinate a Task Force pursuant to section 11(1)(d) in one matter. It resolved to refer six matters to law enforcement agencies but with continuing provision of assistance and facilities pursuant to section 11(1)(a) and section 17. It resolved to refer 12 matters to law enforcement agencies pursuant to section 11(1)(a). It resolved to conduct intelligence operations pursuant to section 11(1)(a) in 11 matters. The Authority is satisfied that appropriate action was taken on every extant matter derived from the Royal Commission.

2.17 The Saffron matter met the formal requirements for investigation by the Authority. It was one of the matters on which the Authority sought and was given a reference - Commonwealth Reference No.1, which was issued on 19 October 1984.

15. Commonwealth-New South Wales Joint Task Force on Drug Trafficking, *Report, Volume 2: Nugan Hand (Part 1)*, June 1982, AGPS, Canberra, 1982, p. 422.

16. NCA, *Annual Report 1984-85*, p. 9. The appointment was pursuant to s. 50 of the NCA Act.

Stewart provided the Committee with his recollection of what he thought at the time about seeking a reference on Saffron.¹⁷

Saffron was notorious in Sydney as being untouchable. Whilst a lot of the things that I knew were anecdotal things, some of them were not, and he had been around for so long that it was suggested that he was able to do what he liked, when he liked, where he liked, and that he was a corrupter of police and others. I just took the view that this man had been getting away with so much for so long, it was about time we tried to stop it. That was part of it ... I did have some knowledge of him that I had come across in my Royal Commission, and it was quite sickening. He was popping around the place, he had never been convicted of anything since back in the old days ... It was notorious in Sydney that he had been selling liquor on the black market and doing all sorts of things and nothing ever seemed to happen. So it was not only myself but I think the other members of the Authority and people that we consulted with who took the same view, that he would be an appropriate person to investigate, together with his associates and the things that he had been allegedly involved with over the years.

2.18 Stewart also told the Committee:¹⁸

we had to take on something. There were 42 matters that Costigan said he had investigated, and some of them you never would have been able to follow through. This is the sort of advice we were getting from Cummins. Here was one sticking out I thought, and the others did too, and if we were going to be a proper investigative unit, we had to take on a hard one. So our attitude was, 'Let's do it properly', but not trying to get runs on the board, but just trying to do the best we can in the circumstances.

2.19 Another of the Authority Members at the time, John Dwyer QC, was asked by the Committee if Stewart was the prime mover in obtaining the Saffron reference. Dwyer replied that he was not: the Chairman and the two Members who at the time constituted the Authority shared the view equally that the matter was appropriate for a reference.¹⁹

The Scope of the References Relevant to Saffron

2.20 The scope of Commonwealth Reference No.1, under which Saffron was investigated, was defined in the terms of reference, which were signed by the Special Minister of State:

(a) The general nature of the circumstances or allegations constituting the relevant criminal activity is the widespread financial and business activities, including activities associated with prostitution and movement of persons into Australia for that purpose, of a certain

17. PJC *in camera* Evidence, 11 August 1992, pp. 272-73. The reference to Stewart's Royal Commission is to the Royal Commission of Inquiry into Drug Trafficking, of which he was the Commissioner and which reported in February 1983.

18. PJC *in camera* Evidence, 11 August 1992, pp. 359-60.

19. PJC *in camera* Evidence, 30 September 1992, pp. 671, 673.

person, whose identity was communicated to me by the Authority on 17 October 1984, and associated persons or companies, suggesting tax evasion and involvement in the importation of narcotic substances into Australia, their distribution within Australia and the financing by that person and associated persons or companies of such importation and distribution.

2.21 The terms of reference stated that the purpose of the investigation was to ascertain whether any relevant offences had been or were being committed; to identify the principal offenders; to assemble evidence that would be admissible in the prosecution of the offenders; and to furnish that evidence to the relevant law enforcement agency for prosecution of those offenders. The terms of reference limited the investigation to offences against Commonwealth or Territory laws.

2.22 As the Authority's investigation progressed it became clear that some serious and credible allegations against Saffron involved offences against New South Wales law. Accordingly, the Authority sought a New South Wales reference to enable it to use its coercive powers in investigating these State matters. On 4 April 1986, the New South Wales Minister for Police and Emergency Services signed NSW Reference No.3. The relevant criminal activities referred to in NSW Reference No.3 were arson, fraud, bribery or corruption of State officers and supply of illegal drugs. The NSW Reference defined the target and 'associated persons' in similar wording to that used in Commonwealth Reference No.1.²⁰

2.23 Under the terms of both Commonwealth Reference No.1 and New South Wales Reference No.3, Anderson was potentially an 'associated person' in relation to Saffron. The Committee was told that the reference to 'associated persons' in the terms of reference was intended to cover any associates who came to light during the investigation of Saffron. The term was not used with Anderson specifically in mind.

2.24 The Committee was also told that the possibility of using Anderson as an informer/witness against Saffron was not a factor in the 1984 referral of the Saffron matter to the Authority. According to the witnesses, the Authority's decision to seek what became Commonwealth Reference No.1 was not influenced by contact with Anderson, or by any knowledge or expectation that he would provide information and evidence against Saffron.

20. See National Crime Authority, *Commonwealth Reference No.1, New South Wales Reference No.3: Interim Report provided pursuant to Section 59(5) National Crime Authority Act 1984*, April 1989, paras 1.1 to 1.3 for a summary of the terms of the Commonwealth and NSW references and for the fact that Saffron 'was the principal subject of both' references. This report is a public document, having been tabled (with minor deletions of sensitive material) in the NSW Legislative Assembly on 3 August 1989.

CHAPTER 3

DESCRIPTION OF THE RELATIONSHIP

Introduction

3.1 The relationship between the Authority and Anderson lasted from late in 1984 until the end of 1988. A chronology of the relationship is set out in Appendix 1. This chapter describes the events in the relationship up to the middle of 1988, and includes brief references to other agencies' dealings with Anderson during that period. The relationship after mid-1988 primarily involved provision of witness protection to Anderson. All aspects of this are discussed in chapter 5.

3.2 In describing the relationship, only the more significant events are referred to. From Authority documents supplied to the Committee it was clear that there had been low-level and less formal contacts between Authority staff and Anderson in addition to the contacts described below.

NCA Investigations of Saffron

3.3 The Costigan Royal Commission had done little detailed investigation of Saffron before the matter passed to the Authority. The Authority eventually examined a whole range of allegations against Saffron. He was charged in relation to two matters:

- *the tax case* - this arose from the operation by Saffron and Anderson of Kings Cross bars and clubs using two sets of books so as to defraud the revenue. On 14 November 1985 Saffron was arrested and charged with conspiring to defraud the Commonwealth of tax. Anderson gave evidence against Saffron at the committal proceedings (October 1986) and trial (September-October 1987). Saffron was convicted and, following unsuccessful appeals,¹ began his jail term in November 1988. He was released in March 1990.² Civil proceedings to

1. See *Saffron v The Queen* (1989) 17 NSWLR 395 and 450 for reports of the judgments of the NSW Court of Appeal and Court of Criminal Appeal respectively.

2. 'Saffron beats new prison system home', *Australian*, 12 March 1990, p. 3.

recover unpaid tax and penalties have also taken place.³

- *the police bribery case* - this arose from allegations that Saffron had systematically bribed New South Wales Police to ensure that licensing and other laws were not vigorously enforced against premises in which he had an interest. In March 1987, Saffron was charged with conspiring with former Deputy New South Wales Police Commissioner W.A.R. Allen to bribe New South Wales Police Sergeant Warren Molloy in 1981.⁴ The principal evidence linking Saffron with Allen's bribery of Molloy came from Anderson.⁵ During cross-examination at the committal proceedings, Anderson showed little credibility.⁶ The magistrate dismissed the case.⁷ Despite appeals,⁸ this dismissal was ultimately upheld as far as Saffron was concerned.⁹

3.4 The Authority also investigated in detail allegations that Saffron was involved in eight suspicious fires in Sydney in 1979-82. The fires included those at the Creole

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3. See *Saffron v FC of T* (1991) Australian Tax Cases 4,501 and *Saffron v Commissioner of Taxation* (1991) 30 FCR 578 for reports of two intermediate phases in these proceedings. In *Saffron v FC of T (No. 2)* (1992) 92 Australian Tax Cases 4,859 the Federal Court (Beaumont J) rejected appeals by Saffron against decisions by the Commissioner to disallow objections to assessments of income tax and additional tax. In June 1993, Saffron obtained an order from the Federal Court that the Commissioner of Taxation review the amount of the penalty imposed for failure to pay the tax: *Saffron v FC of T* (1993) 93 Australian Tax Cases 4,456. For the proceeds of crime action against Saffron see *Director of Public Prosecutions (Cth) v Saffron and others* (1989) 93 FLR 338.
 4. Allen had been investigated in 1981-82 for this bribery and other matters: see Police Tribunal of NSW, *Report of the Tribunal to the Minister for Police pursuant to an inquiry under section 45 of the Police Regulation (Allegations of Misconduct) Act, 1978, into certain matters relating to discipline in the Police Force and Mr W.A.R. Allen*, April 1982 (NSW Parl Paper No.4 of 1982). Following the Tribunal's adverse report Allen was reduced from the rank of deputy commissioner to sergeant first class and he retired from the force on 22 April 1982: New South Wales, Legislative Assembly, *Hansard*, 23 February 1984, p. 4665.
 5. See paras. 4.190 to 4.204 below for discussion of Lionel Ockrim's statement corroborating Anderson's evidence, and Ockrim's subsequent evidence in court.
 6. *cf. Saffron and Allen v Director of Public Prosecutions* (1989) 16 NSWLR at p. 406 (Priestley JA): "When cross-examined, Mr Anderson answered in a way which justified a conclusion that it would be unsafe to believe him on any matter unless some fact were in evidence, independent of his own testimony, supporting what he said".
 7. *DPP v Abraham Saffron and William Alan Allen*, Local Court, Castlereagh Street, Sydney, committal proceedings, transcript of adjudication, 15 July 1988.
 8. See *Director of Public Prosecutions v Saffron and Allen*, NSW Supreme Court, Common Law Division, No. 14552 of 1988, Carruthers J, in which the prosecution succeeded; and *Saffron and Allen v Director of Public Prosecutions* (1989) 16 NSWLR 397 in which the NSW Court of Appeal set aside the orders of Carruthers J.
 9. Allen was later tried and convicted and sentenced to 18 months imprisonment: NCA, *Annual Report 1991-92*, p. 49. However, Anderson played no part in that trial.

Disco on 12 October 1980 and the Luna Park Ghost Train at Milsons Point on 9 June 1979. Seven people were killed in the Ghost Train fire. The other fires caused property damage only.

3.5 Anderson had given information to New South Wales Police Sergeant Warren Molloy in 1981 and to a coronial inquest in August 1983 that Saffron committed arson and insurance fraud in relation to the Creole Disco fire.¹⁰ Information provided by Anderson to the Authority was a factor in its decision to investigate the fires.

3.6 The Authority made a detailed report in April 1989,¹¹ but no charges were laid against Saffron. The Authority stated that there was insufficient admissible evidence to justify charging anyone over the Creole Disco fire.¹² On the Luna Park fire, the Authority made no finding against Saffron and stated: 'The Authority cannot say whether the fire was deliberately lit or not'.¹³

Main Events in the Relationship

3.7 In October and November 1984, the Authority was gathering material on Saffron relating to a wide range of matters. Authority staff sought Saffron-related material from Anderson's bankruptcy hearing and from his trustee in bankruptcy. In particular, Authority staff were interested in the dual sets of accounting records (the 'black' and 'white' books) referred to in the proceedings. While Anderson had important information about the books, they had long-since passed out of his possession. The Authority obtained them from elsewhere and without his help.

3.8 Authority investigators were understandably interested in talking to former associates and employees of Saffron who were believed to have fallen out with him. It was obvious that Anderson fell into this category from his public disclosures in 1983-84.¹⁴ The Authority had police intelligence material to the same effect, and in November 1984 its staff had viewed the New South Wales Bureau of Criminal Intelligence holdings on Anderson.

3.9 In addition, Authority staff were told by experienced police officers that

10. 'Saffron rejected arson claim: Inquiry told of businessman's accusations', *Sydney Morning Herald*, 11 August 1983, p. 3; 'Coroner rules on Creole fire', *Sydney Morning Herald*, 12 August 1983, p. 2.

11. National Crime Authority, *Commonwealth Reference No. 1 and New South Wales Reference No.3: Interim Report provided pursuant to Section 59(5) National Crime Authority Act 1984*, April 1989.

12. *ibid.*, para. 4.28. The Authority noted that a possible tax charge could be laid against Saffron arising from the Creole fire. However, the Authority resolved not to recommend prosecution on this, given that it involved only one tax return and Saffron had by then been convicted of conspiracy to defraud the Commonwealth - the tax case referred to above: see *ibid.*, para. 4.33.

13. *ibid.*, para. 6.146(5).

14. See paras. 2.4 to 2.6 above.

Anderson would be a useful starting point and a good source of information on Saffron, although not everything he said could be believed. As one Authority witness observed, it was inevitable that Authority staff would want to talk to Anderson.

3.10 From the documents provided to the Committee, it appears that Authority staff first attempted to contact Anderson on 15 November 1984, nearly a month after the Saffron reference was given on 19 October. Anderson was overseas at the time, but he telephoned an Authority staff member on 20 November from Las Vegas. He presented himself as a lone crusader against Saffron and indicated that he was keen to assist the Authority on the Saffron matter.

3.11 Authority staff made arrangements to interview Anderson on a wide range of Saffron-related matters, with the aim of finding out what he could and would tell them. The interview, by two Authority staff, took place on 20 December 1984. Vic Anderson, then an Australian Federal Police officer on secondment as Director of the Australian Bureau of Criminal Intelligence, was also present at the interview.

3.12 As the Authority learned in dealing with him, James Anderson was very wary of contact with law enforcement agencies and trusted few police officers. When dealing with investigators with whom he had not built up a rapport, he preferred to have an officer present whom he trusted. At this period, Vic Anderson was one of the officers he trusted.¹⁵ (The two men were not related.)

3.13 The Authority staff who arranged the interview considered it was helpful for Vic Anderson to be present to provide an introduction, to improve the quality of Anderson's information, to assist in assessing the credibility of what he said, and to act as a brake should he try to manipulate the situation.

3.14 The interview on 20 December 1984 was regarded as productive and useful by Authority staff. It produced a large number of leads for the Authority to follow up. However, Authority staff noted the interview was not as wide-ranging as planned, and could have been deeper. Some at the Authority saw this as an indication of Anderson's ability to control the agenda of meetings.

3.15 The Authority's actions in regard to Anderson up to the middle of 1985 have to be seen in context. He was merely one of many ex-Saffron associates the Authority was attempting to interview. An Authority internal memo of 16 November 1984, for example, lists 8 ex-associates for interview, one of whom had a far worse criminal record than Anderson. Because the inquiry was concerned with the relationship between the Authority and Anderson, and not with the Authority's investigation of Saffron, the Committee saw only a fraction of the material relating to the Saffron investigation. Nevertheless it did obtain minutes of meetings within the Authority

15. Vic Anderson was seconded to the Authority as its Director of Investigations from January 1987 until he retired from the Australian Federal Police on 31 July 1987. The Committee was told that his secondment had nothing to do with the fact that the Authority was then dealing with James Anderson.

which referred to Anderson. On the basis of this material, the Committee was satisfied that Anderson was a significant element in the investigation, but by no means the central or key element. The Authority investigation reports and the minutes of Saffron investigation team meetings of the period typically run to between 3 and 10 pages. Anderson seldom rates more than a few lines, and in many he is not mentioned at all.

3.16 Some priority, however, was given to conducting an early interview with Anderson (*ie.* the interview which occurred on 20 December 1984). This was because he was keen to talk and because he was claiming that there were threats to his life. Additionally, he was talking to the media, and there was an interest in getting his information before it was influenced by repeated media contact. Following the 20 December 1984 interview, there was a gap of nearly eight months before the next significant contact between the Authority and Anderson.

3.17 In the meantime, in July 1985 Anderson gave evidence before the New South Wales Court of Appeal in a contempt of court case.¹⁶ A TV program broadcast during Anderson's February 1984 trial for larceny contained material prejudicial to him. The trial was aborted as a result of the broadcast. Proceedings for contempt of court were commenced against the broadcaster and others. The Court found Anderson to be an unsatisfactory witness.¹⁷

3.18 This finding came as no surprise. Authority staff believed that corroboration would be essential for whatever Anderson provided. In May 1985, an internal minute by an Authority lawyer to investigators proposing to interview Anderson stated:

It should be borne in mind at all stages of the investigation that Anderson is a liar. His credit on any matter is highly questionable. If he is to have the slightest value as a witness his evidence will require corroboration on every important detail.

3.19 Because of this view of Anderson, the Authority's efforts were not merely directed to obtaining information and evidence from him. An important priority was obtaining indications from him of where corroborating evidence, especially documents, might be found.

3.20 As 1985 progressed, the Authority was putting together the prosecution brief on the tax case in which Anderson featured, as well as pursuing a large number of other lines of investigation into Saffron. The operational overviews and the minutes of meetings of the Saffron investigation team throughout 1985 and into 1986 make very little reference to Anderson. In the length and breadth of the Saffron investigation, he clearly was not a key component.

3.21 On 8 August 1985, Anderson was interviewed by two Authority staff. A non-

16. 'Anderson feared for his life, court told', *Sydney Morning Herald*, 19 July 1985, p. 6.

17. See the judgment of Hope JA reported in *Registrar of the Court of Appeal v Willesee* (1985) 3 NSWLR at p. 664. Kirby P (p. 654) and Priestly JA (p. 681) agreed with Hope JA on this point.

Authority police officer whom Anderson trusted was also present. The interview did not canvass all the Saffron-related matters that the Authority initially planned. This was because Anderson set a 2-hour limit on the interview. It focused mainly on what Anderson knew of Saffron's finances, including allegations that Saffron had made payments to police and was involved in money laundering.

3.22 In the context of finalising the prosecution brief on the tax case, an Authority investigator took a 5-page formal statement from Anderson on 26 October 1985 for use in evidence. The statement identified the 'black' books and detailed Saffron's alleged role in the accounting arrangements used to defraud the revenue. The question whether the Authority would support any request Anderson might make for an indemnity, and whether the Director of Public Prosecutions would grant such an indemnity were raised by Authority staff at the end of October 1985. (See paras. 4.39 to 4.43 below on the indemnity issue.)

3.23 On 14 November 1985, Saffron was charged with one count of having conspired to defraud the Commonwealth, and 12 charges relating to making false income tax declarations.¹⁸ Anderson was not charged with being party to the conspiracy.

3.24 On 6 December 1985, the 1979 bribery charge against Anderson came to trial in the Local Court in Sydney. The charge was dismissed. The Authority's monitoring of this case is discussed below (see paras. 4.212 to 4.214).

3.25 Anderson made an overseas trip in March 1986. On 2 April 1986, the Authority summonsed Anderson to appear before it to give evidence at a formal hearing on 8 April. On 3 April, he was given a summons to appear and give evidence on 29 September 1986 at the committal proceedings against Saffron on the tax charges. On 4 April, the Authority made an application to the Federal Court to have Anderson appear before the Court and show cause why his passport should not be surrendered. In support of the application, an affidavit by an Authority lawyer stated:¹⁹

On 2nd April 1986, very reliable information was received by the Authority that James McCartney Anderson had said he was intending to soon leave Australia and not return until after the conclusion of hearing of the charges laid against Saffron and that this proposed departure followed an approach by a person (whose identity is unknown) on Saffron's behalf requesting that Anderson 'withdraw'.

3.26 Anderson appeared at the Authority hearing on 8 April. At the hearing, he confirmed the accuracy of his 26 October 1985 statement. He also gave undertakings: to appear at the Saffron committal proceedings and any subsequent trial on the tax charges; to give the Authority notice of any overseas travel and to provide it with an

18. 'Saffron on \$5m tax charges', *The Age*, 15 November 1985, pp. 1, 4.

19. Federal Court of Australia, General Division, NSW Registry, No. G96 of 1986, re: The Application of the National Crime Authority, Affidavit by David Geoffrey Staehli, 4 April 1986, para. 8.

itinerary; to remain in telephone contact with the Authority; to permit the Authority to take steps to bring him back from overseas if necessary; and to participate in a further interview with Authority investigators on the Saffron tax matter. In light of this, it proved unnecessary to proceed with the Federal Court application.

3.27 Anderson left Australia later in April 1986 and apparently remained overseas, mostly in the Philippines, until early July. He returned to Australia on 2 July 1986, in order, he said, to assist the Parliamentary Commission of Inquiry then inquiring into the conduct of Justice Lionel Murphy.²⁰

3.28 On 11 July 1986, Anderson was interviewed at length by Authority staff. A wide variety of Saffron-related matters were discussed. A further, less extensive, interview took place on 13 August 1986. Information provided by Anderson in the 11 July interview was deemed sufficient, taken in conjunction with other information the Authority had, to justify further inquiries into allegations that Saffron had systematically bribed police.

3.29 It was decided that the Authority's bribery investigation should focus on a particular matter - the allegation that Saffron and Allen had bribed Molloy - rather than other, wider allegations. In part this was because investigation of the wider bribery allegations would raise the same role conflict for Anderson as the Saffron tax case: he would be both a prosecution witness and a participant in the offences being prosecuted.²¹

3.30 In October 1986, Anderson gave evidence at the Saffron committal proceedings on the tax charges. The following month he was again interviewed by an Authority investigator.

3.31 Richard Hugh Barton went on trial in November 1986 on charges relating to possession of stolen international airline tickets and receiving a stolen car.²² In 1982, Barton had sold one of the tickets to Anderson for \$1,350. The ticket showed a face value of \$6,133. Anderson had borrowed the stolen car from Barton for a short time in 1982. Anderson gave evidence for the Crown in the trial. The Authority had no involvement in the matter.

20. 'Murphy's denial on Saffron was to meet serious challenge', *National Times on Sunday*, 14 September 1986, p. 5 reports on what Anderson is believed to have told the Inquiry's staff.

21. Other factors were that a wider investigation would be very time consuming, and the specific charges would be against police officers with regard to only small amounts of money. The focus on the Allen case was expected to net the people at the top, and had a credible police officer who was available to testify to receiving money.

22. 'Man for trial on airticket, car charges', *Sydney Morning Herald*, 18 October 1984, p. 13 (reporting the committal proceedings).

3.32 In January 1987, Vic Anderson joined the Authority's staff as Director of Investigations.²³ Between February and June 1987, he tape-recorded meetings with Anderson on 13 occasions. The meetings consisted of largely undirected monologues by Anderson, although some information relevant to Authority investigations was sought and obtained.

3.33 Authority staff took formal statements from Anderson on 24 February and 5 March 1987. Both related to alleged bribery of police by Saffron. Authority staff arrested Saffron in Perth on 11 March 1987. He was charged, together with the former New South Wales Police Deputy Commissioner W.A.R. Allen, with conspiring to bribe a police officer and to obstruct the course of justice.

3.34 At the beginning of September 1987, the Authority began providing witness protection to Anderson (see chapter 5 below). In late September and early October 1987, Anderson gave evidence in Saffron's trial on the tax charges. At the end of June 1988, he gave evidence in the committal proceedings against Saffron and Allen on the police bribery charges.

Applying a Label to the Relationship

3.35 Almost all the witnesses who gave evidence to the Committee referred to Anderson as if he belonged in the category of 'criminal informer' or 'criminal informant' - the two terms were used inter-changeably. The Committee refers to him in the same way in this report. The Committee found this to be an accurate description, despite the fact that Anderson had not been convicted of a criminal offence.²⁴

3.36 The Committee notes that the category of 'criminal informer' has no precise meaning. It is used in law enforcement to cover a variety of situations. In some respects Anderson does not fit the popular public stereotype of criminal informers. To avoid misunderstanding, the Committee makes the following comments.

- Typically an informer has a 'controller' - a single officer who handles all contacts between the law enforcement agency and the informer. Often the controller is the only person in the law enforcement agency who is aware of the informer's identity. No single officer at the Authority was Anderson's controller in this sense, and his identity was widely known within the Authority teams investigating Saffron.

23. It was noted in para. 3.12 above that Vic Anderson was a police officer that James Anderson trusted.

24. cf. Queensland Police Service, *Policy Orders and Procedures*, para. 6(viii) where 'criminal informants' are defined as 'those who provide information which they have come by through their association with criminals and criminal activity'. The relevant part of the *Policy Orders and Procedures* forms Appendix 9 to Queensland, Commission of Inquiry into Operation Trident, 19 September 1988 to 2 April 1990, *Report*, March 1993, which was tabled in the Queensland Parliament on 17 March 1993.

- Criminal informers may receive a cash payment for each piece of information they provide which is of value to their controller. Anderson was never paid in this fashion by the Authority. Indeed, the Committee was assured that he was never paid at all for assisting the Authority. (The question of witness protection and whether he received other benefits from the Authority are considered later in this report.)
- Often criminal informers are used to provide their controller with information about on-going or planned crimes. They may be directed to infiltrate criminal groups. The informers may, with the controller's knowledge and tacit consent, participate in crimes so as to remain acceptable to those they are informing on. An informer may become an *agent provocateur*, instigating the commission of crimes, or assist in 'sting' operations. Anderson was not used in any of these ways by the Authority. The information he provided to the Authority on Saffron related almost entirely to activities which had occurred prior to his first contact with the Authority.
- Criminal informers are sometimes used as a source in relation to whatever information they happen to come across, rather than in relation to a particular target. The Authority sought information from Anderson mainly in relation to Saffron.
- Controllers often go to great lengths to avoid their informers having to give evidence in court in a way that discloses their identity. The on-going flow of information is often regarded as more important than the courtroom evidence the informers might give in relation to particular crimes. The Authority did not regard Anderson in this way. As his relationship with Saffron had long since broken down, the question of maintaining him as an informer-in-place against Saffron did not arise. When Anderson gave evidence against Saffron, there was no question of him seeking to claim the 'informer privilege' so as to conceal his identity.²⁵

25. This privilege, recognised at common law, provides some scope for the prosecution to use information supplied by informers without their identity being publicly disclosed. See for example, *Cain v Glass (No.2)* (1985) 3 NSWLR 230, especially p. 233 where the President of the Court of Appeal, Justice Kirby, notes the rules developed by courts to protect informers:

In the case of police informers, rules have developed, over many years, to protect the confidential basis upon which police deal with such informers. In part, this is for the defence of the particular witness involved. In part, it is to ensure a continuing flow of helpful information from such a witness. In part, it is to reassure the many other persons who, formally and informally, provide useful information to the police. Special care needs to be exhibited by any court approaching an application for the disclosure of the identity of a person said to be entitled to protection as a police informer.

CHAPTER 4

ASSESSING THE RELATIONSHIP

INTRODUCTION

4.1 Issues relating to witness protection are dealt with in the next chapter. Other issues arising from the Authority's relationship with Anderson are considered in this chapter.

4.2 First, the Committee considers what criteria should apply in assessing the relationship. The Committee then notes the lack of any formal assessment by Authority staff of the arguments for and against using Anderson as an informer and (later) a witness. To assess the significance of this, the Committee attempts to identify what an initial assessment would have shown, and whether this would or should have led Authority staff to treat Anderson differently. The main focus in this assessment is on the extent of Anderson's criminality and the degree to which he avoided investigation and prosecution by becoming an informer and witness. This assessment is followed by a consideration of the issues that arose during the course of the relationship.

CRITERIA FOR ASSESSING THE RELATIONSHIP

Two Levels of Assessment

4.3 The Committee's terms of reference require it to report on whether the Authority 'properly performed its statutory functions' in its relationship with Anderson. This expression is not a legal term of art or an expression with a settled meaning. The Committee considered that under its terms of reference it was required to assess the Authority's actions at two levels: one related to observance of applicable statutes; the other looked at issues of sound management and administration.

Statutory Requirements

4.4 The NCA Act does not refer to use of criminal informers. However, the Authority's statutory functions include collecting intelligence on, and investigating,

relevant criminal activity.¹ The NCA Act does not impose any pertinent limits on how the Authority gathers intelligence or investigates. Use of criminal informers is a well-established method by which law enforcement agencies perform these activities. Therefore, it seems to the Committee to be beyond question that the Authority is empowered to make use of criminal informers in performing its statutory functions.

4.5 The Committee did not find that any breach of any statute had occurred in the Authority's dealings with Anderson as an informer and witness.

Requirement for Sound Management and Administration

4.6 The Committee did not consider that its sole criterion of assessment ought to be whether a statute had been breached or not. The Committee also asked whether the Authority had acted prudently, efficiently and effectively, or, in other words, in accord with the dictates of sound management and administration. These types of criteria are less capable of being stated precisely than statutory requirements.

Selecting Assessment Criteria

4.7 The aspects of the relationship considered in this chapter are those of informer and witness. Such relationships commonly raise many difficult ethical and practical issues for the agency involved.² There is no simple, agreed standard against which a body like this Committee can measure how well an agency has managed such a relationship. Procedures devised to govern such relationships provide a source of criteria for assessment. Where an agency has such procedures, the approach of a body charged with inquiring into the agency's actions is relatively straightforward. It has to ask, firstly, are the procedures adequate. If they are, it then has to ask if they have been followed in the particular case that is the subject of inquiry.

4.8 This conceptually simple method of inquiry was not available to the Committee because the Authority did not have a comprehensive set of procedures for dealing with criminal informers during the period it was dealing with Anderson. One Authority witness told the Committee: 'I think it is fair to say that the NCA

1. NCA Act, s.11(1)(a) and (b).

2. For a useful survey of the many issues that can arise, not all of which are relevant to the Authority's relationship with Anderson, see P.N. Grabosky, 'Prosecutors, Informants, and the Integrity of the Criminal Justice System', *Current Issues in Criminal Justice*, July 1992, vol. 4(1), pp. 47-55. See also NSW, Independent Commission Against Corruption, *Police Informants: A Discussion Paper on the Nature and the Management of the Relationship between Police and their Informants*, May 1993. This paper appeared after the main part of the Committee's inquiry was completed.

left the handling of informers and the use of undertakings to the good sense of investigators in the early part ... [of its existence]'. Other Authority witnesses gave varying recollections of the extent to which there were some documented procedures in place in 1984-88, but none claimed these were comprehensive.

4.9 For example, in 1984-88 it appears there was no Authority-wide register of informers kept. The registration of informers and the details of their handling were regarded by the senior lawyers at the Authority as largely a matter for their police colleagues. In practice, the matter seems to have been left to the senior investigator at the time in the Sydney and Melbourne offices of the Authority. Whatever procedures the person in charge at each office deemed necessary were followed in that office at the time.

4.10 The Authority developed comprehensive procedures in 1991-92 on, amongst other matters, informant management. The 'informant management' procedures form a chapter of the Authority's *Policy and Procedures Manual*. The Committee was supplied with a draft of the informant management procedures, and later was given the final version, dated November 1992.³

4.11 The Committee considered it should have regard to the 1992 procedures as one basis of assessing the Authority's relationship with Anderson. The Authority has requested that the detail of these procedures not be made public by the Committee. The Committee accepts the validity of this request. Therefore the references in this report to points in the procedures are not as detailed or specific as they might otherwise be.

4.12 The Authority's 1992 procedures note the need for an initial assessment of a prospective informant. However, they give little guidance on what factors should be taken into account in the initial assessment. The procedures define the aims of the assessment in a way that appears too narrow to the Committee. The two aims identified in the procedures relate to the reliability of the information expected to be provided, and to whether the prospective informer is likely to be able to cope with the pressures associated with being an informer. The Committee considers that other aims and factors should also be part of the assessment.

4.13 The Committee found the provisions of the 1980 guidelines on the use of informants by the United States Federal Bureau of Investigation (FBI) useful in identifying the appropriate scope of an initial assessment. The guidelines for the FBI state that no informant may be used on a continuing basis unless a specified FBI officer has made written findings, including a finding that 'the informant ...

3. The *Policy and Procedures Manual* is in loose-leaf form and is updated as required.

appears suitable for such use'.⁴ The guidelines set out eight factors that 'the FBI shall weigh and consider' in order to make this finding.⁵

4.14 Five of these factors appear to the Committee to be relevant to allegations made about the Authority's relationship with Anderson.⁶ The table below quotes the relevant FBI guidelines in the left hand column. The allegations made to the Committee about the NCA-Anderson relationship are in the right hand column.

Guidelines for FBI - factors to be weighed	Allegations on NCA-Anderson relationship
(a) the nature of the matter under investigation and the importance of the information or assistance being furnished	NCA excessively keen to succeed against Saffron and thus 'get runs on the board'; Saffron only convicted of tax fraud; Anderson's information was not essential to achieve this
(b) the seriousness of past and contemporaneous criminal activity of which the informant or confidential source may be suspected	Anderson was suspected of offences: (i) in the past in concert with Saffron; (ii) in the past apart from Saffron, including the Nielsen murder; and (iii) at the time, separately from Saffron. He should not have been used as an informer and given <i>de facto</i> immunity as a result
(c) the motivation of the informant or confidential source, including any consideration sought from the government for his cooperation	Anderson was using his relationship with the NCA to obtain revenge on Saffron and to blackmail him
(d) the likelihood that the information or assistance which an informant or confidential source could provide is not available in a timely and effective manner by less intrusive means	Saffron could have been convicted on tax and other matters without Anderson being used as a witness
(e) the informant's or confidential source's reliability and truthfulness, or the availability of means to verify information which he provides	Anderson's credibility as a witness was very poor

4. US, Office of the Attorney General, 'Attorney General's Guidelines on FBI Use of Informants and Confidential Sources', 2 December 1980, section D(1).

5. *ibid.*, section D(3).

6. The other three factors in the guidelines relate to the person's past record as an FBI source and the ability to control the person when acting on behalf of the FBI; the risk that using the informer may inhibit the lawful association of individuals or expression of ideas; and the risk that using the informant may compromise an investigation or subsequent prosecution, including court-ordered disclosure of identity which may require the government to move for dismissal of the criminal case.

4.15 Another area in which the Authority's 1992 informant management procedures are not, in the Committee's view, sufficiently precise is the question of what activates the procedures in relation to an individual. In other words, the procedures do not make clear at what stage someone in contact with Authority staff becomes an 'informant', and hence subject to the procedures. Yet this was, in the Committee's view, a matter of some importance in the relationship with Anderson.

LACK OF FORMAL ASSESSMENTS OF THE RELATIONSHIP

No Formal Assessments Were Made

4.16 It is notorious that agency-informer relationships can easily go wrong. It seems to the Committee that one important means towards preventing this is by ensuring that a thorough assessment of the risks and benefits of entering into a particular relationship is made beforehand by the agency. The Authority's 1992 informant management procedures note the need for careful assessment of criminal informers.

4.17 Authority staff in 1984 did take some steps to obtain information about Anderson (see paras. 3.8 and 3.9 above). But the Committee could find no evidence that anyone at the Authority ever assembled what had been learned from these steps and then assessed whether to use Anderson as an informer. Witness recollections and Authority documents provided to the Committee indicate that there was some scattered, *ad hoc* consideration of some of the factors. Nothing approaching a formal assessment was made, however.

4.18 The evidence given to the Committee indicates that the Authority's relationship with Anderson began with incremental steps, and developed throughout in the same way. There was no clear point identified to the Committee at which Anderson became an informer. Nor, later in the relationship, was there any clear point at which the decision was made that he would be a witness in the briefs being assembled by the Authority on the Saffron tax matter and subsequently on the Saffron/Allen bribery matter.

4.19 As set out in the previous chapter, the initial contact with Anderson occurred in mid-November 1984, and the first meeting with him was on 20 December 1984. One person at the Authority at the time had misgivings about the rather unstructured approach to the 20 December interview:

my feeling was that with such interviews it was very important that there be a clearly defined plan for the interview, that whoever was conducting it should have marshalled the - as it were - external evidence and be in a position to bring that evidence into play

during the course of an interview if need be. I had misgivings about the idea of an interview being conducted to find out whatever it was that Anderson might know.

4.20 Authority witnesses involved with the Saffron investigation in late 1984 indicated that they had no particular view of Anderson at that stage. He was seen simply as someone whom it might be useful for them to talk to, with no real consideration as to whether he was then, or should become, an informer, a witness or a target to be investigated.

4.21 One witness told the Committee: 'I do not know that at that stage the problem of Anderson as a codefendant was given very much consideration. I cannot recall any consideration of that problem'. Another witness said that as far as he was concerned Authority staff conducting the 20 December interview with Anderson were 'not meeting him with any view to him being a target'.

4.22 A third witness told the Committee that 'it was not on the agenda to contemplate charging him [*ie.* Anderson] over the black books matter'. He was asked:

Q. Was that a decision that was taken by way of omission, rather than by commission? Is it something that just was not addressed? A. I think so, yes. That is a fair description.

4.23 The lack of a considered view of how the Authority ought to relate to Anderson might not have mattered much if the Authority's only options were to use Anderson as a source of information (and possibly later as a witness) or to ignore him altogether. However there was clearly a third option: the Authority could have treated him as someone to be investigated with a view to his prosecution.

4.24 By dealing with Anderson without assessing how it ought to treat him, the Authority was in effect depriving itself of the option of treating him as a target. The Committee considers later in this chapter the question whether this option was fully viable and one the Authority ought to have adopted. The point the Committee is making here is that the Authority failed to assess the option and make an informed decision on whether to choose it. Instead, the Authority lost this option by a series of actions, each of which appears to have been taken without all the consequences being assessed.

4.25 As already noted, the first interview between Authority staff and Anderson was on 20 December 1984. No caution was issued to Anderson either at the start of or during this interview,⁷ although there was some evidence that Authority staff considered the implications of interviewing Anderson without cautioning him. Nor

7. The caution is in words to the effect that the interviewee is not obliged to say anything, but anything that is said may be taken down and used in evidence. If a caution is not issued when it ought to have been, a court has a discretion to refuse to admit into evidence any admissions made in the course of the interview. A caution should be given before interviewing someone whom the interviewer has decided is to be charged.

was a caution given at any of the later meetings. The absence of the caution acts as a strong signal that the person being interviewed is seen as a prospective witness, not as someone who may be charged.⁸

4.26 Apart from the failure to issue cautions, the non-adversarial manner in which the Authority dealt with Anderson gave him the (correct) impression that the Authority was not regarding him as a target for investigation by it. This in turn would have made it very difficult, perhaps impossible in practical terms, for the Authority later to decide to investigate him in relation to any of the matters on which he was providing information.

4.27 The Committee considers that criminal informers like Anderson should be subject to initial assessment prior to the Authority's first contact with them. In his case, this would have involved doing the assessment before seeking to establish contact with him in November 1984. To delay the assessment puts at risk the otherwise viable option of treating the person as a target for investigation rather than an informer or informer/witness.

4.28 The evidence available to the Committee shows that there was no formal assessment of Anderson as an informer at any later stage in the relationship.⁹ Similarly, there was no evidence that any formal assessment was made when he was put forward as part of the prosecution brief being prepared for the Commonwealth DPP on the Saffron tax matter, or the later brief for the New South Wales DPP on the Saffron/Allen bribery matter. Relevant matters were considered only in a more *ad hoc* way.

4.29 The Committee considers that such assessments should have been made.

Significance of Lack of Formal Assessments

4.30 The Committee attempted to determine the significance of the failure of Authority staff to conduct a comprehensive initial assessment of Anderson. If such an assessment would not have led, and ought not have led, the Authority to act differently towards Anderson, the significance of the failure is much reduced.

4.31 The factors that the Committee believes that the Authority ought to have 'considered and weighed' (to use the phrase from the guidelines for the FBI) in an

8. A witness told the Committee: 'I would have thought the last thing you want to do, if you are going to use somebody as a witness, is to go along and caution them and tell them that anything they say may be used against them, because the first thing that they do is to shut up'.

9. Contrast US, Office of the Attorney General, 'Attorney General's Guidelines on FBI Use of Informants and Confidential Sources', 2 December 1980, section D(5): 'Determinations of suitability and pertinence shall be reviewed at least every 90 days by a field supervisor and at least annually by FBI Headquarters'.

initial assessment of Anderson are those reflected in the five guidelines for the FBI set out in the table in para. 4.14 above. In the Committee's view, the most important of these factors in the present context are the ones concerning the informer's past and contemporary criminal activity, and the extent to which immunity from investigation and prosecution is obtained by the informer in exchange for informing.

IMMUNITY AND ANDERSON'S CRIMINALITY

The Best Informers are Often Criminals

4.32 A recognised feature of tackling organised crime is that often the only persons able to give information and evidence against the leading perpetrators and organisers are themselves criminals - often participants in the very crimes they then provide information about.¹⁰ This feature can be summed up in such phrases as 'an informer needs to be "dirty" to be useful';¹¹ and 'being a criminal is a qualification for being an informer, not a disqualification'.¹² In this sense, the bigger the criminal

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10. See for example US, Office of the Attorney General, 'Attorney General's Guidelines on FBI Use of Informants and Confidential Sources', 2 December 1980, section G(2): 'Informants who are in a position to have useful knowledge of criminal activities often are themselves involved in a criminal livelihood'; and Ian Temby QC, 'The Decision to Prosecute', Address to the Australian Bar Association, Second Biennial Conference, Alice Springs, July 1986, p. 16:

There are circumstances where it will be appropriate to indemnify a person who occupied a relatively high position in the criminal organisation, perhaps only one level removed from the principals. Crime is becoming increasingly sophisticated and some criminals have become quite adept at distancing themselves from those who perform the actual 'dirty work', making necessary arrangements only through such 'middle level' operatives. Sometimes it will only be with the latter turning Queen's evidence that those identified as principals can be successfully prosecuted.

See also Parliamentary Joint Committee on the National Crime Authority, *Witness Protection*, May 1988, paras. 2.6 to 2.11 on the need for law enforcement agencies to use informers. The Royal Commission of Inquiry into Drug Trafficking (Commissioner: the Hon. Mr Justice D.G. Stewart), *Report: February 1983*, AGPS, Canberra, 1983, pp. 558-64 discusses the value of and difficulties in using informers to move up the hierarchy of organised crime.

11. J.R. Williams and L.L. Guess, 'The Informant: A Narcotics Enforcement Dilemma', *Journal of Psychoactive Drugs*, July-September 1981, vol. 13(3), p. 240.
12. See Martin Short, *Lundy: The Destruction of Scotland Yard's Finest Detective*, Grafton Books, London, 1991, p. 91 where the view is given from a police perspective of Lundy's relationship with his informer, Garner:

Fighting crime is a war, and folk like Garner are part of the weaponry. That he was a criminal is no shame to his 'handler'. Indeed, it was a qualification, although Lundy had no idea what rackets the man was into. As John Grieve, another senior detective, told an inquiry into Lundy in 1987, Garner 'was an outstanding informer who cost the public purse little. He was dangerous and undoubtedly deeply criminal. So are nearly all the top informers.'

the better the potential informer.

4.33 A senior police officer told the Committee: 'The most significant criminals provide the major part of information to law enforcement...'. An Authority witness told the Committee: 'if an investigator is not allowed to go and glean information from criminals, then he will never get anywhere'.

4.34 It was precisely because Anderson had been so closely involved with Saffron's alleged criminal activities that those at the Authority regarded him as so potentially useful to it. One Authority witness told the Committee, regarding criminal informers:

it was of necessity ... that we had to deal with these people. ... you would not expect to be dealing with the Archbishop of Canterbury or the Pope to try to find your way into an organised criminal group. You had to get somebody in that group who was prepared to turn over. I did not like James McCartney Anderson at any stage but we had to deal with people like that, otherwise we would still be treading water and would have got nowhere.

4.35 Another witness made the same point in the context of using Anderson against Saffron:

It is frequently the case that a person who is nearly as guilty as the person who ends up being charged becomes an indemnified witness. ... It is a function of criminal investigation in this sort of area, particularly where you are dealing with people as experienced as Saffron, that you are probably going to have to get somebody pretty close to him before you can hope to get a case against him. This was an illustration of that principle.

Immunity from Investigation and Prosecution

4.36 Almost invariably, criminals become informers because they perceive that they will benefit by doing so.¹³ A witness told the Committee:

13. See for example, J.R. Williams and L.L. Guess, 'The Informant: A Narcotics Enforcement Dilemma', *Journal of Psychoactive Drugs*, July-September 1981, vol. 13(3), p. 238: 'The main motivations for being an informant are money, fear, revenge, (spite, jealousy), repentance, ego, competition reduction, citizenship (patriotism, duty) and eccentricity (cranks). Naturally, a single informant may often be motivated by more than one of these inducements'. See also P.N. Grabosky, 'Prosecutors, Informants, and the Integrity of the Criminal Justice System', *Current Issues in Criminal Justice*, July 1992, vol. 4(1), p. 49: informants

are likely to be practised in the art of deception, if not criminals themselves. Some may indeed be skilled in treachery. Rarely are they paragons of virtue and honesty. ... Some will be driven by mercenary considerations. Others may be attracted by the ease of access to illegal commodities which their participation may provide. For others, who are facing or who could face criminal charges, the motive will be indemnity from prosecution or perhaps a reduction in charges. Others still may be driven by vengeance, and may seek to use their position to settle old scores.

A. In my understanding, it is common for informants to have a private agenda. The notion that informants assist investigations out of a spirit of assisting the public for motives of pure, disinterested good citizenship -

Q. That is forlorn, is it not? A. Yes. It is so rare as to very seldom happen.

Q. If they were good citizens, they would be bad informers, would they not? A. That is right, because they would not be in association with the person in the first place.

4.37 A major incentive for criminals to inform is that, by doing so, they will obtain a degree of immunity from prosecution in respect of their own criminal activity. Criminal informers obtain this immunity in a number of ways, both formal and informal or *de facto*.

■ No Formal Grant of Immunity

4.38 A witness cannot be compelled to give evidence against an accused if the evidence given would also incriminate the witness. The law provides, however, that witnesses may be given a formal undertaking that self-incriminating evidence they give will not be used in any prosecution against them.¹⁴ The giving of such undertakings, often referred to as 'indemnities', deprives witnesses of the ability to refuse to give evidence on the ground that the evidence would incriminate them.

4.39 The Authority has no power to issue such indemnities. They can only be issued by the relevant Commonwealth, State or Territory attorney-general or prosecuting authority - for example, the Commonwealth DPP in relation to offences against Commonwealth law.¹⁵ Some witnesses against Saffron were given indemnities by the DPP. However, the Committee was told that Anderson never sought and was never given any formal indemnity in relation to the evidence he gave in court against Saffron,¹⁶ or indeed any other matter arising from his relationship with the Authority.

4.40 The Authority, however, did explore with the Commonwealth DPP and his officers whether the DPP would give Anderson an indemnity if he asked. The indemnity under discussion was limited to his evidence in relation to the Saffron

14. See generally Ian Temby QC, 'Immunity from Prosecution and the Provision of Witness Indemnities', *Australian Law Journal*, August 1985, vol. 59, pp. 501-12.

15. See *Director of Public Prosecutions Act 1983*, s. 9(6) for the powers of the Commonwealth DPP to give undertakings in relation to court proceedings. The DPP also has power to give undertakings in relation to evidence given at Authority's hearings: *NCA Act*, s. 30(5)-(6). The inability of the Authority itself to give an indemnity that would effectively protect an individual from further prosecution causes the Authority some difficulties, the Committee was told. It means that criminal informers coming to the Authority, once they learn of this, sometimes respond by saying 'Why should we tell the Authority anything? It cannot guarantee our protection from prosecution'.

16. It seems that just before the Saffron tax trial Anderson found out that other witnesses had indemnities and asked one of the Authority staff for one himself. But he did not pursue the matter or make any formal request.

tax matter. The Committee was told that there was never any suggestion that Anderson be given any wider indemnity.

4.41 The tax charge against Saffron named Anderson as Saffron's co-conspirator in the conspiracy to defraud the Commonwealth.¹⁷ Much of the evidence he was expected to give against Saffron would also be evidence of his own role in the conspiracy. Up until the moment he gave evidence in the Saffron tax trial, the Authority (and the DPP's office) had to be prepared for the possibility that he might rely on his right not to incriminate himself, and hence an indemnity would need to be given to him if he was to testify. As one witness told the Committee:

What was wanted was to preserve the situation whereby he could not have the option at the trial of saying, when asked whether or not he agreed with Saffron to produce black books - to prevent him saying - 'I decline to answer that question on the ground that it might incriminate me'.

4.42 For some Authority staff, a secondary motive for preparing the groundwork for a formal indemnity was to increase Anderson's confidence in the Authority. These staff felt that Anderson was holding back information and would continue to do so until the Authority demonstrated that his position would be protected.

4.43 Authority staff asked the DPP late in 1985 if he would give Anderson an indemnity, should this later become necessary. In November 1985, the DPP indicated that it was more likely than not that when the appropriate time came (*ie.* much closer to the court proceedings) he would give the indemnity. The question of an indemnity lay fairly dormant until mid 1987, just before the commencement of the tax trial. By this stage the DPP had had fresh thoughts about the matter, and was less inclined to give an indemnity. There were intensive discussions between Authority and DPP office staff on the eve of the trial. In the event, Anderson did not seek an indemnity, so the DPP did not have to make a decision.

■ *De Facto* Immunity - NCA Investigations

4.44 Even if there is no formal undertaking, a criminal informer may still obtain effective immunity by informal or *de facto* means. The logic of self-interest dictates that an informer is unlikely to assist a law enforcement agency if the agency appears to be intent on prosecuting him. Therefore, in any practical sense, an agency cannot investigate someone in Anderson's situation with a view to prosecution and at the same time expect the person to assist it as an informer or witness.

17. The original charges did not refer to Anderson. Saffron was committed for trial on 13 charges, including a charge that he conspired 'with divers other persons'. The Commonwealth DPP's office, which had carriage of the prosecution, decided to reduce the number of charges to a single conspiracy charge and to name Anderson in the charge.

4.45 For this reason, once the Authority made it clear to Anderson by its conduct in December 1984¹⁸ that it was using him to assist it against Saffron, he could be confident that there was no real risk that he would be charged alongside Saffron.¹⁹ The Committee was told that had the Authority not decided to use him, he would most probably have been charged in the matter:

Saffron was the target. If the case against him could have been got up without needing Anderson's evidence, I would have thought that the investigation would have exposed Anderson to being prosecuted at the same time as part of the conspiracy, and I would have expected that that would have happened.

4.46 In the Committee's view, the *de facto* immunity thus conferred covered not only Anderson's role in the matters with which Saffron was ultimately charged, but extended to all aspects of the Saffron-Anderson relationship. In the Committee's view, the Authority could not, in practical terms, use Anderson as an informer in respect of one aspect of Saffron's activities and charge him alongside Saffron in relation to any other aspect.

4.47 The Committee examined whether Authority staff ever told Anderson he was not going to be charged alongside Saffron. The responses from Authority witnesses varied. Some said they did not think anything was said on the subject to Anderson. One witness said that as far as he was aware, Anderson was never told, not even given a nod and a wink. A second witness said:

as far as I know Anderson was not given any indemnities; he was not given any undertakings that he would not be prosecuted or anything of the sort. But it may have happened and I not be aware of it.

4.48 A third witness told the Committee:

my strong belief was that nobody had given him any undertaking or even an indication that he was not himself to be charged. ... What I can say is that I know of nothing that was said to James McCartney Anderson that would have led him to believe that he was going to be prosecuted for the black books or, indeed, any other offence. But there was certainly no positive decision that I know of to instil that impression in his mind. It is certainly possible that he drew that inference himself from the conduct of the NCA -

18. See para. 4.25 above on the way the 20 December 1984 interview with Anderson was conducted.

19. One witness pointed out that, in assessing the risk, Anderson had to consider the attitude of the DPP as well as the Authority:

I accept that by approaching Anderson in the way we did, without cautioning him, he may well have taken the view that he was not the target, and therefore to some extent we were lulling him into a sense of security which might have turned out to be false. The Director of Public Prosecutions may have said, 'Look, even though he wasn't cautioned, I'll run with that statement. Let him argue that the statement should not be admitted against him as a confession. Let him argue that, and the judge may or may not rule it out in the exercise of his discretion'.

Q. Did anyone take any steps or say anything that would have actively disabused him of any mistaken notion he may have had that he had a de facto immunity from prosecution?

A. I think the answer to that is that I know of nothing that was said to him that would have disabused him of that, and certainly nothing in the nature of a caution.

4.49 A fourth witness said:

I think that any statement that he ever made was an induced statement and what he said could not be used against him but, as far as I am concerned, if there had ever been a promise or any understanding arrived at, that was quite against any proper behaviour. That would not have been condoned if I had known about it. I do not think that is the case.

4.50 Some witnesses accepted that Anderson had correctly worked out from the Authority's conduct towards him that he was not going to be charged. For example, one witness told the Committee that Anderson:

may well have thought that we were effectively not pursuing him on the black books issue, and that that may have been induced by either the conduct of the Authority or the conduct of the police in the course of their dealings with him. Beyond that, I was certainly never aware of any nod or wink that was actually given to him by the police.

4.51 Another witness told the Committee:

it would not surprise me if Anderson expected that he would not be prosecuted in relation to the black books matter. I do not have any memory of discussions as to how that state of mind would have arisen.

Q. But if one of your officers had given a commitment like this to Mr Anderson, what would be your attitude, briefed as to that fact? A. In relation to the black books matter I would not have been disturbed about that because it was my view that it would be necessary to have evidence from Anderson on that prosecution.

4.52 There was some evidence that Authority staff did tell Anderson in 1986 or 1987 that he would not be charged in the Saffron tax matter. An August 1987 internal minute in the Commonwealth DPP's office refers to this. The minute records that one NCA officer had conceded in conversation 'that it is very likely that one or more of the police officers involved is likely to have said words to that effect to Anderson'.

4.53 A witness was asked by the Committee if he recalled anything along these lines being said to Anderson. He replied, with reference to the position in 1987:

I do not remember it actually being said, but if he had asked, it would have been said. That is, he was here, having given all this information on two previous occasions. He was a witness, he was assisting; we were not going to charge him with the offence in respect of which he was assisting.

Q. Had you personally said anything to Anderson along those lines? Do you recall ever saying that? A. I do not recall it, but it is possible that I did. ... if Anderson had said,

'Are you going to arrest me' - 'you' being the NCA - 'for the black books conspiracy?', we would have said, 'No, we are not'. ...

Q. And it is not only you who may have said that to him, but also other officers directly involved in the investigation of the black books matter. Is that a fair proposition? A. That is possible.

4.54 One of those who dealt with Anderson at the Authority in 1986 conceded to the Committee that some understanding might have been conveyed by implication at least. He referred to the matters in which Saffron and Anderson acted together and said to the Committee:

when he is telling you about ... [Saffron] and skimming off profits, committing taxation offences, and prostitution in clubs, if we do not acknowledge to him that we are not going to prosecute him, why would he ever sign up?

... as far as Saffron's bookkeeping is concerned, if we were going to gather evidence on that you were going to have to give an undertaking to Anderson that you were not going to prosecute him for taxation offences.

Q. Precisely. So you gave him that sort of an undertaking? A. No, I did not, I do not think, and bear in mind that I am very strong about the 'don't think' business. But that is what I would be implying. How do you expect him to give evidence unless you say, 'We are not going to prosecute you for having two sets of books et cetera'?

4.55 The same witness later clarified the extent of what had been implied:

if you are going to put him into a witness box you have got to undertake to tell him that you are not going to prosecute him for the same offences. But beyond that - if you start to suggest that there is any indication or discussion of immunities for murder, fires and things like that, I think that is all a nonsense.

4.56 Another witness made the same qualification. He agreed that Anderson may, from his dealings with the Authority, have gained the impression that he was not at risk - but 'only in relation to this [tax] conspiracy, nothing else'. A different witness gave his view on the scope of what Anderson was reasonably entitled to assume:

It was certainly not my understanding that Anderson had any quasi or unofficial general indemnity. I would accept that, as I have said, he may well have been entitled to assume that he would not be prosecuted over the black books matter, and he would not have had to be very smart to have worked that out, judging by the fact that we plainly proofed him as a witness. But I do not know of any basis on which he could have gone beyond that.

4.57 The Committee does not consider it important whether Anderson was told he would not be charged. His *de facto* immunity derived inevitably from the fact that he was assisting the Authority, not from whether he was told he would not be charged. The fact that the immunity is inevitable in such informer-agency relationships makes it essential in the Committee's view that the agency fully consider beforehand whether it is desirable to give this immunity by entering into the relationship.

■ *De Facto* Immunity - non-NCA Investigations

4.58 Criminal informers also obtain a degree of immunity from attention by agencies other than the one they are assisting. The informer is unlikely to continue his voluntary assistance to one agency if at the same time some other agency is investigating him with a view to prosecution. It is in the interest of the agency being assisted if other agencies adopt a 'hands-off' approach to its informer.

4.59 The Committee found it difficult to assess the extent of the benefit that Anderson received in this way. None of the evidence before the Committee suggested that the Authority was asked by any other agency to avoid using Anderson as an informer or witness because doing so would interfere with its plans to investigate and charge him.

4.60 The Committee was told no agency indicated to the Authority that it was interested in investigating Anderson during the period of his relationship with it. This was despite the fact that liaison officers in other agencies would have been aware, in very general terms only, that Anderson was assisting the Authority.²⁰ The Committee also notes that the *de facto* immunity did not operate to prevent New South Wales Police from arresting and charging Anderson at the end of 1985 for gaming offences.²¹

4.61 Authority witnesses stated to the Committee that the fact that the Authority used Anderson as an informer did not prevent any other agency from investigating him. One of the witnesses put the argument as follows:

I certainly think that the investigative body have the ability to determine who they are going to investigate, and in that sense they are in the position of giving *de facto* immunity from their own investigations, but they cannot prevent any other law enforcement agency, any other police force, with appropriate jurisdiction from investigating the offences. If they were to give the nod to an individual such as Anderson, they would be misleading, to the point that they could not bind either the Director of Public Prosecutions or any other law enforcement agency with jurisdiction to investigate those matters. The Australian Federal Police, for instance, could have

20. A criticism made to the Committee was that the fact that Anderson was assisting the Authority was too widely known in the law enforcement community. A witness told the Committee: 'Everybody knew, I would imagine, if they had any brains at all, that Anderson was being used by the Authority - in the law enforcement area'.

21. He was arrested and charged with assisting the conducting of a gaming house and being in a gaming house without lawful excuse: 'Police swoop on "legal" card game: black Friday for blackjack at the Empress Club', *Sun-Herald*, 15 December 1985, p. 2 and '50 in court on gambling charges', *Sydney Morning Herald*, 9 January 1986, p. 4. The Committee was told the arrests were made to provide the basis for a test case on the question whether the gaming was in fact illegal. It was held at first instance and on appeal that it was: *Tahapi Pty Ltd v Avery* (1986) 6 NSWLR 128 and 138 respectively. However, the Committee was told that the charge against Anderson was never proceeded with following the ruling on the legal issues.

made a decision, if they so wished, to investigate and to prosecute Anderson, notwithstanding the direction taken by the National Crime Authority.

So they really do not have the power to grant *de facto* immunity as such; they merely have the power to decide what they themselves are going to do. I suppose it was a reasonable punt that the Australian Federal Police or any other agency, such as the Tax Office, that was aware of the black books and had been aware of the black books for some years and had not, to that point, done anything about it, knowing that the National Crime Authority had effectively taken the thing on board, was not likely itself to conduct an investigation if the National Crime Authority had chosen a particular course.

4.62 The Committee considers that, while theoretically correct, this view does not give sufficient weight to the way law enforcement officers operate in practice. The Committee was told that, notwithstanding the absence of any formal Authority request, law enforcement personnel would have avoided Anderson to the extent they were aware that he was assisting the Authority. Unwritten rules among police at the working level ensure that, unless a major crime is indicated, one police officer does not inquire too closely into what another officer's informer is up to. One witness told the Committee that other agencies 'would be generally leaving him [*ie.* Anderson] alone, one would expect, if the NCA investigators were known to be interested in him in relation to Saffron'.

4.63 Because this type of immunity occurs irrespective of the wishes of the Authority, the Committee considers that it is a factor that the Authority was obliged to take into account in establishing an informer relationship with Anderson. In addition, it is possible that police at the Authority asked colleagues in other agencies to avoid Anderson. A witness told the Committee:

it would not surprise me if somebody had had a word to the New South Wales Police to leave him alone.

Q. Keep away? A. Yes.

Q. Again, in a relationship between an informer and a policeman, that is a reasonable thing - A. Sure.

Q. If somebody is sniffing too close to an informer and the informer says, 'Listen, I am getting a bit of heat here', the policeman might go round - A. As long as he does not go out and rob a bank or kill someone, but that is understandable.

4.64 The Committee recognises that assessment of the extent the Authority would be giving Anderson *de facto* immunity by using him as an informer would have been made more difficult because of his prior long-term informer relationship with the New South Wales Police,²² and the possibility that he might have had a similar

22. See para. 2.9 above for the fact that this informer relationship was disclosed at the Nielsen inquest, and para. 3.5 for a 1981 instance of Anderson providing a NSW Police officer with information.

relationship with other agencies.²³ If Anderson had been actively assisting other agencies, he would have already had a measure of the *de facto* immunity that comes from being an informer.

Relevance of Anderson's Criminality

4.65 Immunity is of importance only if there was criminal activity by Anderson for which he could and would have been investigated and prosecuted had he not become an NCA informer in 1984. Before looking in some detail at what the Authority ought to have known in November 1984 about Anderson's criminality, it is necessary to consider two separate arguments that the precise extent of criminality is not relevant.

4.66 One argument is that law enforcement agencies should not use criminal informers at all, because any use necessarily involves ignoring their criminality to some extent.²⁴ Arthur King told the Committee that if this was inherent:²⁵

that would mean ... that if you are going to use an informant, any informant, you must of necessity ignore all that informant's criminal activities. I think that is an unacceptable situation.

4.67 The other argument took a position near the opposite end of the spectrum, arguing that even serious criminal activity was largely immaterial. On this view, the only factors that mattered were whether the informer could give valuable information about the target, and whether he would be a credible and necessary witness in proceedings against the target.

4.68 One witness told the Committee, if obtaining evidence for a conviction 'involved having to call someone suspected of murder in order to give evidence, in my opinion, that is justifiable'. The Committee pointed out to an experienced

23. *e.g.* see 'Murphy's denial on Saffron was to meet serious challenge', *National Times on Sunday*, 14 September 1986, p. 5, which states that Anderson was interviewed by staff of the Parliamentary Commission of Inquiry into Justice Lionel Murphy and gave a range of information, including the names of people who could corroborate his information.

24. *cf.* P.N. Grabosky, 'Prosecutors, Informants, and the Integrity of the Criminal Justice System', *Current Issues in Criminal Justice*, July 1992, vol. 4(1), p. 49:

While the use of informants may strike some idealists as inconsistent with the basic principles of a free and democratic society, pragmatists will argue that informants are essential to combat a range of low visibility criminal activity, particularly that involving corruption or drug traffic. Rather than join this debate, we shall acknowledge that authorities have used and will continue to use informants.

25. PJC *in camera* Evidence, 10 August 1992, p. 26.

prosecutor that Anderson was a prime suspect in the Juanita Nielsen murder, and he replied: 'So what? I have had to use murderers before and I have no doubt that I will have to use them again'. Another lawyer told the Committee that his personal view was that the Authority should still have used Anderson, even if it had been aware that he was a prime suspect in a murder case.

4.69 The Committee considers that the proper answer lies between these two positions. Authority witnesses told the Committee it is essential for an agency such as the Authority to use criminal informers.²⁶ The Committee accepts that this is the case. It follows that some criminality by informers will have to be overlooked in order to obtain their information or evidence.

4.70 However, the Committee believes that there is a point where the amount or seriousness of the criminality that would have to be overlooked is so great that the decision to use the person as an informer cannot be justified. The Committee expresses its concern that the Authority's 1992 informant management procedures do not acknowledge this.

Categories of Anderson's Criminal Activity

4.71 Anderson had no criminal convictions in 1984. However, the material available then shows:

- strong evidence suggesting that Anderson was Saffron's accomplice in a range of offences that continued throughout the 1970s, including tax fraud, bribery of police, licensing offences and making money from the activities of prostitutes; ('accomplice criminality')
- evidence of widely varying quality suggesting that Anderson had been involved in the 1970s and early 1980s in offences independently of Saffron, ranging from running prostitutes, through trying to hire someone to kill Saffron and drug trafficking, to the Nielsen abduction and murder; ('past criminality') and
- suggestions, mainly in police intelligence material of unknown or doubtful reliability, that Anderson had recently been, and might still be, involved in offences related to illegal drugs, stand-over tactics and illegal gambling. ('concurrent criminality')

4.72 These categories raises different issues with respect to the immunity obtained by becoming an informant. Accomplice criminality raises the issue of when it is appropriate to use one participant in a joint enterprise as a source of information

26. See paras. 4.33 to 4.35 above.

and a witness against another participant. When used in this way, the informer and/or witness often escapes punishment for his or her own role in the joint crimes.

4.73 Because the relevant Authority references refer to associates of the principal target, the issue of whether the Authority should investigate and lay charges in respect of accomplice criminality is one it must squarely confront. With past criminal activity for which charges have never been laid, the crimes may not be covered by an Authority reference, and may lie altogether outside the scope of the criminal activity the Authority is empowered to investigate under the NCA Act. The issue arises therefore of how the Authority should respond to such past criminal activity on the part of someone it proposes to use as a source of information and to put forward as a witness to the relevant DPP.

4.74 Concurrent criminality raises the same issue as past, non-accomplice criminality - to what extent is the Authority obliged to have regard to criminal acts by its informer where those acts lie outside the sort of criminal activity that the NCA deals with. In addition, the Authority has to consider the extent to which it is shielding the person from attention by other law enforcement agencies, by using the person as an informer.

Accomplice Criminality

4.75 With respect to accomplice criminality, a comprehensive assessment should have considered whether the potential informer is no more than a subordinate, rather than an offender at the same level as the target. If this is established, a choice has to be made between charging the accomplice alongside the target, or using the accomplice as a source (and perhaps later as a witness) against the target.

4.76 The assessment may show that the relationship between the two men is not one of principal and subordinate but of equal partners in the criminal activity. If this is the case, the Authority (and later the DPP) has to weigh up whether the evidence is sufficient to charge and convict both. If it is not, the only means of obtaining a conviction may be to use one partner as a source of information and a witness against the other.

4.77 The Committee accepts that an assessment made in late 1984 of the criminal activities in which Saffron and Anderson had been involved in together would have shown that Saffron was the principal and Anderson was a subordinate, albeit a senior subordinate. An Authority witness told the Committee:

I think that in this case, or so it seemed to us, at all relevant times Saffron was the boss and Anderson was his offside in the brothels, in the clubs, in the massage parlours and all the rest of it. It seemed that he was Saffron's, if not his first lieutenant, one of his trusted lieutenants. Of course, Saffron was not about to give evidence against James McCartney Anderson. McCartney Anderson, we were told, was willing to give evidence against Saffron.

4.78 The Committee accepts that, if a choice between Saffron and Anderson was really necessary and only one of the pair was to be charged in relation to their joint activities, it was proper that Saffron be that one. (The assessment of whether Anderson's information and evidence was necessary to obtain Saffron's conviction is considered below - see paras. 4.127 to 4.139)

Past Criminality

4.79 Some of the criminal matters that Anderson had allegedly been involved in, independently of Saffron, in the 1970s and early 1980s were noted in chapter 2. The most serious matter in this category was the disappearance and presumed murder of Juanita Nielsen.

4.80 As far as can be determined from Authority records, its staff did not obtain a full copy of the transcript of the Nielsen inquest until about the middle of 1985 at the earliest. Minutes of a meeting of the Saffron investigation team in May 1985 state: 'Agreed the transcript of the Nielsen inquest to be obtained, but initially restricted to Anderson's evidence'. The full extent of the use made by the Authority of the transcript is unclear to the Committee.

4.81 An Authority document indicating work done on the Saffron investigation to 25 June 1985 shows that one officer had assessed Saffron's evidence at the inquest. Another had 'perused Nielsen inquest brief re evidence given by James Anderson'. An October 1985 memorandum setting out, amongst other matters, some background on Anderson indicates that Authority staff had read at least those parts of Anderson's evidence at the inquest that related to the 'black' books.

4.82 However, a profile of Anderson developed by an Authority analyst, dated 28 February 1986, lists a number of sources of material on him, but does not include the Nielsen transcript as a source.²⁷ The profile indicates that some NSW Police believed that Anderson had some association with the disappearance of Juanita Nielsen but were unable to prove this. It is not clear to the Committee when and how Authority staff first became aware of this belief.

4.83 What is clear to the Committee is that no one at the Authority ever sat down and read everything about Anderson's alleged involvement in the Nielsen matter and satisfied him or herself both that it was not an issue worth pursuing by the Authority, and that it was not a matter of concern to the Authority given the fact that he was assisting it. This underlines the point made above - that no real attempt was made to assess Anderson's criminality prior to meeting with him.

27. One of the sources listed is a book which discusses the Nielsen case in some detail: David Hickie, *The Prince and the Premier*, Angus & Robertson, Sydney, 1985. Pages 476-521 are headed 'The Juanita Nielsen Murder' and discuss the inquest evidence on Nielsen's disappearance.

■ Appropriate Response to Past Criminality

4.84 The Committee found it more difficult to conclude what the Authority's response should have been if it had fully assessed Anderson's role in the Nielsen case. As suggested in the previous paragraph, there are two aspects to this question: whether the Authority should itself have investigated the Nielsen matter; and, if not, whether it should have nonetheless treated Anderson differently.

■ Should the NCA Have Investigated the Nielsen Matter?

4.85 The first question in examining whether the Authority ought to have elected to investigate the Nielsen matter, is whether it had the legal power to conduct such an investigation. The Authority can only act with respect to 'relevant offences', as noted in chapter 1 above.

4.86 It is difficult to state with certainty that offences involved in Nielsen's disappearance and presumed murder come within the NCA Act's definition of 'relevant offence', because the definition is in a sense circular. To apply it, many facts about the alleged offence must be known - specifically, whether it is an offence that involves 'substantial planning and organization' and 'sophisticated methods and techniques' and is an offence 'that is committed, or is of a kind that is ordinarily committed, in conjunction with other offences of a like kind'.²⁸ When someone has, like Nielsen, simply disappeared these facts may be a matter of conjecture until the investigation is complete, or at least well under way.²⁹

28. The quoted words are all elements of the definition of 'relevant offence' in s. 4 of the NCA Act. The Nielsen case fits the other elements of the definition - an offence that involves violence, punishable by three or more years imprisonment, for which the time for the commencement of a prosecution has not expired.

29. Subsection 3(3) of the *National Crime Authority (State Provisions) Act 1984* (NSW) does not resolve the problem. (The subsection is equivalent to NCA Act, s. 4(2) and is the applicable provision because possible offences related to Nielsen's disappearance involve New South Wales, not Commonwealth, law). The subsection provides that:

Where the Authority suspects that an offence that is not a relevant offence as defined in section 4(1) of the Commonwealth Act may be directly or indirectly connected with, or may be a part of, a course of activity involving the commission of a relevant offence as so defined, whether or not the Authority has identified the nature of that relevant offence, the first-mentioned offence shall, for so long only as the Authority so suspects, be deemed, for the purposes of this Act, to be a relevant offence.

This would have enabled the NCA to investigate Anderson's role in the Nielsen matter provided it suspected that her disappearance was connected with a relevant offence. If the relevant suspicion was that she was killed as a result of her opposition to property development in Victoria Street, then the link to a relevant offence would appear to be lacking. The real estate development was not illegal. The position would have been different if the relevant suspicion was that Nielsen was killed because she had discovered something incriminating about relevant offences of, say, Saffron.

4.87 The Committee considers that the New South Wales Police investigation into Nielsen's disappearance and the evidence before the subsequent inquest disclosed a reasonable possibility that her disappearance involved an offence that fits within the definition of 'relevant offence' in the NCA Act. Therefore, in the Committee's view, it was open to the Authority in 1984 to investigate her disappearance had it wished to do so.

4.88 In the absence of a reference, the Authority can only conduct 'general' investigations - that is, investigations not employing the coercive powers available for use in 'special' investigations. Without the availability of its coercive powers, the Authority would not have any greater powers than the New South Wales Police to investigate the Nielsen matter.

4.89 Had the Authority conducted an assessment of Anderson's criminality and decided that his role in the Nielsen matter warranted a special investigation, it had two options: to try to fit the investigation under the terms of an existing reference; or to seek a new reference covering the matter.

4.90 Relevant offences arising from Nielsen's disappearance and presumed murder would all be offences under New South Wales law, not Commonwealth law. Therefore, a reference under which they were investigated would have to be a New South Wales reference. In 1984 the Authority had no New South Wales reference. The New South Wales reference under which Saffron was investigated was not given to the Authority until 4 April 1986.

4.91 An Authority witness informed the Committee:

The Authority did not have jurisdiction to investigate the Luna Park fire or the Juanita Nielsen murder until that New South Wales reference was obtained. Once it was obtained, obviously the Authority had to confine itself still to investigating relevant offences. The Luna Park fire, with the other fires, was fairly easy to fit into that category. The Juanita Nielsen murder, for instance, may have been difficult to fit into that category - not impossible perhaps, but it was less easy to show that that was part of some sort of series of offences.

4.92 It is a difficult question of legal interpretation whether the Authority was empowered to investigate the Nielsen matter under this State reference. The State terms of reference did permit investigation of 'associated persons' and clearly Anderson was an associate of a person that the Authority was investigating under the reference - Saffron. However, the power to investigate associated persons may be limited, as a matter of legal interpretation, to situations where the principal has acted in concert with the associate.³⁰ The power may not extend to activities which the associate engaged in independently of the principal. The main theory relating to

30. In a letter to the Committee on 25 November 1992, the Authority stated that in its view investigation of 'associates' under a reference should be linked to the alleged criminal activity involving the person or persons identified as the principal target under that reference.

Nielsen's disappearance does not involve Saffron and Anderson acting together.³¹

4.93 Rather than rely on existing references, the Authority could have sought a reference explicitly focused on the Nielsen matter.³² The Authority actively and successfully sought references on other matters.³³ For example, when investigations into Saffron under Commonwealth Reference No.1 uncovered suspected offences against New South Wales law, a reference was sought and obtained from the New South Wales Minister for Police and Emergency Services through the Inter-Governmental Committee on the NCA.

4.94 Authority witnesses gave several reasons why it would have been inappropriate for the Authority to have investigated the Nielsen matter. The reasons were not considered as part of an assessment at the time because, as noted above, the Authority failed to make such an assessment. However the reasons merit examination.

4.95 One reason was the view of Authority staff that an Authority investigation of Nielsen's disappearance would not have been fruitful. Authority witnesses told the Committee that in their view the matter had been extensively investigated by New South Wales Police officers. Authority and other witnesses said they regarded these officers as honest and competent. One witness told the Committee:

to the best of my recollection the view that I took and, on my recollection, the view that others who were similarly apprised of the material took, was that that material had already been done to death, as it were, by the New South Wales police. They had investigated the matter apparently thoroughly. There was nothing in the material to indicate that there had been any inefficiency, or corrupt influence, or any failure in the investigation into the death, or anything in the inquest material to suggest that there were other avenues that were likely to bear fruit and there was not, in my view at that time, an area which was likely to produce further evidence against Anderson or indeed anybody else. ...

I am quite sure that, if we perceived - and I do not recall that we did - any weaknesses in the original police investigation, our view was that there was nothing to suggest that anything that we could do now was likely to improve the situation.

4.96 An Authority witness told the Committee he examined the transcript of the Nielsen inquest in 1986 in order to see what had been said about the 'black' books

31. For example, see Peter Rees, 'Juanita Nielsen - the questions that were never asked', *Sydney Morning Herald*, 10 November 1990, pp. 76-77, where the focus is on the links between Anderson and a Kings Cross property developer, Frank Theeman, who allegedly had a strong motive for securing Nielsen's disappearance.

32. This assumes that a 'relevant offence' was involved - on which, see paras. 4.86-4.87 above.

33. The NCA Act, s. 10(1) provides: 'The Authority, if it considers it appropriate to do so, may request the Inter-Governmental Committee to give approval for a matter relating to a relevant criminal activity to be referred by a Minister or Ministers to the Authority for investigation'.

and by Saffron, Anderson and others. He was asked by the Committee if as a result he reached a view on Anderson's role in Nielsen's disappearance. He replied:

I cannot recall now whether I formed a conclusion. Having refreshed my memory recently by looking at parts of the inquest, I believe I would not have formed any concluded view. I suppose that I tended to look at things as a prosecutor, and they seemed to me to be well short of any sort of case which could be mounted against him for having an involvement in her disappearance.

4.97 Another Authority witness told the Committee:

if there were evidence that Anderson was involved in a murder and if there were some hard evidence of it, I would not shy away from that. I would go for it and try to charge him. In the case of the Juanita Nielsen disappearance and alleged murder, ... it was all some time ago. ... There had been a lengthy coroner's inquiry and in a coroner's inquest situation, as you would know, the coroner is not bound by the rules of evidence, all sorts of hearsay got in and all sorts of things were allowed there that would not be allowed in a court. ...

To me there was not any imperative for us to go right through the whole thing again.

4.98 A third witness said, regarding the Nielsen murder:

If I had become aware of evidence which went close to being strong enough to charge Anderson with that murder, then it would have been my responsibility, I believe, to further investigate the matter after referring it to the Authority at an Authority meeting. I think I would have, in those circumstances, certainly asked the Authority to take further steps to step up an investigation against him for the murder. But that was not the position.

4.99 The Committee comments that the value of such views is limited by the fact that the Authority took no concerted steps to make itself aware of and assess the evidence against Anderson in relation to Nielsen. Any information that came to the attention of Authority staff came as only as a by-product of their focus on Saffron. The Committee notes that Authority staff were not looking for such information. Anderson was seen by Authority staff almost entirely as an informer and witness, not as someone to be investigated. An Authority witness said of Anderson:

we were not looking at the informer with a view to prosecuting him at any stage. Had we got evidence that made it absolutely imperative that he be prosecuted, then obviously we would have had to rethink the whole issue.

4.100 Another Authority witness told the Committee: 'All I can tell you is that I was never presented with, I never stumbled across, I never became aware of any cogent reason why Anderson should be reasonably suspected of the Nielsen murder'. The Committee pointed out that no-one at the Authority was looking too hard for information on the matter. The witness replied:

The reason that nobody was looking too hard was, firstly, it was none of our business and, secondly, we had too much else to do. I am very sorry that Miss Nielsen was

killed - everybody is - but it happened 12 years prior to the events that we are talking about.

4.101 Related to the question of work-load was the need to keep investigations focused. Law enforcement agencies generally have a discretion as to which matters they will investigate.³⁴ It would seem that a level of discretion applies to the Authority, subject to it paying due regard to the terms of reference it has been given. Authority witnesses told the Committee that the need to keep investigations focused was critical, and in this case their focus was on Saffron. One witness said:

If you are carrying out any investigation, if you start going down all the rabbit burrows you will never get anywhere. You have to direct your energies to one thing. And having done that you may then go back and pick up something else. But you must not get diverted from your objective or you will always lose your way.

4.102 Another witness told the Committee:

We had to try and maintain some sense of direction here. We had to work out priorities, and the first priority was the black books investigation. We could have asked each of these witnesses, when they came to the hearings convened for the purposes of the black books investigation, a number of questions across the board, and in some cases I think we did ask them a few questions about other matters. But we had to try and maintain some degree of control over the investigation, otherwise we would simply have been too diverse and going off into too many different directions at once.

4.103 A further reason for not looking too hard at Anderson's alleged involvement in the Nielsen matter was the perception at the Authority that its overall role was a limited one. This role was not one of tackling major unsolved crimes, but of concentrating on organised crime matters referred to it. Authority witnesses saw the New South Wales authorities as having prime responsibility for investigating the disappearance of Nielsen. As one witness explained:

We were only interested in Saffron; that was our reference. We were not concerned to prosecute other individuals. They were not controlling a criminal network which warranted the use of the NCA's powers. The New South Wales Police Force had had years to have a go at Anderson for these sorts of things, if it had wanted to. It had all the time in the world to deal with him, if it thought he was a prime suspect in the Juanita Nielsen matter, but nothing was done about it.

4.104 Another witness made a similar point:

One of the things that the Authority had to be very conscious of was the difficulty of going into the bailiwicks of the AFP and the State forces. The Authority was there to untangle the hard knots which were referred to it. It is a reactive organisation, not proactive, and it was not seized of the responsibility to investigate the Nielsen murder.

34. e.g. see *R v Commissioner of Metropolitan Police, ex parte Blackburn* [1968] 2 QB 118; *The Queen v McAulay and others, ex parte Fardell* (1979) 41 FLR 267.

4.105 The same witness also told the Committee, regarding the role of the Authority:

It is not ordinary police work where one thing leads to another and it is your own business where you end up. We were there committed to expending finite resources in order to fulfil our duty under the reference in relation to Saffron - not in relation to Anderson or anybody else. I suppose, even more in law enforcement agencies which operate under references like that, the assumption is more readily manifested that your informants are not likely to be charged.

4.106 Another witness also referred to the impact of the fact that the Authority operated against designated targets:

The system, I suppose, is open for criticism in one sense. If you target somebody, then you are looking for evidence in order to establish a case against them, first of all. To that extent, one tends to go into an investigation with a less open mind as to the merits of the various players in the scheme than one might otherwise have done. I think that that is a legitimate criticism of that method of investigation.

4.107 The Committee accepts that, had the Authority assessed the question in November 1984 (or at any later stage), it had grounds on which it could properly decide not to take up the Nielsen disappearance as a matter for investigation.

■ **Impact of Nielsen Matter on Decision to Use as Informer**

4.108 This conclusion leaves the question whether, if the Authority was not going to investigate the suspicion that Anderson was responsible for Nielsen's disappearance, it should nonetheless have declined to use him as a source of information. The Committee regards this suspicion as a strong reason for the Authority not to have used him. However, the Committee does not consider that this factor was, on its own, sufficiently strong to have been decisive.

■ **Weight Given to Other Past Criminality**

4.109 In chapter 2, the Committee noted that there was police intelligence material indicating that Anderson might have been involved in a range of criminal activity in the late 1970s and early 1980s independently of Saffron. The Committee considers that much of the reasoning and its conclusions expressed above in relation to the Nielsen matter equally apply to the allegations about Anderson's other past criminal activity: they were not matters which the Authority was obliged to investigate; and on their own, the allegations did not provide sufficient reason, either alone or in combination with the Nielsen matter, for the Authority to decline to use Anderson as an informer.

Concurrent Criminality

4.110 The Authority's 1992 informant management procedures do not condone any criminal activity by an informer during the time he is assisting the

Authority. The evidence available to the Committee indicates that the Authority did not formally assess what activity Anderson was engaged in when it commenced to talk to him.

4.111 The Committee is not in a position to say what a full assessment of Anderson's activities in 1984 would have shown. It does not have specific evidence that Anderson was engaged in criminal activity in November 1984. In late 1983, Anderson maintained an apparently affluent lifestyle at a time when he was a bankrupt with no legitimate source of income. An Authority witness was asked if he knew of criminal activity that Anderson was involved in about 1985. He replied:

I do not know any crook that does not continually involve himself. That is the nature of the beast.

Q. What sorts of things do you think he was involved in at the time? What did you know he was involved in? A. I did not know he was involved in anything. He was a bit of a loose ending, quite frankly. He did not have any oomph left in Sydney at that particular time. He did not seem to have any money. He was always involved in prostitution, and it would not [sic] have surprised me if he still did not have his finger in that somewhere. I do not know that ...

4.112 The inference is that a full assessment would have disclosed some criminal activity. Thus, under the Authority's 1992 informant management procedures, it would not have used him as an informant unless steps were also taken to initiate his prosecution for this criminal activity. As noted above, the practical effect of taking such steps might well have been that Anderson would have refused to assist the Authority against Saffron.

4.113 As an aside, the Committee notes that the criterion of no criminal activity may be too stringent in cases where an informant is a continuing member of an organised criminal group.³⁵ Some continuing criminal activity on the informant's part may have to be tolerated in order to preserve his credibility (and even physical safety) within the group, and hence his continuing access to further inside information. The Committee simply notes the issue. This type of situation is

35. Contrast US, Office of the Attorney General, 'Attorney General's Guidelines on FBI Use of Informants and Confidential Sources', 2 December 1980, section E(1) - emphasis added:

Each ... [informant] shall be advised that his relationship with the FBI will not protect him from arrest or prosecution for any violation of Federal, State, or local law, except where the FBI has determined pursuant to these guidelines that his association in specific activity, which otherwise would be criminal, is justified for law enforcement ...

However, the Queensland Criminal Justice Commission, Official Misconduct Division, 'Interim Procedures Governing the Use of Informants' (as at August 1992), para. 14, requires that, where it appears to a controller that an informant has apparently committed a criminal offence, the controller shall furnish a report to the registrar requesting that the informant be deregistered. Upon deregistration, all contact with the informant is to be terminated.

not relevant to the Anderson relationship. It is unnecessary in the context of this inquiry to consider it further.

IMPORTANCE OF THE SAFFRON INVESTIGATION

Introduction

4.114 One of the factors to be assessed under the informer guidelines applying to the FBI is the importance of the matter involved in the investigation in which the informer is expected to assist.

4.115 In one sense this factor is not relevant to the Authority. A State police force selects, within broad limits, the matters it considers important enough to warrant investigation by its officers. In contrast, specific matters identified as important by a relevant Minister and the Inter-Governmental Committee are referred to the Authority for investigation.

4.116 However, in another sense the factor is applicable. In investigating a matter referred to it, the Authority has to form some judgment as to the seriousness of the offences which it may be able to assemble admissible evidence on. It has then, in the Committee's view, to balance the negative aspects of using the informer against the nature of these offences. For example, using a drug-user to assemble a prosecution brief on a major trafficker may be acceptable. Using a drug-user to secure the conviction of another user may not be acceptable.

4.117 Two criticisms were made to the Committee that are germane to this factor:

- that the Authority was excessively keen to succeed against Saffron, thereby proving its worth and ensuring it continued to exist after the 'sunset' date in the NCA Act - 30 June 1989;³⁶ and
- that, despite the Authority's use of Anderson, Saffron was only convicted of one offence, and that was a tax offence.³⁷

36. Submission from Peter Rees and Arthur King, pp. 1-2.

37. Submission from Peter Rees and Arthur King, p. 2.

Importance Attached to the Saffron Investigation

4.118 It was suggested to the Committee that in 1984 the newly-created Authority attached excessive importance to Commonwealth Reference No.1:³⁸

The NCA's reference number 1 and so called 'Mr. Big' of Australian crime was Abe Saffron. If the new organisation could put him behind bars its future would be secure, for it would have demonstrated that it could do what no other Police force could do, convict Saffron of a criminal offence. The bureaucratic imperative for the NCA was to get some runs on the board, get the sunset clause on the legislation lifted, and then with its future secure it could attract the right people and get on with the job.

4.119 Following from this argument, it was put to the Committee that the Authority's excessive enthusiasm to succeed against Saffron led it to overlook major problems in using Anderson as an informer/witness.

4.120 Authority witnesses rejected this. One witness was asked if he felt he was under any peer group pressure in relation to the Saffron reference. He said, no. He was then asked if he was under pressure by the hierarchy at the Authority. He replied:

Only in the sense to do the job properly. There was not any particular thing like 'We have got to get this guy. You have got to produce the results. You have got to get him at all costs or we are going to look like we are not a proper organisation'. If there has been a public perception, it has been very convenient to be able to say, 'The NCA had to get runs on the board. The NCA had to get Saffron', et cetera. I disagree with that.

4.121 The Authority made the following response to the claim that it had placed undue importance on succeeding against Saffron.³⁹

This assertion lacks logic and attaches disproportionate significance to Reference No.1. Further, Messrs King and Rees provide no details to support the assertion.

The fact was that between 19 October and 12 December 1984, four References were given to the NCA by the Commonwealth and some States. Resources were allocated to three of the References (Commonwealth Reference Nos. 1, 2 and 3) in late 1984 and early 1985 and, after certain documents were released by the Victorian Government to the NCA, on the fourth reference in mid 1985. A 5th Reference was granted to the NCA on 30 May 1985 to which resources were also allocated.

Whilst not diminishing the importance of Reference Number 1 to the NCA, the NCA attached importance to all of its References.

The statement that 'if the (NCA) could put him (Saffron) behind bars, its future would be secure' ignores other investigations and the diversity of the NCA's role and

38. Submission from Peter Rees and Arthur King, p. 1.

39. Letter from the NCA to the Committee, 25 November 1992, pp. 1-2.

functions. The NCA had no illusions that all its investigations would be closely scrutinised and its performance carefully monitored. However, the NCA expected that any review of its performance would take into account a number of criteria, including the success of its investigations. Indeed, the PJC [Parliamentary Joint Committee on the NCA] itself recognised in its Second Report (November 1986) the complexities in measuring the success of the NCA's performance (see paragraphs 34-39 of the Committee's Second Report).

4.122 Based on the evidence before it, the Committee does not consider any improper enthusiasm existed at the Authority for 'getting Saffron'.

Saffron Convicted on Tax Charge Only

4.123 Some Authority witnesses strongly objected to the proposition that Saffron's conviction in the tax matter was for a minor or trivial offence only. The Committee was told that, apart from the nature of the offence, Saffron's conviction demonstrated that he was not immune from successful prosecution, thereby disproving a widespread popular belief about him. However, one witness gave the Committee a different perspective: 'No, I do not get taxation evasion out of its place, but Saffron is one of the million who are doing that, after all, is he not?'

4.124 The Committee accepts that the Authority did not know when it first dealt with Anderson that the end result of its Saffron investigations would be only the tax conviction. One witness told the Committee:

Remember that the Saffron reference did not start as being a black books reference ... If all we had had was the black books matter, I do not know that we would have sought or properly obtained a reference in relation to Saffron.

4.125 The Committee's criticism is that, because no attempt was made by Authority staff in November 1984 to assess whether to use Anderson as an informer, the ambit of the Saffron investigation and Anderson's possible role in it were not carefully considered at that time.

4.126 The Committee is not in a position to say whether a comprehensive assessment in November 1984 would have altered the perception of the importance of the matter under investigation. Clearly Saffron's notoriety, the fact that the Costigan Royal Commission recommended that he be investigated, and the fact that the Authority had been given a reference under which to investigate Saffron all entitled those at the Authority to regard its investigation into Saffron as a matter of major importance.

NEED FOR ANDERSON'S INFORMATION AND EVIDENCE

The Value of Anderson's Information and Evidence

4.127 The factors to be weighed and considered by the FBI in deciding to use a person as an informant are set out in the table in para. 4.14 above. Two of the factors are: the importance of the information or assistance that could be obtained; and whether that information and assistance could be obtained without using the informant.

4.128 The Committee's impression, gained from listening to Authority witnesses and examining the documents provided by the Authority, is that, as an informer, Anderson never provided much information that proved to be of value to the Authority. As far as the Committee can judge, the same can be said of the evidence Anderson gave in the prosecutions against Saffron arising from the Authority's investigations.

4.129 The Committee acknowledges the point made by some witnesses: it is impossible to say that Saffron would have been convicted in the tax matter without Anderson's testimony, because no-one knows what weight the jurors gave to his evidence, or whether they would have convicted without this evidence.⁴⁰ One of the DPP's staff expressed the view that Saffron could have been convicted in the tax matter without Anderson's evidence, although the period covered by the charge (1969-81) would have had to have been reduced.⁴¹ However, the DPP decided to use Anderson and to base the prosecution case on the longer period. Several experienced lawyers on the staff of the Authority took the view that his evidence was essential.

4.130 The Committee recognises that, without the benefit of hindsight, an assessment in November 1984 of the importance of what Anderson might have told

40. In 1992 the Federal Court heard appeals by Saffron against decisions by the Commissioner of Taxation to disallow objections to assessments of income tax and additional tax. The Court rejected Saffron's appeals: *Saffron v FC of T (No. 2)* (1992) 92 Australian Tax Cases 4,859. The facts underlying the assessments and the appeals were basically the same as those in the 'black' books criminal case that resulted from the Authority's investigation of Saffron. Anderson was not called as a witness on behalf of the Commissioner. However, the 1992 result provides little guidance on whether the criminal case against Saffron would also have succeeded without Anderson's evidence. In the 1992 case, the onus was on Saffron to show that the Commissioner's assessments were excessive. In the criminal case the onus was on the Crown to show beyond reasonable doubt that Saffron had conspired to defraud the Commonwealth.

41. The documentary evidence and the evidence of the other witnesses related largely to the period from late 1972 to 1981. Anderson's evidence was essential in showing that the conspiracy to defraud the revenue existed as far back as 1969. See *Saffron v The Queen* (1988) 17 NSWLR at pp. 419-421 for the view on appeal of Hope JA on the question whether, even with Anderson's evidence, there was sufficient evidence of a conspiracy between 1969 and 1972.

the Authority and the evidence he might have given would have been even more difficult. One of the points in favour of treating Anderson as a potentially valuable source was that experienced officers in other agencies had suggested that he be regarded as such (see para. 3.9 above). More generally, he had clearly been a senior associate of Saffron, had fallen out with Saffron, and had publicly demonstrated his willingness to provide evidence on oath against Saffron.

4.131 The Committee asked one Authority witness if those at the Authority had enormous expectations about what Anderson would provide. The witness replied:

I do not think that I ever had an enormous expectation. I think that we all believed that potentially he was a mine of information. Anybody that has lived and worked around the Kings Cross area in the capacity of manager of these various clubs, either on his own account or on behalf of Saffron, was bound to be a mine of useful information. ... But so far as enormous expectations are concerned, they were always, in my view, qualified, and significantly qualified, by the general lack of credit rating that one could place upon Anderson as a potential witness.

4.132 Some Authority witnesses said that the Authority would have been strongly criticised if it had not listened to what Anderson wanted to say. One witness said:

if the NCA had never talked to Jimmy Anderson, I could be here right now explaining why not, equally as much as being here right now explaining why we did. He was a natural person for us to talk to. He was connected, he was involved. If we had taken a view, 'We are not going to talk to this guy, because he is a crook', the premier so-called law enforcement or investigation authority in the country would have been seen as a joke.

4.133 The Committee has some sympathy with this view, and can understand how attractive it must have seemed at the time to use Anderson against Saffron. However, the Committee notes that the value of requiring formal, comprehensive initial assessments is that they impose a check on action based on no more than initially attractive reasons.

4.134 An assessment made at the time the Authority first spoke with Anderson would, in the Committee's view, have shown that the Authority was potentially able to mount a strong case against Saffron without Anderson's assistance. It appears to the Committee that a viable option for the Authority at that time was to develop the prosecution brief against Saffron on the tax matter without speaking to Anderson. The Committee put the proposition to an Authority witness not directly involved in the development of the 'black' books brief that the prosecution would have succeeded without Anderson's evidence. He replied: 'I would not be surprised if that proposition is true. It certainly should have been aimed at'.

4.135 It may have transpired that a brief prepared without Anderson's assistance, but relying on the 'black' books, the book-keepers and the other evidence would have seemed strong enough to warrant forwarding to the Commonwealth DPP. If, after attempting to build such a brief, the Authority (or the DPP) was convinced that Anderson's evidence was necessary, the Authority (or the DPP) should then, and only then, have weighed and considered the arguments for adding him to the brief as a prosecution witness. Alternatively, if the brief seemed strong enough without him, he could have been added as a defendant alongside Saffron.

4.136 The Committee considers that it would be generally beneficial if informers were used as a last resort.⁴² If they are relied upon early in an investigation, there is a temptation to avoid what may be the hard investigative work of finding other evidence to support the prosecution case. Informers can turn out to be of dubious value to the prosecution case in the witness box. Assembling a prosecution brief without initial recourse to an informer may well result in a stronger brief, even if, at the end, the informer has to be added to it.

4.137 The Committee recognises that an informer's importance to building a prosecution brief may alter as the investigation progresses. There is a case for erring on the side of caution by postponing as long as possible the decision whether a person is to be used as an informer/witness or is to be himself charged. The 'black' books case illustrates this. The books were far more likely to be meaningful to, and accepted by, a jury, if they were supported by testimony from those who maintained them. In practical terms, the people potentially available to do this in November 1984 were Anderson for the whole period of the alleged conspiracy (1969-81), and three book-keepers who made the entries at different times during part of the period (1972-81).

42. Note the position in the related situation of indemnifying criminal witnesses: Commonwealth Director of Public Prosecutions, *Prosecution Policy of the Commonwealth: Guidelines for the making of decisions in the prosecution process*, 1990 edition, AGPS, Canberra, para. 5.4 (emphasis added):

In principle it is desirable that the criminal justice system should operate without the need to grant any concessions to persons who participated in alleged offences in order to secure their evidence in the prosecution of others (for example, by granting them immunity from prosecution). However, it has long been recognised that in some cases this course may be appropriate in the interests of justice. Nevertheless, an undertaking under either section 9(6) or section 9(6D) [of the DPP Act] will only be given as a last resort.

The 1986 edition of the *Guidelines* also stated (in different words) that indemnities were only to be given as a last resort.

4.138 One of the book-keepers died in a traffic accident on 29 January 1985, before she could be interviewed by Authority staff.⁴³ Authority staff did not become aware of this until many months later. The Authority was unable to locate another of the book-keepers until the latter part of 1985. She was living overseas and at that stage was believed to be reluctant to assist the Authority. Thus at one point in 1985, the Authority had only one book-keeper and Anderson available and willing to speak to the books in court. At the trial, however, the two remaining book-keepers were available and did give evidence.

4.139 The Committee considers that a similar 'wait and see' logic should have been applied to other lines of investigation against Saffron - the Authority should have first tried to develop admissible evidence without Anderson's help. Only if cases could not be made out to the requisite standard of proof, would the need arise to assess whether to use Anderson. Instead of preserving the Authority's options as long as possible, its staff acted from the outset as if the only option was to give Anderson *de facto* immunity and use him against Saffron.

Lack of Control over Anderson

4.140 A matter related to the information that the informer could provide, but not explicitly addressed in either the Authority's 1992 informant management procedures or in the guidelines applying to the FBI, is the question of control within the informer relationship. A constant danger for any agency using an informer is that the informer will become the dominant partner in the relationship. This danger is largely a matter for continuous assessment throughout the course of the relationship rather than one that can be fully determined at an initial assessment. However, the Committee believes that the issue can and should be addressed as far as possible in the initial assessment.

4.141 The Authority had no 'hold' on Anderson. One Authority witness told the Committee: 'Any suggestion that Anderson was controlled by the NCA I dispute totally. If you knew the man, you would know that that was a ridiculous suggestion'. Another Authority witness who dealt with Anderson was asked by the Committee: 'What was to stop Anderson at any stage from just walking away and telling you to clear off?' The witness responded: 'Nothing'.

4.142 Even when talking to the Authority, Anderson remained in control. He decided when he was available to be interviewed and by whom. A witness told the Committee: 'There were some [investigators] that he would talk to and some that he

43 There were suspicions that the accident might have been 'arranged' to prevent her giving evidence. However, the police investigation and inquest found nothing to support the suspicions: New South Wales, City Coroners Court, Glebe, Inquest concerning the death of Diane Susan Lightenegger [sic], 1 August and 16 September 1985.

would not'. Anderson set limits on the duration of the meetings and the topics he was willing to talk about. A witness told the Committee: 'if he wanted to turn off the tap, he did it and he did not care what the consequences were'. The witness also told the Committee:

in my view, Anderson had determined the area he was going to assist in and he was not going any wider than that. The only way we might have persuaded him to go wider than that was to give him an indemnity in relation to the initial matters which might have convinced him of our bona fides and imparted a trust in him or it might not have done, as well as having the real result of making sure that there was no reason why he should not give evidence. He may then have turned on the tap. But my view of this man was that he was absolutely controlled. He just gave you exactly what he wanted you to have.

4.143 The plan drawn up in May 1985 for an interview with Anderson contained 14 topics for the investigators to cover during the interview. The interview eventually occurred in August 1985. The interviewer reported that, due to the time limit placed on the interview by Anderson, only one topic and part of another were able to be covered. Another witness was asked if the Authority only obtained from Anderson what he wanted to give it. He replied:

A. I think that is true, yes. I guess one cannot squeeze blood out of a stone and there was no attempt to do so in any other way than conducting interviews with him. I mean by that that there were no inducements made. I think Anderson told us as much as he wanted to tell us.

Q. He did not provide any hard evidence on the criminal activity of Saffron which created Saffron's income, did he? A. He spoke generally about a lot of matters.

Q. But that is his modus operandi. A. In the end, the Authority did not find sufficient admissible evidence to really charge Saffron with any of those matters that Anderson spoke about and that other people that were interviewed and that other evidence that was obtained would really substantiate. That was the bottom line.

Q. But we have to take it that if Anderson wanted to, he could have provided you with information which could have caused all sorts of prosecutions? A. Again I qualify this by saying that I am not an authority on Anderson and I am just speaking from my own gut feeling, but I would suspect that a person in Anderson's position in the Cross for such a long time would have information that would direct the National Crime Authority to specific areas of evidence which could be corroborated and may have resulted in convictions, and that he chose not to do so.

4.144 The Committee cannot say to what extent Anderson's limited cooperation with the Authority could have been predicted by an assessment made in November 1984. Such an assessment would have shown his previous failure to follow through with useful information to the parliamentary prostitution inquiry and the Perrin inquiry.⁴⁴ The vagueness as to dates and other checkable details which he displayed at the Nielsen inquest and his bankruptcy hearings would also have been noted by a thorough assessment. Thus, an attempt to assess the extent of his

44. See chapter 2 above, footnotes 5 and 9 for references to the Perrin and prostitution inquiries.

cooperation at that stage might have provided a useful balance to the optimistic view which appears to the Committee to have been held on this point by at least some Authority staff at the time.

ANDERSON'S MOTIVATION

4.145 One of the guidelines for the FBI requires the agency to weigh and consider the motivation of the informant, including any consideration sought from the government for his cooperation.⁴⁵ It was noted above that informers act from a variety of motives.⁴⁶ Douglas Meagher QC pointed out a decade ago: 'Whilst the willing informer is not entirely unknown, in criminal organisations he is a rare find, and one in respect of whom there must always be considerable disquiet as to his true motives and the accuracy of his information'.⁴⁷

4.146 An assessment made in 1984 would have had little difficulty concluding that one motive for Anderson to assist the Authority was to obtain revenge against Saffron. His desire to do this was clear from his evidence at the fires inquest, the Nielsen inquest, and the parliamentary prostitution inquiry.⁴⁸ He never sought monetary reward for assisting the Authority and was never paid for his information,⁴⁹ though the witness protection provided to him in late 1987 and in 1988 proved costly.⁵⁰

4.147 Anderson obtained *de facto* immunity from investigation and prosecution, as noted above.⁵¹ He apparently did not explicitly say he was seeking this in exchange for his assistance. However, he did not need to, given that the immunity flows automatically once the agency shows by its conduct that it is

45. See the table in para. 4.14 above.

46. See para. 4.36 above.

47. Douglas Meagher QC, *Organised Crime: Papers presented by Mr Douglas Meagher QC to the 53rd ANZAAS Congress, Perth, Western Australia, 16-20 May 1983*, p. 98.

48. See above, paras. 3.5, 2.5 and 2.6 respectively.

49. Rees and King, in their submission (p. 4), state that Anderson 'was paid a retainer' by the Authority. The Committee found no evidence to support this allegation. The Authority as constituted in November 1992 stated: '... Mr Anderson was not paid a "retainer" and it is incorrect to refer to any moneys paid to Mr Anderson [in connection with witness protection arrangements] by the NCA as such' (letter from the Authority to the Committee, 25 November 1992, p. 4).

50. See para. 5.12 below.

51. See paras. 4.44 to 4.64.

treating the person as an informer. He did not seek witness protection from the Authority until nearly three years after he first began assisting it.⁵²

4.148 A February 1984 inquiry by New South Wales Police Deputy Commissioner Perrin considered it possible that Anderson was making allegations about Saffron bribing police in order 'to embarrass Saffron to a point where he will make some financial offer to him'.⁵³ A thorough assessment by the Authority in November 1984 would have found Perrin's view. It would have warned the Authority of the possibility that Anderson was offering to assist the Authority against Saffron in order to obtain leverage over him and extract money from him. (Anderson was using his relationship with the Authority for this purpose by 1986 - see paras. 4.164 to 4.172 below.)

4.149 In the Committee's view, the Authority should have carefully assessed the possibility that Anderson's motive was to pressure Saffron. It does not follow that, had the Authority discovered this motive, it should have automatically refused to use Anderson. An Authority witness pointed out:

I think it is fair comment to say that he only came to the Authority to manipulate it, yes. I do not know any crook that has not done that to the organisation he is dealing with. Being able to manage it is the secret.

4.150 The witness also told the Committee:

I did not think we would ever get him into a witness box and I always thought he was using us to apply the pressure to the other people. But you have got to go with it. Until you know one way or another, you have to keep going up to the barrier, so to speak, and he did, all for his own reasons in the end.

4.151 The Authority, had it identified the possible motive, may have decided it could manage the risk. The Committee would have regarded such a decision as one that was open to the Authority to make. In the event, the risk was not identified in advance, and no balanced assessment was made on whether or not the risk could or should have been managed.

ANDERSON'S CREDIBILITY

4.152 One of the factors the guidelines applying to the FBI require to be assessed is the informer's reliability and truthfulness, or the available means to

52. See paras. 5.2 and 5.28 below.

53. NSW Police, Deputy Commissioner John Perrin, 'Submission to the Commissioner: Allegations made by James McCartney Anderson at the inquest into the disappearance of Juanita Joan Nielsen alleging misconduct by certain Police Officers in association with Sydney businessman Abraham Saffron', 14 February 1984, para. 66.

verify information the informer provides.⁵⁴ In para. 2.10 the Committee noted that evidence available in November 1984 indicated that Anderson's reliability and truthfulness were poor. In para. 3.18, the Committee noted that an Authority lawyer came to a similar conclusion in May 1985, when he emphasised the need to obtain corroboration for every important detail Anderson provided.

4.153 On the other hand, in para. 3.9, it was noted that experienced police officers had suggested that Anderson was a useful source of information on Saffron, although not everything he said could be believed. One witness, who had dealt with Anderson before the Authority was established, told the Committee he would certainly have used him as a source in any investigation against Saffron.

4.154 Anderson's doubtful credibility raises the question whether a thorough initial assessment would have found that the Authority were better off not using him. No assessment was made. The Committee believes that an assessment would have concluded that, under the heading of credibility, Anderson's value to the Authority was, at best, marginal.

4.155 The Authority's 1992 informant management procedures note that a method of assessing prospective informers is to have them appear at a formal Authority hearing. They can be examined on oath and their credibility and demeanour as witnesses can be tested.

4.156 The Committee notes that the Authority did not adopt this procedure with Anderson, despite the material available to it indicating his doubtful credibility. Authority staff considered in May 1985 whether to obtain information from Anderson (and others) under summons and on oath at formal Authority hearings, or by means of interviews. A document provided to the Committee by the Authority indicates that the option of using hearings was not adopted because of the possible reluctance of Anderson (amongst others) to give information in this manner.

4.157 Anderson did appear at brief hearings in 1986 and 1987 to discuss administrative matters. When he appeared at hearings in November 1988 on more substantive matters, he demonstrated what a poor witness he was.⁵⁵ By this stage, however, the Authority had already learned this the hard way: his lack of credibility played a significant part in the dismissal of the bribery charge against Saffron at committal proceedings in June-July 1988.⁵⁶

54. See para. 4.14 above.

55. See paras. 5.21 and 5.22 below.

56. See paras. 5.14 and 5.15 below.

4.158 The Committee notes that the Commonwealth DPP decided to use Anderson as a prosecution witness in the Saffron tax trial, and the New South Wales DPP made a similar decision in regard to the Saffron and Allen bribery matter. Thus both DPPs endorsed, to some extent at least, the Authority's view of Anderson's value as a witness.

INITIAL ASSESSMENT - CONCLUSIONS

4.159 In para. 4.14 above, the Committee identified criteria which it considers that the Authority ought to have weighed and considered before deciding to use Anderson as an informer. In separate sections above, the Committee has considered what an assessment against each of the criteria would have shown. The Committee's view is that under no single criterion would the assessment have clearly shown that the Authority should not have used Anderson.

4.160 However, under several of the criteria, using Anderson was clearly a very marginal proposition. The Committee has noted the immunity he gained in respect of his past criminal activity and the real possibility that he was engaged in criminal activity in late 1984; his suspect motivation; his questionable credibility; and the lack of a compelling need to use him as a source of information and evidence on Saffron. All these reasons taken together would have clearly justified a decision by the Authority not to use Anderson as an informer and witness.

4.161 The Committee believes that the Authority should not have used Anderson as an informer or put him forward as part of the admissible evidence it provided in prosecution briefs. The Committee considers that had the Authority made a comprehensive initial assessment in November 1984, it would have decided either not to use Anderson or at least to postpone using him until the need to do so became clearer. In light of this, the Committee regards the failure to do such an assessment as a serious failure.

4.162 The Committee was told in November 1992 by the Authority as then constituted that it would not have dealt with Anderson in the way that its predecessor did. It would only have interviewed him in a way that ensured it could later charge him, that is by issuing a caution at the beginning of the interview. Authority staff who dealt with Anderson at the time took the view that Anderson would not have assisted the Authority in the way that he did if it had indicated to him (by, for example, issuing cautions at the beginning of interviews) that he might be charged. In effect, the Authority as constituted in 1992 was saying that it would have done without Anderson's assistance and taken the risk that no successful prosecution could have been brought against Saffron.

MATTERS THAT OCCURRED AFTER THE RELATIONSHIP BEGAN

Introduction

4.163 It was noted above that the Authority did not conduct assessments of Anderson's use as an informer or witness during the course of its relationship with him. In this section the Committee examines events after the relationship had commenced which might have led the Authority to re-evaluate its attitude towards him. As part of this examination, the Committee looks at suggestions that he may have obtained improper benefits from the relationship.

Using the Relationship to Pressure Others

4.164 Anderson had convinced himself that Saffron owed him a large sum of money following the break-up of their business relationship between 1978 and 1981. Anderson's version of the amount kept increasing as he mentally added interest to his original claim. By mid-1986, the figure he was most often mentioning was \$320,000, although on one occasion \$400,000 was mentioned. Saffron denied that he owed Anderson any such sum.

4.165 In 1986 Saffron received from Frank Theeman a copy of the following letter. The photocopy of the handwritten letter provided to the Committee is unsigned and undated. The handwriting does not appear to be that of Anderson. (The original spelling, abbreviations and so forth have been retained).

Dear Frank

The situation that exists to-day is totally unacceptable. This letter will explain how I see and plan the next few months. I have no intentions of begging for what is rightfully mine. The agreement I entered into through your good offices, I have kept and intend to keep until 29/5/86. My wife is due here on the 31/5/86. If the balance of the goodwill is not in her hands by the 29/5/86 I have no alternative but to accept certain offers that have been put to me. For your information these are to testify and give evidence if required into:-

Lionel Murphy: Merv. Wood: Morg. Ryan: N.S.W. Police: Tosca the Torch: Simon and Bafski: Farqhar: King: Nelson: Cesna and Milner: fires Bondi and Lunar Park. I have been assured, unofficially as yet, that I will receive full immunity from everything and financial assistance in relocating and restarting. I have also been advised that any witnesses I can produce to substantiate and corroborate any of the above, will also enjoy the same treatment.

If I am not satisfied by the 29/5/86 the Australian Govt. through its agencies will pay for all exp's. for a lawyer of my choice to be flown to Manila to represent my legal and financial interests in my negotiations for complete immunity and financial resettlement. I am extremely reluctant to take this step, but my personal and financial situation leave me no choice. I have come to this decision, because of the failure of your negotiations on behalf of other parties. It seems that once again they have played me for the fool.

Therefore I have to do the best for myself and family. So it is everyman for himself after the 29/5/86.

If the other interested party thinks he is only looking at 2 yrs. tell him to think again about life!

I regret the fact that a lot of others will suffer [word indecipherable] from my revelations, I would like you to inform them that this has been brought about solely by the other party failing to honour his agreed undertaking with myself.

4.166 The Committee was not able to determine if the NCA knew of this letter in 1986. One investigator thought that he had obtained a copy from Anderson at some stage, but was not certain. Another could not rule out the possibility he had seen it at some stage at the Authority, but did not think he had. Other Authority witnesses said they had not seen it prior to the Committee's inquiry. None of the documents provided to the Committee contained any reference suggesting that Authority staff were aware of the letter at the time.

4.167 When shown the letter, Authority witnesses said that the claims about immunities and government assistance were nonsense and rubbish. One witness told the Committee on these claims in the letter:

That is part of his extortion to some degree, is it not? What are you going to say in a letter like that - 'I might be given immunity'? If you are going to really put the hard word on someone you have to do it pretty strongly, do you not, and I think he has probably done that. ... That [claim about immunity] is all a nonsense. I think it just follows that for anyone reading that, it is much the same. I certainly did not talk to him about immunity. I am quite confident that the Authority did not. But if I was going to extort from someone like that I would do much the same. I would go a bit harder than that, I think.

4.168 Whether the NCA knew of the letter at the time or not, its staff clearly knew by 1986 that Anderson was trying to extract money from Saffron, because Anderson had told them so. An Authority staff overview of the Saffron investigation, dated 28 April 1986, noted: 'James McCartney Anderson has recently informed the Authority that ... [Saffron] has offered him a large sum of money to flee the jurisdiction and to remain overseas until ... [Saffron's] court hearings are over'.

4.169 Anderson told Authority staff he was telling Saffron that, if Saffron paid him, he would break off his relationship with the NCA, and that he promised Saffron he would have a 'memory loss' when called to give evidence. Anderson's version was that Saffron, through third parties, was offering to pay him to have the 'memory loss'. Anderson presented his claim on Saffron as legitimate debt collecting, denying that it was blackmail. For example, he told NCA investigators

in 1986: 'I've never blackmailed a soul in my f----- life and that really f----- bugs me with Saffron. All I want is my money he owes plus bank interest for six years'.

4.170 Anderson also at times told Authority staff that, even if Saffron paid him, he would still give evidence against him: 'I'm not dropping off Saffron for f----- 10 million dollars, no way in the world. Like he nearly f----- had my wife f----- killed and my son. Right.' He tried to have the investigators believe that even if Saffron paid him, he would still assist them. He even promised to give them hitherto undisclosed information on Saffron once Saffron had paid him.

4.171 An Authority witness told the Committee:

we were generally aware of the fact that, according to Anderson, if he were paid by Saffron what he was owed - which was the basis of the falling out - there might not be a continued falling out which would result in Anderson giving evidence.

4.172 At one point, Anderson expressed concern to an NCA investigator that Saffron would 'set him up' in the course of receiving a payment, and have him arrested for extortion. In a 1986 interview by Authority staff, Anderson was asked if Saffron was going to leave Australia as a result of the pressure Anderson claimed he was putting on him. Anderson replied:

No. ... He will pay me the \$325,000 he owes me, I'll leave the country, they'll want a rescission or a statement saying, oh any reason at all or not right. Right and then I won't f----- come back. Right, that is what they want. And I've said mate you give me my money, you got it.

4.173 The Committee asked one Authority witness:

Q. What is the attitude of law enforcement officers towards a witness who has been subpoenaed and is in the process of extorting blackmail money for the purpose of refusing to give evidence? A. I do not know what other law enforcement officers would do, but ... I would abandon him at that stage. ... If I had a prosecution where you were using someone as a witness and he is trying to extort things, that would be the end of it, as far as I personally am concerned.

Q. But did he not admit to you that he was seeking to extort money and he in fact received - A. To some degree, yes, and I reported it to the Authority.

Q. But you say you would abandon him. A. I would personally, yes. You have got to see the two different positions. I have been brought up in an area where, as a police officer, I have made decisions on prosecutions myself for the whole of my life, and I come to work for that organisation ... and I had to learn a new scenario again. You do not make decisions. You tell us [i.e. the lawyers in charge of investigations at the Authority] everything and we will make the decisions. You are not very smart - not me personally - cops. Cops are not very smart.

Q. I understand that. What about the decision to use McCartney Anderson? ... there is no suggestion with you, as you say, giving input to the NCA and all this, that McCartney Anderson's position in terms of prosecution or as an informer ought to be reviewed by the NCA? A. I do not understand. We would report to ... [a senior lawyer

then at the Authority]; then ... [he] must have discussed it with the management of the NCA. We were not involved in it and I was never invited to those things.

Q. To your knowledge, there was no suggestion that there should be a review of the treatment or the conduct or the handling of - A. I have no idea.

Q. To your knowledge? A. To my knowledge, no.

4.174 The Committee asked another Authority witness what he did with what the Committee regarded as a confession to him by Anderson that he (Anderson) was engaged in blackmail:

A. What has he confessed to? He has confessed to what he might do if it happens that way.

Q. No, he has confessed that he is proceeding to extort \$320,000 from Saffron. A. No, he is not. He is saying that the money from Saffron is money that Saffron owes him.

Q. He is extorting it all the same. Extortion is, if you do not give it to me, I will whistle it. If you do give it to me I will go overseas and claim the books are mine. A. All I can say to that is that this information is fed into the Authority, the lawyers look at it and they have decided not to do anything with it. I mean, where do I go from there?

Q. When do your responsibilities start and finish? A. I am not sure what you mean.

Q. As a senior officer, you were attached to the NCA for this reference and you came by this information. At what point were you satisfied that you had done your job? A. When I have put the information into the system, it is looked at by the lawyers who will then decide whether it makes a case, whether the information that is contained will make a case against him, and I am bound to go with their decision.

4.175 The Committee asked one of the Authority lawyers engaged on the Saffron investigation if he was aware of an interview transcript that showed Anderson had told an Authority investigator about the money he was trying to extract from Saffron:

A. ... There was obviously something there to do with money, which Anderson was at pains to recover. His evidence, in some way, was potentially able to be affected by it. I do not dispute that. I have a recollection that it was of concern but that it never came to fruition so far as we were aware.

Q. Are you conscious of any memos or any meetings in which notes were taken where the matter was discussed? Do you remember discussing it with anybody else? A. I do not remember, but it is quite possible that it was. It may or may not have been recorded, depending on the nature of the conversation. I might have taken that sort of thing up with ... my immediate boss, or with counsel assisting, or possibly with the relevant Member, whoever it was at this time. I may not have done so but I would expect that at some stage - if I was aware of the fact that there was an issue about whether or not if Saffron paid him a large sum of money, he would not give evidence - that that would have been discussed.

Q. Did you ever think of it in terms of an offence by McCartney Anderson - putting aside the fact that you may be losing a witness? Were they the circumstances that could lead to an offence being committed? A. Possibly.

Q. So you had the situation where you may have had a witness who had told a ... police officer in the National Crime Authority that he was in the process of committing an offence? A. There are a lot of possibles and that is a possibility.

Q. What steps would you expect the NCA to take if they were to become aware of the prospect that a witness for whom they had sought indemnity was involved in criminal conduct? A. The NCA would unquestionably not tolerate people in Mr Anderson's position committing criminal offences, with its knowledge.

Q. I assume from that transcript that you had some knowledge of the prospect of an offence being committed. A. It may amount to that, it may not. The NCA would have been particularly interested, I would imagine, in attempting to catch Mr Saffron paying Mr Anderson for him not to give evidence, if it accepted that what Mr Anderson was saying was credible. It would have been a great reinforcement of the case against Mr Saffron.

4.176 The Committee considers it totally unacceptable that Authority staff did nothing about Anderson's attempted extortion. The Committee also considers it unacceptable that the Authority clearly had no mechanism in place to ensure that such a serious issue as attempted blackmail by its informer/witness was brought to the attention of, and dealt with by, the Authority Chairperson and Members.

4.177 The Committee notes that under the Authority's 1992 informant management procedures the Authority would drop a person as an informant immediately if it found he was engaged in such activity. This would happen even if, for lack of evidence or some other reason, the pressure being applied by the informer could not be shown to amount to a criminal offence. For the 1992 procedures do not permit the informer to use his relationship with the Authority to resolve personal matters.

4.178 During one of its regular meetings with the Authority in 1992, the Committee asked what would happen now if it found out that its informer was seeking to do a deal with the target. The Committee was told:

A. It is quite a common occurrence, I might add.

Q. I am sure it is. A. You would sever the relationship if he does not play ball, totally.

Q. Even if it meant your target fell over? A. That may be right.

4.179 If Anderson is to be believed, some money was paid to him as a result of the pressure he was putting on Saffron. The money came through middlemen, including Frank Theeman. None came explicitly from Saffron. However, Anderson said he believed Saffron was the source of it, although at one point he acknowledged to an Authority investigator that there was another possibility:

The money comes from Abe, it went to Frank and came to me, there was always the possibility that the money was coming from Frank to me and not from Abe at all, I just don't go along with that but it is a possibility ...

4.180 Anderson said Theeman gave him \$2,000 directly and sent another \$3,000 via a third party. Through other intermediaries, Anderson claimed to have received further sums totalling \$19,000. Anderson told an Authority investigator

that these amounts were not enough 'but if I can get him to f----- settle the \$300,000, that's a different kettle of fish'.

4.181 In the event, Anderson appears not to have received any further payments. At one stage, Authority investigators served a subpoena on Anderson while he was sitting in Frank Theeman's car. It is unclear, but it may have been when Theeman was delivering a payment. Anderson later told an Authority investigator: 'Theeman f----- nearly dropped dead in the car, mate'. Whether this had the effect of frightening Theeman off delivering further payments, the evidence before the Committee does not reveal.

Other Criminal Activity

4.182 The attempt to blackmail Saffron is only one aspect of the larger question of whether Anderson was engaging in criminal activity during his relationship with the Authority. This question has already been referred to in the context of discussing what an initial assessment of Anderson would have revealed.⁵⁷

4.183 The Committee received no evidence that indicated that anyone at the Authority was specifically inquiring whether Anderson was engaged in criminal activity during his relationship with it. The Authority followed up one allegation that he was, but this occurred only because of the possibility that Saffron was also involved. Some other suspected criminal activity by Anderson was clearly known to other agencies.⁵⁸ But as far as the Committee can determine, there was no mechanism in place at the Authority to discover what Anderson was up to and to review his informer status in the light of what was discovered.

4.184 A police officer described to the Committee his personal approach to concurrent criminal activity by informers:

You have got to understand that criminal figures will always be involved in criminality. As a law enforcement officer, if you are using someone like that to gain information ... while I am not aware of what he is doing I can find the ability to keep interacting with them, but the minute I realise that they were doing something criminal I would have to direct my - Now, take that the right way; you do not pursue to find out that. While you are not aware of it, you can live with it. When you become aware of it, you cannot. That is what I am trying to get across.

4.185 The Committee does not know how typical this approach is among police dealing with informers. It suspects it may be common, especially among police at agencies like the Authority which pursue specific targets and do not have

57. See para. 4.111 above.

58. For an example which is in the public domain, see footnote 21 in this chapter on Anderson's arrest by New South Wales Police on gambling-related charges in December 1985.

responsibility for general law enforcement. In such agencies, the informer's criminal activity can be rationalised as being none of the agency's business if it does not relate to the target.

4.186 The Committee comments that there is little point in having informer management procedures in place to deal with concurrent criminal activity by informers if investigators act so as to make it unlikely they will ever become aware of the activity.

Ockrim's Statement

4.187 Peter Rees told the Committee, with reference to Anderson:⁵⁹

I just find it extraordinary that a criminal informant should accompany a police investigator - in fact, the Director of Investigations of the NCA at the time - and put pressure on another witness to sign a statement. That is surely not acceptable practice.

Some background is necessary to explain the basis of this criticism.

4.188 In 1986-87, the Authority was investigating an allegation that Saffron had conspired in 1981 with a then Assistant Commissioner in the NSW Police, W.A.R. Allen, to bribe Warren Molloy.⁶⁰ An Authority document indicates that the investigation resulted, in part at least, from information Anderson provided in an interview with Authority staff in 1986.⁶¹ However, the Authority at first experienced difficulty in getting Anderson to make a formal statement committing himself to the details of what he alleged had occurred.⁶² Anderson eventually made formal statements on the matter on 24 February and 5 March 1987. Both were witnessed by Vic Anderson, who at that time was the Authority's Director of Investigations.

4.189 At the time of the alleged bribery, 1981, Molloy was a New South Wales Police sergeant in charge of the Special Licensing Squad. He was enforcing compliance with the licensing requirements and this interfered with the way various licensed premises, mainly in Kings Cross, operated. Saffron had interests in some of the premises. The alleged purpose of the bribery conspiracy was to influence Molloy to alter his enforcement activity.

59. PJC *in camera* Evidence, 10 August 1992, p. 33.

60. Allen was promoted in 1979 to Assistant Commissioner, with responsibilities covering licensing matters. He was promoted to Deputy Commissioner in August 1981.

61. NCA memo, 'James McCartney Anderson', by J.R. Sackar QC, 5 October 1988, p. 1.

62. *ibid.*

4.190 There was some circumstantial evidence of Saffron's motive and of his visiting Allen at the time of the alleged conspiracy.⁶³ But the key evidence linking Saffron to the bribery was Anderson's claim that Saffron told him that Warren Molloy was 'on the team now' and that Molloy had 'accepted his first envelope' from Allen.⁶⁴ Anderson alleged that Saffron said this in about April 1981 at a Kings Cross coffee shop. According to Anderson, Lionel Ockrim and Todor Maksimovich were present and heard what Saffron said.⁶⁵

4.191 Ockrim had been an employee and business associate of Anderson's in the early 1980's. Ockrim was interviewed by the Authority's Director of Operations at the time, Vic Anderson, on 4 June 1987. James Anderson was present during the interview. An Authority lawyer later drafted a statement for Ockrim to sign, based in part on information given during the interview.⁶⁶ On 29 June 1987, Vic Anderson, accompanied by James Anderson, met with Ockrim at a Newcastle hotel. Vic Anderson said that James Anderson had arranged the meeting at his (Vic Anderson's) request.⁶⁷ Ockrim discussed, amended and signed the prepared statement in the hotel foyer while James Anderson was present. In the statement, Ockrim corroborated Anderson's version of the 1981 Kings Cross coffee shop meeting.

4.192 At the committal proceedings against Saffron and Allen in June 1988, James Anderson was discredited during cross-examination. The magistrate allowed the prosecution to treat Ockrim as a hostile witness.⁶⁸ In his oral evidence, Ockrim disowned his statement and did not corroborate the key parts of Anderson's evidence-in-chief.⁶⁹ Ockrim explained in court that: he had been persuaded to sign the statement by James Anderson and Vic Anderson; he told them the statement 'was a load of crap'; and he signed the statement in order to be left in peace and in the belief, fostered by the two Andersons, that the statement would never be used

63. The prosecution case is set out in the judgment of Priestley JA in *Saffron and Allen v DPP* (1989) 16 NSWLR at pp. 406, 413, 415.

64. Statement of James McCartney Anderson, 5 March 1987, p. 3.

65. *ibid.*

66. *DPP v Abraham Saffron and William Alan Allen*, Local Court, Castlereagh Street, Sydney, transcript of evidence, 6 July 1988, p. 68.

67. *ibid.*, p. 74.

68. *ibid.*, transcript of adjudication, 15 July 1988, p. 4.

69. Ockrim had told one of the prosecution team on the eve of the proceedings that he would be doing this: NCA briefing note prepared by H. Church and M.N. Holmes, 30 August 1988, p. 2.

in court.⁷⁰ Ockrim said he signed the statement 'not under duress but under persuasion, nobody was coercing me but it was persuasive because that way I wouldn't have to be bothered again'.⁷¹ He said he signed it because James Anderson asked him and persuaded him to.⁷²

4.193 The prosecution case against Saffron collapsed, and the magistrate discharged him.⁷³ Allen later stood trial and was found guilty in November 1991 of five counts of bribing Molloy and sentenced to 18 months imprisonment. His appeal against conviction and sentence was dismissed on 7 July 1992.⁷⁴

4.194 The prosecution argued at the time (as did the Authority⁷⁵) that Ockrim had changed his position because he had been 'got at' by the defence.⁷⁶ The main basis for this view was a visit paid to Ockrim in the week before the committal proceedings by one of the defendants, Allen, accompanied by his (Allen's) brother. During the visit, the case was discussed and Ockrim said his visitors urged him to tell the truth.⁷⁷ Ockrim denied he had been intimidated by the visit.⁷⁸ The Magistrate concluded that he was not bound to draw the inference that Ockrim's evidence had been swayed by the visit of the Allens, and thus not bound to prefer his statement to his oral evidence.⁷⁹

4.195 Another view, used as a basis from cross-examining Ockrim at the committal, was that he had been pressured by the two Andersons to make his original statement supporting Anderson. Behind this view lay the possibility that

70. *DPP v Abraham Saffron and William Alan Allen*, Local Court, Castlereagh Street, Sydney, transcript of evidence, 4 July 1988, p. 79; 5 June 1987, pp. 9-10. For a press report of this part of the committal proceedings, see 'NCA blamed for "false statement" on Saffron', *Sydney Morning Herald*, 6 July 1988, p. 8.

71. *ibid.*, 5 July 1988, p. 11.

72. *ibid.*, p. 19.

73. *ibid.*, transcript of adjudication, 15 July 1988, p. 6.

74. NCA, *Annual Report 1991-92*, p. 49.

75. This Committee's predecessor raised the matter with the Authority at the time, in the course of the regular meetings between the Committee and the Authority.

76. *DPP v Abraham Saffron and William Alan Allen*, Local Court, Castlereagh Street, Sydney, transcript of adjudication, 15 July 1988, p. 4.

77. *ibid.*, transcript of evidence, 4 July 1988, pp. 68-70; 5 July 1988, p. 20.

78. *ibid.*, 5 July 1988, p. 17.

79. *ibid.*, transcript of adjudication, 15 July 1988, p. 4.

Anderson was inventing his own evidence in order to 'get' Saffron and assist the Authority.

4.196 From Authority documents disclosed at the committal proceedings, it is clear that the Authority was aware that Ockrim was reluctant to give evidence of any kind. He had severed all connections with Anderson, and he felt that continued publicity linking him with Anderson and Saffron was harming his business and employment prospects.⁸⁰ Moreover, he was sceptical that his evidence would really result in Saffron's conviction.⁸¹ At a formal Authority hearing on 4 March 1987, Justice Stewart became so exasperated at Ockrim's refusal to provide even apparently innocuous information that he said: 'Oh come on. I am going to adjourn before I lose my temper'.⁸²

4.197 At this Authority hearing, Ockrim indicated he was not able to corroborate Anderson's view of what Saffron had said about Molloy at the 1981 meeting. Ockrim was asked:⁸³

Q. Did you become aware at some point in time, and if so when, that it was being said about the Cross that Warren Molloy was on the take? A. No. I had not heard any rumours like that until once again the papers said that he had been paid.

... Q. Do you recall an occasion when you, I suggest, were all sitting around having a cup of coffee when Mr Saffron came in and said words to the effect, 'Bill [Allen] has telephoned me and Warren is taking his first envelope'? A. I would doubt whether that would happen in those circumstances, to be quite frank with you, and I will tell you why. ... Generally Jimmy and Abe would sit at the table on their own and anybody else who was present would sit somewhere else. You may or may not know I am wearing an earpiece. I have an 80 per cent disability, and at that time I did not have the earpiece, so quite frankly, if I was sitting here now and you were yelling in my ear and I did not have that in, I would not hear you, but we would not sit at the same table. Jim and Abe would sit and discuss whatever they discussed. If there was anybody else present - there were not too many meetings where there were a lot of people present - we would be called across to ask a question.

... [Saffron's statement about Molloy] is not the sort of thing that Abe would have said in public - let us be frank about it. He certainly would not say it in front of a lot of

80. NCA, Reference No. 1, transcript-in-confidence, 5 March 1987, pp. 1008-09.

81. e.g. see NCA, transcript of interview by Vic Anderson of James Anderson and Lionel Ockrim, 4 June 1986, part 1, pp. 7, 25-26; part 2, p. 25.

82. NCA, Reference No. 1, transcript-in-confidence, 4 March 1987, p. 1005. On 4 June 1987 Ockrim gave his version of this to James Anderson and Vic Anderson:

And he was very annoyed with me that day, because he realised that, I wasn't procrastinating I just wasn't prepared to put my name to anything, why should I. He hadn't convinced me at that stage that the NCA was any different to any other Commission that existed... (NCA, transcript of interview by Vic Anderson of James Anderson and Lionel Ockrim, 4 June 1986, part 2, p. 25.)

83. *ibid.*, pp. 991-94.

people. He certainly did not say it in front of me. I could have been there, and he could have said it to whoever was sitting at the table; but I would not have been sitting at that table because he never ever said that in front of me. It is completely out of character.

Q: Well, what you are saying ---? A: I am not saying it is impossible because the papers said it was, and Jimmy said that had happened subsequently after the papers when Bill Allen had supposedly been paid.

Q: Just tell us about what Jimmy said? A: Sorry?

Q: What you just referred to - you said Jimmy said after the papers. What do you mean by that? A: When it came out in the papers that Bill Allen had been on the take; and I think Jimmy mentioned it then. But I do not ever remember Jimmy Anderson ever telling me that he had been told so-and-so, or so-and-so.

Q: Is this the state of your awareness: you, at no time, until the papers exposed this material, you tell us, were aware that Allen was passing envelopes to Molloy? A: No.

4.198 Following this, on 4 June 1987, Ockrim was interviewed by Vic Anderson with James Anderson present. He asked Vic Anderson:⁸⁴

Perhaps you could tell us what exactly are you sort of trying to do, they wouldn't come square at the NCA, I don't volunteer information ..., and what I'm not asked I don't say.

VA: Alright, well what we're trying to do is this, we have a fairly, a fair amount of evidence against ... Bill Allen and Abe over the bribing of Warren Molloy, now Jim has helped us along the track of this meeting where Abe says Warren's taken his first envelope. We realise that you were there at the time we just want you to sort of support what Jim says if you like, because otherwise, well it adds a bit of strength into it and Jim's going to come under attack on it.

Lionel: Up until now when that has been mentioned up 'til now I've stated that I remember the various meetings and I've stated that I don't think I heard that remark. And I've kept away from it bluntly because it's not that I don't want to be involved in that sense, but I'm not sure that whether I said it or whether I didn't that the way things go whether anything would happen except I'd given evidence against some people who are not going to lose anyway.

JA: And he's in trouble again.

4.199 Later in the interview Ockrim said, in regard to the meeting at which Saffron was supposed to have made the incriminating admission:⁸⁵

Lionel: Getting back to this meeting, but the problem is I don't remember whether Abe said it, or whether you told me he said it because once again, but I was at that meeting. What I couldn't understand, I didn't know why -

JA: Why don't we go through the diaries [which Ockrim kept], 'cause I remember Abe was smiling he was all happy.

4.200 Still later in the interview, James Anderson referred to the difficult times he had been given by counsel when he had been a witness.⁸⁶

84. NCA, transcript of interview by Vic Anderson of Anderson and Lionel Ockrim, 4 June 1987, part 1, p. 7.

85. *ibid.*, part 1, p. 13.

86. *ibid.*, part 2, p. 23.

and I'm not concerned but I'm worried, I mean Lionel's agreed he'll corroborate, like it's a just a matter of getting -

Lionel: What I know I'll corroborate, let's get it straight I will not corroborate what I don't know, that's why I've told, at that meeting I can't remember whether Jim told me Abe said it, whether Ron told me he'd said or whether I heard it, because I just don't remember but I know it was said, 'Warren Molloy's been paid', and I know Abe was present.

4.201 The Committee notes that at the committal proceedings Vic Anderson denied that he had acted wrongly in having James Anderson present when dealing with Ockrim.⁸⁷

Q. Anyhow you agree that you wanted Mr Ockrim to corroborate Mr Anderson in order to strengthen up the case against Mr Saffron, is that correct? A. Yes if that was within his ability to do so. I mean I wasn't asking him to do anything that he couldn't properly do, I was there to seek ---

Q. By the way --- A. I was out to seek his truthful reactions as to whether he could corroborate Anderson or not.

Q. What I want to put to you is that at that meeting on 4 June 1987 you badgered Mr Ockrim in an attempt to obtain corroboration of what Mr Anderson said about his conversation with Mr Saffron? A. No I don't agree with that.

Q. You were very persistent were you not? A. I was persistent in attempting to gain his confidence.

Q. You were persistent were you not in attempting to obtain corroboration from him as to what Mr Anderson had said Mr Saffron said at a coffee lounge? A. I believe I was persistent in attempting to get him to tell me all he knew about that particular incident.

Q. When Mr Ockrim told you that he didn't remember anything you didn't accept that answer did you? A. Well I don't believe he told me he didn't remember anything.

Q. Well you kept on at it to endeavour to get a positive answer from him? A. Well I was getting reasonably positive answers from him I believe all along.

Q. Now will you agree that as an officer of the National Crime Authority you acted wrongly in interviewing Mr Ockrim in the presence of Mr Anderson? A. No I do not.

Q. Is that your idea of standard practice with interviews with the National Crime Authority? A. In respect of witnesses I have frequently throughout my service interviewed one witness in the presence of another, frequently.

Q. Was Mr Anderson, James McCartney Anderson, helpful with him? A. Well I think he was helpful in the fact that he was, he and Ockrim were friends and that Ockrim appeared to feel more relaxed in his presence.

Q. Or more intimidated? A. I don't believe he was intimidated at all, as I mentioned before ---

Q. There was a chance was there not that Mr Ockrim could have been intimidated? A. I don't believe so.

4.202 The Committee notes that none of the Authority documents, including transcripts, supplied to it contain any suggestion that James Anderson used intimidation to coerce Ockrim into making a false statement. However, it seems plain to the Committee that both Andersons were trying very hard during the 4 June 1987 interview to persuade Ockrim to corroborate Anderson. This occurred

87. *DPP v Abraham Saffron and William Alan Allen*, Local Court, Castlereagh Street, Sydney, committal proceedings, transcript of evidence, 6 July 1988, pp. 71-72.

despite the fact that Ockrim had told the Authority months before that he could not provide this corroboration.

4.203 The Committee notes that those dealing with a witness may properly use persuasion to overcome the witness's reluctance to become involved in the case by giving evidence. Where the witness's recollection is poor, it may be proper to show the witness documents (such as diaries) to assist the witness make an honest statement. However, it is improper to persuade the witness to give evidence of matters which the witness in truth cannot recall. The Committee is unable, on the evidence available to it, to conclude that the Authority overstepped the line in relation to Ockrim.

4.204 Putting to one side the question whether the Authority behaved with propriety in its handling of Ockrim's corroboration of Anderson, its judgment appears to the Committee to have been faulty in assessing the strength of the case. Anderson's general lack of credibility as a witness was well known, and indeed it was this which led to the attempts to persuade Ockrim to give evidence supporting him. Knowing the background (as revealed in the quotations from transcripts above) the Authority ought surely have had major doubts whether Ockrim would prove a credible witness, even if the Authority expected him to adhere to his signed statement.

4.205 In summary, Anderson's information was a factor in starting the Authority down the path that ended with the Magistrate's discharge of Saffron. The Committee takes the view that a more sceptical attitude to Anderson's information might have saved the Authority and others considerable expenditure.

Early Release of Grant Leon O'Meagher

4.206 On 15 April 1983, Grant Leon O'Meagher arrived at Sydney airport from Los Angeles. An airport Customs search found about 330 grams of cocaine concealed in the lining of his jacket.⁸⁸ He was later tried and found guilty by a jury on one count of possessing a prohibited import, cocaine. On 27 September 1985 he was sentenced in the District Court in Sydney to seven years imprisonment, with a non-parole period of three years.⁸⁹ The sentence and non-parole period were back-dated: both were to run from 27 August 1984 as O'Meagher had been in custody awaiting trial since that date.⁹⁰ He was released on licence on 9 June 1986, that is, more than 14 months before the expiry of his non-parole period.

88. *R v Grant Leon O'Meagher*, NSW District Court, Criminal Jurisdiction, No. 84/01/0958, Judge Williams, 27 September 1985, transcript of decision on handing down sentence, p. 1.

89. *ibid.*, p. 4.

90. *ibid.*, p. 2.

4.207 O'Meagher was a foster son of Anderson and had worked with him in Kings Cross bars and restaurants. The Committee was told that Anderson was particularly attached to O'Meagher. In their submission to the Committee, Rees and King asked: 'Did the NCA make any representations to the authorities to secure O'Meagher's early release as part of their deal with Jim Anderson?'.⁹¹

4.208 The Committee put this question to witnesses from the Authority. All said that they had not made any move to secure O'Meagher's early release, that they were confident no move had been made by others at the Authority, and in any event the Authority had no power to secure an early release.⁹² One Authority witness said that Anderson had raised the matter with him. However, he had done nothing to assist O'Meagher. Another witness pointed out that there was nothing suspicious about the length of time O'Meagher served, taking into account time off for good behaviour in prison.

4.209 The Committee was advised that, under the then-applicable provision in the New South Wales *Probation and Parole Act 1983*,⁹³ reductions to non-parole periods of about one-third were automatically granted. In addition, it was possible under this Act for prisoners showing excellence in conduct, industry and rehabilitation to apply for special remissions.⁹⁴ O'Meagher did apply and was granted a further remission of 10 days to his non-parole period.⁹⁵

4.210 One Authority witness observed that an informer might erroneously believe that his controller had intervened to secure the early release of the informer's relative. If this happened, the Committee was told, the controller might allow the belief to persist, even though there was no basis for it. By doing this, the informer would (falsely) believe that he owed his controller something. The Committee notes the utility of doing this from the controller's point of view. However, it also notes that the effect of allowing such false beliefs is to foster the

91. Submission from Peter Rees and Arthur King, p. 4.

92. The Authority as constituted in November 1992 also stated that 'no such representations were made by or on behalf of the Authority': letter to the Committee, 25 November 1992, p. 3.

93. O'Meagher was sentenced for an offence against Commonwealth law. However, the Committee was told that under the Commonwealth legislation then applicable (*Commonwealth Prisoners Act 1967*, s. 19), he was entitled to receive any remission of sentence or non-parole period granted by the relevant State law. As O'Meagher was serving his sentence in New South Wales, its legislation on remissions applied to O'Meagher.

94. *Probation and Parole Act 1983* (NSW), s. 27(2).

95. The Committee was told that this special remission did not apply to Commonwealth offenders as a matter of law. However, it was the practice to apply any special remission obtained under State law, when considering the release of a Commonwealth offender on licence.

view that the time served in prison can be altered by behind-the-scenes representations.

Dropping of Bribery Prosecution against Anderson

4.211 On 23 November 1979, Anderson was charged with offering a bribe to three New South Wales Police officers.⁹⁶ Anderson denied the charge, claiming that it was trumped up. The matter came to trial in the Local Court in Sydney on 6 December 1985. Without evidence being taken, the charge was dismissed on a technicality, following discussions between the prosecutor and the defence counsel.⁹⁷ A document available to the Committee states that the New South Wales Police had apparently decided at some stage prior to January 1985 not to offer evidence in this case if it came to court.⁹⁸

4.212 At the time, some Authority investigators believed that the bringing on of the bribery proceedings might be simply an attempt to embarrass Anderson or damage his credit prior to him giving evidence in proceedings against Saffron. However, the Authority and its staff played no role in the bribery case.

4.213 An Authority staff member was in court on 6 December. He was there to build rapport with Anderson and to see what evidence would be produced against him. Additionally, the Authority was interested in the trial for whatever insights it might give into New South Wales police corruption. The Authority person present noted that Anderson may have got the impression that the Authority had assisted in having the matter dismissed; however, the person stated he had not said anything to foster that impression. Again the Committee notes that if such an impression had been fostered, while no doubt increasing Anderson's perceived debt to the Authority, it would also have given a false and improper impression of the Authority's role and powers.

1986 Request that the NCA Investigate the Nielsen Case

4.214 In 1986, two journalists, Peter Rees and Arthur King met with Authority officers to put their view that Anderson was involved in Nielsen's disappearance. In their submission to the Committee they described what happened:

96. See para. 2.7 above.

97. 'Bribery case dismissed over incorrect wording', *Weekend Australian*, 7-8 December 1985, p. 7.

98. NSW Police Internal Affairs Branch, memo by Det. Sgt. D.T. McCusker, 29 January 1985, re: Complaint by Mr J.M. Anderson concerning alleged actions of police towards him on 23 November 1979, p. 6.

On June 5th 1986 the NCA were fully briefed by the authors of this submission at a meeting in the Sydney offices of the NCA. They were advised of the strength of the evidence against Anderson and of the lack of action by the NSW Police. While not arguing against the views put forward the NCA officers were totally uninterested and no action resulted.

4.215 Authority witnesses told the Committee that Rees and King had provided little to support their belief that further investigation would produce evidence admissible in a prosecution against Anderson. They had offered suspicions, conjecture and speculation, but had not identified any avenues for investigation likely to lead to fresh, cogent, admissible evidence. Almost all the arguments they put forward were based on material available to the New South Wales Police and to the Nielsen inquest.⁹⁹

4.216 The Committee notes that Rees and King did not know when they visited the Authority that its association with Anderson had already been established - nor should they have been told, or made aware of the terms of the references in relation to which the association related. The Committee considers that the response of the Authority to an approach from concerned citizens was dismissive. The response placed an unreasonable onus on Rees and King to identify new evidence.

FACTORS MODIFYING COMMITTEE CONCLUSIONS

4.217 In parts of this chapter the Committee has been critical of the way the Authority's relationship with Anderson was entered into and conducted. The Committee considers that the criticisms should be read in the light of three modifying factors. First, at the time the relationship was entered into the Authority had just been established. The Committee recognises that some allowance has to be made for this fact.

4.218 A second factor is that the Committee recognises that Authority staff dealt with Anderson the way they did as the result of judgments they made in good faith about what was most appropriate. The evidence before the Committee

99. As noted in para. 2.9 above, the Coroner found that there was no *prima facie* case against Anderson (or anyone else) in relation to Nielsen's disappearance. It should be noted that neither the counsel assisting the Coroner nor any of the counsel representing interested parties submitted that there was a *prima facie* case against anyone. Moreover, the inquest was not bound by the rules of evidence that would apply in criminal proceedings: Nielsen inquest, transcript, 9 November 1983, p. 4028. Hence, not all the evidence put before the Coroner and jury relating to (say) Anderson would be admissible in his trial if he were to be charged over Nielsen's disappearance.

indicated that Anderson was not an easy person for Authority staff to deal with.¹⁰⁰ To suggest they were seeking assistance from him unnecessarily implies that they had opted for the hard road in preference to an easier one that was available. There was no logical reason why they should do this. In the professional judgments of most of the relevant Authority staff at the times they were dealing with him, Anderson represented an important source and/or witness for whom they had no better substitute. The Committee accepts that Authority staff made these judgments in good faith.

4.219 A witness who was in some respects critical of the way the Authority used Anderson pointed out how difficult major investigations like the Authority's Saffron investigation are to conduct:

These sorts of major investigations are terribly hard, terribly taxing, very detailed and very difficult. It is very hard. It is much easier to sit around here and pick it to pieces than to do it.

4.220 A third factor, which the Committee regards as most significant, is that in the last few years there has been a change in attitude on the part of Australian law enforcement agencies to using criminals as informers and witnesses. In the early 1980s, there was an emphasis on the benefits of using informers as a means of tackling organised crime.¹⁰¹ The negative aspects of using informers and informer/witnesses were not given equal emphasis. The Authority's relationship with Anderson has to be seen in this context.

4.221 Events since the mid-1980s, especially in New South Wales, have highlighted the risks involved in using informers. In April 1991, the New South Wales Independent Commission Against Corruption began an investigation into

100. Peter Rees, 'Juanita Nielsen - The questions that were never asked', *Sydney Morning Herald*, 10 November 1990, p. 76 described the Authority's dealings with Anderson as a 'cosy relationship'. The submission from Peter Rees and Arthur King repeated this assertion (p. 1) and described Anderson as the Authority's 'favourite informant' (p. 2). One Authority witness pointed out that the relationship was not very cosy. In a letter to the Committee dated 25 November 1992, the Authority commented: 'These remarks are among many others in the submission which the NCA considers are unsupported and incorrect. There is no material which supports any assertion of this kind and the NCA entirely rejects them.'

101. The inclusion in the NCA Act of s. 34, which provides for witness protection, reflects the belief that the Authority would be using indemnified witnesses. See also Royal Commission of Inquiry into Drug Trafficking, *Report: February 1983*, AGPS, Canberra, 1983, pp. 558-64: need to make better use of informers to tackle organised crime; Special Prosecutor R.F. Redlich, *Annual Report, 1983-84*, para. 4.6: 'Recent Royal Commission Reports such as those of the Williams, Woodward and Stewart Commissions, illustrate that law enforcement authorities investigating drug trafficking rely heavily on accomplices to inform on and give evidence against principal offenders'; Senate, Standing Committee on Constitutional and Legal Affairs, *Reference: The National Crime Authority Legislation: Hansard*, 13 March 1984, p. 512: evidence of Cedric Hampson QC on the need to use informers and the failure of police in the past to do so.

aspects of the use of informers.¹⁰² ICAC reported on this investigation in January 1993.¹⁰³ A further ICAC investigation is currently looking at other aspects of using informers.¹⁰⁴ In addition, ICAC is preparing a general report on informers and has issued a discussion paper on the topic.¹⁰⁵ A recent inquiry in Queensland examined a police operation, involving an informer, that clearly did not go as planned.¹⁰⁶ Several prosecution cases based on informers have failed, and attracted media attention and criticism in the process.¹⁰⁷ The Committee believes that law enforcement agencies are now far more cautious in dealing with informers. The Authority's 1992 informant management procedures are one indication of this.

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102. ICAC, *Annual Report to 30 June 1991*, p. 50. The investigation focussed particularly on the use of prisoners as informers.
103. ICAC, *Report on Investigation into the Use of Informers*, January 1993, 2 vols.
104. The investigation is into the relationship between police and criminals covering a period since 1975, one aspect of which concerns allegations that some police relationships with their informers had become corrupt: ICAC, *Annual Report to 30 June 1992*, p. 37. Public hearings on this investigation commenced in November 1992.
105. NSW, Independent Commission Against Corruption, *Police Informants: A Discussion Paper on the Nature and the Management of the Relationship between Police and their Informants*, May 1993.
106. Queensland, Commission of Inquiry into Operation Trident, 19 September 1989 to 2 April 1990 (W.J. Carter QC, Commissioner), *Report*, March 1993. An edited version of this report was made public when it was tabled in the Queensland Legislative Assembly on 17 March 1993.
107. e.g. see 'Supergrass loses another case', *Sydney Morning Herald*, 27 October 1988, p. 3: convictions based on the evidence of 'Mr Smith' overturned by the New South Wales Court of Criminal Appeal; 'Murder plot: Dominican cleared', *Sydney Morning Herald*, 8 July 1989, p. 6: acquittal in case based heavily on evidence of two criminal informers; 'The supergrass dilemma', *Australian*, 28 October 1989, p. 10: 'Law enforcers have been embarrassed by several cases that have failed after witnesses, despite the promise of indemnity, have refused to perform or may have overperformed'; Editorial, 'Questions of justice again', *Sydney Morning Herald*, 19 February 1992: failure of several prosecutions relying on the evidence of Frank George Walters, a criminal informer.

CHAPTER 5

WITNESS PROTECTION AND TERMINATION OF THE RELATIONSHIP

NCA Act Provides for Witness Protection

5.1 Section 34 of the NCA Act empowers the Authority to provide protection to persons. The protection may be provided where it appears to an Authority Member that the safety of a person may be prejudiced, or the person subjected to intimidation and harassment, as a result of providing information to the Authority.

The Protection Provided to Anderson

5.2 The Committee was told that Anderson believed that his physical safety was at risk because he was talking to the Authority. However, according to the Authority, prior to September 1987 he did not seek witness protection from it, preferring to look after his own security.

5.3 On 5 May 1987, Anderson was attacked in a Kings Cross nightclub. He sustained a fractured clavicle in his left shoulder and was hospitalised for a short time. There was no firm evidence that the injury was linked to his relationship with the Authority. However, some steps were taken to ensure Anderson's security while he was in hospital. Anderson did not request protection after he left hospital. The Committee was told that he continued to look after his own accommodation and security, although at his request the Authority conveyed him to and from various appointments.

5.4 In September 1987, Anderson was due to give evidence against Saffron in his trial on the tax matter.¹ On 1 September, shots were fired into Anderson's flat, allegedly just missing him.² The subsequent New South Wales Police investigation failed to identify the attacker. Anderson declined to be interviewed by the investigators, who identified the weapon used and established that Anderson had a number of enemies.

1. The trial eventually started on 14 September 1987, after two earlier starts had aborted with the juries being discharged on 27 August and 1 September respectively.

2. See 'NCA witness was shot at in hall of "safe house"', *Sydney Morning Herald*, 26 December 1987, p. 4. The Committee was told that this story, while accurate in many respects, was incorrect in saying that Anderson's flat was an NCA safe house.

5.5 The Authority had no evidence to suggest that the September 1987 shooting was staged or faked. The shooting suggested that there was a real threat to Anderson's life at that period. The Authority and Anderson believed that the threat might well be linked to his relationship with the Authority.³ However, there was no evidence to establish this link.

5.6 Following the shooting, Anderson was placed under 24-hour protection by armed Authority investigators in several different locations. Anderson gave evidence at Saffron's trial between 29 September and 9 October 1987. The Authority told the Committee that both it and Anderson were anxious that he leave Australia so as to reduce the possibility of further attempts being made on his life, and also to distance him from Saffron.⁴

5.7 Anderson appeared under summons at a formal Authority hearing before Justice Stewart and Peter Clark on 12 October 1987 to canvass his security and the possibility of him going overseas. On 23 October 1987, a written agreement was entered into between Anderson and the Authority dealing with his security. It was agreed that he should leave Australia for reasons associated with his personal safety. He would remain in contact with the Authority, and return as and when required to assist the prosecution of Saffron and Allen (the police bribery case). When returning, Authority investigators would escort him from the point of overseas departure. The Authority agreed to provide the cost of the airfares for his departure and return. In addition, it agreed to provide him with financial assistance which was considered sufficient to maintain him at a satisfactory standard of living until he was no longer required to give evidence in the Saffron and Allen matter, or such time as was otherwise agreed. The document which Anderson signed stated that the airfares and financial assistance were not an inducement or reward for giving evidence. In the document, he also undertook not to compromise his own security.

5.8 The Committee was told that cost savings were an important factor in the Authority's agreement to assist Anderson to go overseas. In addition, the Committee was told that the agreed arrangements conformed more closely to what Anderson wanted and was prepared to accept. The Authority recognised the risk that, once overseas and outside the day-to-day supervision of the Authority, Anderson would not adhere to his agreement.

5.9 The Authority provided the Committee with the following description of the protection it gave to Anderson under its agreement with him. He left Australia on 28 October 1987 under the agreement described in paragraph 5.7. The Authority gave

3. Another prosecution witness in the Saffron and Allen case, Warren Molloy, reported receiving death threats: 'Witness tells of death threats', *Sydney Morning Herald*, 2 July 1988, p. 7.

4. See para. 4.169 above where the possibility is noted that Anderson was seeking and/or Saffron was offering financial inducements to him not to give evidence against Saffron.

Anderson US\$150 per day to cover all his expenses while overseas, including the cost of accommodation in a hotel with good security for its guests and the hire of a security guard. Anderson's air travel paid for by the Authority was business class for many journeys. Other tickets were for first class, but took advantage of special offers whereby considerably less than the standard first class fare was paid.

5.10 Anderson spent much of his time overseas in the Philippines. He returned, accompanied by two Authority escorts, in June 1988 to give evidence at the committal stage of the Saffron and Allen prosecution. During his stay in Australia he was accompanied by two Authority investigators. He left Australia again on 19 August 1988 and was provided with living expenses while overseas. He returned unescorted on 6 November 1988. He was provided with protection until 22 November and he departed again on 26 November. He was paid a final sum then, which was sufficient to cover his arrangements overseas until January 1989.

5.11 The Authority told the Committee that it also provided \$3054.70 to Anderson's wife to enable her to terminate the lease of the flat in which the September 1987 shooting attempt occurred and to relocate herself.

5.12 The Authority provided the following summary of the total direct costs (excluding police salaries and overtime) of the witness protection it provided to Anderson.

	Domestic	Overseas	Total
Sustenance, meals, incidentals (and accommodation overseas)	9,831	72,007	81,838
Accommodation	27,781	599	28,380
Travelling allowance	19,945	615	20,560
Fares	3,509	12,239	15,748
Vehicles	8,064	-	8,064
Other	3,155	-	3,155
Total	\$72,285	\$85,460	\$157,745

Decision to End Anderson's Witness Protection

5.13 The Committee was told that a combination of factors led the Authority to its November 1988 decision to terminate Anderson's witness protection (with effect from January 1989). One factor was the manner in which Anderson gave evidence on 28 and 29 June 1988 in the Saffron and Allen committal proceedings. The Magistrate

stated: 'by his demeanour and answers to questions put in cross examination, the only conclusion I can come to as a Tribunal of fact is that his credit is destroyed'.⁵

5.14 Anderson's refusal to recall even recent events reduced the committal proceedings to near farce.⁶ He subsequently explained to the Authority why he was saying he could not recall in response to so many questions. He said that he did not think the questions were relevant and more informative answers would have disclosed his whereabouts or otherwise prejudiced his physical safety. However, the Authority had ample grounds for thinking that Anderson was simply not trying, and was treating as a game not only the committal proceedings but also (by implication) his relationship with the Authority.

5.15 The magistrate dismissed the charges against Saffron and Allen. The New South Wales Director of Public Prosecutions decided to ask the Supreme Court to set this decision aside, but the matter did not come before the Court until 21 December 1988. Counsel had advised the Authority that, in the event that fresh committal proceedings were ordered, Anderson would be required as a witness. However, in making the November 1988 decision to end witness protection, the Authority had some regard to the doubtful value of any evidence he might give in the matter.

5. *DPP v Abraham Saffron and William Alan Allen*, Local Court, Castlereagh Street, Sydney, committal proceedings, transcript of adjudication, 15 July 1988, pp. 3-4.

6. The following extract from the transcript of proceedings, 28 June 1988, pp. 62-63 illustrates Anderson's manner of giving evidence under cross-examination by Ian Barker QC:

Q. Have you ever been to the office of the National Crime Authority in Sydney? A. I could have been sir.

Q. Are you able to say yes I have been or no I have not been? A. Well I said it's possible I have been.

Q. Do you remember ever having been to the office of the National Crime Authority in Sydney? A. I believe I have been but I've got no clear recollection of when.

Q. Have you been there within the last week? A. I could have been sir yes.

Q. Do you remember being there within the last week? A. Not specifically no sir.

Q. Or in the week before that? A. Not specifically at this point in time sir no.

Q. Did you go there today? A. Not specifically sir.

Q. Pardon? A. Not specifically.

Q. Whether you went there specifically or in any other way did you go there today? A. I wasn't paying a great deal of attention where I was going today.

Q. Are you able to tell us whether or not today you were in the office of the National Crime Authority? A. I don't believe I was in the office of National Crime Authority. It is a possibility but I was not paying attention today.

Q. Are you able to say whether you were in the office of the National Crime Authority yesterday? A. Not specifically sir no.

Q. ... I would ask you to tell us yes or no were you in the office of the National Crime Authority yesterday? Now can you say yes or no? A. I've got no clear recollection of it sir. I couldn't give you yes or no. It would be inaccurate. I'd be guessing.

5.16 The Authority told the Committee that Anderson's conduct in Manila was the other factor in the Authority's decision to end his witness protection arrangements.

5.17 The Authority told the Committee that information reached it in 1988 that Anderson, then in Manila, was not behaving in accordance with the protection agreement. Authority documents provided to the Committee show that an Authority meeting on 12 April 1988 had before it advice of Anderson's activities in the Philippines, and advice that these were allegedly general knowledge in the Sydney criminal community.

5.18 In November 1988, an Authority investigator returning from overseas was instructed to stop en route in Manila and make inquiries.⁷ The investigator reported that Anderson had not maintained his 'cover' in Manila. Locals knew who he was and his connection with the Saffron matter. He had had business cards printed with his photograph. Moreover, he had appeared on television and in a newspaper story which included the name of his hotel and his photograph.⁸ He often went about without a security guard. He had received visits from persons from Australia alleged to be criminals.

5.19 In short, there was considerable evidence to suggest to the Authority that by November 1988 Anderson was not acting in conformity with the terms of his protection agreement. More importantly, he was not behaving as if his life was in serious danger. If it was not, the need for continuing Authority protection no longer existed.

5.20 Fresh threats justifying continuation of protection might have arisen if Anderson had provided further information or evidence to the Authority. Hence, the Authority had to consider whether he would provide hard information and evidence about matters other than Saffron. In earlier interviews with an Authority investigator, Anderson indicated that he knew about other relevant criminal activity. However, he was apparently reluctant to assist the Authority, in part at least because he believed that, if he did, additional threats to his safety would arise.

5.21 The Authority questioned Anderson at formal hearings in November 1988 about non-Saffron matters. He provided a brief statements on two such matters on 11 November 1988. The Authority concluded that he was unlikely to be of practical assistance on these matters.

7. On 22 December 1988, Anderson wrote to the Authority from Manila complaining that the activities of this investigator posed an unacceptable danger to his (Anderson's) security.

8. 'This investor's ROI: six lives saved at sea', *Business World*, 26 October 1988, p. 1: the story described Anderson, 'in town to survey business possibilities', as taking part in the rescue of some seamen whose boat was drifting onto rocks in a storm.

5.22 At formal Authority hearings on 7, 9, 14 and 21 November 1988 the Authority discussed with Anderson his future security arrangements. The adjournments enabled him to think particular matters over and to consult a person whom he particularly trusted. He was also given the opportunity to comment on the information that the Authority had obtained about his behaviour in Manila.

5.23 At the November 1988 hearings, Anderson stated that he considered that he was still in danger as a result of assisting the Authority. He indicated that he thought the Authority should continue to protect him for at least twelve more months: he was reluctant to give a firm time as he was unable to predict when the threat would diminish. He showed no interest in the suggestion that, as a long-term solution, he be relocated under a new identity in Australia. He stated a strong preference for returning to Manila.

5.24 At the end of the hearing on 21 November 1988, the Authority told Anderson that it would discontinue providing for his protection. To allow him time to make his own arrangements, the Authority provided him with US\$12,000 to meet his living and security expenses in Manila.¹⁰ According to the Authority, he also had unused portions of air tickets previously paid for by the Authority. The Authority considered that these would enable him, if he wished, to travel to Manila and return to Australia.

Anderson's Criticism of the Decision to End Protection

5.25 On a *Four Corners* interview with Neil Mercer, broadcast on 8 April 1991, Anderson gave his account of the way in which the Authority terminated the relationship:

JMA: Oh yes, Justice Stewart, in his wisdom, if you can call it that, did something to me that even Abe Saffron couldn't do. He made me a classic godfather statement. He made me an offer I couldn't refuse.

NM: What was the offer?

JMA: Well the offer, word for word, as close as I can recall, he ordered me to leave Australia on the first available Qantas flight to the Philippines. This was on a Monday. The first available Qantas flight was on Tuesday. He then authorised a payment of \$US10,000....

NM: To you.

JMA: Yes. And said 'You've got your ticket. If you haven't left on that flight, I will withdraw your protection'.

NM: This is your 24-hour protection.

JMA: Correct.

9. In each hearing Justice Stewart and L. Robberds QC constituted the Authority pursuant to s. 25 of the NCA Act.

10. Previous payments to enable Anderson to look after his own security overseas were calculated on the basis of US\$150 per day. On the same basis, the final payment of US\$12,000 would provide for 80 days further protection.

NM: ... What would have happened if your protection had been withdrawn and you'd stayed in Australia?

JMA: I'd be dead. There's no question about that at all.

NM: As he tells it, having used him, the NCA threw him to the wolves.

JMA: Yes, well, unfortunately, the National Crime Authority was very selective. If it suited their purpose, they would protect you. The minute ... a common expression: 'They use you, chews you up, and spat you out'.

5.26 The Authority Chairperson in 1991 (Justice Phillips) and Justice Stewart both denied the accuracy of Anderson's versions of events. The Committee was told that Justice Stewart dealt with Anderson only at formal Authority hearings. Transcripts exist for these and were provided to the Committee.¹¹ The Committee has verified that nothing in the transcripts corresponds to Anderson's version of the 'offer'.

5.27 The Authority also pointed out that Anderson was told on Monday, 21 November 1988 that his protection would be ending. He did not leave Australia until the following Saturday. The Authority paid for Anderson's accommodation for three nights before he left, which is inconsistent with his version of events.

Committee Observations

5.28 The Committee attaches significance to the fact that Anderson only asked the Authority to provide witness protection nearly 3 years after its relationship with him commenced, and after the second physical attack on him. This suggests that Anderson did not enter into the relationship in order to obtain the protection. The information he provided to the Authority was virtually all given before he made any request for protection. The benefits Anderson obtained as a protected witness cannot be seen as a pre-arranged reward or payment for information he provided and evidence he gave.

5.29 The Committee notes that the protection arrangements were effective. Anderson was not assaulted or apparently intimidated while in protection. He made himself available to assist prosecutors. He returned to give evidence in court when required, although the evidence turned out to be valueless.

5.30 The Committee has serious concerns about the Authority's decision to enter into the arrangement that enabled Anderson to go overseas. Such arrangements put the witness's activities beyond the effective supervision and control of the Authority, and give the Authority no means of ensuring that the witness will return to give evidence. The Committee considers that Anderson's conduct in Manila illustrates why such arrangements should not be entered into. If Anderson insisted on overseas protection

11. In July 1991, the then Chairman of the Authority, Justice Phillips, issued a direction pursuant to s. 25(9A) of the NCA Act to enable the Committee, its staff and its counsel to have access to all the transcripts. As the Authority pointed out, Anderson's reference to 'Monday' as the day of the 'offer' suggested that the relevant transcript was that of Monday, 21 November 1988, the final hearing in the series.

as a condition for continuing to assist the Authority, the Authority should have done without his assistance.

5.31 The Committee considers that, as the Authority did agree that Anderson would go overseas, it should have either acted on the information received before April 1988 that suggested Anderson was not conforming to the agreement while in Manila, or taken steps much earlier in 1988 to discover what he was actually doing in Manila. If either of these courses had been adopted, the Authority would have been in a position to have terminated Anderson's witness protection arrangements well before November 1988 on the basis that he was not observing the conditions of the protection agreement. The Committee does not consider that the payment to Anderson of a sum as large as US\$12,000 was justified on termination of the witness protection agreement.

CHAPTER 6

SUMMARY AND CONCLUSIONS

6.1 James McCartney Anderson is a former close associate of Abraham Gilbert Saffron. Anderson has had extensive associations with criminals and criminal activity over many years, although he has apparently never been convicted of any offence. His relationship with the Authority began in late 1984 and finished at the end of 1988. During this period, he provided information to the Authority, gave formal statements to it for use in evidence, appeared as a prosecution witness in proceedings resulting from Authority investigations, and was provided with witness protection at Authority expense. His association with the Authority arose in the context of its investigation of Saffron, and principally related to that investigation.

6.2 The Committee was asked to report on whether the Authority has properly performed its statutory functions in respect of James McCartney Anderson.

6.3 The Committee did not find that any breach of any statute had occurred in the Authority's dealings with Anderson. However, the Committee did not consider that its sole criterion of assessment ought to be whether a statute had been breached. The Committee also asked whether the Authority had acted in accord with the dictates of sound management and administration.

6.4 The Authority did not conduct any formal assessment of whether it should use Anderson as an informer or witness before entering into its relationship with him. The Committee considers that such an assessment should have been made.

6.5 The Committee considers that this assessment would have shown that using Anderson in the way that the Authority did was clearly a very marginal proposition. In the Committee's view, the assessment would have noted the *de facto* immunity Anderson would gain from his relationship with the Authority in respect of his past criminal activity; the real possibility that he was engaged in criminal activity in late 1984; his suspect motivation; his questionable credibility; and the lack of a compelling need to use him as a source of information and evidence on Saffron.

6.6 The Committee believes that the Authority should not have used Anderson as an informer or put him forward as part of the admissible evidence it provided in prosecution briefs. The Committee considers that had the Authority made a comprehensive initial assessment in November 1984, it would have decided either not to use Anderson, or at least to postpone using him until the need to do so became

clearer. In light of this, the Committee regards the failure to do such an assessment as a serious failure. Had Anderson not been used as an informer and witness, he would almost certainly have been charged and convicted alongside Saffron.

6.7 The Committee was told in November 1992 by the current Authority that, under procedures now in place, it would not commence the relationship with Anderson in the way that its predecessor did in 1984.

6.8 Anderson used his relationship with the Authority to try to blackmail Saffron. Anderson claimed Saffron owed him a large sum of money. Anderson told Saffron that if Saffron paid him that money, he would no longer assist the Authority's investigation of Saffron and he would suffer a memory loss if called to give evidence against Saffron. Anderson told Authority staff he was doing this. The Authority took no action as a result. The Committee considers that the Authority's failure to respond was totally unacceptable. It should have terminated its relationship with Anderson immediately it found out what he was doing.

6.9 The Committee was told in November 1992 by the current Authority that, under procedures now in place, it would terminate a relationship with an informer/witness if it found that the person was using the relationship to blackmail its target or to resolve personal matters.

6.10 Both the Authority and Anderson obtained only limited benefits from their relationship. The Authority obtained assistance in investigating the Saffron tax matter and Anderson gave evidence in court for the prosecution in this matter. It is impossible to say how valuable Anderson was in bringing about Saffron's conviction. Some witnesses regarded his role as critical and essential. Others rated it as somewhat less important. In the Committee's view, it is quite possible that Saffron's conviction could have been obtained without Anderson's help, and that Anderson could have been successfully prosecuted alongside Saffron.

6.11 Anderson provided the Authority with information of very variable quality in relation to other aspects of its Saffron investigations. In the only one of these which resulted in court proceedings against Saffron, Anderson's evidence was discredited under cross examination at the committal stage and Saffron was discharged.

6.12 Anderson obtained no cash rewards for his information. He received no formal undertakings that he would not be prosecuted, and received no formal indemnities that evidence he gave would not be subsequently used against him. The logic of his position as a Crown witness, however, ensured that he would not be prosecuted along with Saffron for his part in the conspiracy to defraud the Commonwealth of tax due.

6.13 Anderson may have obtained some *de facto* immunity from investigation and prosecution for other alleged offences. If this happened, it would have been because

of two factors. First, it was not in the Authority's interest to investigate Anderson while he was providing information and evidence to it. Secondly, there are tacit understandings among police that one officer does not interfere with another's informer, unless a serious offence is involved.

6.14 Anderson was bashed and shot at in 1987. He felt he was forced to alter his lifestyle as a result, but he obtained considerable assistance from the Authority to do this. Under an agreement with the Authority, he was given funding to live overseas and look after his own security there. The Committee does not consider that the Authority should have assisted Anderson to travel and live overseas. If Anderson insisted on living overseas for security reasons, the Authority should have done without his assistance.

6.15 Given the Authority did agree that Anderson would go overseas, it should have taken steps early in 1988 to discover what he was doing in Manila. It would then have found out well before November 1988 that he was not living up to the agreement, and should have then terminated his witness protection arrangements. The Committee does not consider that the payment to Anderson of a sum as large as US\$12,000 was justified on termination of the witness protection arrangement in November 1988.

6.16 The Committee considers that the above criticisms of the Authority should be read in the light of three modifying factors. First, when the relationship was entered into the Authority had just been established, and some allowance has to be made for this fact. Secondly, the Committee recognises that Authority staff dealt with Anderson in the way they did as the result of judgments they made in good faith about what was most appropriate.

6.17 A third factor, which the Committee regards as most significant, is the context in which the relationship occurred. In the last few years there has been a change in attitude on the part of Australian law enforcement agencies as the result of unsuccessful attempts to use criminals as informers and witnesses. In the early 1980s, there was an emphasis on the benefits of using informers as a means of tackling organised crime, and the negative aspects were not given equal emphasis. The Committee believes that law enforcement agencies are now far more cautious in dealing with informers. The Authority's 1992 informant management procedures are one indication of this.

Peter Cleeland, MP
Chairman

APPENDIX 1

CHRONOLOGY OF THE RELATIONSHIP BETWEEN THE NATIONAL CRIME AUTHORITY AND JAMES McCARTNEY ANDERSON

(As provided to the Committee by the Authority in March 1992, save that file and document references and some names have been removed)

19 October 1984	The Commonwealth issued Reference No.1
20 December 1984	Anderson interviewed by Authority lawyers and investigators
8 August 1985	Anderson interviewed by Authority investigators
26 October 1985	Formal statement alleging taxation offences by Saffron taken from Anderson by Authority investigators
14 November 1985	Saffron was arrested by Authority investigators and charged with conspiring to defraud the Commonwealth and with 12 alleged taxation offences
4 April 1986	NSW issued a Reference (No.3) on Saffron
8 April 1986	Anderson appeared at Authority hearing essentially concerning his plans to travel overseas and his availability to give evidence at Saffron's committal
11 July 1986	Anderson interviewed by Authority investigators
13 August 1986	Anderson interviewed by Authority investigators
7-10 October 1986	Anderson gave evidence at Saffron's committal
24 February 1987	Formal statement re Saffron and Allen taken from Anderson by Authority investigators
February-June 1987	Anderson interviewed on 13 occasions (once with Ockrim) by Assistant Commissioner V. Anderson, then the Authority's Director of Investigations
5 March 1987	Formal statement re Saffron and Allen taken from Anderson by Authority investigators
12 March 1987	Saffron and William Allen were charged with conspiring to bribe a police officer and conspiracy to obstruct the course of justice

Appendix 1

5 May 1987	Anderson was attacked at a Kings Cross nightclub and sustained a fractured clavicle in his left shoulder
1 September 1987	Anderson was fired upon six times at his place of residence; he was not injured; he was taken into witness protection by the Authority
29 September to 9 October 1987	Anderson gave evidence at Saffron's trial on the taxation charges
12 October 1987	Anderson appeared at Authority hearing to settle the arrangements for his protection overseas at the Authority's expense
23 October 1987	Anderson signed a document prepared by the Authority concerning his relationship with the Authority
28 October 1987	Anderson left for overseas at the Authority's expense
December 1987 to February 1988	Financial assistance (\$3054.70) provided to Anderson's wife
June 1988	Anderson returned to Australia under protection
28-29 June 1988	Anderson gave evidence at the Saffron and Allen committal
19 August 1988	Anderson left for overseas at Authority's expense (Note: although the committal proceedings against Saffron had failed, the NSW DPP was giving consideration to an appeal - and subsequently did appeal - against the Magistrate's decision; it was accordingly necessary to keep Anderson under protection for a further period)
6 November 1988	Anderson returned to Australia and resumed local witness protection
November 1988	at the request of the then Chairman, an Authority investigator who was then in Hong Kong visited Manila en route to Australia to make inquiries about Anderson (in Anderson's absence). The investigation disclosed that Anderson breached his own security in material respects.
11 November 1988	Formal statements re non-Saffron matters taken from Anderson by Authority investigators

Appendix 1

7, 9,14 and 21 November 1988	Anderson appeared at Authority hearings re non-Saffron matters and his present and future witness protection arrangements
26 November 1988	Anderson left for overseas at Authority expense
21 December 1988	Mr Justice Carruthers of the NSW Supreme Court allowed the appeal by the DPP against the Magistrate in the Saffron and Allen committal; Saffron and Allen took the matter to the NSW Court of Appeal
January 1989	The Authority's protection and support of Anderson ceased
6 February 1989	The Authority received from the AFP a handwritten note by Anderson which he gave (unsolicited) to the AFP Liaison Officer in Manila complaining about the inquiries the Authority had made about him in the Philippines in November 1988
7 June 1989	The NSW Court of Appeal allowed the appeal by Saffron and Allen against Mr Justice Carruthers' decision, thereby effectively ending the joint proceedings against them.
September 1989	Apparently following an approach from Anderson, the NSW Victims Compensation Tribunal sought details from the Authority of the assault on Anderson in May 1987 (see above); on counsel's advice, the Authority informed the Tribunal that it could not assist; the reason being that the Tribunal was not an agency to which the Authority would directly communicate information under its statute
March 1990	Following an approach by Anderson to the Authority via a former Authority investigator, the Authority disseminated the information about the assault to the NSW Police so that it could communicate the information to the Tribunal; on 15 March 1991, the Tribunal awarded Anderson \$1,500
9 November 1990	The Authority received an invoice from a person in New Zealand, in the sum of \$NZ30,375 (including GST) for accommodation and meals for Anderson for 90 days in 1988 and 180 days in 1989; the Authority declined to pay, Anderson having been given money by the Authority to meet his own expenses; the person has been associated with Anderson for many years

Appendix 1

April 1991

A similar approach by the same person to the Minister for Justice drew a similar response

APPENDIX 2

FURTHER MATERIAL PREPARED BY THE SECRETARIAT AND CONSIDERED BY THE COMMITTEE IN COMPILING ITS REPORT

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INTRODUCTION

On 19 October 1984 the Authority was given a reference to investigate a nominated person and persons 'associated' with him. Under the reference, the Authority investigated Abraham Gilbert Saffron. To provide the context and background to the reference, Part 1 of this paper sets out what was known in 1984 of Saffron, of Anderson, and of the relationship between the two men. Part 2 of the paper deals with the investigation and coronial inquest into the disappearance in July 1975 of Juanita Nielsen. Both Anderson and Saffron were interviewed during the course of the investigation, and both gave evidence at the inquest.

PART 1: BACKGROUND ON ANDERSON AND SAFFRON

SAFFRON'S BACKGROUND

1.1 Saffron's business career had been a subject of continuing interest to both law enforcement authorities and the media for decades prior to 1984. He was born in Sydney on 6 October 1919 and educated at Fort Street High School. He left school at the age of 15 and worked in his father's retail drapery business. In 1938 he was convicted of a betting offence and fined 5 pounds.¹ In 1940 he was convicted of receiving stolen goods and sentenced to six months' hard labour, suspended on condition that he enter a 10 pounds two-year good-behaviour bond.² He was in the army from 1940 to 1943, and in the merchant navy for the remainder of the war.³

1.2 After the war he bought hotels, initially at Kurri Kurri and Newcastle, before moving to hotels in Sydney.⁴ In 1947, he took over the running of the Roosevelt night club in Kings Cross. A charge of possession of an unlicensed pistol was found proven in 1947 and he was put on a 10 pounds two-year good-behaviour bond.⁵ His hotel interests expanded rapidly. He came to the attention of the New South Wales Liquor Royal Commission in the early 1950s. It reported adversely on him, finding that he had attempted to conceal his financial interest in a number of hotels from licensing authorities and from the Royal Commission. It reported:⁶

-
1. David Hickie, *The Prince and the Premier*, Angus & Robertson, Sydney, 1985, p. 117.
 2. *ibid.*
 3. Malcolm Brown, 'The Life and Times of Abe Saffron', *Sydney Morning Herald*, 14 November 1983, p. 9.
 4. *ibid.*
 5. *ibid.*
 6. The Royal Commission (The Hon Mr Justice Maxwell) on Liquor Laws in New South Wales, *Report*, 1954, pp. 12, 30.

Appendix 2

A.G. Saffron employed a number of persons to conduct various hotels on his behalf though this was concealed from the Licensing Court.

and

A.G. Saffron ultimately admitted his beneficial interest in a number of hotels using different persons as 'dummies'. These hotels included West End Hotel, Westdale Hotel, Cumberland, Gladstone, Albert Hotel. These interests were successfully concealed from the Licensing Court; and before this Commission - with a clear appreciation of his obligation to abide by his oath and of his liability if he failed - he engaged in systematic false swearing.

1.3 The Liquor Royal Commission noted that Saffron, 'who ultimately admitted his interest in the Roosevelt' obtained liquor supplies on the black market which then existed.⁷ The Royal Commission referred to the Roosevelt as 'one of the most infamous night clubs' and noted 'the unsavoury reputation' of the witnesses from the Roosevelt and 'of the place itself'.⁸ The Roosevelt had been declared a 'disorderly house' under the relevant legislation on a number of occasions.⁹ An attempt to prosecute Saffron for giving false evidence to the Liquor Royal Commission failed on technical grounds.¹⁰

1.4 In 1956, Saffron was charged with an unnatural offence with a woman, two charges of scandalous conduct, and two charges of being the occupier of premises in which obscene photographs were found. Two of these matters were dismissed at the committal stage,¹¹ while the trial in a third was not proceeded with. He was convicted on the two obscene photographs charges but the convictions were overturned on appeal. In 1964, he was committed for trial on three charges of receiving stolen goods - refrigerators, televisions and a dishwasher found in use in his Lodge 44 motel.¹² The jury found him not guilty on all charges.¹³

1.5 He was at one time referred to by some sections of the press as 'Mr Sin'. In 1966, the New South Wales Licensing Court refused to allow a company to hold a restaurant permit

7. *ibid.*, p. 68.

8. *ibid.*, p. 71.

9. *ibid.*, p. 71. See also 'Roosevelt Night Club "Declared"', *Sydney Morning Herald*, 16 January 1953, p. 1. This January 1953 order was lifted after a change in ownership removed Saffron from control: 'Judge Lifts Order on Roosevelt', *Sydney Morning Herald*, 4 March 1953, p. 7.

10. 'Counsel Asks for Costs Against Crown', *Sydney Morning Herald*, 19 December 1952, p. 5.

11. 'Saffron Charge Dismissed', *Sydney Morning Herald*, 30 May 1957, p. 8; 'Two Freed On Scandalous Conduct Count', *Sydney Morning Herald*, 2 October 1957, p. 8.

12. 'Saffron Charged', *Sydney Morning Herald*, 18 February 1964, p. 6.

13. 'Receiving Charges Acquittal', *Sydney Morning Herald*, 26 February 1964, p. 12.

under the Liquor Act on the grounds that Saffron had a 'beneficial interest' in the company. The magistrate, T.A. Ratcliffe, said:¹⁴

On a view of the past history of Mr Saffron and his present day interests, I am far from satisfied that his character and conduct have so altered as to now find that he is a fit and proper person to have any interests in a permit under the Liquor Act.

1.6 Saffron had been on a Customs alert list in 1972-75. Commonwealth Police narcotics officers were to be notified when he left or entered Australia. He was to receive a 100% baggage search on re-entry. Saffron was on the list because he was 'suspected of drug trafficking and of involvement in criminal activities'.¹⁵ Following representations by Saffron's lawyers that he was being needlessly embarrassed and harassed, the Customs attention given to him on departure and re-entry was down-graded in 1975.¹⁶

1.7 In 1977, the Commissioner of the Commonwealth Police noted that Saffron had over the years been the subject of numerous allegations, mainly revolving around the vice area, and that were adequate grounds for believing that him to be a major figure in organised crime in Australia

1.8 Police intelligence on Saffron from foreign law enforcement agencies indicated that Saffron associated with known criminals when overseas. Police also alleged that overseas organised crime figures who visited Australia had contacted Saffron while in Australia.

1.9 In 1977, the New South Wales Premier said of Saffron: 'It is a matter of notoriety in the community that Mr Saffron is not a person of good repute. All sorts of wrongdoings have been imputed to him over the years'.¹⁷ Early the following year in the South Australian House of Assembly, the Attorney-General, Peter Duncan, tabled documents on Saffron and described in some detail the allegations made over the years against him.

1.10 The South Australian Attorney stated:¹⁸

When they look at ... [Saffron's criminal record that] I have tabled, members will note that Mr Saffron's personal involvement with the police appears to have ended abruptly in 1964, but despite this he was called as a witness to the 1973 Moffitt Royal Commission inquiring into the infiltration of organised crime into the licensed club and entertainment industries in New South Wales.

14. Quoted in David Wilson and Lindsay Murdoch, *Big Shots: A Who's Who in Australian Crime*, Sun Books, Melbourne, 1985, p. 98.

15. Senate, *Hansard*, 6 September 1984, p. 566.

16. *ibid.*, p. 567.

17. New South Wales, Legislative Assembly, *Hansard*, 30 November 1977, p. 10,644.

18. South Australia, House of Assembly, *Hansard*, 7 March 1978, pp. 1971, 1973.

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During the proceedings of the Moffitt Royal Commission it was put to Mr Saffron that he was one and the same person who was commonly referred to in the press as the Mr Sin of Australian organised crime. Mr Saffron denied this allegation. However, one matter which became apparent from the proceedings of the Royal Commission was that Mr Saffron had close involvement with Mr Jack Rooklyn, of the Bally Poker Machine Company. That organisation has close links with the Mafia in America.

In his report the Royal Commissioner, Judge Moffitt said that the continued operation of the Bally company in Australia posed a real threat of the infiltration of organised American crime syndicates in this country.

... [Another document tabled] indicates the links between establishments in Sydney owned by Mr Saffron and certain employees of Mr Saffron with the circumstances surrounding the mysterious disappearance of Juanita Nielsen on July 4, 1975, who it is believed was murdered.

... What emerges from all this is that Mr Saffron has been, from time to time, publicly linked with criminal and illegal activities in the State of New South Wales in particular, and that his behaviour and organisations with which he is associated have been the subject of a number of Royal Commissions and inquiries conducted by various authorities.

I am making no claims as to the veracity of the allegations made in the documents I have produced this afternoon. However, it was important in light of the Hon J.R. Cornwall's question as to reasons why Mr Saffron has been described as a person well known to the police throughout Australia and overseas to make the information contained in those documents available to honourable members.

In this regard I make it clear to the House that I have been informed by the police that Mr Saffron is a key figure in organised crime in this country.

... While it is true that Mr Saffron has not been charged with criminal offences since 1964, it is also clear that he is one of the principal characters in organised crime in Australia. The fact that he has been the subject of a number of governmental inquiries and independent investigations, and that he is without doubt involved in more than 100 companies throughout Australia, makes it imperative that the public be aware of the extent of his influence.

1.11 This statement was in part a result of a 1976 question in the South Australian Legislative Council. On 12 October 1976, J.R. Cornwall had referred to a story in the *Sunday Mail* of 10 October 1976 which stated that 'Drug pushing in the Adelaide drug scene is now almost totally under the control of a Sydney businessman'. He had asked if the Sydney businessman was Saffron, and whether Saffron was 'known to police throughout Australia and overseas for his criminal activities'.¹⁹ The Chief Secretary, D.H.L. Banfield, had replied:²⁰

I also read the report there is no doubt that the name 'Abe Saffron' was the first one to come to mind but, of course, the report was not specific on that. I should not be in the least surprised if they were referring to Abe Saffron in this regard. Regarding the second question, Abe Saffron's activities are well known throughout the Commonwealth, and he is a person well known to the Police Department.

19. South Australia, Legislative Council, *Hansard*, 12 October 1976, p. 1412.

20. *ibid.*

1.12 On the day after the Attorney-General's 1978 speech, the South Australian Premier quoted from a report from the South Australian Commissioner of Police:²¹

Inquiries within the CIB and at the Drug Squad in particular reveal that, whilst it is well known that Abraham Gilbert Saffron already has extensive business interests in Adelaide in the form of night clubs, hotels and massage parlours, there is no credible evidence to prove his connection with drugs or drug trafficking, although he is strongly suspected through association and information.

1.13 Saffron denied the allegations made against him by the Attorney-General in the South Australian Parliament.²² He has also contested the adverse police information on him that was given to the Moffitt Royal Commission.²³ He has denied that he was 'Mr Sin',²⁴ and has also denied involvement in dealing in illegal drugs.²⁵

1.14 In 1980, following earlier media publicity,²⁶ a question was asked in the New South Wales Parliament whether a building on land owned by the Public Transport Commission (PTC) above Kings Cross railway station housed a gambling club, a brothel and a sex shop.²⁷ The PTC had leased the building to a company owned by Sir Paul Strasser and Robert Ryko. Without PTC approval, this company had sub-let the property to two companies which Saffron controlled. In 1977, the head lease was transferred to Togima Leasing Pty Ltd with PTC approval. The directors and nominal shareholders of Togima Leasing were all associated with Saffron. The Government paid Togima \$2.668 million to end the lease, with the stated aim of ending illegal activities on government land. Not surprisingly, questions were asked

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21. South Australia, House of Assembly, *Hansard*, 8 March 1978, p. 2044.
 22. Saffron unsuccessfully sought to appear at the bar of the South Australian House of Assembly to respond to the Attorney-General's allegations (South Australia, House of Assembly, *Hansard*, 14 March 1978, p. 2160).
 23. See Commonwealth of Australia, Committee of Permanent Heads on Allegations in the National Times of 10 August 1984, *Report*, 4 September 1984, paras. 6-7 for Saffron's attempt in 1974 to refute the adverse report made on him by Commonwealth Police to the Moffitt Royal Commission into Allegations of Organized Crime in Clubs. (The full text of the report is incorporated in Senate, *Hansard*, 6 September 1984, pp. 565-69.)
 24. When he appeared before the Moffitt Royal Commission, Saffron denied being 'Mr Sin'. See also 'Saffron's not saying on Mr Sin', *Nation Review*, 21-27 September 1973, p. 1539 (reporting Saffron's denial that the name applied to him); 'Portrait of Abe', *Nation Review*, 19-25 November 1976 (Saffron denied that the label Mr Sin which had been attached to him by the media was correct). According to Marian Wilkinson, 'Who is Abe Saffron?', *National Times*, 9-15 May 1982, p. 8, Saffron had successfully sued a newspaper that alleged he was 'Mr Sin'.
 25. For Saffron's denial of 1976 allegations that he was involved in illegal drug dealing, see 'Drug accusation vile, says Saffron', *Sydney Morning Herald*, 20 October 1976, p. 2.
 26. 'PTC asked to close sex shop', *Sydney Morning Herald*, 13 July 1978, p. 9.
 27. New South Wales, Legislative Assembly, *Hansard*, 20 March 1980, p. 5,630.

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about this method of achieving the objective,²⁸ and NCA staff were later to consider whether the Authority should look into the Togima Leasing transaction as part of its Saffron investigations.

1.15 Saffron was referred to in the 1982 report of the Commonwealth-New South Wales Joint Task Force on Drug Trafficking in connection with the Nugan Hand group of companies.²⁹ These companies were involved with drug traffickers and allegedly also had links to international arms deals and other shady or illicit activities. The group was later the subject of a Royal Commission inquiry.³⁰ The Joint Task Force report stated that amongst Nugan Hand records was a handwritten note by Michael Hand. This indicated that a Hong Kong transaction involving A\$50,000 had been entered into by Saffron with Nugan Hand.

1.16 The Joint Task Force interviewed Saffron, who denied that he had had any association with the Nugan Hand group of companies. Saffron also said that of those connected with the group, he had met only Frank Nugan. Evidence from Bernie Houghton, a Kings Cross restaurant operator linked to Nugan Hand,³¹ contradicted this latter assertion. The report commented:³²

there is little doubt that Saffron was at one time involved in at least this one transaction with Nugan Hand ... That at least Saffron chose to lie about his association with Hand and both Houghton and Saffron chose to lie about the transaction only adds to suspicion that there was something either illegal or improper about it.

1.17 Saffron was mentioned in evidence to the Costigan Royal Commission as having in 1980 used a tax avoidance scheme marketed by the firm of Ward, Knight and Dunn.³³

1.18 In 1982, Saffron was referred to in the report of a New South Wales Police Tribunal inquiring into the conduct of the then Deputy Police Commissioner, W.A.R. Allen. One of

28. See the Government response to a parliamentary question, New South Wales, Legislative Assembly, *Hansard*, 25 March 1980, pp. 5,773-80 for the background and the Government's explanation of the transaction.

29. Commonwealth-New South Wales Joint Task Force on Drug Trafficking, *Report, Volume 2: Nugan Hand (Part 1)*, June 1982, AGPS, Canberra, 1982, pp. 420-22, 437, 501-03.

30. Royal Commission of Inquiry into the Activities of the Nugan Hand Group (Commissioner the Hon Justice D.G. Stewart), *Final Report, June 1985*, AGPS, Canberra, 1985.

31. *ibid.*, pp. 190-94.

32. Commonwealth-New South Wales Joint Task Force on Drug Trafficking, *Report, Volume 2: Nugan Hand (Part 1)*, June 1982, AGPS, Canberra, 1982, pp. 421-22.

33. *ibid.*, p. 503; Royal Commission on the Activities of the Federated Ship Painters and Dockers Union, transcript of proceedings, 22 April 1982, pp. 7530-38 (Evidence of F.D. Ward).

the allegations against Allen was that he had brought discredit on the force by associating with Saffron. The Tribunal said in its report:³⁴

It is clearly established on the evidence that A.G. Saffron is a person of ill repute in the community. It is not to the point that his actual character is claimed to be different. His counsel presented many arguments to support his contention that Mr Saffron was in fact a person of good character but the question is whether he is of such a reputation that the repeated association with him by Mr Allen was likely to bring discredit upon the Police Force. He was described by experienced and senior police officers as being of 'unsavoury' reputation, known for his involvement in illicit activities. The Tribunal ... finds that it is established that Mr Saffron has a reputation said to be unsavoury and of being involved in illicit activities. It agrees with their disapproval of Mr Allen's actions in seeing Mr Saffron as he did. ... It is to be observed that Mr Allen himself accepted without question that Mr Saffron was a man of bad repute. He said in the preliminary report and investigations: 'He has always had a reputation of being involved in vice and I still wouldn't trust him'. ...

It is relevant, on the question of suspicion, to observe that senior counsel for Mr Allen chose directly to ask Mr Saffron whether he had paid any money or bribe to Allen. On that point it must be said that there is no evidence that any money was paid to Mr Allen by Mr Saffron. ... Whereas the impropriety of holding such meetings has been established, there can be no finding that impropriety or misconduct actually occurred at such meetings but there remains in all the circumstances a high degree of suspicion that such did occur. ...

The Tribunal has firmly reached the conclusion that the effect of these repeated visits by Mr Saffron to Mr Allen is such as to disturb the confidence of the community in its Police Force.

1.19 In 1984, an attempt was made in the Licensing Court of South Australia to use the findings of the New South Wales Police Tribunal against Saffron. The findings were put forward by the Assistant Superintendent of Licensed Premises (the 'objector') to support the claim that Saffron was a person of bad fame or character and not a fit and proper person to be a director of a company operating a licensed hotel. Saffron's counsel successfully objected to the use of the material on the ground that Saffron was not given the opportunity to cross-examine his detractors before the Police Tribunal.³⁵ The judge concluded:³⁶

I have been presented with this one Report [ie. that from the Police Tribunal] - nothing else. No other Reports of Commissions - no witnesses as to reputation. In view of all of this I simply express surprise that this case has produced so little information about the man who is said to be of such bad fame and character. How very different things might (I stress 'might') have been had

34. *Report of the Tribunal to the Minister for Police pursuant to an inquiry under section 45 of the Police Regulation (Allegations of Misconduct) Act, 1978, into certain matters relating to discipline in the Police Force and Mr W.A.R. Allen*, April 1982 (NSW Parl Paper No.4 of 1982), pp. 16, 17.

35. During the proceedings, Saffron admitted to the following recent convictions: Castlereagh (NSW), 27 February 1984, fail to display trading hours, fined \$40, alter premises without authority, fined \$100, and fail to display correct sign, fined \$10; and Adelaide Magistrates Court, 2 April 84, supply liquor to minor (5 counts), fined \$50 on each count. (*In the matter of the Licensing Act 1967-1983, Abraham Gilbert Saffron and Blair Athol Hotel P/L*, reasons for decision of Acting Judge B. St.L. Kelly, Licensing Court of South Australia, Adelaide, 12 September 1984, p. 1)

36. *ibid.*, p. 6.

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there been direct sworn evidence before this Court as to Saffron's alleged bad fame or character. Perhaps no such evidence is available. I do not know. Certainly there has been no reason advanced for the failure to produce witnesses from interstate as originally suggested by the objector's counsel.

I approve Mr Saffron as a Director as sought in the application, stressing the unexplained failure on the part of the objector to proceed in the manner so clearly foreshadowed at that earlier hearing.

ANDERSON'S RELATIONSHIP WITH SAFFRON

How the Saffron-Anderson Relationship Began

1.20 Anderson was born in Scotland in 1930. He served in the Royal Marines between 1947 and 1952, being discharged as medically unfit.³⁷ He said that following this he had a variety of jobs, and lived for a time in New Zealand.³⁸ In 1984 he provided the following account of his subsequent career to a New South Wales parliamentary committee:³⁹

I came here in 1957 for the first time. I then arrived here on a permanent basis in 1959. I took up residence at 44 Macleay Street, which in those days was owned by Mr Saffron and some other gentleman. ...

I then moved into the Rex. I brought over a group of New Zealand entertainers on a month's contract for a nightclub called Andres run by Mr Jim Callaghan at the time. The group of entertainers were very successful and they had an extended season for two or three months. I then got a contract for Surfers Paradise at the Chevron Group. I then became entertainment director for the Chevron Hotels in Queensland and maintained that position for four and a half to five years. During that time I also became entertainment director for the Rex hotels which at that time were controlled by Mr Gordon Aldrich. It was during the period when I was involved with the Rex Hotel that I came into the first contact with corruption and prostitution as we know it today. The Rex Hotel was a place for working ladies of a high standard and quality, with complete police protection. ...

I studied the system pretty closely because I found it, having come from London where things were done a bit more discreetly, this was a bit blatant. It seemed to be accepted and that was the system. I then finished at the Rex. ... I then was asked to go in on a semi-manager's position into the nightclub called the Latin Quarter of Mr Sammy Lee, which I did for possibly a period of eight or nine months. At the same time I got an interest in a coffee lounge which opened in Darlinghurst Road called the Show Biz Coffee Lounge. My period at the Latin Quarter was very informative, very educational. That is where I first really studied prostitution and corruption, where it was quite openly practised without fear or favour, to use the expression.

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37. Telex from Interpol Canberra to NSW BCI, 4 November 1983, containing the result of a request for information from the Royal Marines.
38. Neil Mercer, 'The scene: Kings Cross. The man: Jim Anderson. The feeling: extremely tropical', *Sydney Morning Herald*, 4 October 1983.
39. New South Wales, Select Committee of the Legislative Assembly upon Prostitution, transcript of evidence, 14 November 1983, pp. 49-51.

I left the Latin Quarter after one rather messy murder⁴⁰ and took over full-time management of the Show Biz until Mr Bernie Houghton appeared. ... I tried to buy a strip club at that time called the Crazy Horse. It looked like being reasonably successful until there was a fire. Mr Saffron owned the business, by the way. That then became the Bourbon and Beefsteak. Then Kentucky Fried Chicken bought out the Show Biz from me, and I was offered a position with Mr Saffron if I was interested in running a new cocktail bar and grill called the Venus Room.

1.21 The Venus Room was in a building at 6-8 Orwell Street, Kings Cross. Saffron had bought the building in 1959 through a company he controlled. Anderson became the manager and licensee of the Venus Room business on 27 August 1969.⁴¹ From 1 September 1969 until 4 February 1970 the business was owned by another Saffron-controlled company, P H Electrical. The New South Wales Court of Appeal noted in the 1988 appeal arising from Saffron's tax trial:⁴²

The paper title to the business from February 1970 onwards is not clear. There is no record of the person to whom P H Electrical sold the business, if in truth there was a sale. ... The Crown's case ... was that a person appearing to have a paper or other title to the business might simply be a front for Saffron, and have no, or no beneficial, interest in the business, except as an employee.

On 28 February 1972, an account in the name of the Venus Room was opened with the Kings Cross branch of the ANZ Bank, the signatories each of whom was named as a partner and had a sole authority to draw being Anderson, his wife and Saffron. A statement of renewal of registration of business name for the Venus Room, signed on 16 January 1974, was lodged with the Corporate Affairs Commission on 7 February 1974, renewing registration of the business name until 15 April 1977 in the names of Anderson and Saffron ... Anderson continued to be the licensee under the *Liquor Act* until Thomas Charles Edwards, Anderson's brother-in-law, became licensee on 8 January 1979, when the name of the business was changed to 'The Raft'. The business was alleged to have been sold to Edwards on 31 March 1979. On the evidence which Edwards gave, he was simply a front, and acquired no beneficial interest in the business. A notice of cessation of business under a business name in respect of the Venus Room was filed with the Corporate Affairs Commission on 1 July 1979, signed by Anderson and Saffron, stating that the business had ceased to be carried on under that name on 1 June 1979. The business appears to have ceased trading on 24 October 1981. It is part of the Crown case that much of this paper title was a front to hide the reality, which was that both Anderson and Saffron had an interest in the business from 1969 until 1981.

1.22 The Saffron-Anderson relationship expanded in the 1970s to include other Kings Cross businesses, such as the Carousel Cabaret (at one stage called Les Girls) in Roslyn Street, the Laramie Restaurant in William Street, Jim's Showbiz in Elizabeth Bay Road, and La Bastille

40. See David Hickie, *The Prince and the Premier*, Angus & Robertson, Sydney, 1985, p. 211: Ray Ducky O'Connor 'was shot through the head at 3.25 one morning early in 1967, in Sammy Lee's Latin Quarter nightclub, as he approached a table where Len McPherson and two friends were seated. O'Connor had been implicated in a series of gangland assassinations during the early 1960s. Even though CIB detectives were drinking at a nearby table when he was shot, nobody was ever charged with his murder'. There was no suggestion that Anderson was involved in the shooting.

41. *The Queen v Saffron* (1988) 17 NSWLR at p. 403 (Hope JA).

42. *ibid.*, pp. 403-04 (Hope JA).

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which was situated above Jim's Showbiz.⁴³ Anderson, however, had never had any apparent role in other New South Wales activities of Saffron, or in any of Saffron's extensive interstate activities. In addition, Anderson had some business dealings which were apparently completely independent of Saffron.⁴⁴ Anderson's activities in Fiji and the Cook Islands appear to belong in this category.⁴⁵

Respective Roles in the Relationship

1.23 Saffron and Anderson have separately given differing accounts of their relationship, and each has altered his account over time. Depending on which account one chooses to believe, the links between Saffron and Anderson were those of:

- business partners, with Anderson claiming a forty percent share to Saffron's sixty;
- employer-employee, with Anderson receiving wages and (he claimed) a share of profits; or
- landlord-tenant, with Saffron leasing premises to Anderson, from which Anderson conducted businesses in which Saffron had no direct interests.

1.24 Whatever the legal facade that existed at any one time or in respect of any one business, the general division of effort between the two men seems fairly clear. Saffron (directly or indirectly) owned the real estate and tangible assets. Anderson had no documented share in this property, although he was given to claiming that he had a share by virtue of alleged oral promises by Saffron.

1.25 Anderson explained in 1984: 'Mr Saffron was the one that looked after all the council, police and political matters'.⁴⁶ In Anderson's version of the relationship, Saffron and his legal

43. *ibid.*, pp. 404-05 (Hope JA).

44. e.g. see NSW, Glebe Coroner's Court, Inquest touching the suspected death of Juanita Joan Nielsen, B.J. Wilson, Coroner, transcript of proceedings (hereinafter, 'Nielsen inquest, transcript'), 29 September 1983, pp. 2230-31 for Anderson's references to businesses he said he ran in the 1970s at 194 Victoria Street, Kings Cross and later, at 157 Victoria Street.

45. See the Examination of James McCartney Anderson under section 69 of the Bankruptcy Act, transcript of proceedings, 17 April 1984, pp. 63-67 and 18 April 1984, pp. 131-34 for references to what he describes as a land development venture in Fiji and game fishing boat business there in the 1970s. In his examination before the Deputy Registrar on 13 September 1984, p. 11, he said that he had attempted in 1983 to lease two islands in the Cook Islands. He told the court that the aim was to undertake tourist development and fishing (p. 14).

46. Examination of James McCartney Anderson under section 69 of the Bankruptcy Act, transcript of proceedings, 17 April 1984, p. 27.

advisers looked after all licensing matters.⁴⁷ According to Anderson, extensive corrupt payments to police and blackmail were involved in these licensing matters.⁴⁸ (The police named by him all denied any involvement.)

1.26 On the information available, it seems reasonably clear that Anderson's role in his relationship with Saffron was basically that of day-to-day manager, supervisor and enforcer in Kings Cross. At the Nielsen inquest Anderson gave the following description of his daily routine in the mid-1970s, referring first to the Carousel Cabaret:⁴⁹

- Q. But you in fact were the person who was actually managing the premises? A. That's correct.
Q. And at that time, did you attend at those premises every night that they were open? A. That's correct.
Q. What about the other establishments the Venus Room and the Laramie did you visit those too?
A. Every night seven nights a week.
Q. So you would call at each of those three every night? A. That's correct.
Q. Did you spend a period of time at each of them? A. Half an hour, an hour depending which ones were busy or which ones were a bit rowdier than others depending on the type of clientele you had at that specific evening.
Q. Was there any particular reason for your calling each night at each of those establishments? (no verbal answer)
Q. Did you go to carry out a particular function or simply to generally supervise? A. Generally supervise.
Q. In each of them were there managers employed? A. Yes.

1.27 Anderson was also responsible for day-to-day staff matters. At the Nielsen inquest he was asked:⁵⁰

- Q. Did you ever observe Mr Saffron having any direct communication with the staff of the Carousel, Laramie and the Venus Room as distinct from having it as it were through you? A. No.

1.28 In an uncritical and flattering interview published in February 1985, Anderson described his attitude to being an enforcer. He criticised the term as a media creation. But he also said:⁵¹

I was prepared to kill the gangsters if they didn't leave me alone. I mean that sincerely. Some people call it murder; I call it pest control, like the Flick Man. If an alleged criminal comes near me, I first tell the police - I know how to get a message to them. If the criminal still wants to go on with it, then it's the OK Corral. ...

47. Nielsen inquest, transcript, 4 October 1983, p. 2357.

48. e.g. see Nielsen inquest, transcript, 30 September 1983, pp. 2283-84.

49. Nielsen inquest, transcript, 23 September 1983, p. 2119.

50. Nielsen inquest, transcript, 29 September 1983, p. 2201.

51. 'Penthouse Interview: James Anderson', *Penthouse*, February 1985, pp. 134, 135.

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Mr Asia was built up as a great criminal, but he was a snivelling coward. I chased Terry Clark down Darlinghurst Road with a shotgun - that's how good he was. He dared set foot in my clubs with his dealers. I told them if I caught them in my premises I would blow their heads off. I told the police and they didn't do anything, so I came up the street after them. I caught one of them in the Showbiz and he got 60 stitches in his head and I smashed his E-type Jag to pieces with a meat cleaver. It had a kilo and a half of heroin in the boot. I then phoned up a certain police division and said, 'If it's still there in half an hour I'm going to burn the thing'. Within half an hour there was a tow truck and away it went. These are all checkable facts - you can go down to the hospital where he was stitched up. ...

Take the Comancheros, who used to hang out at the Venus Room in the seventies. I barred them. They're heavy only if you let them be heavy or if you're scared of them. I said, 'Look fellas, your bikes are all out there - if they are there tomorrow we've got a war. You can come in with your bike chains and your hatchets and your shotguns, but I'll be here with more than you've got'. It was a standoff, but it suited me.

Alleged Blackmail of Politicians and Others

1.29 When he gave evidence to a New South Wales parliamentary committee in 1984, Anderson gave his version of how Saffron's alleged blackmail of politicians and others was organised.⁵² According to Anderson, if a politician or someone in authority was causing concern to corrupt elements such as Saffron, that person would be 'set up'. His sexual proclivities or weaknesses would be determined: 'Does he like little girls, big girls, little boys, big boys? Is he on with his secretary? Is his wife playing around?'⁵³ His movements would be monitored, and at a suitable time, appropriate temptation placed next to him - for example an adjacent table in a restaurant in a position to strike up a conversation. If the target succumbed, the ensuing sexual encounter would be filmed or tape-recorded. Later, the target would be discreetly informed of the existence of the evidence, and he would become a puppet.

Allegations of Corrupt Payments to Police

1.30 Anderson claimed in effect that two systems of corrupt payments to police operated in relation to Saffron's clubs. One was run by Saffron and involved regular payments to buy immunity from the licensing laws. The other was run by Anderson and club staff. It involved *ad hoc* payments to solve particular 'problems', such as patrons going to the police following assaults by club bouncers.

1.31 It was notorious in the 1970s that licensed premises in Kings Cross in which Saffron and Anderson were involved operated with apparent immunity from the licensing laws. Referring to that period, Anderson told his bankruptcy hearing in 1984: 'In those days there was a general understanding that Mr Saffron's establishments could basically do as they

52. New South Wales, Select Committee of the Legislative Assembly upon Prostitution, transcript of evidence, 14 November 1983, pp. 40-41.

53. *ibid.*, pp. 40-41.

wanted in the licensing field, trading without any fear or hindrance'.⁵⁴ He was asked at the Nielsen inquest:⁵⁵

Q. I think you've given evidence that the Carousel would remain open until 6.00, 7.00 or even 8.00 am in the morning depending on when the customers' money ran out? A. That's correct.

Q. Would I be correct in assuming that that was some hours after the official license time had expired? A. Always.

Q. Was that true also of the Venus Room? A. That was true of every establishment I ran for Mr Saffron.

Q. Did you or did any of these establishments have poker machines in them? A. Yes.

Q. Who supplied them? A. I'm not quite sure who the supplier was.

Q. Were they legal at that stage? A. Nothing was legal at that stage.

Q. Was there any secret around the Cross that these establishments were open after licensing hours? A. There are no secrets in Kings Cross.

Q. If there are no secrets would that include there being no secrets from the police? A. Well that goes without saying doesn't it?

1.32 Edward Trigg, the manager of the VIP Lounge bar in the Carousel club in 1975, told the Nielsen inquest:⁵⁶

A. I would imagine that during the period of time that I managed the VIP bar I would have seen most every police officer stationed in say Central, Darlinghurst area.

Q. They would have known that the Carousel was operating out of hours ? A. Well obviously if they were drinking there.

Q. And the Carousel continued for all the time that you were associated with it to operate outside its legal hours? A. Yes.

Q. The police never tried to close it down? A. There were occasions yes when they did come in and close it down.

Q. Well it was never successful, was it? A. Yes, they closed it down for the evening, that was all, that was as far as the success went.

1.33 One witness before the Committee had worked as a policeman in the Kings Cross area in the 1970s. He has told the Committee that at that time police not on the licensing squad ignored breaches of licensing laws. The fact that the Venus Room remained open well after its licensed hours was a licensing matter, and of no concern to police in other squads.

1.34 In the committal proceedings against Saffron in 1986, Anderson was asked about the Venus Room's trading hours:⁵⁷

54. Examination of James McCartney Anderson under section 69 of the Bankruptcy Act, transcript of proceedings, 17 April 1984, p. 17.

55. Nielsen inquest, transcript, 29 September 1983, p. 2211.

56. Nielsen inquest, transcript, 18 October 1983, p. 2972.

57. *R v Saffron*, committal proceedings, transcript of evidence, 8 October 1986, p. 107.

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Q. ... the licence of the Venus Room was to trade till midnight and midnight only, that is right, is it not? A. To the best of my knowledge the licence for the Venus Room from the day I went in was round about that time.

Q. I beg your pardon? A. I said the licence for the Venus Room was always I believe a twelve o'clock licence, but there was a two tier licence system in force in those days.

Q. And it used to trade past midnight, did it not? A. Oh yes continually.

Q. With you as general manager of these clubs including the Venus Room it traded past midnight, did it not? A. Yes sir, that's correct, with police approval.

1.35 In evidence at the Nielsen inquest, Anderson described this 'two-tier licence system' which operated at licensed premises he was involved in: the licence fee was calculated on the declared liquor trade, 'and you're then allowed to trade late by paying the Licensing Police for a two hour late go or a three hour late go or anything else that you want'.⁵⁸ At his bankruptcy hearing in 1984 he referred to this late trading as 'the semi-legal type of trading that was allowed to go on until 6.00, 7.00 or 8.00 in the morning'.⁵⁹ It is clear that 'semi-legal' is simply Anderson's euphemism for plainly illegal but with police acquiescence.

1.36 Anderson described how the corrupt system coped with licensing Sergeant Warren Molloy in 1973, when Molloy refused to become part of the system. Anderson talked about late trading at Gilligans, a club which he operated at Bondi Beach.⁶⁰

A. And it'd probably run through to all hours and unless Warren Molloy was on, then you would close up until you got the message he'd gone back home. The police would follow him home and then say it's ok, you can start running again.

Q. And the police would follow him home? A. Yeah.

Q. Other police? A. Other police, like from Waverley, would say like you know he'd come down at 10 o'clock, I forget what the license was there 10 or 12, um cause Warren always used to come down and check that you're closing up and then you'd get a call from the police station saying, is that you Jim, sweet, go for your life. and you went for your life.

Q. Well what were the actual properly permitted hours under the license? A. I think it was a 12 o'clock, or it wasn't big enough.

Q. 6 til 12? A. 6 til 12.

Q. But you all really went until - A. 8 or 9 in the morning.

Q. 8 or 9 in the morning, providing you had business. A. Providing you had business.

Q. And providing - A. Warren Molloy wasn't on duty.

Q. Warren Molloy or other police who - A. No, the other, we've never had any problems with other police.

Q. It was only Warren Molloy? A. Warren Molloy was the one that wouldn't, when he was on duty you run to the book. Which you had to, so as not to embarrass Waverley Licensing and then once he had gone then you could open up and nobody else would come.

Q. Well did you actually when he was on, did you actually shut the doors and leave the customers inside? A. Yeah.

58. Nielsen inquest, transcript, 24 October 1983, p. 3233.

59. Examination of James McCartney Anderson under section 69 of the Bankruptcy Act, transcript of proceedings, 17 April 1984, p. 75.

60. NCA, interview transcript, 11 July 1986, pp. 37-39. Parts of this transcript, including this extract, were disclosed in the committal proceedings against Saffron and Allen in 1988.

Q. Or did you clean it out? A. No, no, we just closed the doors, lock the doors, he'd drive past the lights were out and the doors were shut.

Q. And for all good intents and purposes - A. You're closed.

Q. You're closed yet there were still people still inside? A. Yeah, and then he'd go back up to Waverley and sign off and whatever it is he does and go back.

Q. Did he ever knock on the door and say - A. Oh sometimes, but we'd never opened it, like you know you had your people, if you knew exactly who was there.

Q. Who made the arrangements with the police? A. Abe.

Q. That wasn't your job? A. No. ...

1.37 Saffron was asked at the Nielsen inquest to comment on the evidence of Anderson and Edward Trigg that premises in which he had an interest stayed open as long as anyone was prepared to drink. Saffron said he found the evidence 'very difficult to believe'.⁶¹

1.38 Anderson claimed that he made weekly trips to Saffron's office to hand over the cash used for the payments to buy immunity from the licensing laws. If he arrived in the late afternoon, the police who received the payments would be present. He was asked.⁶²

Q. Were you concerned that if you arrived there between 4.00 and 4.30 you might run into police officers? A. I wasn't concerned about it at all sir. I just preferred not to be there.

Q. You preferred to leave that side of things to Mr Saffron, did you? A. That's what he was paid for sir.

Q. Was it the fact that you didn't want to get involved in actually handing over payments to police officers? A. Not particularly sir, it was a common practice.

Q. You were content to leave it up to Mr Saffron to look after that sort of thing? A. No sir, that was his job to look after that part.

1.39 After the break-up began between Saffron and Anderson, the latter alleged that Saffron had been pocketing money intended to be passed as corrupt payments to police. He was asked at the Nielsen inquest:⁶³

Q. ... you said you provided money to Mr Saffron for him to pay to police, did he indicate to you that the money was for police? A. Yes.

Q. Are you aware as to whether or all of that money went to the police? A. Good heavens that's what caused all the trouble in Kings Cross, he was skimming off the top.

Q. Can you explain what you mean by that? A. Well if an establishment was paying we'll say fifteen hundred dollars a week for, it was like a two-tier licensing system really. It was common knowledge apparently Mr Saffron would be paying in say two hundred a week and was receiving fifteen hundred a week.

Q. From you? A. From me, yes, and there was a bit of concern at the official level, there seemed to be a bad case of evaporation and nobody was quite sure where the evaporation was happening but it was finally established it was happening in Saffron's area.

Q. How was that established? A. Well I believe certain officials well known to the Eastern Suburbs and hypothetically [sic] shown a list with a figure on it and then had another list with what was actually getting paid and there was a ---

61. Nielsen inquest, transcript, 2 November 1983, p. 3693.

62. Nielsen inquest, transcript, 7 October 1983, pp. 2556-57.

63. Nielsen inquest, transcript, 29 September 1983, pp. 2228-29.

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1.40 If Anderson is to be believed, in 1980-81 a senior New South Wales Police officer, Bill Allen, was trying to regain for police their 'rightful' share of the payments.⁶⁴ This lay behind the transfer of Detective Sergeant Warren Molloy to licensing duties covering the Kings Cross area in early 1981. According to Anderson, the plan was that Molloy would vigorously enforce the licensing laws, thereby discrediting Saffron's ability to be an effective middle-man in purchasing immunity from these laws. Then Allen would step in and collect the payments directly from licensed premises in exchange for restoring the immunity.⁶⁵ Saffron was trying to negotiate with Allen in 1981 to 'get things back to normal', according to Anderson.⁶⁶

1.41 The other aspect of Anderson's allegation that corrupt payments were being made to police concerned *ad hoc* payments made to secure local co-operation on non-licensing matters. Anderson admitted making or supervising the payments involved. He was asked at the Nielsen inquest:⁶⁷

Q. If staff of any of the establishments got into trouble with the police would local police receive any monies from the clubs? A. Yes.

Q. How was that organised? A. Cash.

Q. What sort of sums were involved? A. Depending on the incident.

Q. Something like a drunk driving charge, would that involve an amount of money? A. No, drunk driving never really came into it.

Q. What sort of incidents? A. If a doorman got in trouble putting a customer out.

Q. And what sort of money would be involved in that? A. Depended how much blood the customer lost.

Q. Can you give us a range? A. It ranged from say two hundred to two thousand.

Q. How would that money be paid? A. Cash.

Q. How would it be delivered? A. By hand.

Q. By you or by your staff? A. On occasions by me, on most occasions by the staff.

Q. To the particular police officer involved in the arrest? A. That's correct.

Q. Was this a regular practice? A. Yes.

Operation of The 'Black' Books

1.42 The businesses in which Saffron and Anderson were associated together operated a system of dual book-keeping so as to defraud the tax and licensing authorities.⁶⁸ The fraud also provided a source of undeclared cash that could be used to make corrupt payments. For

64. NCA, Reference No. 1, transcript-in-confidence, 5 March 1987, pp. 1010-11 (Lionel Ockrim repeating what Anderson had told him). This transcript was released for use in court in the committal proceedings against Saffron and Allen in the bribery matter.

65. James McCartney Anderson's statement to the NCA, 5 March 1987. p. 2.

66. *ibid.*, p. 3.

67. Nielsen inquest, transcript, 29 September 1983, p. 2214.

68. The system of dual books used by Saffron and Anderson is described in detail in the judgment of Hope JA in *The Queen v Saffron* (1988) 17 NSWLR at pp. 407-11.

example, there were two wages books kept for each establishment. The one kept for tax purposes (the 'white' book) showed in three columns against each employee's name the gross, tax and net wages per pay period. The parallel book showing the real payments (the 'black' book) had two additional columns showing additional wages paid and a new net total. Moreover, the 'black' book showed wages paid to persons (sometimes identified by first names only) not listed at all in the 'white' wages book.

1.43 Similarly there were 'black' and 'white' books showing the weekly takings. The 'black' recorded much higher takings than the 'white', and showed that much of the difference went to Saffron and Anderson in the form of cash. The two sets of takings books also showed different amounts being paid to the Saffron-owned Crown Street Wholesale Liquor Pty Ltd. Finally there was a 'black' book showing cash payments made to Saffron. This had no 'white' equivalent.

1.44 According to the reconciliations prepared for the prosecution in Saffron's tax fraud trial:⁶⁹

the records show the total distribution to Saffron from the Carousel (1976-1980), the Venus Room (1975-1980), La Bastille (1979-1980), and Jim's Showbiz (1979) of \$245,980. The distribution during the same periods from these businesses (and the Laramie Restaurant (1975-1976)) to Anderson were shown as \$752,386. It is part of the Crown case that a substantial part of this amount, recorded as having been paid to Anderson, was in fact paid to Saffron. ... In respect of the period from 1975-1980, the tax returns for the Venus Room showed a total profit of \$43,298 while the daily takings book showed a total cash distribution of \$852,793, a difference of \$809,405. The way in which the difference was allocated is set out including \$615,455 to 'Jim', \$44,400 to 'Jim R & P', \$5,000 to 'Jim & AS' and \$43,480 to 'Mr S' and 'AS'.

In respect of the Carousel the difference between the tax return and the actual net takings distribution for the years from 1976 to 1980 was \$469,661. Of this amount Saffron is recorded as having received \$202,000, Anderson \$54,241 and Mrs Anderson \$2,267.

1.45 According to Anderson, some of the money received but not shown in the 'white' books 'went to pay off licensing police and other people'.⁷⁰ For example, the relevant 'black' book for the Venus Room showed under the heading of 'R and P' a consistent payment of \$800 per week for almost all of the 1979-80 financial year. Anderson explained at his bankruptcy hearing in 1984 that 'R and P' stood for rent and police.⁷¹ He was asked:⁷²

Q. Do you know who that payment was directed to? A. Police.

Q. Would you make the payment yourself? A. On some occasions I delivered the money to Mr Saffron, who was in company with certain police officers, to make those payments.

69. *The Queen v Saffron* (1988) 17 NSWLR at p. 411 (Hope JA).

70. Examination of James McCartney Anderson under section 69 of the Bankruptcy Act, transcript of proceedings, 17 April 1984, p. 78.

71. Examination of James McCartney Anderson under section 69 of the Bankruptcy Act, transcript of proceedings before the Deputy Registrar, 13 September 1984, p. 33.

72. *ibid.*, p. 34.

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1.46 In addition to the 'black' and 'white' books, the establishments used to operate 'black' tills. At his bankruptcy hearing, Anderson was asked to explain how these operated:⁷³

A. There was a till in each of the establishments that would be moved to wherever your busiest section was; in other words you would have a sort of what I call the break-even figure, the figure that the white books had to -

Q. Well, forget the terms white book and black books at the moment and just describe how these tills operated? A. Say normally on a Thursday, Friday and Saturday - long weekends it would operate on a Monday - they would be on, say it would be on the door at Les Girls from 11 o'clock to 3 o'clock.

Q. That is 11 o'clock at night to 3 o'clock in the morning? A. That was your busiest period for your disco type floor. That is when you would be getting your \$2, \$3 or whatever you decided to charge on the day.

Q. Yes? A. And once you closed it on the door you would then have it moved to the busiest - if your bar was busier than your table service you would put the till to operate on the bar. If you were very full, say you had a good band on, you would put it on to the room service, say. So it would actually operate as a cash till for door take between 11.00 and 3.00, and then at 3.30 when legally 3 o'clock you were supposed to stop selling liquor, then your black till operated during the semi-legal type of trading that was allowed to go on until 6.00, 7.00 or 8.00 in the morning.

Q. And who would do the cash till, that is who would reconcile the tape in the cash register with the cash take at the till itself? Sorry, who would reconcile the tape, the roll in the cash register, with the cash in the till? A. Usually the bar manager would total up and then at the end of the evening I would check it off or the manager who was on duty if I had gone home. I would clear it off before I went home at say 4 or 5 in the morning, and then it would carry on until that time, and that cash would be counted, put in bags, put in the safe until I would come in the following day or following night and pick it up.

Q. And would you check the amount of cash against the tape from the cash register? A. Yes.

Q. Was there more than one black till? A. Yes.

Q. Which establishments had black tills? A. All of them.

Q. Well, when you say all of them, the Venus Room? A. The Venus Room.

Q. Les Girls? A. Les Girls, VIP.

Q. That is the Carousel, is it not? A. The Carousel.

Q. Yes. Bastille? A. The Bastille, the Showbiz, they all had them.

... Q. Would you do a round of the various premises, would you? A. I used to check every premises; I used to try and get round all of them at least once every hour, every hour-and-a-half.

Q. Well, what would happen after you had - so was the cash and the tape from the cash register put in a bag? A. Yes, in a cash bag.

Q. And what happened to it then? A. It was put into the safe.

Q. Yes, and then what happened to it? Would you pick it up? A. I would pick it up and take it home.

... Q. What would happen to it then? A. It was given to Mr Saffron like, you know, there used to be sometimes 3 or 4 bags. If he was away, sometimes I would have 20 or 30 bags.

Q. What sort of amounts would that represent? A. Pardon? Quite large sums.

Q. Now, did you keep any record of that yourself? A. I did in a small - a little sort of small book. You have got a photostat of the sort of book somewhere and I used to - that was left in my office, in my desk.

Q. Do you claim that you are entitled to any of those moneys? A. Yes, I am entitled to 40 per cent of it.

Q. Over what period of time would the black tills operate? A. You mean, not nightly times, not-

73. Examination of James McCartney Anderson under section 69 of the Bankruptcy Act, transcript of proceedings, 17 April 1984, pp. 75-76.

Q. Well, not nightly, no: years, if it was years? A. Years - from about two years approximately after I took over the Venus - from once we got it on a profit-making basis.

... Q. Do you know what happened to the cash from the black tills? A. You mean where it went?

Q. Yes? A. As I stated before, some of it went to pay off licensing police and other people.

Q. Well, then, did you ever inquire of Mr Saffron as to when you were going to see some of this money? A. It was supposed to be coming back in shares and involvement in property and business ventures.

1.47 An NCA accountant trying to unravel the book-keeping arrangements used by Saffron and Anderson found the rationale for the 'black' tills system hard to discern. The system of 'black' and 'white' books enabled the two men to defraud the revenue by book entries. A further system of 'black' tills was unnecessary to achieve this. The accountant speculated that the till system was used to enable Anderson to defraud Saffron.

1.48 The 'black' books showed that Anderson was receiving payments in cash. These were not disclosed on his personal income tax returns in the 1970s. Anderson conceded in his evidence at his bankruptcy hearing in 1984 that his tax returns were not accurate in a number of respects.⁷⁴ In February 1984, the Australian Taxation Office (ATO) issued Anderson with a 'final notice' for the amount of \$936,179.90, which it claimed Anderson owed.

1.49 Anderson did not agree with the claim.⁷⁵ The affairs of individual taxpayers are subject to secrecy provisions in tax legislation, so no attempt has been made by the secretariat to find out from the ATO what steps it had taken to collect this amount, and whether it had succeeded to any extent. Indications are, however, that the ATO did not actively pursue the bankrupt Anderson during the period of his relationship with the Authority.

Subsequent History of the 'Black' Books

1.50 The 'black' books ultimately became part of the admissible evidence assembled by the Authority upon which Saffron was successfully prosecuted for conspiracy to defraud the Commonwealth. However, Anderson did not provide them to the Authority. He retained them (or on one view, stole them⁷⁶) when his relationship with Saffron deteriorated in the late 1970s - early 1980s. He told the Nielsen inquest in 1983 that he gave a 'box of documents' to John Dowd, a member of the New South Wales Parliament, for safekeeping 'approximately two, maybe three years ago'.⁷⁷ However, later in the inquest it was put to him that the

74. Examination of James McCartney Anderson under section 69 of the Bankruptcy Act, transcript of proceedings, 18 April 1984, pp. 88a, 110-11, 128

75. e.g. see *ibid.*, p. 123.

76. See the discussion between Anderson and counsel assisting the coroner at the Nielsen inquest as to who actually owned the books: Nielsen inquest, transcripts, 11 October 1983, pp. 2597-98.

77. Nielsen inquest, transcript, 4 October 1983, pp. 2332-33. See also New South Wales, Select Committee of the Legislative Assembly upon Prostitution, transcript of evidence, 14 November 1983, p. 53: Anderson contacted Dowd in late 1980, and subsequently gave him material which he passed to the Australian Federal Police.

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documents were handed to Dowd in January 1983, and he replied: 'That may be correct'.⁷⁸

1.51 Dowd said he passed the books Anderson gave him on to the Federal authorities.⁷⁹ According to counsel assisting the coroner at the Nielsen inquest, Dowd also provided photocopies to her for use at the inquest.⁸⁰ In addition, the Australian Federal Police loaned one original book to the Nielsen inquest counsel, to overcome the indistinctness of the photocopied version.⁸¹ At some stage in 1983-84 both the Australian Federal Police and the Australian Taxation Office had the books - whether all originals or some only as photocopies is unclear to the secretariat.⁸² The books (either originals, copies, or a mixture of both) apparently passed into the control of Anderson's trustee in bankruptcy.⁸³ They were made available to Anderson's bankruptcy proceedings.⁸⁴

1.52 The Committee has been told that publicity given to the books during the bankruptcy proceedings brought the books to the attention of the Costigan Royal Commission. One of the Commission's officers who became aware of them later transferred to the Authority on its commencement. This officer has told the Committee that, as part of his duties with the Authority team investigating Saffron, he took steps to obtain the books from Anderson's trustee in bankruptcy.

The Venus Room, Prostitution and Drugs

1.53 During the period when Saffron and Anderson were involved with the Venus Room (1969-81), it had a very unsavoury reputation. As Anderson described it in 1983: 'I managed that club for a number of years through all tiers of what you class as working ladies, corruption, kickbacks, slings'.⁸⁵

78. Nielsen inquest, transcript, 11 October 1983, p. 2597.

79. New South Wales, Legislative Assembly, *Hansard*, 2 April 1987, p. 10,024.

80. Nielsen inquest, transcript, 11 October 1983, p. 2601.

81. Nielsen inquest, transcript, 25 October 1983, p. 3246.

82. Deputy Commissioner John Perrin, 'Submission to the Commissioner: Allegations made by James McCartney Anderson at the inquest into the disappearance of Juanita Joan Nielsen alleging misconduct by certain Police Officers in association with Sydney businessman Abraham Saffron', 14 February 1984, paras. 42-43.

83. Examination of James McCartney Anderson under section 69 of the Bankruptcy Act, transcript of proceedings, 17 April 1984, pp. 74-75.

84. e.g. see Examination of James McCartney Anderson under section 69 of the Bankruptcy Act, transcript of proceedings before the Deputy Registrar, 13 September 1984, pp. 23-36.

85. New South Wales, Select Committee of the Legislative Assembly upon Prostitution, transcript of evidence, 14 November 1983, p. 51.

1.54 Judge Torrington reportedly told the District Criminal Court on 15 May 1981 that the existence of the Venus Room was 'a blot on the name of Sydney'.⁸⁶ In the New South Wales Parliament on 16 November 1978, the Premier was asked in part:⁸⁷

Did he receive a letter dated 30th October from Mr Noel McArthur, administrator of the Association of Drug Referral Centres? Does this letter detail the open sale of drugs, juvenile prostitution and illegal liquor sales at the Club Costello in Kings Cross and the Venus Room in Kings Cross? Did the letter state also that uniformed and plain clothes police had been seen drinking at the Venus Room at 4.30 on a Sunday morning with the person in charge of the establishment?

The Premier said that the Commissioner of Police had been asked to investigate the matters raised in the letter.⁸⁸

1.55 The Venus Room was a place that prostitutes used to frequent in order to pick up clients. One prostitute described the Venus Room in 1975-76 as 'nothing more than a brothel'. She explained the way it operated. Up to fifteen prostitutes would mingle with the Venus Room patrons, seeking customers. When a customer was found and a price agreed, the prostitutes would take their customers to rooms which were above the Venus Room but had a separate entrance - 8 Orwell Street.⁸⁹ A 'sitter' at the door would be paid a fee for the use of the room. At that period Anderson organised the whole system, employing staff to act as 'sitters'.⁹⁰

1.56 Anderson was involved in prostitution apart from the operation of 6-8 Orwell Street. For example, he told his bankruptcy hearing that he had an interest in a property at 157 Victoria Street, Kings Cross. It was used as an 'escort agency and a high class parlour', although he claimed his only connection with the business was in leasing the property to the operator.⁹¹ He told the bankruptcy hearing that he was also involved in plans to use a building in Kellett Street, Kings Cross for an 'escort agency', but the plans did not eventuate.⁹² In

86. Quoted in the sworn statement of NSW Police Inspector Warren Molloy in the matter of Abraham Gilbert Saffron, 19 February 1986, p. 13.

87. New South Wales, Legislative Assembly, *Hansard*, 16 November 1978, p. 427.

88. *ibid.*, pp. 438-39.

89. See also the less detailed description given by Anderson in Examination of James McCartney Anderson under section 69 of the Bankruptcy Act, transcript of proceedings, 17 April 1984, pp. 37-38.

90. e.g. see Anderson's response in Examination of James McCartney Anderson under section 69 of the Bankruptcy Act, transcript of proceedings, 18 April 1984, p. 114: 'Q. Well the interest that you had was in collecting monies, collecting rent from the various girls that worked out of those apartments [at 8 Orwell Street]? A. That is correct.'

91. Examination of James McCartney Anderson under section 69 of the Bankruptcy Act, transcript of proceedings, 17 April 1984, pp. 59-60.

92. *ibid.*, p. 55.

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addition, a prostitute said he used to supply prostitutes, call-girl style, to customers in hotels and motels. A prostitute also claimed that in about 1981-82, Anderson operated rooms in Liverpool Street, East Sydney that were used for prostitution.

1.57 Many of the prostitutes were heroin users, and drug dealing used to occur at the Venus Room. Amanda King worked as a barmaid in the Venus Room in 1977. She told the Nielsen inquest that at that time prostitutes were working from the Venus Room and people in the Venus Room were involved with drugs, including heroin.⁹³

1.58 Anderson told a court in 1986 that in the late 1970s 'drug dealers started operating from No. 8 Orwell Street'.⁹⁴ According to Anderson, when his brother-in-law became manager of the Venus Room in 1979, 'his main problem was stopping heroin dealing from No. 6 Orwell Street'.⁹⁵ Anderson has consistently claimed to be opposed to hard drugs. For example, the following exchange occurred when he was questioned at the Nielsen inquest.⁹⁶

Q. And until 1979 did you have any difficulties in terms of running the clubs as you wished to?

A. Yes, sir.

Q. What sort of difficulties? A. I was having difficulties stopping drug dealing.

CORONER: Stopping?

WITNESS: A. Drug dealing.

Q. You were trying to avoid drugs being sold in your clubs were you? A. That's correct.

1.59 In the latter part of the 1970s, Shayne Martin-Simmonds was employed as a manager at the Venus Room by Anderson.⁹⁷ Martin-Simmonds was convicted on 22 March 1979 of managing premises used for prostitution.⁹⁸ In a separate incident, a police raid on the Venus Room found heroin and unlicensed pistols in the safe and stolen goods on the premises. Martin-Simmonds was charged with receiving, possession of the heroin and possession of the unlicensed pistols. He was acquitted on all charges in November 1979.⁹⁹

93. Nielsen inquest, transcript, 8 September 1983, p. 1279.

94. *R v Saffron*, committal proceedings, transcript of evidence, 10 October 1986, p. 19. Anderson refused to be pinned down to a precise period when this occurred.

95. *ibid.*, 8 October 1986, p. 109.

96. Nielsen inquest, transcript, 29 September 1983, p. 2215.

97. Nielsen inquest, transcript, 15 September 1983, pp. 1725-27 and 19 September 1983, p. 1826.

98. Nielsen inquest, transcript, 19 September 1983, pp. 1826-27.

99. Nielsen inquest, transcript, 19 September 1983, p. 1826.

When and Why Saffron and Anderson Broke Up

1.60 Conflicting dates and reasons have been given for the break-up of the Saffron-Anderson relationship. In 1983, Saffron gave the following account when questioned at the Nielsen inquest:¹⁰⁰

- Q. You said that your relationship with Mr Anderson broke up around late '79 early 1980? A. Well I said it started to and I think the final of the break up would have come towards the end of '81.
- Q. What caused the start of the break up of that relationship? A. I was unhappy about the relationship.
- Q. Can you be any more specific than that? A. No.
- Q. Did you initiate the break up of the relationship? A. Yes.
- Q. In what way? A. I told him I was unhappy about the relationship.
- Q. Were you aware of whether or not he was unhappy with the relationship? A. I don't know of anything he said that would have given me that impression.
- Q. So as far as you were concerned the relationship was broken up entirely on your initiative? A. Yes.
- Q. Can you now recall what aspect of the relationship it was that caused you to take that initiative? A. There was not one, the breaches at the Venus Room which he was leasing, the general attitude, I don't know. I just was unhappy about the relationship.
- Q. That's the best you can do, is it? A. Yes.
- Q. Do I take it therefore, well perhaps I should ask you this question, did any further disputes arise between you during the course of the break up of the relationship? A. Any?
- Q. Further disputes arise between you during the course of the break up of the relationship? A. Disputes? No, I don't, actual dispute occasion [sic], no I can't.
- Q. Did you gain any other reasons for finalising the break up of the relationship during the course of the two years or so that it broke up over? A. Just that I was more increasingly unhappy about the arrangement as it become evident that it had to break up.
- Q. Was that increasing unhappiness related to breaches of the liquor laws or licenses? A: Part of it, yes.

1.61 Police intelligence picked up rumours that one factor in the break-up was alleged skimming of profits by Anderson from businesses in which he and Saffron were involved. Anderson in turn claimed that Saffron was cheating him out of his share of the profits. At the Nielsen inquest, these claims were put to Saffron:¹⁰¹

- Q. Did Mr Anderson cheat you in any way to your knowledge? A. He may have.
- Q. Do you have any information now that suggests that he did? A. From the evidence that I've read I can draw that assumption.
- Q. Did you ever cheat Mr Anderson? A. I wouldn't be in a position to cheat Mr Anderson nor did I cheat Mr Anderson.

1.62 Anderson was unhelpful when asked when the relationship ceased. His responses to questions indicate his propensity to give responses damaging to people he is antagonistic to. For example, when asked in 1983 by the New South Wales Select Committee on prostitution when his partnership with Saffron ceased, he responded: 'Effectively it ceased when I found

100. Nielsen inquest, transcript, 2 November 1983, pp. 3708-09.

101. Nielsen inquest, transcript, 2 November 1983, p. 3715.

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out he was involved in the drug industry on the financial side'.¹⁰² He made a similar statement at the Nielsen inquest.¹⁰³

Q. Are you able to indicate approximately when the split-up with Mr Saffron took place? A. When I found out he was involved in the drug business.

Q. When did you find that out? A. I can't recollect that at the moment.

1.63 Also at the Nielsen inquest, Anderson's wife attributed the break-up to Saffron's involvement with drugs.¹⁰⁴

Q. How long is it since he ceased to be a business associate of Mr Saffron? A. My husband always maintained that he would stay an associate of Mr Saffron's unless he found out he was directly concerned with financing or connected with drugs and he did and he left Mr Saffron.

Q. Can you tell us when that was? A. I can't recall definitely but it would be about three years ago.

1.64 At the same inquest, Anderson was asked:¹⁰⁵

Q. Are you able to recall whether your association, business association with Mr Saffron came to an end prior to your arrest by Detective Sergeant Selwood [in November 1979]? A. When Mr Saffron and Tosha [Todor Maksimovich] burned down the Creole [which were premises which Anderson rented from Saffron and had renovated and was just about to open as a discotheque].

Q. Are you able by reference to months or years to indicate when it was that your association with Mr Saffron, your business association with him terminated? A. The ultimate completion was after the fire at the Creole [which occurred on 12 October 1980].

Q. Do you remember when that was? A. No sir. It'd be in the records somewhere.

1.65 At his bankruptcy hearing in 1984, Anderson said that he 'was in the process of dissociating myself from Saffron for a couple of years before that [ie. the October 1980 Creole Disco fire]'.¹⁰⁶ Asked if the split-up had occurred before 7 May 1980, he replied: 'No, it was all in the pipeline then'.¹⁰⁷

102. New South Wales, Select Committee of the Legislative Assembly upon Prostitution, transcript of evidence, 14 November 1983, p. 64.

103. Nielsen inquest, transcript, 7 October 1983, p. 2553. See also *ibid.*, 11 October 1983, p. 2592: 'My disagreement with Saffron started when I was convinced he was involved in drugs ...'.

104. Nielsen inquest, transcript, 22 September 1983, p. 2096.

105. Nielsen inquest, transcript, 7 October 1983, p. 2554.

106. Examination of James McCartney Anderson under section 69 of the Bankruptcy Act, transcript of proceedings, 17 April 1984, p. 51c.

107. *ibid.*, 18 April 1984, p. 102a.

Anderson's Antagonism towards Saffron

1.66 Whatever the reason and exact timing of the break, one effect of it was that Anderson became very hostile towards Saffron. It was clear that Anderson held a grudge against Saffron. Amongst his other apparent grievances, Anderson claimed that Saffron owed him money. Saffron denied this. The amount of Anderson's claim and its basis are unclear. At his 1984 bankruptcy hearing, Anderson gave the following picture of the financial aspects of his break with Saffron:¹⁰⁸

Q. Well, how did you come to cease having an interest in the operations of the Venus Room? A. When I finally split with Mr Saffron, that I was going to run my own businesses in Bondi [ie. the Creole discotheque], and he could have all the places back in The Cross.

Q. What, there was a conference, was there, about your -? A. There was a number of meetings, yes.

Q. What, you just handed back any interest that you might have had in any establishments that you were involved in with Mr Saffron? A. That is correct.

Q. Did you sign any documents to that effect? A. Never any documents signed.

... Q. Well, after the fire at the Creole and your splitting up with Mr Saffron did you ask him for an accounting of the moneys that you claimed were owed to you? A. On a number of occasions, I had written to him and asked him when he was going to pay me, yes.

Q. Did you put to him a figure? A. No, there was no specific figure mentioned.

Q. What you just said you owe me a lot of money? A. I told him he knew what he owed me, and I expected to be paid.

Q. Did you ask him how much it was that he knew he owed you? A. No.

Q. How did you know he knew that; the amount of money he owed you? A. Because he was the one I gave it to.

Q. Did you know of the existence of books and records that would demonstrate it? A. He would have all the books and records on that stuff.

Q. Do you know whether he did or not? A. He would have had to have them, somewhere.

Q. You had some of them, did you not? A. I did.

Q. So you knew that Mr Saffron did not have those? A. No, but Mr Saffron would have had his own ones, he would have to have.

1.67 Apart from some general debt arising from the winding up of the relationship, Anderson apparently held Saffron responsible for the loss he claims to have suffered when the Creole discotheque burnt down on 12 October 1980. Anderson said that he had rented the Creole premises in Bondi from a Saffron-controlled company. He claimed he paid \$3,000 a month rent for a long period around about 1980, although the discotheque was not operating because of renovations. According to Anderson, the fire at the Creole occurred a few days before it was due to open.¹⁰⁹ In court in 1988, Anderson was asked:¹¹⁰

Q. Did you, do you blame him for setting fire to The Creole? A. I believe that he was behind it but I do not [believe?] that he set fire to it. I believe that Tosha (not transcribable) set fire to it.

108. *ibid.*, 18 April 1984, pp. 94-95.

109. Examination of James McCartney Anderson under section 69 of the Bankruptcy Act, transcript of proceedings, 17 April 1984, p. 51a.

110. *R v Saffron and Allen*, committal proceedings, transcript of evidence, 28 June 1988, p. 44.

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Q. You believe he was responsible for it do you? A. I believe he was involved in it yes sir.

Q. Yes, and you suffered a substantial loss in that fire did you not? A. That would be correct sir yes.

Anderson Publicly Accuses Saffron of Crimes

1.68 By mid-1983, knowledge of Anderson's hostility to Saffron spread when Anderson began making public allegations of criminal conduct by Saffron which were given extensive media coverage.¹¹¹

1.69 At an inquest into fires at premises in which Saffron had an interest, Anderson alleged in August 1983 that Saffron had committed arson and insurance fraud in relation to the fire at the Creole Disco on 12 October 1980.¹¹² The coroner found that a *prima facie* case for prosecution against Saffron and one of his associates existed in relation to the fire, and, as required under the *Coroners Act 1980 (NSW)*, terminated the inquest.¹¹³ Publication of the names of the persons against whom the *prima facie* case was found to exist were suppressed at the time. The fact that Saffron was one of them was only publicly disclosed in a New South Wales Court of Appeal judgment delivered in December 1985 in litigation relating to the conduct of the inquest.¹¹⁴ Saffron was never prosecuted in relation to the fires.

1.70 At the 1983 Nielsen inquest, Anderson repeated the arson allegation.¹¹⁵ He also publicly alleged that Saffron had been involved in widespread corrupt payments to police and in defrauding the revenue of tax and licence fees over a long period.¹¹⁶ Anderson disclosed his detailed knowledge of, and role in maintaining, the double set of books used to achieve the fraud - the 'black' and 'white' books.¹¹⁷ He was asked if anyone had offered him money to give evidence against Saffron. He replied: 'No, sir, I think if you know the history of it you don't have to offer me money to testify against Mr Saffron'.¹¹⁸

111. See for example, Wendy Bacon, 'Anderson ends the Sydney crime boss code of solidarity', *National Times*, 7-13 October 1983, p. 5.

112. 'Saffron rejected arson claim: Inquiry told of businessman's accusations', *Sydney Morning Herald*, 11 August 1983, p. 3; 'Coroner rules on Creole fire', *Sydney Morning Herald*, 12 August 1983, p. 2.

113. *Maksimovich v Walsh* [1983] 2 NSWLR at p. 657.

114. *Attorney-General v Maksimovich* (1985) 4 NSWLR at p. 302.

115. Nielsen inquest, transcript, 29 September 1983, p. 2201; 7 October 1983, p. 2554; 26 October 1983, p. 3327.

116. Nielsen inquest, transcript, 29 September 1983, pp. 2212-13, 2215, 2228-30; 30 September 1983, pp. 2283-84. Saffron denied involvement: *ibid.*, 1 November 1983, pp. 3650, 3677.

117. e.g. see Nielsen inquest, transcript, 11 October 1983, pp. 2597-2622 and 26 October 1983, pp. 3314-15. For a detailed description of as many of the 'black' books as were able to be found by the prosecution for Saffron's 1987 tax trial, see *Saffron v The Queen* (1989) 17 NSWLR at pp. 407-17 (Hope JA).

118. Nielsen inquest, transcript, 4 October 1983, p. 2370.

1.71 Anderson told the Nielsen inquest that, as regards his allegations of corrupt payments, he was 'more than prepared to give every piece of information and assistance to an unbiased Federal Royal Commission', but he had no faith in any State-organised inquiry.¹¹⁹ Asked by counsel if he hated Saffron, Anderson replied that he did not, but said he did despise him.¹²⁰

1.72 Anderson gave evidence in public on 15 November 1983 to the New South Wales Legislative Assembly Select Committee upon Prostitution. He alleged that prostitution had been carried on openly in premises controlled by Saffron, and claimed that Saffron and two others 'set out to control the gay scene' in licensed premises in Sydney's eastern suburbs by harassing rivals.¹²¹ He also accused Saffron of being 'involved in the drug industry on the financial side'.¹²²

1.73 According to a New South Wales Police intelligence report, on 20 December 1983 Anderson visited Chatswood Police Station to have his licensed pistol inspected. He was told no licensing officers were rostered. He then reportedly said:¹²³

That e--- Saffron and I had a falling out 6 years ago because he was pocketing money from heroin and I don't agree to that. He blew my house up and it has been on for young and old ever since. He is still a powerful man but he will get his ...

1.74 In his bankruptcy proceedings in the Federal Court in April 1984, Anderson repeated his statement from the Nielsen inquest that the businesses he and Saffron were involved in together had operated with two sets of books so as to defraud the revenue.¹²⁴ Some of the 'black' books were produced in the proceedings. Anderson said part of the 'black' money had been used to make corrupt payments to police and others.¹²⁵ He also said that Saffron-owned premises in Kings Cross were used for prostitution.¹²⁶

119. Nielsen inquest, transcript, 7 October 1983, p. 2565. See also *ibid.*, 7 October 1983, pp. 2567-68, 2584; 26 October 1983, pp. 3315-16 and 3321.

120. Nielsen inquest, transcript, 11 October 1983, p. 2589.

121. New South Wales, Select Committee of the Legislative Assembly upon Prostitution, transcript of evidence, 15 November 1983, pp. 57-58, 60. He also gave evidence *in camera* to the Select Committee.

122. *ibid.*, p. 64. The context makes it clear that illegal drugs are being referred to.

123. NSW BCI criminal and general information form 1339, 20 December 1983. The reference to his house being blown up is mysterious. Anderson has never made this claim elsewhere, as far as the secretariat is aware.

124. Examination of James McCartney Anderson under section 69 of the Bankruptcy Act, transcript of proceedings, 17 April 1984, pp. 74-78. See Marion Wilkinson, 'Dollars, diamonds, dames and the white Rolls', *National Times*, 20-26 July 1984, p. 43 for a summary of what emerged in the proceedings.

125. Examination of James McCartney Anderson under section 69 of the Bankruptcy Act, transcript of proceedings, 17 April 1984, p. 78.

126. *ibid.*, pp. 37-39. On similar allegations by others, see 'Massage ad and its Saffron link', *Sydney Morning Herald*, 16 November 1983, p. 4.

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ANDERSON'S ACTIVITIES UNRELATED TO SAFFRON

General Reputation and Intelligence on Police Files

1.75 Anderson had never been convicted of a criminal offence, it seems.¹²⁷ However, by the early 1980s he had achieved considerable notoriety in the Kings Cross area of Sydney. Until at least 1982 he held a pistol licence,¹²⁸ and had a reputation as someone prepared to use violence.¹²⁹ He had come to police attention on many occasions.

1.76 Reports on police intelligence files suggested that Anderson had been involved in a variety of criminal matters and was an associate of criminals. It was alleged, for example, that Anderson was responsible for an attempt to shoot the manager of a disco in which Saffron had an interest. A criminal informant claimed in 1981 that Anderson had tried to hire someone to kill Saffron.¹³⁰ A 1982 police report alleged that Anderson had been taking undeclared Australian income overseas in the form of banknotes to be 'laundered'. Claims had been made that Anderson was involved in cocaine trafficking in the early 1980s, and possibly was linked to other illegal drug matters.¹³¹ Police believed he had regular contact with a

127. In 'Penthouse Interview: James Anderson', *Penthouse*, February 1985, p. 130 he stated that he had never had a criminal conviction. His counsel told the court during a 1984 application by Anderson to vary his bail conditions that he had 'no criminal record and no convictions': *R v James McCartney Anderson*, District Court of NSW, Criminal Jurisdiction, No 81/1/1295, 29 February 1984, transcript of proceedings, p. 1. The extensive information on Anderson obtained by the Committee does not reveal any convictions, apart from minor liquor licensing matters in relation to premises for which he held the licence. An internal NSW Police memo from the Metropolitan Licensing Inspector to Deputy Commissioner Perrin, 6 October 1983, states that Anderson held the restaurant permit for the Venus Room from 27 August 1969 to 12 March 1979.

During the period that he held the permit for the Venus Room, he was convicted of minor breaches of the Liquor Act, i.e. 'sell liquor after hours, charge for admission, etc.'. However, these matters were not considered sufficient to at any time warrant action being taken to apply for his disqualification as a permit holder.

128. Letter from B. Cook, NSW Police Firearms Registry, to Superintendent of Licences, 6 October 1983.

129. See for example, 'Penthouse Interview: James Anderson', *Penthouse*, February 1985, p. 131.

130. NSW BCI reports, 13 and 17 August 1981. Det. Sgt. Slade and Sen. Const. Withers interviewed Anderson about the matter on 24 September 1981 in the presence of Lionel Ockrim and Malcolm Johns (Anderson's solicitor).

131. NSW Police telex to Interpol for transmission to the USA, UK and New Zealand, 6 October 1983 seeking information on Anderson; telex to NSW Police from Cook Is. police, 30 November 1983 re James McCartney Anderson; regular NSW BCI reports on NSW Police 'Operation Tartan' which was directed at gathering intelligence on Anderson in 1983-84.

United States organised crime figure, Joe Stedino.¹³²

1.77 Police intelligence files of necessity often contain information of varying accuracy, much of it untested.¹³³ One witness has told the Committee in relation to one item of intelligence: '... it would not surprise if it was untrue. A lot of that sort of intelligence is pretty thin; some of the Costigan stuff was absurd'. Intelligence information comes from sources of varying, sometimes low, reliability. The secretariat is not able to judge the reliability of the police intelligence material on Anderson. Some of it was investigated at the time and the investigations were inconclusive. Anderson has consistently over time denied involvement with illegal drugs.¹³⁴ Moreover, witnesses have raised with the Committee the possibility that at least some of the intelligence material on Anderson might have been false, it having arisen from efforts to discredit Anderson.

1.78 Police intelligence material aside, there was by late 1984 much material on the public record describing Anderson's activities. The following sections of this paper set out some of that material.

International Cash Courier

1.79 In his public examination in bankruptcy, Anderson claimed to have regularly carried large sums in cash between countries and into Australia from the late 1950s to the early 1980s. He was characteristically vague about dates and about other details, as the following extract illustrates:¹³⁵

- Q. Where would you collect these moneys from? A. From people at airports.
Q. What, airports in foreign ports, outside of Australia? A. Yes.
Q. Which countries? A. Oh, it varied.
Q. Well, ... with what sort of frequency would you do this? A. Once or twice a year.
Q. Do you recall any instances of your having done it? A. Not specifically, no.
... Q. And you were remunerated for undertaking these tasks, were you not? A. I was.
Q. How was your remuneration calculated? A. On the percentage of what you delivered.

132. NSW BCI telex dated 11 May 1984 reciting intelligence received from the USA on, amongst others, Anderson. Joe Stedino has since reformed and published a book, *What's in It for Me*, Harper Collins, New York, NY, 1992. In it Stedino describes how, having become a consultant to law enforcement agencies in Arizona, he acted in a 'sting' operation as a Mafia representative seeking to bribe State legislators, several of whom were caught as a result. Anderson is mentioned in the 'Acknowledgments' at the front of book.

133. For example, see the quotation from a Commonwealth Police report at para. 1.7 in this paper.

134. e.g. New South Wales, Select Committee of the Legislative Assembly upon Prostitution, transcript of evidence, 14 November 1983, pp. 48, 53; 'Penthouse Interview: James Anderson', *Penthouse*, February 1985, pp. 130, 132, 135. The explanation given by Anderson that Saffron's dealing in drugs was the reason for their break-up was noted above: see para. 1.62.

135. Examination of James McCartney Anderson under section 69 of the Bankruptcy Act, transcript of proceedings, 18 April 1984, pp. 83-85. See also *ibid.*, 17 April 1984, pp. 27-28.

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- Q. Would you know how much money you were carrying? A. Yes.
- Q. And how would you know that? A. You would count it. You would check it.
- Q. You would count it? A. Yes.
- Q. I think you said yesterday that the moneys were always in US dollars, is that the case? A. That is correct.
- Q. Where would you count the money; at the point at which you picked it up? A. No, you would count it before it was handed, before you made delivery of it, depending on the facilities available for you - to enable [you] to do it.
- Q. Well, did you undertake these activities between 1976 and 1981? A. Not that I can recollect, no.
- Q. Well, I thought you said that you did it once or twice a year from 1958 up until 1981? A. That is correct, but not in Australia.
- Q. So you would often be a - is a courier an appropriate term for your activity? A. Courier, escort, it is a reasonable description, yes.
- Q. And would you carry these moneys from one foreign port to another? A. That is correct.
- Q. At what stage of your travels were you paid? A. Oh, it varied. I would pick it up in America, Fiji, Singapore, London.
- Q. Yes, and take it some other port? Not necessarily, no.
- Q. Well, take it where? A. Pardon?
- Q. Take it to where? A. Not necessarily take it anywhere.

1.80 No public explanation has ever been given as to the source of the funds which he was carrying. Nor, as far as the secretariat is aware, is there any independent evidence that the transporting of money actually occurred. Given this, it is at least possible that the activity is either grossly exaggerated by Anderson or is a figment of his imagination.

The Donny Smith Shooting

1.81 At about 10.20 in the evening of 22 June 1970 Anderson shot and killed Donald Hector Neville ('The Glove') Smith at the Venus Room, a licensed restaurant in Orwell Street in Sydney's Kings Cross. Smith was a well-known criminal. When killed, he was on remand on two charges of carrying unlicensed pistols, one charge of 'shoot with intent to murder' and several minor offences.¹³⁶

1.82 Anderson was the manager of the Venus Room at the time. Anderson said that Smith had been making threats against him. According to Anderson, Smith wanted to operate prostitutes out of the Venus Room and he would not agree. Anderson said that Smith was using stand-over tactics to try to make him change his mind. Some weeks before the shooting, Anderson said he had been told by an officer in the police Consorting Squad that Smith was not to be allowed on the premises because he was a known criminal. Shortly after, Smith was arrested in the Venus Room by Detective Sergeant Ballard and other members of the Consorting Squad, and was found to be carrying a pistol. On a later occasion, Anderson said Ballard told him that Smith was planning to murder him that night, and police kept watch on the Venus Room. Smith was in fact arrested in another club and again found to be carrying

136. NSW Police Occurrence report, 23 June 1970.

a pistol.¹³⁷

1.83 In his statement to police, Anderson gave his version of what happened on the night of the shooting as follows. Smith entered the Venus Room with several others. Smith went on his own to the rear of the restaurant where Anderson was seated doing his accounts. There was an exchange of words in which Anderson said Smith told him he was going to kill him. Smith tried to seize Anderson's licensed pistol from the holster Anderson was wearing. Smith struck Anderson a heavy blow in the face with his bandaged and plastered left hand. (Subsequent examination found that there was no injury to Smith's hand which warranted the bandage and plaster.¹³⁸ the inference was that the plaster was there to make his punches more damaging to any opponent.) Anderson was knocked to the ground. Anderson sustained cuts, four broken teeth and a suspected broken nose. Anderson said he heard someone shout a warning that Smith was going to kill him. Anderson drew his pistol and shot Smith in the chest. Smith turned and ran towards the front door. Anderson fired a second shot which police later found had hit Smith in the thigh. As Smith reached his companions near the door, he turned and Anderson, following him, said he thought the group were fumbling for a pistol. Anderson fired a third shot which hit Smith in the back as he had turned to leave. Smith fell out of the doorway and died on the footpath with his left foot resting on the restaurant doorstep.

1.84 Smith's de facto wife said she was outside the restaurant during these events.¹³⁹ One police officer described her as hysterical when he arrived.¹⁴⁰ She told them Anderson had murdered Smith. In her statement made that night she said that Smith had seemed to trip and he fell to the footpath as he left the restaurant.¹⁴¹ Anderson came out and shot him in the back as he was getting up. She also said she thought Anderson had fired a second shot into Smith on the footpath. However, the bullet holes on the body did not support the claim of a second shot on the footpath.¹⁴² Statements from other witnesses did not support her version of Smith being shot while getting up from the footpath.

1.85 Within hours of the shooting, Anderson was charged with murder and with discharging

137. The information in this paragraph and much of the information in the next paragraph is based on Anderson's signed record of interview with police, which commenced at 11.03 pm on the night of the shooting.

138. Statement of Det. Sgt. C.V. Leatherbarrow, 2 July 1970 re murder of Donald Hector Neville Smith, p. 3.

139. Signed statement of Betty June Bennett, 22 June 1970.

140. Statement of Det. Sgt. R.P. Morrison, (day indecipherable) June 1970, p. 1.

141. Signed statement of Betty June Bennett, 22 June 1970.

142. Statement of Det. Sgt. C.V. Leatherbarrow, 2 July 1970 re murder of Donald Hector Neville Smith, p. 2.

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a firearm near a public street.¹⁴³ Bail of \$2,000 was granted the following day.¹⁴⁴ In opposing bail, the police prosecutor was reported as saying:¹⁴⁵

No doubt this man acted in self-defence [in relation to the first shot] ... There may have been self-defence on the first occasion, but because of the fact that he was shot three times the defence of self-defence must fail.

1.86 At Anderson's committal hearing, the murder charge was reduced to one of manslaughter, and the trial was set down for Sydney Quarter Sessions in September 1970.¹⁴⁶ The New South Wales Attorney-General decided not to prosecute on the manslaughter charge.¹⁴⁷ As is the practice in such cases, no reason was given for the decision. Thirteen years later at the Nielsen inquest, Anderson was asked if any payments were made to police in relation to the Donny Smith case. He said none were made.¹⁴⁸

1.87 The secretariat does not have evidence or knowledge of the full circumstances that would indicate why the decision not to prosecute was taken. It does not know whether the fact that Anderson was a police informant,¹⁴⁹ or some other relationship that may have existed, were factors in the decision. There has been speculation over the years as to why the decision had been made.¹⁵⁰ However, it is not a matter for the Committee to pursue as it is not part of its inquiry.

1.88 The charge of discharging a firearm near a public place was heard at Central Court of Petty Sessions on 28 September 1972. The charge was dismissed.¹⁵¹

143. Statement of Det. Sgt. R.P. Morrison, (day indecipherable) June 1970, p. 3.

144. 'Court told dead man a criminal', *Sydney Morning Herald*, 24 June 1970, p. 8.

145. *ibid.*

146. Deputy Commissioner John Perrin, 'Submission to the Commissioner: Allegations made by James McCartney Anderson at the inquest into the disappearance of Juanita Joan Nielsen alleging misconduct by certain Police Officers in association with Sydney businessman Abraham Saffron', 14 February 1984, Annexure 19, (Anderson's criminal history).

147. *ibid.*

148. Nielsen inquest, transcript, 4 October 1983, p. 2363.

149. See para. 2.24 in this paper.

150. e.g. see the extract from a 1984 TV program quoted in para. 1.109 in this paper.

151. Deputy Commissioner John Perrin, 'Submission to the Commissioner: Allegations made by James McCartney Anderson at the inquest into the disappearance of Juanita Joan Nielsen alleging misconduct by certain Police Officers in association with Sydney businessman Abraham Saffron', 14 February 1984, Annexure 19, (Anderson's criminal history).

The 1971 Counterfeiting Matter

1.89 On 21 May 1971, Customs officers with a search warrant searched Anderson's Vaucluse residence and obtained a record of interview with him.¹⁵² In this, he admitted taking currency out of Australia without Reserve Bank permission and on his return failing to declare that he was carrying watches, jewellery, and other items purchased while in Singapore. Customs took possession of the items.

1.90 The items were allegedly purchased by Anderson in Singapore using counterfeit Australian ten dollar notes.¹⁵³ It was also alleged that his hotel accounts in Singapore had been paid using counterfeit notes. Anderson and his companion on the trip, Frank Alfred Gilligan, were said to have passed 407 of the notes in all.¹⁵⁴ The Singapore authorities sought the extradition of the two men.¹⁵⁵ In the interim, the Commonwealth Police retained possession of the items purchased.¹⁵⁶

1.91 The extradition application was heard at Central Court of Petty Sessions in Sydney on 23 December 1971. The Magistrate dismissed the application on technical grounds.¹⁵⁷ He based his decision on the legal requirement that, in order to secure extradition, it had to be shown that there was in New South Wales an equivalent offence to the one under Singapore law for which extradition was sought (the 'double criminality rule'). The Commonwealth Attorney-General's Department explained why the extradition did not proceed.¹⁵⁸

At the conclusion of the hearing the Magistrate expressed the view that for the acts allegedly committed in Singapore to be an offence in New South Wales it would be necessary to show that they were knowingly committed. Mr Gee of counsel had argued strongly, both in relation to the New South Wales law and the Commonwealth Reserve Bank Act in respect of offences connected with bank notes, that the evidence submitted by the applicant country was sufficient for the purposes of the double criminality rule and therefore of offences in Australia to justify their committal for trial.

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152. Record of Interview between Investigator Peter Gribbon and James McCartney Anderson, 21 May 1971 at Neutral Bay, NSW relating to the importation of dutiable goods.
153. Commonwealth Attorney-General's Department minute, re application from Republic of Singapore for the Extradition of James McCartney Anderson and Frank Alfred Gilligan, 21 October 1971.
154. *ibid.*
155. *ibid.*
156. Minute from Deputy Crown Solicitor, Sydney to Crown Solicitor, Canberra, re *F.A. Gilligan v The Commonwealth; The Commonwealth v J.M. Anderson, Siow Hiap Brothers, H. Sena (Pte) Limited & Dharma Sena*, 25 September 1973, p. 1.
157. *Police v James McCartney Anderson and Frank Alfred Gilligan*, CC.118, 119, 23 December 1971, Central Court of Petty Sessions, Sydney, J.E. Fowler, SM, reasons for adjudication.
158. Letter from the Secretary, Attorney-General's Department to the Secretary, Department of Foreign Affairs, 19 January 1972.

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However, the Magistrate found that the evidence before him disclosed no intent on the part of the fugitives in relation to offences in New South Wales if their alleged acts had been committed in New South Wales and therefore found that he was not satisfied of a *prima facie* case justifying their committal for trial, and so ordered the release of the accused persons.

1.92 Anderson and Gilligan subsequently sued for the return of the goods seized by Customs. Despite being notified, the Singapore claimants did not appear at the hearing. The sole defendant was the Commonwealth, which had custody of the goods. Given the non-appearance of the Singapore owners, the Court ordered that the goods be returned to Anderson and Gilligan.¹⁵⁹

Goods in Custody and Receiving Charges

1.93 On 6 July 1972, a charge against Anderson of being in possession of stolen goods was dismissed.¹⁶⁰ On the same date, a *prima facie* case of receiving stolen goods was made out against him. However, it was decided that there was insufficient evidence to place him on trial.¹⁶¹

The 1973 Staccato Club Fire

1.94 At about 3.30 on the morning of 26 November 1973 there was an explosion and fire at the Staccato Club at 101 Darlinghurst Road, Kings Cross. Anderson was seriously burned in the fire and spent many weeks in hospital. Anderson's initial account of the incident was given in an interview with police at 3.45 am on the same morning.¹⁶² Examination of Anderson's clothing revealed that the soles of his shoes and the upper parts of one of them smelled strongly of petrol.¹⁶³

1.95 Police interviewed him again on 12 December 1973.¹⁶⁴ In this interview, Anderson told the police he had no connection with the club, save that its owner was a friend of his. He said

159. *Gilligan v Commonwealth of Australia; Commonwealth of Australia v Anderson and others*, New South Wales Supreme Court, Common Law Division, 5 February 1974, Else-Mitchell J.

160. Deputy Commissioner John Perrin, 'Submission to the Commissioner: Allegations made by James McCartney Anderson at the inquest into the disappearance of Juanita Joan Nielsen alleging misconduct by certain Police Officers in association with Sydney businessman Abraham Saffron', 14 February 1984, Annexure 19, (Anderson's criminal history).

161. *ibid.*

162. Police running sheet, 'Information ascertained at St Vincents Hospital re Fire at 99 Darlinghurst Road, Darlinghurst', 26 November 1973.

163. *ibid.*

164. Unsigned record of interview between Det. Sgt. N.C. Morey and James McCartney Anderson, 11 am, 12 December 1974.

he happened to have driven past the club, had seen two men behaving suspiciously, had parked around the corner, and had returned to see what was happening. The back door to the club was ajar. He said he entered, smoking a cigarette, and fell. He stood up and the explosion occurred. He staggered to his car and drove himself to hospital.

1.96 Anderson altered the details of his version of events during a further interview on 15 January 1974.¹⁶⁵ Police were clearly not convinced that he was telling the truth, and suspected he may have caused the explosion.¹⁶⁶ Investigating officers believed the fire was caused by a petrol explosion, and scientific examination indicated traces of petrol on Anderson's shoes.¹⁶⁷ Police appear to have regarded it as strange that Anderson left his licensed pistol in his car when he went to investigate what he said was a suspicious incident.¹⁶⁸ Anderson said he had not noticed any petrol odour when he entered the club.¹⁶⁹ The owner (through companies) of the Staccato Club, Peter Farrugia (also known as Peter Farr) told police he could see no motive for Anderson to have deliberately caused a fire at the Club.¹⁷⁰ Farr said that, to his knowledge, Anderson would not benefit in any way from the fire. No charges were ever laid against Anderson in relation to the incident.

1.97 Police asked Anderson why he took such an interest in the premises: He replied: 'I told you before, I've nothing to do with the premises. Peter Farr has it and he is a friend of mine'.¹⁷¹ At the Nielsen inquest in 1983, Anderson was asked during cross-examination:¹⁷²

Q. Mr Anderson, at the time that you were blown up in the Staccato Club was Mr Peter Farr or

165. Unsigned record of interview between Det. Sgt. N.C. Morey and James McCartney Anderson, 11.05 am, 15 January 1974.

166. James McCartney Anderson, sworn deposition, Glebe Coroner's Court, 11 July 1974, p. 9:

Q. Did you get the impression that you were under suspicion for this fire? A. Not at first.

When did you get that impression? A. When Mr Morey saw me at hospital, about 4 weeks I think after the fire.

Q. It was then you got the impression you were a suspect? A. Yes.

167. Police statement to Anderson in unsigned record of interview between Det. Sgt. N.C. Morey and James McCartney Anderson, 11.05 am, 15 January 1974, p. 2.

168. Unsigned record of interview between Det. Sgt. N.C. Morey and James McCartney Anderson, 11 am, 12 December 1974, p. 4.

169. Unsigned record of interview between Det. Sgt. N.C. Morey and James McCartney Anderson, 11.05 am, 15 January 1974, p. 2.

170. Signed statement of Peter Paul Farrugia at Darlinghurst Police Station, 26 November 1973, p. 3.

171. Unsigned record of interview between Det. Sgt. N.C. Morey and James McCartney Anderson, 11.05 am, 15 January 1974, p. 2.

172. Nielsen inquest, transcript, 7 October 1983, p. 2547.

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Peter Farrugia involved in the management of the Staccato Club? A. No I have no knowledge if he was actually involved in the management or control of the Staccato Club.

Q. Was he a person you believed to have some financial interest in that Club? A. No sir, I couldn't answer that either way again.

The Necklace and 'Offer Bribe' Cases

1.98 On 23 November 1979, Anderson was charged with conspiring on 19 November 1979 to steal a necklace valued at \$8,600.¹⁷³ The co-conspirators who were also charged were his foster son, Grant Leon O'Meagher, his bodyguard/driver, Brian Tobin, and Tony Samuel. Anderson was charged at the same time with offering a \$10,000 bribe to Detective Sergeant Selwood and other members of the team questioning him in relation to the conspiracy charge.¹⁷⁴

1.99 The necklace had allegedly been taken from Raymond Alan Mitchell. Mitchell said he had known Anderson for about twelve months, and had met him by chance on 19 November in Kings Cross.¹⁷⁵ Mitchell said Anderson asked him to come to Double Bay to discuss real estate matters. They went in Mitchell's car, and Mitchell said that on the way he showed Anderson a necklace he was trying to sell. At Double Bay, Mitchell and Anderson parked and walked up Knox Street to the Cosmopolitan Coffee Lounge. Mitchell said he left the necklace in the car under the front seat.

1.100 The police statements¹⁷⁶ indicate that an officer of the New South Wales Police Crime Intelligence Unit saw Anderson in Kings Cross being driven in Mitchell's car. Further surveillance officers were summoned by radio as the car was followed to Double Bay and seen parking. Police observation of the parked car was maintained and other officers watched Anderson and Mitchell who were in a coffee shop.

1.101 Sometime later, according to the police statements,¹⁷⁷ Samuel and O'Meagher were seen examining Mitchell's car, and O'Meagher was seen using his portable radio. Anderson, and Tobin who was with him, were seen by other surveillance officers using a

173. Statement of Det. Sgt. Kenneth James Selwood, Waverley Police Station, 23 November 1979, p. 4.

174. *ibid.*, p. 4.

175. Statement of Raymond Alan Mitchell, Rose Bay Police Station, 20 November 1979; Signed record of interview between Det. Sgt. K.E. McDonald and Raymond Alan Mitchell, Waverley Police Station, 23 November 1979.

176. Statements of Det. Snr. Const. G.R. Owens, Det. Const. T.J. Williams and Det. Sgt. M.K. Ogg in the matter of James McCartney Anderson and others charged with stealing, Crime Intelligence Unit, 21 March 1980; Statement of Det. Snr. Const. J. Francisco in the matter of James McCartney Anderson and others charged with stealing, CIB, 21 March 1980.

177. Statement of Det. Snr. Const. G.R. Owens and Det. Sgt. M.K. Ogg in the matter of James McCartney Anderson and others charged with stealing, Crime Intelligence Unit, 21 March 1980.

portable radio outside the coffee shop at about the same time.¹⁷⁸ Samuel then broke into the car using a bent coat-hanger, while O'Meagher kept watch. Samuel reached under the driver's seat and removed an envelope. Nearly an hour later the driver was seen to return and search for the missing envelope. Watching police said the driver returned to the Cosmopolitan and spoke to Anderson.¹⁷⁹ Some time later, Anderson and Mitchell were seen to meet Samuel and O'Meagher in the street. Mitchell then went to Rose Bay police station to report the theft. The surveillance team had taken photographs throughout,¹⁸⁰ although there were no photographs to corroborate the actual stealing of the necklace from the car.¹⁸¹

1.102 Police searched Anderson's Vaucluse home on 23 November 1979 and questioned him.¹⁸² They showed him the surveillance photographs. Subsequently, at Waverley Police Station Anderson allegedly offered the police (Detective Sergeants K.J. Selwood and T.R. Sandford, and Detective Constable J.P. Minkley) the \$1,681 he had on him and to make it up to \$10,000 within half an hour, if they did not charge him over the necklace.¹⁸³ The police then charged him both over the necklace and the bribe.

1.103 On the same evening as his arrest, Anderson accused Selwood of stealing or failing to account for \$86,000 allegedly found and taken when the police searched Anderson's house.¹⁸⁴ Anderson said the money represented savings and accumulated earnings kept in cash because he was avoiding income tax.¹⁸⁵ The Police Internal Affairs Branch and the Ombudsman's office became involved in the investigation of this allegation. On 26 November 1979, Anderson had private summonses taken out against Selwood on charges of stealing and

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178. Although of no relevance to the necklace case, Tim Theeman was with Anderson, Tobin and Mitchell in the coffee shop at one stage: Statement of Raymond Alan Mitchell, Rose Bay Police Station, 20 November 1979, p. 3. The links between Anderson and the Theeman family are discussed later in this paper: see para. 2.132.
179. Statement of Det. Snr. Const. G.R. Owens in the matter of James McCartney Anderson and others charged with stealing, Crime Intelligence Unit, 21 March 1980; Statement of Det. Snr. Const. J. Francisco in the matter of James McCartney Anderson and others charged with stealing, CIB, 21 March 1980.
180. Signed record of interview between Det. Sgt. K.E. McDonald and Raymond Alan Mitchell, Waverley Police Station, 23 November 1979 in which Mitchell is recorded as being shown the photographs.
181. *R v James McCartney Anderson*, District Court of NSW, Criminal Jurisdiction, No 81/1/1295, 27 February 1984, transcript, p. 19 (judge's summing up to the jury).
182. Statement of Det. Sgt. Kenneth James Selwood, Waverley Police Station, 23 November 1979, pp. 3-4.
183. *ibid.*, p. 4.
184. Letter from Det. Sgt. Selwood to Inspector R. Hunt, Police Internal Affairs Branch, 25 November 1979, p. 6.
185. Signed record of interview between Inspector Hunt, Police Internal Affairs Branch, and James McCartney Anderson, Waverley Police Station, 23 November 1979, appended questions, Q. 5.

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failing to account for this money.¹⁸⁶ Police records show that on the same day a telephone caller left a message for Selwood: 'tell him to lay off Jimmy Anderson or he'll be in a lot of trouble'.¹⁸⁷ Police records also show that less explicit messages were left for Minkley on that day and two days later.¹⁸⁸

1.104 Anderson's version (as given to the NCA in 1985) was that the necklace and bribe charges were a frame-up. He was arrested on the afternoon he was preparing for the formal opening of a new restaurant in Kings Cross, The Mint, which he was establishing independently of Saffron. His relationship with Saffron had started to break up at this time. He said the \$86,000 at his house was money he was holding for Saffron. Anderson wanted the Authority to believe that the police were using the necklace search as a pretext for recovering the money on Saffron's behalf.

1.105 Selwood, Sandford and Minkley denied that any large sum of money had been found at Anderson's house, and denied his allegation that police had taken \$86,000.¹⁸⁹ Selwood replied on 25 November 1979 to Anderson's allegations in a statement to Internal Affairs.¹⁹⁰

there is no doubt in my mind that Anderson's allegation of the theft of the sum of \$86,000 is completely false and that he has made this allegation against me in an attempt to discredit me in a most evil manner so as to attempt to defeat a conviction for the offences of conspiracy to steal, stealing and offering a bribe of \$10,000.00, which offences I charged him with on the 23 November, 1979. Anderson is a reputed murderer, thief, drug offender, receiver and associate of the most dangerous criminals in the Kings Cross area ...

1.106 On 27 November 1979, the three police issued writs for slander and defamation against Anderson as a result of the allegation against them.¹⁹¹ Following initial investigations,

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186. Letter from Inspector R. Hunt to Superintendent in Charge, Police Internal Affairs Branch, 13 December 1979, re: Complaint by J.M. Anderson concerning the actions of Police toward him on the 23 November 1979, p. 1.
187. NSW Police running sheet, 'Threatening phone call received at the Bondi Police Station re Detective Sergeant Selwood', 26 November 1979, 3.35 pm.
188. NSW Police running sheet, 'Threatening phone call involving Detective Const. 1/C Minkley, received at the Rose Bay Detectives Office', 28 November 1979, 12.15 pm; Telephone message log, 28 November 1979, 12.05 pm (call from anonymous male).
189. Letter from Det. Sgt. Selwood to Inspector R. Hunt, Police Internal Affairs Branch, 25 November 1979; Letter from Det. Sgt. T.R. Sandford to Inspector R. Hunt, Police Internal Affairs Branch, 24 November 1979; Letter from Det. Const. J.P. Minkley to Inspector R. Hunt, Police Internal Affairs Branch, 24 November 1979.
190. Letter from Det. Sgt. Selwood to Inspector R. Hunt, Police Internal Affairs Branch, 25 November 1979, p. 1.
191. Letter from Inspector R. Hunt to Superintendent in Charge, Police Internal Affairs Branch, 13 December 1979, re: Complaint by J.M. Anderson concerning the actions of Police toward him on the 23 November 1979, p. 1.

it was decided to hold over further Internal Affairs and Ombudsman's Office examination of Anderson's allegation about the \$86,000 until the necklace charge against Anderson was dealt with.¹⁹² Following committal proceedings, in August 1981 Anderson and his co-conspirators were committed to stand trial on the necklace charge.¹⁹³

1.107 On 14 October 1981, Anderson's summonses against Selwood over the \$86,000 were withdrawn at Castlereagh Street Court of Petty Sessions in Sydney.¹⁹⁴ Counsel at the Nielsen inquest put to Anderson that the reason for this was that counsel for Anderson chose to offer no evidence to the court.¹⁹⁵ Anderson responded: 'As of this moment that may be correct'. He suggested that this had happened only because he had run out of money with which to pay his lawyers.¹⁹⁶

1.108 The trial on the necklace charge was initially set for 22 August 1983.¹⁹⁷ On 27 July 1983, the trial date was altered to 24 October 1983 on Anderson's application.¹⁹⁸ It turned out that this date was one of the days on which he gave evidence at the Nielsen inquest, during which he made allegations of police corruption. On further application by Anderson on 11 October 1983, the trial date was fixed for 13 February 1984.¹⁹⁹ The trial started on that date before Judge Mathews and a jury in the District Court. The trial proceeded and at the close of proceedings on Monday, 27 February, the Judge had almost finished her summing up. At 9.30 that evening a TV program pre-recorded by Mike Willesee was broadcast on Channel Nine. The following day the Judge discharged the jury on the ground that, by reason of the potential effect on the jury of the material contained in the Willesee program, it was impossible for Anderson to be seen to have had a fair trial.²⁰⁰

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192. Letter from the Ombudsman to the Police Commissioner, 21 January 1980, re Complaint by Mr James McCartney Anderson.
193. Letter from Inspector F.C. Connell to Chief Superintendent, Police Internal Affairs Branch, 21 August 1981, re: Complaint by J.M. Anderson concerning the actions of Police toward him on the 23 November 1979.
194. Letter from Inspector F.C. Connell to Chief Superintendent, Police Internal Affairs Branch, 14 October 1981, re: Complaint by J.M. Anderson concerning the actions of Police toward him on the 23 November 1979.
195. Nielsen inquest, transcript, 4 October 1983, p. 2383.
196. Nielsen inquest, transcript, 4 October 1983, p. 2382.
197. *Registrar of the Court of Appeal v Willesee and others* (1985) 3 NSWLR at p. 664.
198. *ibid.*
199. *ibid.*
200. *R v James McCartney Anderson*, District Court of NSW, Criminal Jurisdiction, No 81/1/1295, 28 February 1984, transcript of proceedings, p. 95.

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1.109 The TV program referred to Anderson and the police corruption allegations he made at the Nielsen inquest. Footage was included showing Anderson walking around Kings Cross with a shotgun.²⁰¹ In the program, Willesee said: 'Jim Anderson calls himself a minder, sorting out trouble, sometimes with his fists, sometimes with a gun. He shot one man dead but somehow, some way, the charges were dropped'.²⁰² The program included statements by Anderson that he had paid possibly between five and six million dollars over a fifteen year period to Abe Saffron to pay the police and the politicians. A statement by the then-Premier, Neville Wran, was also included.²⁰³

I wouldn't hang a dog on what Anderson, that is Jim Anderson, said. He made the most reckless allegations against all sorts of people and then when put to the test would not answer any questions put to him at all to substantiate the matters that he put forward.

1.110 The re-trial of Anderson on the necklace charge went ahead in June 1984, and on 13 June the jury acquitted him.²⁰⁴ Tobin and Samuel absconded and did not face trial on the matter.²⁰⁵ O'Meagher also failed to appear at the trial at the time when it was set down for October 1983. He was later apprehended and tried separately from Anderson. O'Meagher was acquitted at his trial early in 1985.

1.111 The Internal Affairs investigation into Anderson's allegation that Selwood had taken \$86,000 from his house was re-activated following Anderson's acquittal.²⁰⁶ At that time, no further steps had been taken in the police officers' defamation action against Anderson. On 29 July 1984, Anderson told the officer handling his complaint at Internal Affairs that he was undecided whether he wished to continue his complaint.²⁰⁷ In the following months, Anderson failed to respond to further police attempts to contact him on the matter.²⁰⁸ Anderson told the Internal Affairs officer on 13 June 1985 that he would not object if inquiry into his complaint

201. *Registrar of the Court of Appeal v Willesee and others* (1985) 3 NSWLR at p. 664.

202. Quoted in the judgment of Hope JA in *Registrar of the Court of Appeal v Willesee and others* (1985) 3 NSWLR at p. 666.

203. Quoted in *ibid.*, p. 667.

204. *Registrar of the Court of Appeal v Willesee and others* (1985) 3 NSWLR at p. 664.

205. NSW Police telex, 11 October 1983, informing of the issue of bench warrants that day for the arrest of Samuel, Tobin and O'Meagher for failing to appear for trial.

206. Memo from Det. Sgt. D.T. McCusker to Executive Chief Superintendent, Police Internal Affairs Branch, 20 June 1984.

207. NSW Police Internal Affairs Branch, memo by Det. Sgt. D.T. McCusker, 29 January 1985, summarising the handling of the complaint, p. 5.

208. *ibid.*

was discontinued.²⁰⁹ Internal Affairs discontinued its investigation,²¹⁰ and the Ombudsman did likewise.²¹¹

1.112 The 'offer bribe' charge had been adjourned on 16 March 1983, pending completion of the trial of the necklace charge.²¹² In a 29 January 1985 memo, a Police Internal Affairs Branch officer looking at Anderson's complaint against Selwood noted:²¹³

In relation to the charge of offer bribe preferred against Mr Anderson I have been informed that no evidence will be offered when this matter is re-listed for hearing. All the facts were given in during Anderson's trial [on the necklace charge].

1.113 The 'offer bribe' charge eventually came on for trial on 6 December 1985 at Sydney Court of Petty Sessions. An NCA officer attended the trial as an observer.

1.114 Before the trial commenced there was lengthy discussion between the prosecutor and the defence counsel. It appeared to the Authority observer that their concern was that the 'information' was defective in that it failed to specify an essential element - that the person to whom the bribe was offered was in fact a police officer. In addition the observer noted there was discussion over whether the matter was 'out of time'.²¹⁴ The Magistrate dismissed the matter.²¹⁵

1.115 The NCA observer reported to his superiors:

From what I observed I am quite satisfied that the Prosecution and Defence had engineered a situation where the Information would be dismissed although it would appear that the matter had been lost on a technicality and indeed this end was achieved with a minimum of fuss. I do not believe for one moment that the Prosecution wanted to offer any evidence in the first instance for fear it would come under a great deal of scrutiny.

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209. Memo from Det. Insp. R.B. Kelly to Det. Superintendent, Police Internal Affairs Branch, 4 June 1985.
210. Memo from Asst. Commissioner (Internal Affairs) to Det. Sgt. D.T. McCusker, Police Internal Affairs Branch, 2 October 1985.
211. Letter from the Assistant Ombudsman, J. Pinnock, to NSW Police Commissioner, J. Avery, 19 September 1985.
212. Deputy Commissioner John Perrin, 'Submission to the Commissioner: Allegations made by James McCartney Anderson at the inquest into the disappearance of Juanita Joan Nielsen alleging misconduct by certain Police Officers in association with Sydney businessman Abraham Saffron', 14 February 1984, Annexure 19, (Anderson's criminal history); Memo from Det. Insp. J. Toms to Executive Chief Superintendent, Police Internal Affairs Branch, 1 November 1983.
213. NSW Police Internal Affairs Branch, memo by Det. Sgt. D.T. McCusker, 29 January 1985, summarising the handling of the complaint, p. 6.
214. *ibid.*, para. 5.
215. 'Bribery case dismissed over incorrect wording', *Weekend Australian*, 7-8 December 1985, p. 7.

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Anderson's 1983 Bankruptcy

1.116 In September 1983, Anderson was made bankrupt. His statement of affairs showed a deficiency of debts over assets of \$451,670.29.²¹⁶ By early 1984, the Commissioner of Taxation was seeking to recover outstanding taxes and penalties from Anderson of \$936,175.90.²¹⁷

ANDERSON IN 1984

Introduction

1.117 All the above information is background that was relevant to any law enforcement agency that proposed to deal with Anderson. Some further points relate more specifically to Anderson's position in 1984, when the Authority first had contact with him. These points, discussed below, are: where he was obtaining the money to support his life-style; the alleged threats on his life; and his credibility as a source of information and as a witness in court.

Anderson's Sources of Funds

1.118 Despite his bankrupt status, Anderson somehow had access in 1983 and 1984 to the funds to make international air trips, travelling first class and staying in expensive hotels.²¹⁸ It was unclear how Anderson was supporting himself at this time. The following extract from Anderson's bankruptcy examination provides a representative example of his evasiveness and tendency to include allegations against others in his responses. He was asked where the cash then in his possession, \$250, had come from:²¹⁹

Q. How did you acquire that? A. It was given to me.

Q. By whom? A. By a friend.

Q. Where? A. I cannot recollect that.

Q. How much was given to you? A. I have no recollection.

Q. Well, it was more than \$250? A. Course it was.

Q. Substantially more than \$250, was it; substantially more than \$250? A. It depends what you mean by 'substantial'.

Q. Well, was it in the thousands? A. It would have been a couple of thousand, yes.

216. Bankruptcy District of NSW and the ACT, No.859 of 1983, re James McCartney Anderson, Statement of Affairs, 22 November 1983.

217. Australian Taxation Office, 'Final Notice - Income Tax', 8 February 1985.

218. e.g. see 'Anderson flies to NZ for "health"', *Canberra Times*, 29 October 1983, p. 3: travelled first class and 'took out of the country a wad of \$100 bills in US currency'.

219. Examination of James McCartney Anderson under section 69 of the Bankruptcy Act, transcript of proceedings, 17 April 1984, p. 48.

Q. Yes, why did he or she give it to you? A. To keep me alive until such times as I can proceed with damages claims against Mr Saffron after his trial for arson.

Q. Had you received any other amounts of money prior to this sum from this person? A. I cannot recollect.

Q. Had you known this person long? A. I cannot recollect.

Q. It was not somebody that just strolled up in the street to you and said: here you are, Jim, here is two grand, was it? A. That has happened on a number of occasions.

Q. Has it? You are luckier than I am. Does this happen quite frequently, does it? A. What?

Q. People walk up to you and give you some money? A. It has happened quite frequently over the last few years.

Q. And they are people whose names you do not recall? A. That is correct.

1.119 There were reasonable grounds for suspecting that Anderson was obtaining money through illegal activity. Some of these have been referred to above in noting the police intelligence material on Anderson. More generally, Anderson's lavish life-style in the 1970s had clearly depended on income from dubious activities. There was no reason why a law enforcement agency should believe that he had become a reformed person since breaking up with Saffron. A witness has told the Committee: 'it would be difficult to imagine Mr Anderson making an honest living'. The fact that he refused to give any credible explanation for his funds in 1984 inevitably raised suspicions.

Anderson's Relationship with Frank Hing

1.120 After breaking up with Saffron, there was some suggestion that Anderson was working as an enforcer for Frank Hing. In 1984, the New South Wales Minister for Police told the Legislative Assembly:²²⁰

A certain Sydney underworld figure is attempting to gain control of certain parts of Sydney's gambling, vice and drug activities. This person, if I can call him that, uses various means to carry out his unlawful activities and various persons to assist him in his endeavours. The man I am referring to is Frank Hing ... I would like to take this opportunity ... to explain to the House how Frank Hing carries out his activities.

Several months ago premises in Sydney had two cheque books stolen. Cheques from each of these books were given to Frank Hing, who ran the Chinese dominoes at the Empress Bridge Centre, 66 Darlinghurst Road, Kings Cross, by the person who stole the cheque books as part payment of a \$5,000 gambling debt incurred by him at that club whilst playing Chinese dominoes. Later Frank Hing, in the company of two other Chinese and a very large European, names unknown, attended the premises where the cheque books were stolen from. The following was stated: 'We know your premises are uninsured. If you don't want the place burnt down or bombed, you will fix us up for the money ...'. As a result of this threat Frank Hing was given some cash and he left a card from the Empress Bridge Centre with a phone number and informed him to contact 'Jimmy' for payment of the remaining debt. Jimmy of course is none other than ... James McCartney Anderson. The owner of the premises did not pursue the assault and extortion charges due to the threats and possible later reprisals.

220. New South Wales, Legislative Assembly, *Hansard*, 11 September 1984, p. 591.

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1.121 The previous month the Police Minister had said that the premises at 66 Darlinghurst Road were believed to be run by Anderson and Peter Farrugia.²²¹ Late the following year, Anderson was arrested following a police raid on these premises. He was subsequently charged with assisting the conducting of an unlawful gaming house and being in a gaming house without lawful excuse.²²²

Claims that Attempts Had Been Made on His Life

1.122 Anderson put forward an image of himself as someone who lived in a world where violence was commonplace, and whose life was always in danger. The 1970 threats to his life by Donny Smith have already been mentioned. In 1974, his wife was attacked, allegedly suffering seven bullet wounds.²²³ His foster son, Grant O'Meagher, was also shot in the same incident. Although characteristically vague about the date, Anderson claimed that the car he was then using - a Rolls Royce - had been shot at towards the end of the 1970s. The following exchange about the car occurred during Anderson's bankruptcy hearing in 1984.²²⁴

Q. How long did you have the car for? A. Two or three years, I think.

Q. When did you dispose of it? A. When people started shooting at it.

Q. When was that? A. Just after the Mint opened.

Q. When was that? A. I am not quite sure of the dates. You probably have something on paper somewhere there about it; I just cannot recollect the date.

Q. Well, I suppose it must have been a sort of an outstanding moment in your life when people started shooting at you driving around in your Rolls Royce, was it not? A. No, they had been shooting at me before I owned the Rolls Royce.

Q. Yes. Well, did you report the shootings to the police? A. Certain police were aware of them, yes.

Q. What officially or unofficially? A. Unofficially I would recollect, I think.

Q. What, through statements of yours to them? A. Well, it soon gets out when you put your car in to get patched up and put new windscreens in it and that sort of thing, yes.

1.123 In November 1979, Anderson complained to the New South Wales Police Consorting Squad that a telephoned death threat had been made against him.²²⁵ Separately,

221. New South Wales, Legislative Assembly, *Hansard*, 23 August 1984, pp. 468-69.

222. '50 in court on gambling charges', *Sydney Morning Herald*, 9 January 1986, p. 4. On the raid itself, see 'Police swoop on "legal" card game: black Friday for blackjack at the Empress Club', *Sun-Herald*, 15 December 1985, p. 2.

223. Nielsen inquest, transcript, 23 September 1983, p. 2140.

224. Examination of James McCartney Anderson under section 69 of the Bankruptcy Act, transcript of proceedings, 17 April 1984, p. 79.

225. Letter from Det. Sgt. B.C. Nelson to Superintendent in charge, CIB, 28 November 1979.

he claimed about the same time that someone had tried to kill him with a poison pellet.²²⁶ He claimed that police officers, whom he did not name, had told him Saffron was behind the alleged poison pellet incident.²²⁷ In 1981, he told police that in 1979 he had been warned that 'Israeli hitmen' had been hired to kill him.²²⁸

1.124 In a colourful magazine interview published in February 1985, he claimed that a bomb had been placed as a booby trap in his Mercedes 'about two years ago'.²²⁹ However, one witness has told the Committee he thought this may have been a figment of Anderson's imagination. Anderson's wife told the Nielsen inquest on 22 September 1983 that her husband had had 'many threats [on his life] from police and from Mr Saffron'.²³⁰ Anderson told the Nielsen inquest that he gave the 'black' books to Dowd 'because I believed that attempts were to be made on my life if certain people were aware that I still had certain documents'.²³¹

1.125 Anderson made application to have his bail conditions (in relation to the necklace larceny charge) varied in March 1984. He claimed his life was in 'extreme danger' and sought the return of his passport so he could go overseas for his safety and for health reasons. The judge who heard the application in the New South Wales Supreme Court accepted that Anderson had genuine fears for his safety. The Judge quashed the bail condition requiring the surrender of the passport.²³²

Anderson's Doubtful Credibility

1.126 At the time that the NCA came to consider using Anderson as an informer and subsequently as a witness, his limitations as an informer and very limited credibility in the witness box were well established. Premier Neville Wran's view is set out above.²³³ The Attorney-General, Senator Gareth Evans QC, commented to the Senate in 1984 on allegations Anderson made at his bankruptcy hearing.²³⁴

226. 'Penthouse Interview: James Anderson', *Penthouse*, February 1985, p. 134. See also Nielsen inquest, transcript, 29 September 1983, p. 2203.

227. Interview of James McCartney Anderson by Detective Sergeant Slade, 24 September 1981, transcript, p. 3.

228. *ibid.*, pp. 13-14.

229. 'Penthouse Interview: James Anderson', *Penthouse*, February 1985, p. 131.

230. Nielsen inquest, transcript, 22 September 1983, p. 2079.

231. Nielsen inquest, transcript, 11 October 1983, p. 2597.

232. See 'Anderson fears assassins', *Sydney Morning Herald*, 2 March 1984, p. 4 and 'Anderson gets passport back and plans trip', *Sydney Morning Herald*, 3 March 1984, p. 7.

233. See para. 1.109 in this paper.

234. Senate, *Hansard*, 31 May 1984, p. 2227.

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I do not know to what extent Mr Temby [the Director of Public Prosecutions] has been able to follow up the kinds of allegations that have been made by Mr Anderson. Other matters have been notoriously inaccurate, notoriously scandalous and of such a character that, in the view of law enforcement authorities generally, they have not been such as to be required to be taken seriously.

1.127 The issue of Anderson's general credibility as a witness was evident at the Nielsen inquest. One police witness at the inquest agreed that, because Anderson was a known liar, police had to be careful in dealing with him.²³⁵ Counsel for the New South Wales Police, in summing up, submitted:²³⁶

Mr Anderson's attitude to the police was venomous, he held this court and you as a jury in contempt and he showed himself to be a stranger to the truth. In his evidence, he was selective, he was slippery, and he was spiteful. You cannot, in my submission, accept his evidence unless it is corroborated by some other evidence.

1.128 At the Nielsen inquest, Anderson made allegations that Saffron had made corrupt payments to named former and serving New South Wales Police officers.²³⁷ According to Anderson, some of the payments had been handed over at Saffron's Crown Street Liquor Store in a social setting in which girls and liquor were made available to the police by Saffron.²³⁸ The allegations were investigated by Deputy Commissioner Perrin of the New South Wales Police. Perrin made a report on his investigation to the Police Commissioner.²³⁹ All the police denied the allegations, as did Saffron.²⁴⁰

1.129 Anderson, after considerable delay, decided not to assist the investigation. Although his allegations at the inquest had been vague as to when the payments had been made, Anderson refused to provide dates to Perrin to enable him to cross-check alleged Saffron-police meetings against police diaries. However, it is relevant to note that Anderson had stated several times at the Nielsen inquest that he had no confidence in New South Wales authorities, but would be more forthcoming to a Federal inquiry.²⁴¹

235. Nielsen inquest, transcript, 4 November 1983, p. 3859.

236. Nielsen inquest, transcript, 9 November 1983, p. 3995. See also, *ibid.*, 8 November 1983, p. 3943: Counsel for a member of the Nielsen family submitted that one aspect of Anderson's evidence 'was really totally incredible' and that on one matter the story he gave to the inquest 'was a total concoction'.

237. e.g. Nielsen inquest, transcript, 29 September 1983, pp. 2179, 2212-14; 30 September 1983, pp. 2250, 2284-85; 25 October 1983, p. 3279.

238. Nielsen inquest, transcript, 25 October 1983, p. 3279.

239. Deputy Commissioner John Perrin, 'Submission to the Commissioner: Allegations made by James McCartney Anderson at the inquest into the disappearance of Juanita Joan Nielsen alleging misconduct by certain Police Officers in association with Sydney businessman Abraham Saffron', 14 February 1984.

240. New South Wales, Legislative Assembly, *Hansard*, 21 February 1984, p. 4,395.

241. Nielsen inquest, transcript, 7 October 1983, pp. 2564-65, 2567-68, 2584; 26 October 1983, pp. 3315-16, 3321.

1.130 The following paragraphs are extracts from Perrin's report and provide insights into how Perrin saw Anderson.

9. ... James McCartney Anderson agreed to see me, and Executive Chief Superintendent Sadler, at his solicitor's office at 10 am on 7th October 1983. However, in telephone conversation between the solicitor, Mr Johns and myself that morning, Johns informed me that Anderson had changed his mind. He was leaving the country that day and would consider his position on his return to Australia.

10. I made a number of telephone calls to Mr Johns' office endeavouring to fix some date to see Mr Anderson but without success.

11. On 22nd November 1983 I received information that the person Anderson was prepared to see me that day at the Burwood Police Station. I agreed to meet him and there spoke with him. Whilst he declined to discuss his allegations, he did make a written statement to me indicating that he had originally agreed to see me but changed his mind. ...

13. A letter has subsequently been received from Mr Malcolm Johns dated 3rd January 1984 indicating that it is now Anderson's intention not to be interviewed by Police. ...

15. It must be pointed out that from the 'depositions' etc., Mr Anderson had indicated that some of these alleged incidents/ transactions occurred before 1975 and some after. Times are very vague and in the absence of anything from Anderson to substantiate his allegations or nominate times, questioning became very difficult and to some extent ineffective. ...

24. When asked why Anderson would make such allegations, against him Saffron said 'one would be his sworn hatred of me. Two, I believe there is some political motivation behind his false allegation. I've read of his association with Mr Dowd and I believe there are certain Police who could also have motivated him'. ...

38. ... Mr [Frank] Theeman stated he had been talking to Anderson who mentioned to him that he could have been mistaken in his identifying Assistant Commissioner Pyne as one of the Police involved.

45. [An informant] well known in the criminal fraternity ... informed me that Anderson had 'put in Pyne and the other coppers cold'. He alleged he had spoken to Anderson about this matter. He further alleged that Anderson claimed that Saffron owed him \$160,000 and he would not rest until he got it. He went on to inform me of approaches that had been made to Anderson by other persons with 'vested interests' in the Kings Cross/Darlinghurst areas but Anderson had rejected those approaches and indicated that he wanted \$160,000 from Saffron himself and would accept nothing less. The informant also indicated that he believed Anderson was politically motivated and was attacking the Police in an attempt to discredit the Government and also in the belief that the attacks upon the Police would bring pressure on Saffron to pay him a considerable amount of money. ...

47. In view of the allegations made by Anderson and the fact that he was adamant that meetings between Police and Saffron took place at the Crown Street Liquor Store, coupled with the denial by all the Police and the description of the premises as given to me by Saffron I decided to have the premises photographed. ...

48. The photographs were taken and clearly show there is no office in the premises. It is a supermarket type store with a table mid-centre where book work is carried out. The shop is one long narrow room, fully stocked with minimal customer space. To suggest it as a meeting place for a number of Police and females is ludicrous. There is a small storeroom at the rear but it is

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stocked with liquor and has no furniture. ... There is no way meetings between Saffron and the Police, drinks and female companionship could have been engaged in those premises without detection and I am satisfied that Anderson has been untruthful in making his allegations about these meetings.

49. It is again pointed out that the person James McCartney Anderson has declined to be interviewed and supply any other evidence ... In the absence of approximate dates and times it has not been possible for the Police to completely rebut the allegations. As pointed out by Assistant Commissioner Pyne the daily duties of Police are properly recorded and if Anderson would nominate specific dates then it is probable the Police could put 'lie' to his allegations completely.

...

1.131 Perrin considered it relevant to note that one of the officers named as corrupt by Anderson had arrested him in 1979 and shortly after sued him for defamation.²⁴² Two other officers named had initiated action against Anderson in relation to licensing breaches at the Venus Room.²⁴³ Another officer named had identified Anderson publicly as a police informant. Perrin said he believed Anderson's naming of this officer as corrupt was a 'get square' attempt by Anderson.²⁴⁴ Perrin concluded:

66. There is no doubt that Anderson has developed an intense hatred of Saffron. He has stated this openly on a number of occasions. Further, he is obsessed with the idea that Saffron owes him \$160,000. I have no knowledge of the true position in this regard but consider it possible and probable that Anderson has made these particular accusations to embarrass Saffron to a point where he will make some financial offer to him. Anderson does have the reputation of a stand-over man and blackmailer.

CONCLUSION

67. After studying all the information which has been made available I conclude that there is in fact no evidence available to substantiate any of the allegations made by Anderson into which I have inquired or that any of the Police (and former Police) referred to by him have in any way been guilty of any improper conduct.

1.132 The evidence Anderson gave at his bankruptcy hearing in 1984 exhibited the same characteristics as his evidence at the Nielsen inquest - apparently accurate and useful in some parts, but very much lacking credibility most of the time.

1.133 In para. 1.108 it was noted that a trial of Anderson for larceny was aborted in February 1984 as a result of the broadcast of a TV program. Action was taken against the

242. Deputy Commissioner John Perrin, 'Submission to the Commissioner: Allegations made by James McCartney Anderson at the inquest into the disappearance of Juanita Joan Nielsen alleging misconduct by certain Police Officers in association with Sydney businessman Abraham Saffron', 14 February 1984, para. 53. See paras. 1.98 and 1.106 in this paper on the background.

243. *ibid.*, para. 54.

244. *ibid.*, para. 60. See para. 2.24 in this paper on Anderson being named as an informant.

program's maker and others for contempt of court. Anderson was a witness in the contempt proceedings. Justice Hope commented.²⁴⁵

I should first say that I found Anderson to be an unsatisfactory witness. This does not mean that I do not accept any of his evidence, but it does mean that in so far as the establishment of some part of the Registrar's case depends upon an acceptance of his evidence, I could not be satisfied on the criminal onus about that matter on his evidence alone.

In these proceedings, Anderson's evidence was not accepted on several specific points where it conflicted with that of another witness.²⁴⁶

1.134 As a further example of Anderson's general lack of credibility, the Chairman of the New South Wales Legislative Assembly's select committee on prostitution told the Legislative Assembly in November 1985.²⁴⁷

It is well known that Mr James McCartney Anderson did appear before the Select Committee upon Prostitution. His evidence, however, was not of any great value to the committee. He made a lot of allegations, particularly *in camera*. He was asked to verify those allegations at a subsequent time. He has not yet appeared again to verify those allegations, and until he does so it is not the committee's intention to recall him. As I emphasize again, his evidence was not of great value - a lot of allegations that are completely unsubstantiated.

1.135 After the Authority began talking to Anderson, the New South Wales Police considered using him as a witness against Saffron in a licensing matter. The decision was made at a very senior level not to use him because of the belief that he would tarnish or discredit the police case. On the other hand, Anderson was used by the Crown, and apparently gave useful evidence, in the November 1986 trial of Richard Hugh Barton in the New South Wales District Court.

1.136 A constant feature of Anderson's sworn testimony was to respond to questions he found it awkward to answer by saying 'I cannot recollect'.²⁴⁸ He appeared to think that by giving this answer he could avoid possible perjury charges while still allowing himself the opportunity of giving the proper answer later if it suited him to do so.

Anderson and the Media

1.137 For some time before the NCA interviewed him in December 1984, Anderson had been speaking freely to the media about his life and activities. In August-September 1983

245. *Registrar of the Court of Appeal v Willesee* (1985) 3 NSWLR at p. 664.

246. *ibid.*, pp. 664, 665.

247. New South Wales, Legislative Assembly, *Hansard*, 28 November 1985, p. 11,220.

248. A representative example is given in para. 1.118 in this paper, in the context of his source of funds in 1984.

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Anderson gave extensive recorded interviews to TV producer and personality, Mike Willesee. The following background to the interviews emerged in court in 1985:²⁴⁹

Willesee's evidence is that Anderson approached him, probably early in August 1983, about his allegations of corruption. Anderson's evidence is that it was Willesee who approached him and that his purpose in giving information about his allegations to Willesee was not to obtain publicity for them, but to ensure that some responsible person would be in possession of what he alleged to be the facts in the event that he was killed. I do not accept the evidence of Anderson on these matters. ... on 30 September [1983] ... Trans Media and Anderson signed a document confirming an agreement made between Trans Media and Anderson that it should have the exclusive rights to Anderson's personal story of events relating to his career in and around the Kings Cross area, and in particular his information relating to matters of bribery, corruption and taxation avoidance.

1.138 In 1984, Anderson assisted Tom Mangold, who was making a TV documentary on crime and corruption for British television.

249. *Registrar of the Court of Appeal v Willesee* (1985) 3 NSWLR at pp. 664-56 (Hope JA).

PART 2: NIELSEN DISAPPEARANCE AND INQUEST

Introduction

2.1 This part of the secretariat paper describes the disappearance of Juanita Joan Nielsen and the subsequent investigation into her death. The description does not purport to be comprehensive. It focuses on aspects which seem relevant to the relationship between the Authority and Anderson. In particular, the description is intended to provide background to the proposition that the Authority should have had more regard to Anderson's possible role in Nielsen's disappearance, and the view that the Authority itself should have investigated his role.

2.2 Nielsen was born in 1937, the only child of a wealthy family. In 1975, she lived at 202 Victoria Street in Sydney's Kings Cross. For about seven years prior to 1975 she had operated a business of publishing a local fortnightly newspaper called 'NOW'. She ran the editorial side of the paper from her home, assisted by her partner, David John Farrell.

2.3 On the evening of 5 July 1975, Nielsen was reported by Farrell as a missing person to Darlinghurst Police Station in Sydney. There were no undisputed sightings of Nielsen after the morning of 4 July. A road maintenance gang found her handbag containing her business cards on 7 July on the side of the eastbound lane of the F4 freeway near Penrith.¹ It was regarded as rubbish and taken to the rubbish tip. However, one of the gang saw media publicity relating to Nielsen soon after and contacted police. The bag was then retrieved from the rubbish tip.² Following a search, personal effects that might have been in her handbag at the time she was last seen were found scattered along the roadside near where the handbag was found.³ Torn cheque blanks from Nielsen's cheque book were also found, near the Nepean bridge at the western end of the freeway.⁴

2.4 No-one has ever been charged in relation to her death. There were no further issues of her newspaper after her disappearance.⁵ An inquest into her disappearance was held between 15 August 1983 and 10 November 1983 by a coroner sitting with a jury. Amongst the more than sixty witnesses who appeared at the inquest were Anderson, his wife and Saffron. In his summing up to the jury the coroner said:⁶

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1. Nielsen inquest, transcript, 23 August 1983, pp. 362, 366.
 2. Nielsen inquest, transcript, 23 August 1983, p. 363.
 3. Nielsen inquest, transcript, 23 August 1983, p. 382.
 4. Nielsen inquest, transcript, 24 August 1983, p. 397.
 5. Nielsen inquest, transcript, 24 August 1983, p. 422.
 6. Nielsen inquest, transcript, 9 November 1983, p. 4029. See also *ibid.*, 7 November 1983, p. 3869.

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If during the course of this inquest I was of the opinion that the evidence had established a prima facie case against any known person for ... an indictable offence I was required to terminate the inquest, discharge the jury and forward the transcript to the Attorney-General. The law provides that the decision regarding an indictable offence is reserved for me the Coroner and is not for the jury. It is my opinion that the evidence given at this inquest does not establish a prima facie case against any known person for an indictable offence where the cause of death is in issue.

Neither the counsel assisting the Coroner nor any of the counsel given leave to appear submitted that there was evidence to establish a prima facie case against a known person for an indictable offence in relation to Nielsen's disappearance.

2.5 The jury found that Nielsen was dead but could not say how, when or where she died. The jury added a rider to its finding.⁷

There is evidence to show that the police inquiries were inhibited by an atmosphere of corruption, real or imagined, that existed at the time.

2.6 Detective Sergeant Karl Arkins was involved in investigating Nielsen's disappearance in the period 9 July 1975 to early August 1975.⁸ He returned to the Nielsen case in early October 1976, and took charge of it towards the end of that month.⁹ He was still in charge at the time of the inquest in 1983.¹⁰ Detective Sergeant Norman Maroney joined the investigation on 7 July 1975 and remained involved in it throughout.¹¹ He was the senior officer on the case during Arkins' absence on other duties between August 1975 and October 1976.¹²

2.7 The following description of the Nielsen case is based mainly on evidence presented at the inquest into her disappearance.

Property Development in Victoria Street

2.8 Victoria Street was a mainly residential street near Kings Cross. In the early 1970s, most of the buildings were large old houses, many of which had been divided into flats, and many of which were in run down condition. For several years prior to 1975, the street had been the focal point in a dispute between developers and those who wanted to preserve the

7. Quoted in Evan Whitton, *Can of Worms: A citizen's reference book to crime and the administration of justice*, Fairfax Library, Sydney, 1986, p. 313.

8. Nielsen inquest, transcript, 15 August 1983, p. 41; 16 August 1983, p. 54.

9. Nielsen inquest, transcript, 17 August 1983, pp. 107-08.

10. Nielsen inquest, transcript, 4 November 1983, p. 3855.

11. Nielsen inquest, transcript, 17 August 1983, p. 105; 19 August 1983, p. 236; 22 August 1983, p. 308.

12. Nielsen inquest, transcript, 22 August 1983, pp. 308-09.

existing character of the street and the availability of low-cost accommodation in the inner city. Developers had gradually acquired properties in the street in the early 1970s.

2.9 Prominent amongst the developers in terms of project size and financial exposure was Victoria Point Pty Ltd. This was a family company of Frank William Theeman.¹³ In July 1973, Victoria Point Pty Ltd obtained council approval for a major development in Victoria Street.¹⁴ However, this approval lapsed when Victoria Street became part of plans to re-develop the whole Woolloomooloo basin.¹⁵ The western side of Victoria Street, which overlooks the Woolloomooloo basin, was included in the Woolloomooloo plan agreed between city, State and Federal authorities in 1974.¹⁶

2.10 Meanwhile, tenants had been evicted by the developers amid accusations that harassment, intimidation and stand-over tactics were being used.¹⁷ At the request of some of the residents, the Builders Labourers' Federation imposed 'green bans' on development of Victoria Street and other areas in the vicinity.¹⁸ Other unions also supported those opposing the developers.¹⁹ The union actions proved expensive for developers, as they were incurring major costs in holding sites they had acquired.

2.11 Squatters had moved into vacant properties in Victoria Street, allegedly with the encouragement of those opposing the developers.²⁰ The squatters defied court orders for their removal.²¹ Persons with a reputation for violence were employed as security guards in 1973-74 to guard properties, to remove squatters and to prevent them re-occupying the vacant properties. Allegations were widespread that force and intimidation were being used. At the same time Theeman said he was receiving death threats and bomb threats.²² At one stage in 1974 Theeman employed armed guards to protect his home.²³

13. Nielsen inquest, transcript, 5 September 1983, p. 1061.

14. Nielsen inquest, transcript, 5 September 1983, p. 1063.

15. Nielsen inquest, transcript, 5 September 1983, p. 1065.

16. Nielsen inquest, transcript, 5 September 1983, p. 1065.

17. e.g. see Nielsen inquest, transcript, 24 August 1983, p. 452; 2 September 1983, pp. 972, 1008-09.

18. e.g. see Nielsen inquest, transcript, 2 September 1983, p. 1005.

19. e.g. see Nielsen inquest, transcript, 2 September 1983, p. 1006.

20. Nielsen inquest, transcript, 5 September 1983, p. 1063.

21. Nielsen inquest, transcript, 5 September 1983, p. 1063.

22. Nielsen inquest, transcript, 5 September 1983, p. 1070.

23. Nielsen inquest, transcript, 5 September 1983, pp. 1029, 1055.

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2.12 One of the persons hired by Theeman to provide security services in 1973-75 was Joe Meissner, a karate expert who hired members of karate clubs to assist him.²⁴ Others used were ex-police.²⁵ One of these, used between mid 1973 and mid 1974, was Frederick Claude Krahe.²⁶ Krahe was later to be named as a suspect in the Nielsen case.²⁷ He had retired early on medical grounds from the New South Wales Police in 1972. His reputation as a police officer was described in a 1985 book as:²⁸

King of the crooked police during the Askin era, he organised the abortion rackets, armed hold-ups, the framing of criminals and bribery payments among prostitutes and the police, and he maintained a reputation feared in the Sydney underworld.

2.13 At the time of his retirement, Krahe was the focus of allegations by a Kings Cross prostitute and later brothel keeper, Shirley Briffman. She claimed that he had accepted protection money from her for several years, and was corruptly involved with criminals in a variety of ways. Thirty-three other police were named by her as part of her allegations, which she made in July and August 1971.²⁹ Briffman was found dead in her Brisbane apartment in March 1972. Although press reports said she died of a heart attack or a drug overdose, there was a widespread rumour that Krahe had killed her.³⁰

Alleged Kidnapping of Arthur King

2.14 At the height of the Victoria Street confrontation in 1973, Arthur Charles King briefly disappeared. This disappearance took on new importance following Nielsen's July 1975 disappearance. In 1973, King lived in a flat at 97A Victoria Street. He was active in the Victoria Street Residents' Action Group which was campaigning to resist evictions and prevent large-scale re-development. On Saturday, 14 April 1973, he disappeared. His disappearance was reported to police³¹ and in the media.³² He returned to his flat on the following Monday.

24. Nielsen inquest, transcript, 5 September 1983, pp. 1028-29, 1034.

25. Nielsen inquest, transcript, 17 August 1983, p. 135; 5 September 1983, p. 1046.

26. Nielsen inquest, transcript, 5 September 1983, p. 1070.

27. See para. 2.70 below.

28. David Hickie, *The Prince and the Premier*, Angus & Robertson, Sydney, 1985, p. 281.

29. *ibid.*, pp. 286-88.

30. *ibid.*, p. 284.

31. Nielsen inquest, transcript, 16 August 1983, p. 67.

32. e.g. see 'Fears for missing residents' advocate', *Sydney Morning Herald*, 16 April 1973, p. 3.

2.15 On the morning of 18 April 1973, King attended the Darlinghurst Police Station with a lawyer.³³ He was interviewed and said that about 5.00 am on 14 April 1973 he walked to the Cahill Expressway, hitched a series of lifts to Port Stephens where he had a boatshed.³⁴ He remained at the boatshed suffering from migraine and had no contact with anyone. He hitch-hiked back to Sydney on 16 April, and went to St Vincents Hospital where he received treatment for the migraine. After returning to Victoria Street flat on the Monday, he went to live with a friend in Balmain.

2.16 Following Nielsen's disappearance in July 1975, King was re-interviewed about his 1973 disappearance.³⁵ He declined to make any written statement, but said he adhered to the information he had supplied in his 1973 interview. According to police, his solicitor then contacted the police to say King did not want to make any further statements.³⁶ At a further interview, on 29 December 1976, police told him they had information that his 1973 story was untrue.³⁷ King continued to maintain that the information he gave in the 1973 interview was true and he had nothing further to add that would affect investigations into the disappearance of Nielsen.³⁸

2.17 King gave a very different version of his disappearance in a private meeting with the New South Wales Attorney-General in 1977, and in a statement to police in May 1983. He gave this later version in public at the Nielsen inquest in August-September 1983.³⁹ In this version, he said he had been seized from his flat in the early hours of the morning, blindfolded and driven away. He was initially in the back of the car on the floor, but an hour or two later was transferred to the boot during a stop on a dirt road. Still blindfolded, he was transferred to a motel room which he believed was on the south coast and held there the rest of the Saturday and all of Sunday. Before dawn on the Monday he was put in the boot of the car. He managed to remove his blindfold and found that there was a hole in the boot out of which he could see. He noticed that the car entered Sydney from the south, passing the Royal National Park on the way. The car travelled through Long Bay, Bondi, Dover Heights and Rose Bay. He was able to see through the hole that, during a stop of about ten minutes, the

33. Nielsen inquest, transcript, 16 August 1983, p. 67.

34. Record of interview between Det. Sgt. J. Bryant and Arthur Charles King, Darlinghurst Police Station, 18 April 1973; Nielsen inquest, transcript, 16 August 1983, p. 67.

35. NSW Police running sheet, Interview of Arthur Charles King re the Disappearance of Juanita Nielsen, 18 August 1975.

36. *ibid.*

37. Nielsen inquest, transcript, 16 August 1983, p. 68; 31 August 1983, pp. 823-24.

38. Nielsen inquest, transcript, 16 August 1983, p. 68; 18 August 1983, p. 216; 23 August 1983, pp. 350-51.

39. Kings evidence is to be found in Nielsen inquest, transcript, 31 August - 1 September 1983, pp. 805-86.

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car was outside the Venus Room in Orwell Street.⁴⁰ He was then driven to a nearby lane and released.

2.18 A person employed by Anderson, Lloyd Marshall, was asked at the Nielsen inquest:⁴¹

Q. What is your knowledge of another person who was kidnapped from the Kings Cross area? A. At some stage Mrs Anderson told me that she'd received phone calls at their home from two men who had a person in the boot of a car and these men wanted her to wake Mr Anderson up who was asleep at the time and talk to him about what they should do with the man in the boot of the car.

2.19 Marshall said he was unable to date the incident itself. He said the conversation could have happened at any time from the latter half of 1974 to the latter half of 1975, and he believed that the incident itself had just happened when Mrs Anderson told him of it.⁴² Mrs Anderson denied at the inquest that either the incident or the conversation had ever occurred, saying that Marshall was 'a profound liar'.⁴³

2.20 King said he was instructed that on his release he was to leave his flat within two days, take no further part in the residents' action group, and tell no-one about the abduction. To explain his absence, he was told to go to St Vincent's Hospital and say he had a migraine headache. He did so, and near the hospital noticed a man apparently watching him. When, some time later, he saw Anderson, he was 'about 80% positive' that Anderson was the same man.⁴⁴ At the Nielsen inquest, Anderson denied all knowledge of King's visit to the hospital following his abduction.⁴⁵

2.21 King explained that fear was the main reason he made no complaint and remained silent about the abduction.⁴⁶ He was also distrustful of police. His abductors, who said they had abducted him for a fee, had claimed to have had contacts in the police.⁴⁷ Recent events had made him suspect that this might have been true.

40. See paras. 1.21 and 1.53 in this paper on Anderson's links with the Venus Room.

41. Nielsen inquest, transcript, 14 September 1983, p. 1564.

42. Nielsen inquest, transcript, 15 September 1983, pp. 1646, 1676.

43. Nielsen inquest, transcript, 22 September 1983, p. 2086. See also pp. 2051-52. James Anderson also said he had no knowledge of the King abduction: *ibid.*, 30 September 1983, p. 2251.

44. Nielsen inquest, transcript, 31 August 1983, p. 821.

45. Nielsen inquest, transcript, 29 September 1983, p. 2179.

46. Nielsen inquest, transcript, 31 August 1983, p. 826.

47. Nielsen inquest, transcript, 31 August 1983, pp. 821, 847, 865; 1 September 1983, pp. 875-77.

2.22 On the Wednesday prior to the abduction he had been visited by two uniformed police. At the inquest, he was asked:⁴⁸

Q. What happened when the police officers came? A. They, 2 police officers came to the door, they asked for me and they said, 'Are you Arthur King?' And I said, 'Yes.' And they said, 'Are you the Arthur King doing all these illegal things in the area?' And I asked them what they meant but they just wanted to know my name, they asked me my name again. They wanted to know my date of birth and what I'd been doing. I then asked them in turn why they were asking me all these questions. They refused to answer so I in turn said something like, 'Well I'm, I won't answer your questions unless you explain to me why you're asking them.' At that, one of the or both of the police officers partly entered my flat and took me by the arm and led me outside. As they were leading me outside I called out to the other, to Marcel and told him to phone a friend, I forget who it was, and they took me out and put me in a Mini Minor which was the car they were driving, all the time insisting I tell them my birth date. They started telling me I was wanted for a maintenance order which is a bit strange because I'd never been married.

Q. Where was it that that question was, that was told to you? A. I can't be positive. It was, I feel it was while we were in the car on the way to Darlington Police Station although I can't be positive on that.

Q. What happened when you got to the police station? A. Well nothing happened when we got, we got to the police station, they parked outside, they went inside, left me alone in the car outside, asked me no further questions, came out and without explanation drove me back to my flat.

2.23 One of the police officers involved in this incident told the inquest he had received an anonymous phone call saying that there were maintenance warrants outstanding against a person called Arthur King who was living at 97A Victoria Street. He checked by phone with the Central Warrant Index and found that there were two warrants in this name, and that they would take some time to locate.⁴⁹ He and another officer went and brought King to the police station and obtained his date of birth. At the station they discovered that the warrants were issued in 1953 and 1954, and by reason of King's age and his middle name, he could not be the relevant Arthur King.⁵⁰

2.24 The following evening, Detective Sergeant Brian Ballard and two plain-clothes officers visited King, saying that they had received information that there were drugs on the premises.⁵¹ Ballard told the Nielsen inquest that this information came from an anonymous telephone tip.⁵² Before acting on it, he had checked its likely veracity with Anderson at the Venus Room. Anderson, who Ballard told the inquest was a 'regular police informant', had confirmed the tip.⁵³ Anderson denied Ballard's account and said he had nothing to do with

48. Nielsen inquest, transcript, 31 August 1983, p. 811.

49. Nielsen inquest, transcript, 31 August 1983, pp. 763-65.

50. Nielsen inquest, transcript, 31 August 1983, pp. 765, 768, 772-73.

51. Nielsen inquest, transcript, 30 August 1983, p. 751; 31 August 1983, p. 813.

52. Nielsen inquest, transcript, 30 August 1983, p. 751.

53. Nielsen inquest, transcript, 30 August 1983, pp. 751-52.

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King.⁵⁴ He reacted to the disclosure that he had been a regular police informer by telling the Nielsen inquest.⁵⁵

I take exception to the fact that he alleges that I'm a police informer which is a well known ploy to get someone murdered and the police can investigate the thing and explain it away as a gangland killing.

2.25 At the Nielsen inquest, Ballard was asked if he thought there was any connection between the person who gave the anonymous tip about drugs and Anderson. He replied.⁵⁶

No, not at that stage. After we had arrived at the premises [ie. King's flat] you might say warning bells or something flashed, that you thought that you know, there's a little bit of a trick attached to us being there ... There was nothing to substantiate that suspicion but I sensed that there was probably a little bit of mis-information.

2.26 However, Ballard said he did not go back to talk to Anderson about the matter. He was later asked if he suspected that he was being used by Anderson. Ballard replied that Anderson could have been responsible for the original telephone call, but Ballard had no firm information.⁵⁷

2.27 King told the Nielsen inquest that, almost immediately he heard of the July 1975 disappearance of Juanita Nielsen, he thought the people behind his abduction were responsible for her disappearance.⁵⁸ He said he had never resiled from that belief. Nonetheless, he did not assist the police investigating her disappearance in 1975-76. Nielsen's partner, Farrell, was asked by police why he reported her missing so soon after she was last seen. Farrell referred to King's disappearance, about which rumours had circulated, and said that Nielsen, like King, was an activist on Victoria Street.⁵⁹

Nielsen's Role in Opposing Developers

2.28 Nielsen became interested in the Victoria Street development issue in 1973. An architect who acted as a residents' advocate at the time, Colin James, told the Nielsen inquest.⁶⁰

54. Nielsen inquest, transcript, 30 September 1983, pp. 2251-52.

55. Nielsen inquest, transcript, 30 September 1983, p. 2249.

56. Nielsen inquest, transcript, 30 August 1983, p. 759.

57. Nielsen inquest, transcript, 31 August 1983, pp. 762.

58. Nielsen inquest, transcript, 1 September 1983, p. 881.

59. Statement of Det. Sgt. D.W. Stolle in the matter of Juanita Nielsen, Darlinghurst, 19 August 1977, p. 2

60. Nielsen inquest, transcript, 2 September 1983, p. 968.

I understood that she was born in that part of the street, she had a very close and strong affection to the buildings and the environment and the people who had lived there and I think she had a very nostalgic and affection [sic] for both the appearance of it and the community that had existed there.

2.29 Nielsen gradually became more prominent in the anti-development campaign, and by 1975 was a leading opponent of development and Theeman's plans. In the months prior to her disappearance her newspaper concentrated on news of development plans, taking a very strong line against the developers. She had also, as a resident and on behalf of the Victoria Street Ratepayers' Association, lodged an objection with the council to Victoria Point Pty Ltd's development proposal.⁶¹

2.30 Nielsen was also a member of the Woolloomooloo Residents' Action Group (WRAG), which was actively opposed to the developers' plans for the area.⁶² Other members of WRAG included Mary Ellen Leonard, a long-time resident of Woolloomooloo, and her husband. Mrs Leonard told the Nielsen inquest that in February 1975 two men called at her home asking for her husband, who was not home. The men warned that if she, her husband and other members of their group did not 'slow up and drop off' then 'you know what will happen'.⁶³

2.31 Leonard told Nielsen about this threat. Nielsen told her that, from her description, one of the men could have been the person who called at her home previously. At the inquest, Leonard said she had been told by Nielsen that the caller had told her to 'drop off or she would disappear of the face of the earth'.⁶⁴ Nielsen told Leonard in about May 1975 that she had received threatening phone calls.⁶⁵

2.32 The confrontation over Victoria Street was winding down by early 1975. For example, at the beginning of 1974 Meissner had used up to eighty or a hundred people as security guards in the Victoria Street area.⁶⁶ This large group was disbanded soon after the mass eviction of squatters in January 1974, and by July 1975, only one man was used.⁶⁷ The green bans were all lifted in April and May of 1975, except for a possible union ban on supply of water to development sites. The water authority had been told by the union that a ban on water and sewage services was due to come into effect on 10 July 1975.⁶⁸

61. Nielsen inquest, transcript, 5 September 1983, p. 1074.

62. Nielsen inquest, transcript, 1 September 1983, pp. 915, 919-20.

63. Nielsen inquest, transcript, 1 September 1983, p. 917.

64. Nielsen inquest, transcript, 1 September 1983, p. 918.

65. Nielsen inquest, transcript, 1 September 1983, p. 918.

66. Nielsen inquest, transcript, 5 September 1983, p. 1029.

67. Nielsen inquest, transcript, 5 September 1983, p. 1040.

68. Nielsen inquest, transcript, 22 August 1983, pp. 261, 303.

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2.33 Shortly before she disappeared, Nielsen formed a close personal relationship with the secretary at the time of the union covering water and sewage employees.⁶⁹ In mid June 1975, Nielsen's newspaper publicised the fact that his union was prepared to assist people in Victoria Street who were being treated unjustly by landlords and developers.⁷⁰

2.34 A further obstacle to Theeman's plans was removed when the city, State and Federal governments reached agreement, signed on 27 June 1975, for development of the Woolloomooloo basin.⁷¹ Theeman said he had been told that council and environmental approval of his Victoria Street plans could be expected within weeks of that agreement being signed.⁷² He told the Nielsen inquest that he was aware some months before it was signed that the agreement was going to occur.⁷³

2.35 Because of her newspaper campaign, her links with a supportive union, and her position as a Victoria Street property owner and ratepayer it was possible to see Nielsen in July 1975 as one of the few significant obstacles to the plans of developers. Theeman told the Nielsen inquest jury that Victoria Point Pty Ltd's interest charges on monies borrowed to finance the Victoria Street project were accruing at the rate of \$16,800 a week in June 1975.⁷⁴ Counsel for the Nielsen estate, N.A. Newton, suggested to the inquest jury that this provided a very strong reason to try to remove the blockage.⁷⁵ Newton continued:⁷⁶

it is not an exaggeration in my submission ladies and gentlemen to say this. That at the time she disappeared Mrs Nielsen was probably the only possible bar to the work proceeding at that time. She was the person who had the strong association with the only union preventing work going on. Hers was the voice that would not be stilled and hers were the hands that would not cease to write in opposition. ...

... basically it was the Victoria Point Proprietary Limited development proposal which was the only one in which, at the time she disappeared, her opposition would have been of any importance at all. In other words nobody else really had any motive to silence the voice and the hands of Mrs Nielsen.

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69. Nielsen inquest, transcript, 25 August 1983, p. 516.
70. Record of Interview between Det. Sgt. N. Maroney and David John Farrell, CIB, 13 July 1975, p. 1; Nielsen inquest, transcript, 2 September 1983, pp. 988-90.
71. Nielsen inquest, transcript, 2 September 1983, pp. 950-53, 978-79.
72. Record of interview between Det. Sgt. K. Arkins and Frank Theeman at CIB, Sydney, 5 August 1975, p. 3.
73. Nielsen inquest, transcript, 6 September 1983, p. 1152.
74. Nielsen inquest, transcript, 6 September 1983, p. 1091.
75. Nielsen inquest, transcript, 7 November 1983, p. 3910.
76. Nielsen inquest, transcript, 7 November 1983, pp. 3911, 3914.

2.36 At the inquest, Theeman denied that Nielsen was an obstacle to his development.⁷⁷ He said he was unaware in July 1975 of any connection between her and the water employees' union,⁷⁸ or of the proposed ban on his development by that union.⁷⁹ He regarded the ratepayers' association led by Nielsen as a front to give her credibility rather than an association having the genuine ratepayer support.⁸⁰

Events Immediately Surrounding Nielsen's Disappearance

2.37 On the morning of the day she disappeared, Friday, 4 July 1975, Nielsen telephoned her business partner, Farrell, at about 10.30 and told him she was running late for her appointment at the Carousel club, in Roslyn Street, Kings Cross.⁸¹ Nielsen had told Farrell about two weeks before this that she felt that her activities against developers were putting her at risk, and she arranged with Farrell to keep him regularly informed of her whereabouts.⁸²

2.38 The first floor club called the Carousel (previously known as Les Girls) had a second floor bar called the VIP Lounge. The club was managed by Anderson and owned by a Saffron-controlled company. Nielsen's appointment was with Edward Frederick Trigg, the VIP Lounge's night manager.⁸³

2.39 Nielsen had been told by Trigg that the Carousel wanted to advertise the availability of businessmen's lunches in the VIP Lounge. A key issue following her disappearance was whether the Carousel was genuinely interested in placing advertising, or whether it was just a ploy to get Nielsen to come to the Carousel. Some witnesses took the view that the state of the premises at the time made it impractical to use them without renovation for businessmen's lunches.⁸⁴ In addition, the inquest was told, the premises were not licensed for lunches.⁸⁵

2.40 Nielsen spent the weekend before her disappearance at her parents' house. Someone went to considerable trouble to obtain the phone number in order to contact her there on the

77. Nielsen inquest, transcript, 5 September 1983, pp. 1079, 1082, 1087; 6 September 1983, p. 1123.

78. Nielsen inquest, transcript, 6 September 1983, p. 1123.

79. Nielsen inquest, transcript, 6 September 1983, p. 1140.

80. Nielsen inquest, transcript, 6 September 1983, p. 1125.

81. Nielsen inquest, transcript, 24 August 1983, p. 412.

82. Nielsen inquest, transcript, 24 August 1983, p. 409.

83. Statement of Edward Frederick Trigg, CIB, 13 July 1975, pp. 1-2.

84. e.g. Nielsen inquest, transcript, 23 August 1983, p. 332; 12 September 1983, p. 1383.

85. Nielsen inquest, transcript, 7 September 1983, p. 1197.

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Sunday.⁸⁶ The caller, who did not give his name, wanted to arrange a meeting at the Camperdown Travelodge motel to discuss advertising in her newspaper. He would not be specific, saying only that the advertising related to landscaping. Nielsen told her partner, Farrell, that she was suspicious of the caller and refused to agree to the meeting.⁸⁷ Police investigating Nielsen's disappearance eventually found that the caller was Lloyd Charles Marshall.

2.41 Marshall was at that time a public relations agent engaged to handle advertising for the Carousel and act as a personal assistant to Anderson's wife, who was looking for possible locations interstate for night clubs and casinos.⁸⁸ In the latter capacity Marshall often travelled with Mrs Anderson, and was away from Sydney when Nielsen disappeared. Anderson told the Nielsen inquest that Marshall had, by mid-June 1975, been relieved of his position in relation to the Carousel for 'loading the advertising bills about thirty-five percent through one of his own companies'.⁸⁹ Marshall had, however, been retained at Anderson's personal expense to continue assisting Mrs Anderson.⁹⁰

2.42 Anderson said that when Marshall was relieved of his advertising duties, Trigg had been given responsibility for the Carousel's advertising. Counsel for a member of the Nielsen family, J. Basten, put to the inquest jury:⁹¹

Mr Trigg, in my submission had absolutely no qualifications for such a job and if Lloyd Marshall had not performed it adequately as an ex-journalist and someone who had some time to spend on it, Mr Trigg would have no hope and of course the evidence is that Mr Trigg only ever did one thing in relation to that role and that was to try and contact Juanita Nielsen. A contact which ended on 4th July.

2.43 Marshall told the inquest he had been instructed - he thought it was by Trigg on Anderson's behalf⁹² - to invite Nielsen to a press night for a new show at the Carousel on 13 June 1975.⁹³ She would not normally have been invited as her newspaper did not give free

86. Nielsen inquest, transcript, 24 August 1983, p. 408.

87. Nielsen inquest, transcript, 24 August 1983, p. 409.

88. Nielsen inquest, transcript, 13 September 1983, p. 1522; 14 September 1983, p. 1612a; 15 September 1983, pp. 1664, 1683-84.

89. Nielsen inquest, transcript, 23 September 1983, p. p. 2126.

90. Nielsen inquest, transcript, 23 September 1983, p. 2127.

91. Nielsen inquest, transcript, 8 November 1983, p. 3937.

92. Nielsen inquest, transcript, 14 September 1983, pp. 1586-88. Compare *ibid.*, pp. 1598-99: instruction could also have been from Crawford or Mrs Anderson.

93. Nielsen inquest, transcript, 13 September 1983, pp. 1536, 1537.

publicity.⁹⁴ She did not come, and the inquest was told that Anderson was 'up in arms' as a result.⁹⁵ Trigg later told police: 'When she didn't turn up Jim [Anderson] really blew his top ...'.⁹⁶ However, Marshall denied that Anderson was upset with him for Nielsen's failure to attend.⁹⁷

2.44 According to Marshall, Trigg told him to try to arrange a meeting with Nielsen at the Camperdown Travelodge.⁹⁸ Evidence presented at the inquest showed that Trigg had stayed in this motel while looking for a flat.⁹⁹ According to evidence at the inquest, the Camperdown Travelodge was selected because its lift gave direct access to the car park, which enabled rooms to be accessed without being seen.¹⁰⁰ The room was to be booked in a fictitious name.¹⁰¹ Marshall told the inquest that Trigg gave him the impression that he wanted to talk to Nielsen in relation to some material that she had which was unfavourable to either Saffron or Anderson or both of them.¹⁰² He was asked:¹⁰³

Q. Do you recall whether anything was said about what would happen at the appointment that was now arranged? A. Mr Trigg wanted to speak to Mrs Nielsen, that was the reason for the meeting. to, I got the impression that whatever she had that was incriminating was in a document form and that she was threatening to expose this material, that he was going to try to persuade her not to or to buy it from her or something like that. But the conversation that led to that conclusion I can't relate.

2.45 Marshall later told the inquest that in his own mind he justified his use of subterfuge to lure Nielsen to a meeting 'by the fact that she was blackmailing somebody'.¹⁰⁴ He assumed that Anderson was giving instructions to Trigg.¹⁰⁵

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94. Nielsen inquest, transcript, 13 September 1983, p. 1536.
 95. Nielsen inquest, transcript, 12 September 1983, p. 1392.
 96. Nielsen inquest, transcript, 14 September 1983, p. 1570.
 97. Nielsen inquest, transcript, 15 September 1983, p. 1658.
 98. Nielsen inquest, transcript, 13 September 1983, p. 1538.
 99. Nielsen inquest, transcript, 16 August 1983, p. 76; 8 September 1983, p. 1253; 19 September 1983, pp. 1793-94.
 100. Nielsen inquest, transcript, 14 September 1983, p. 1568; 16 September 1983, p. 1778.
 101. Nielsen inquest, transcript, 13 September 1983, p. 1538.
 102. Nielsen inquest, transcript, 13 September 1983, p. 1538; 15 September 1983, pp. 1667-68.
 103. Nielsen inquest, transcript, 13 September 1983, p. 1540.
 104. Nielsen inquest, transcript, 15 September 1983, p. 1662.
 105. Nielsen inquest, transcript, 14 September 1983, p. 1587.

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2.46 Marshall said that, acting on instructions, he made the Sunday phone call to try to arrange the Camperdown Travelodge meeting. Trigg and a friend of Trigg and Marshall, Shayne Martin-Simmonds, were both present when he made the phone call. (Martin-Simmonds was later employed by Trigg and Anderson at the Laramie and Venus Room.¹⁰⁶ In July 1975, he was employed by a clothing company, and was away sick on 4 July 1975.¹⁰⁷) Marshall said that he was asked some days later, when he was in Brisbane, to make a further attempt to contact Nielsen to set up a motel meeting.¹⁰⁸ He could not reach her. However, he said he left a message on her answering machine to the effect that he wanted to arrange a further meeting with her, and naming the time and place: he could not recall at the inquest if the place was to be the Camperdown Travelodge.¹⁰⁹

2.47 Trigg had a long criminal record, including convictions for living off the earnings of prostitution, for stealing, and for receiving stolen goods.¹¹⁰ He had been employed by Anderson at the Carousel club in various capacities since March 1984. On 30 June 1975, Trigg had called at 202 Victoria Street. He spoke to Farrell, who said Nielsen was unavailable, and asked about advertising rates in her newspaper.¹¹¹ He said the Carousel was thinking of starting businessmen's lunches in the VIP Lounge and wanted to advertise these lunches.

2.48 Trigg was first seen by the Nielsen investigators in the late evening of 6 July 1975. Detective Sergeant D.W. Stolle's statement on the meeting records that Trigg was told:¹¹²

'... We are making inquiries into the disappearance of Juanita Nielsen and we have been informed that she came to see you on Friday the 4th July, and this is the last place she was seen'. He said, 'Yes, she came to see me about advertising. I spoke to a man named Farrell early last week. I had never met her before and I rang on Thursday and made an appointment to see her at 10.15 am on Friday'. I said, 'Did she keep the appointment?' He said, 'She was not there at 10.15 am so I rang her about 10.30 am and she came around about 5 minutes later or so'. I said, 'What was the appointment for?' He said, 'She came about 10.40 am and it was about publicity for the disco. She only stayed for a few minutes, five or ten or so because I told her that the directors of the establishment had decided not to advertise at that time due to poor business. She told me she had a luncheon appointment but she did not say where or with who. She said it was for 12 midday.' I said, 'What was she wearing when she left here?' He said, 'She was dressed in a beret style hat,

106. Nielsen inquest, transcript, 12 October 1983, p. 2743.

107. Nielsen inquest, transcript, 22 August 1983, p. 291.

108. Nielsen inquest, transcript, 13 September 1983, p. 1541; 14 September 1983, pp. 1591-95.

109. Record of Interview between Det. Sgt. K. Arkins and Lloyd Charles Marshall, Townsville, 17 November 1976, p. 6.

110. Nielsen inquest, transcript, 20 October 1983, pp. 3102-05.

111. Nielsen inquest, transcript, 24 August 1983, pp. 410-12.

112. Statement of Det. Sgt. D.W. Stolle in the matter of Juanita Nielsen, Darlinghurst, 19 August 1977, p. 2.

dark slacks and top and a tangerine leather jacket'. I said, 'Can you tell us anything else that might help?' He said, 'No, that's the last I saw of her'.

2.49 Trigg was interviewed again by police briefly the next evening (7 July) and asked if he had told Nielsen that the directors had decided against advertising. According to Maroney:¹¹³

Trigg said, 'No, just that the arrangements were not completed, I paid her \$130 for the advertising, here's the receipt she gave me'. Trigg handed me a piece of paper with handwriting on it and I saw that it was a receipt in the sum of \$130 signed by Juanita J. Nielsen. ... I said, 'I intended to obtain a statement from you tonight about the matter, but another urgent matter has arisen and I will contact you later'.

According to Trigg, Nielsen was to confirm the details of the advertisement with Anderson later.

2.50 Trigg was interviewed in more detail on 13 July 1975. He adhered to the version of events he gave on 7 July, rather than the 6 July version. After describing how Nielsen arrived on the morning of 4 July and came up to the second floor bar, Trigg's statement continued:¹¹⁴

I then said, 'The position is this, we would like to take a half page of advertising in your paper, however, Mr Anderson is away on business and I am not expecting him back until Friday or over the weekend. Would it be possible for me to pay you now the amount required for the half page advertisement and could you make arrangements sometime during the following week to see Mr Anderson for the actual wording and make-up of the advertisement.' She said, 'Yes' or something like that meaning that it was all right. I then ... took ... one hundred and thirty dollars and gave it to Mrs Nielsen; in fact I placed it on the counter. Mrs Nielsen then looked through her bag and took from it a large notebook and she said to me, 'I don't have a receipt book with me but I can assure you that this is quite legal'. I said, 'That will be fine'. She said, 'How much of the money are you paying?' I said, 'The full amount one hundred and thirty dollars'. She then picked the money up and counted it and wrote out the receipt. She then took the receipt from the pad and gave it to me. I then remarked, 'I am going back home to bed' and she said to me, 'You are lucky, I have to go to lunch and I don't feel like going'. ... I walked with her down the stairs to the first floor landing where she said goodbye and she said, 'I will contact Mr Anderson early next week'. I agreed and she left.

2.51 Trigg was asked if there was anyone else on the premises when he met with Nielsen. He said yes, a receptionist, Loretta Crawford and possibly the cleaner, who was Anderson's father-in-law.¹¹⁵ Crawford was interviewed by police on 15 July 1975 and confirmed Trigg's version of Nielsen's departure from the Carousel.¹¹⁶

113. Statement by Det. Sgt. N.W. Maroney in the matter of Trigg, Martin-Simmonds and Marshall charged with conspiracy, 20 March 1978, p. 1.

114. Statement of Edward Frederick Trigg, CIB, 13 July 1975, pp. 2-3.

115. Statement of Edward Frederick Trigg, CIB, 13 July 1975, pp. 3, 4.

116. Nielsen inquest, transcript, 15 August 1983, pp. 47-48; 14 September 1983, p. 1419.

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2.52 Maroney told the Nielsen inquest that police suspicions were raised by Trigg's change in story,¹¹⁷ and that police had doubts about Trigg's claim that advertising for businessmen's lunches was planned in Nielsen's newspaper.¹¹⁸ Maroney was asked at the Nielsen inquest:¹¹⁹

Q. Since Eddie Trigg came from premises owned it appears by Mr Saffron and conducted by Mr Anderson, did you feel that you could depend upon his word in the description of events that he gave? A. ... Well at this stage or at that particular stage you'd have to accept what he said.

2.53 Maroney said that police inquiries were led away from Trigg and the Carousel by Crawford's statement.¹²⁰ In a letter to police on 26 September 1975 and in an interview on 2 October 1975, Anderson supported Trigg's second version on the issue of advertising in Nielsen's newspaper. Maroney said that this support also had some effect in diverting attention away from Trigg.¹²¹

The Yellow Car

2.54 Evidence at the inquest showed that the Nielsen investigation was also diverted from the Carousel in a major way¹²² when a local real estate agent, Glenn Andrew Williams, contacted police on 17 July to say he had seen her after the time she was at the club on the morning of 4 July.¹²³ In a record of interview on 18 July 1975, he told police that he had seen Nielsen, whom he had briefly met some 2 years earlier and knew by sight, getting into a yellow Ford car between 10.20 am and 11.00 am. The car was parked in Darlington Road about 100 metres from the Carousel club and there were two men in the car.

2.55 He said he could give a detailed description of only one of the men. This description resembled the appearance of Martin-Simmonds,¹²⁴ although at this stage police were unaware of Martin-Simmonds and his links with Trigg and Marshall. Williams was later asked if he would be able to identify the men if he saw them again, and said he would not.¹²⁵ Williams

117. Nielsen inquest, transcript, 23 August 1983, p. 329.

118. Nielsen inquest, transcript, 23 August 1983, p. 332.

119. Nielsen inquest, transcript, 22 August 1983, pp. 298-99.

120. Nielsen inquest, transcript, 23 August 1983, p. 329.

121. Nielsen inquest, transcript, 23 August 1983, p. 329.

122. Nielsen inquest, transcript, 18 August 1983, pp. 213-14; 23 August 1983, p. 329.

123. Nielsen inquest, transcript, 22 August 1983, pp. 261-62.

124. Nielsen inquest, transcript, 18 August 1983, p. 162.

125. Nielsen inquest, transcript, 29 August 1983, pp. 617, 627.

was not asked to view Martin-Simmonds in a line-up when police later became aware of Martin-Simmonds' involvement with Trigg and Marshall.¹²⁶

2.56 The information from Williams led police to protracted inquiries trying to identify the car, including attempting to track down some 1,500 registered vehicles matching the description.¹²⁷ A police media release was issued stating that information had been received that Nielsen had been seen to enter the vehicle, not apparently under any duress, and that police were most anxious to interview the persons in the vehicle.¹²⁸ The police never found the car or any further information indicating who the persons in it might have been. Williams was re-interviewed in November 1976 and 'adamantly adhered to his original statement'.¹²⁹

2.57 In summing up to the Nielsen inquest, counsel for a member of her family, J. Basten, referred to the evidence relating to the yellow car.¹³⁰

The evidence is odd in a number of respects. Firstly Mr Williams quite frankly didn't know Juanita Nielsen very well and didn't seem very interested in her on that morning. His evidence is that he was fascinated by the car and he could describe to police the detail of the car down to black protector strips along the side and so on and so forth. He looked with care at the car. He was moving away from the car when he says Mrs Nielsen walked past him and got into the car and he saw her with a turn of his head get into the car. She was a woman of course of distinctive features but she was a woman that he had only met on one occasion of which he had a clear recollection some two years before. Although as you members of the jury ascertained Mr Williams was not colour blind he did not notice the colour of her jacket, a startling tangerine colour if the evidence of Messrs Trigg and Loretta Crawford is to be accepted on that point. He made no acknowledgment to her of her presence. They exchanged no words. It was a passing recognition and in my submission there must be some doubt as to whether or not that was indeed Mrs Nielsen who got into a yellow car on that morning.

2.58 Both prior to and at the Nielsen inquest, there was nothing to suggest that Williams had any connection with the Carousel or Anderson. Therefore he was apparently not asked if any connection existed. Anderson was asked if he knew Williams when he was interviewed on 2 October 1975. He said he did not.¹³¹

126. Nielsen inquest, transcript, 18 August 1983, p. 163.

127. Nielsen inquest, transcript, 17 August 1983, pp. 101-02; 22 August 1983, pp. 282, 296-97.

128. Nielsen inquest, transcript, 22 August 1983, pp. 265-66.

129. Nielsen inquest, transcript, 16 August 1983, p. 65.

130. Nielsen inquest, transcript, 8 November 1983, p. 3941.

131. Record of interview between Det. Sgt. N. Maroney and James McCartney Anderson, Kings Cross, 2 October 1975, p. 1.

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2.59 However, in March 1984, the New South Wales Police received information that Anderson was in possession of a 1981 Daimler car.¹³² The car had been obtained in January 1983 from a finance company by using false documentation, which had been submitted to the finance company by Williams.¹³³ Williams told the Nielsen inquest that his occupation in 1983 was as a finance broker.¹³⁴ The documents gave the applicants' names as Robert James McCartney and Nancy Anne McCartney and included a bogus statement on the applicants' finances from a non-existent firm of accountants. Amongst the bogus 'additional information' submitted with the finance application was the following paragraph:¹³⁵

Applicant is a highly regarded business consultant established in Australia for the past 11 years. Originally from the UK, he set up a corporate trouble shooting service in the early seventies, working for such companies as Victoria Point Pty. Limited, a well known development company controlled by Sir Frank Tieman [sic] and Tim Tieman [sic], attempting to totally redevelop Victoria Street, Kings Cross amidst green bans and protests. Mr McCartney conducted several negotiations with the BLF and agreement for partial redevelopment was reached.

Activities of Ward and Reeves

2.60 Arkins told the Nielsen inquest that the activities of Anthony Reeves and Barry Ward, also had the effect of diverting police attention away from the Carousel.¹³⁶ From mid-July 1975, Ward and Reeves began making extensive inquiries into Nielsen's disappearance. Both were freelance journalists at the time. Reeves became an alderman on the Sydney City Council in 1977 and was still on the Council at the time of the inquest in 1983.¹³⁷ Both were part of an informal group which was concerned about the adequacy of the police investigation at the time.¹³⁸ Some members of the group believed that what they saw as endemic police corruption in the Kings Cross area might be affecting the investigation.¹³⁹ From the stories in the press and contacts with other journalists, Reeves and Ward took the view that speaking to Trigg should be their starting point.¹⁴⁰

132. NSW Police, Organised Crime Squad, Minute re: James McCartney Anderson, born 20/4/30, by Det. Con. P.A. O'Neill, 13 April 1985, p. 1.

133. *ibid.*

134. Nielsen inquest, transcript, 29 August 1983, p. 613.

135. Attachment to Asset Purchase Agreement submitted to Standard Chartered Finance by Centrelease Corporation Pty Ltd for purchase of Daimler Vanden Plas Double Six saloon.

136. Nielsen inquest, transcript, 16 August 1983, p. 65; 17 August 1983, p. 143.

137. Nielsen inquest, transcript, 21 September 1983, p. 1962.

138. Nielsen inquest, transcript, 21 September 1983, p. 1963.

139. Nielsen inquest, transcript, 21 September 1983, p. 1963.

140. Nielsen inquest, transcript, 21 September 1983, p. 1964.

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2.61 Reeves told the inquest that, after an earlier attempt to interview Trigg had been unsuccessful,¹⁴¹ the two journalists went to the Carousel club seeking him late in the evening of 29 September 1975. At about 2.30 am the following morning they located him in the Laramie - another Kings Cross bar and restaurant which Anderson managed and Saffron had interests in. Reeves told the inquest that Trigg became very agitated when they told him why they wanted to speak to him, and he abruptly left them to make a phone call.¹⁴² Reeves said he and Ward anticipated trouble and decided to leave.

2.62 Reeves said that, while walking towards Reeves' house in nearby Darlinghurst, he and Ward were forced into a car by Trigg and another person (later identified as an employee at the Venus Room, Bob Wikki¹⁴³). They were driven to Darlinghurst Police Station. According to Reeves, Trigg entered the station and quickly returned with two uniformed officers who told the journalists as they got out of the car that they were under arrest. They were later charged with being drunk in a public place, the place being outside the police station.¹⁴⁴ Reeves said they were sober at the time. Reeves said they were locked up for the rest of the night and not allowed to phone anyone, and were released at about 8.30 am.¹⁴⁵

2.63 At the Nielsen inquest, Anderson said it was he that Trigg had phoned when Ward and Reeves raised the Nielsen case at the Laramie.¹⁴⁶ He said he had advised Trigg to contact the police, or possibly contacted Darlinghurst Police Station himself - he could not recollect which.¹⁴⁷

2.64 When the case came on in May 1976, it was dismissed by the magistrate, Murray Farquhar. He found that the journalists were drunk. However, he found that they had been abducted and brought by force to the public place where the offence allegedly occurred (outside the police station). On the basis of this finding, the magistrate held that technically they had not been found in a public place within the meaning in the Summary Offences Act.¹⁴⁸ The journalists wrote to the Premier and Minister for Police suggesting that, in view

141. Nielsen inquest, transcript, 21 September 1983, pp. 1964-65.

142. Nielsen inquest, transcript, 21 September 1983, pp. 1967, 1981.

143. Nielsen inquest, transcript, 21 September 1983, p. 1979.

144. Nielsen inquest, transcript, 21 September 1983, p. 1971.

145. Nielsen inquest, transcript, 21 September 1983, p. 1972.

146. Nielsen inquest, transcript, 30 September 1983, p. 2272.

147. Nielsen inquest, transcript, 30 September 1983, p. 2273.

148. Nielsen inquest, transcript, 21 September 1983, pp. 2004-05.

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of the finding that they had been abducted, Trigg and Wikki be charged with assault and abduction. Reeves said that the Premier replied stating that this would not occur.¹⁴⁹

2.65 The two journalists continued their interest in the Nielsen case for nearly three years.¹⁵⁰ They made a statutory declaration on 15 September 1976 which was critical of the police investigation, alleging a police cover-up.¹⁵¹ According to Reeves, in October 1976, Anderson spoke to a colleague of theirs and referred to their inquiries. Anderson reportedly said: 'Go and tell your mates they're playing with fire'.¹⁵²

2.66 Reeves told the Nielsen inquest that, by 1977, he and Ward were pushing for a Royal Commission into the Nielsen case.¹⁵³ They were no longer prepared to provide to police all the information they were finding, because they did not trust the officer then leading the investigation, Detective Sergeant Arkins.¹⁵⁴ Reeves also said that one of the journalists' sources similarly would not provide full information to the police.¹⁵⁵ The source was a drag queen who allegedly had information from another drag queen who was supposed to be the girl friend of someone who was present when Nielsen was killed.¹⁵⁶

2.67 The person who put them in contact with this source was Timothy Francis Rohl. When interviewed by Arkins on 2 November 1976, Rohl said, amongst other things:¹⁵⁷

At this point of time I am not prepared to reveal the name of this person and I am unaware of his address because I have been advised by him and others engaged in similar occupation that their sole source of employment is in jeopardy if they discuss information which comes in their hands with the press or the police. I [ie. Rohl] asked whether or not he knew if Juanita Nielsen had been killed at the Carousel. The reply was in the form of a jocular but knowing statement, in essence it was quote, 'She never even went to the Carousel, it was all a big set up by the police and the heavies to throw the trail off the Lido'. Quote, 'The press took the bait, handed out by the police. She went to the Lido and never came out alive.' I then asked whether or not other people knew this information and he informed me that it was reasonably common knowledge amongst the 'kids'

149. Nielsen inquest, transcript, 21 September 1983, p. 2005.

150. Nielsen inquest, transcript, 21 September 1983, p. 1973.

151. Nielsen inquest, transcript, 16 August 1983, p. 55; 18 August 1983, pp. 167, 174; 21 September 1983, p. 1974.

152. Nielsen inquest, transcript, 21 September 1983, p. 1997.

153. Nielsen inquest, transcript, 21 September 1983, p. 1988.

154. Nielsen inquest, transcript, 21 September 1983, pp. 2010, 2017.

155. Nielsen inquest, transcript, 21 September 1983, p. 2009.

156. Nielsen inquest, transcript, 21 September 1983, p. 2007.

157. Record of interview between Det. Sgt. K. Arkins and Timothy Francis Rohl at Randwick, 2 November 1976, p. 1.

at the Carousel. No one of course would say anything to the police or the press because they would end up the same way.

2.68 This statement supported one of the theories advanced by Ward and Reeves: that Nielsen went to the Lido Motel, which was in Roslyn Street near the Carousel, and was killed there.¹⁵⁸

2.69 Another person whom Ward and Reeves followed up was Heather Pauline Currey. They took the view that police had not properly taken into account her information.¹⁵⁹ Currey had contacted police on 8 July 1975 and was spoken to a week later.¹⁶⁰ However, a statement was not taken from her until 18 February 1977.¹⁶¹ Police apparently did not regard her as a credible witness. Currey said she knew Nielsen by sight and had seen her in the street in Kings Cross on the day she disappeared at a time later than Nielsen's visit to the Carousel. Curry also gave police a different description of the clothing Nielsen was wearing to that given by Trigg. Ward told police that Currie told him on 17 August 1976 that her husband and a friend had expressed grave fears about her becoming involved in the journalists' investigation any further: she would prefer not to see him again.¹⁶²

2.70 Another theory pursued by Ward and Reeves was that Nielsen had been murdered by Fred Krahe.¹⁶³ (Anderson told the Nielsen inquest that he believed that Krahe had murdered Nielsen.¹⁶⁴) The basis on which Ward and Reeves put forward this theory was a statement supposed to have been made in November 1975 by a well-known Sydney criminal figure, Leonard Arthur McPherson. He allegedly said that Krahe had killed Nielsen because she was going to publish something about Krahe's operations around Kings Cross.¹⁶⁵ McPherson's statement had reportedly been made to a Commonwealth Police officer, David Haswell, who said he attached little credibility to it but might have mentioned it to Ward or Reeves.¹⁶⁶

158. Record of interview between Det. Sgt. K. Arkins and Anthony Reeves and Barry Ward, 3 Edward Street, Bondi, 14 October 1976, p. 3.

159. Nielsen inquest, transcript, 16 August 1983, p. 68; 17 August 1983, p. 144.

160. Nielsen inquest, transcript, 29 August 1983, pp. 634, 639.

161. Nielsen inquest, transcript, 16 August 1983, p. 68; 17 August 1983, p. 114.

162. Record of interview between Det. Sgt. K. Arkins and Anthony Reeves and Barry Ward, 3 Edward Street, Bondi, 14 October 1976, p. 9.

163. e.g. see Record of interview between Det. Sgt. K. Arkins and Anthony Reeves and Barry Ward, 3 Edward Street, Bondi, 14 October 1976, pp. 2, 3-4; Nielsen inquest, transcript, 17 August 1983, p. 144.

164. Nielsen inquest, transcript, 29 September 1983, pp. 2179-80, 2189-90; 5 October 1983, pp. 2428, 2434.

165. Record of interview between Det. Sgt. K. Arkins and Det. Insp. D.H. Haswell of the Commonwealth Police, Police Headquarters, 4 January 1977, p. 1.

166. *ibid.*, pp. 2, 3-4.

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Haswell did not pass it on to the Nielsen investigators, who learned of it from Ward and Reeves.¹⁶⁷

2.71 The Nielsen investigators then interviewed Haswell and McPherson. The latter told them on 4 January 1977 that he had told Haswell the story about Krahe. However, he said the story was merely supposition on his part.¹⁶⁸ The Nielsen investigators did not bother to interview Krahe.¹⁶⁹ Krahe died in December 1981.¹⁷⁰ Arkins was asked at the Nielsen inquest why he did not interview Krahe. He replied:¹⁷¹

Q. Mr Krahe was an ex police officer you have told us who used to be in charge of a section in which you worked? A. Yes.

Q. Apart from that factor was there any reason why you didn't interview Mr Krahe himself? A. None at all.

Q. Did the fact that he had been your superior at one stage influence you in that regard? A. Well, I didn't ever regard him as my superior. He was certainly senior to me, but it certainly did have no bearing whatsoever on my decision, certainly not.

Q. So you can give us no reason why you didn't interview Mr Krahe about Mrs Nielsen's disappearance? A. I didn't see the reason to interview him. One must bear in mind with perhaps Mr Krahe in particular that he was a former police officer. He would have had a number of contacts within the Police Department, and if he had any information in relation to this issue I would assume that he would have passed it on, if he was not involved. If he was involved it would be useless me going to see him unless I had something concrete to put to him.

2.72 At the Nielsen inquest in 1983 it was no longer suggested by any of the counsel or investigators that McPherson's story had any basis in fact.¹⁷² McPherson appeared before the inquest, but denied that he had ever told the Nielsen investigators that he had given the Krahe story to Haswell, and denied that he linked Krahe with Nielsen's disappearance when talking to Haswell.¹⁷³

2.73 Arkins told the Nielsen inquest that the effect of the theories and claims put forward by Ward and Reeves was to divert police away from Trigg and the Carousel.¹⁷⁴ Even after

167. Nielsen inquest, transcript, 16 August 1983, p. 66.

168. NSW Police running sheet, 4 January 1977, Interview with Leonard Arthur McPherson re information that he had nominated Fred Krahe as being responsible for Nielsen disappearance.

169. Nielsen inquest, transcript, 17 August 1983, p. 133; 4 November 1983, p. 3852.

170. Evan Whitton, *Can of Worms: A citizen's reference book to crime and the administration of justice*, Fairfax Library, Sydney, 1986, p. 303.

171. Nielsen inquest, transcript, 17 August 1983, pp. 134-35. See also *ibid.*, 19 August 1983, pp. 225-26.

172. Nielsen inquest, transcript, 21 September 1983, p. 2001 (statement by counsel assisting the coroner).

173. Nielsen inquest, transcript, 15 September 1983, p. 1697.

174. Nielsen inquest, transcript, 17 August 1983, pp. 65, 143; 18 August 1983, pp. 167, 211.

Crawford came forward with new information (see below), much police effort was spent between October 1976 and March 1977 investigating and reporting on the Ward and Reeves theories and claims.¹⁷⁵ Yet Arkins said at the inquest that none of the Reeves/Ward information was of any use in following up the Trigg trail.¹⁷⁶

Investigative Focus Returns to the Carousel

2.74 In October 1976, Crawford, the Carousel receptionist, went to police on her own initiative to tell them that information she had given in her 15 July 1975 interview was incorrect.¹⁷⁷ Police viewed this as a major breakthrough, leading their investigation back to the Carousel and Trigg.¹⁷⁸ Crawford said she was coming forward because she was 'having hassles' with Anderson in 1976.¹⁷⁹ One of the Counsel at the inquest suggested that, as the new information provided by Crawford did not, on its face, implicate Anderson, her explanation for providing it merited follow-up.¹⁸⁰ However, this aspect was not followed up by Arkins.¹⁸¹

2.75 Crawford, sometimes known as Laurence Dudley Rollo,¹⁸² habitually dressed in female clothing and was often referred to as a 'drag queen'.¹⁸³ Anderson described her at the inquest as 'a six foot two gentleman that wears female clothing'.¹⁸⁴ Anderson told the Nielsen inquest that Crawford could have been annoyed with him in October 1976 because 'it could very well have been the period when he [ie. Crawford] was dismissed for misappropriating funds to give to Mr Marshall. He was having a homosexual relationship with him at the time on a cash basis'.¹⁸⁵

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175. Nielsen inquest, transcript, 17 August 1983, pp. 143-44; 18 August 1983, pp. 167, 208.
176. Nielsen inquest, transcript, 17 August 1983, p. 65; 18 August 1983, pp. 208, 211; 4 November 1983, p. 3829.
177. Nielsen inquest, transcript, 17 August 1983, p. 140.
178. Nielsen inquest, transcript, 17 August 1983, p. 140.
179. Nielsen inquest, transcript, 12 September 1983, pp. 1434, 1459, 1463.
180. Nielsen inquest, transcript, 4 November 1983, pp. 3827-28.
181. Nielsen inquest, transcript, 4 November 1983, p. 3828.
182. Nielsen inquest, transcript, 15 August 1983, p. 37.
183. e.g. see Nielsen inquest, transcript, 15 August 1983, p. 47; 13 September 1983, p. 1542.
184. Nielsen inquest, transcript, 23 September 1983, p. 2128.
185. Nielsen inquest, transcript, 30 September 1983, p. 2256.

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2.76 At the inquest Crawford was asked:¹⁸⁶

Q. ... you say it was known around the [Carousel] club that you were the adopted son of James Anderson? A. Yes. No, I take that back, it wasn't, I never heard it actually being referred to like that but people did used to treat Mr Anderson and myself as father and daughter yes, but I'd never heard it referred to as me actually being adopted.

Q. Did he refer to you as his daughter or son? A. He would often call me daughter, yes.

Q. That would indicate a very close association between yourself and Mr Anderson? A. A very long association, it wasn't always very close.

2.77 The 29 October 1986 interview with Crawford was held at Police Headquarters rather than the CIB. This was for the purpose of secrecy and to protect Crawford. Crawford was frightened that word that she was talking to police would leak out and she would suffer as a result.¹⁸⁷ Crawford was asked at the October 1986 interview about information given in her 15 July 1975 interview:¹⁸⁸

Q.5 Do you recall what you told the police on that occasion? A. To my knowledge I said that Juanita Nielsen came to the Carousel to keep an appointment with Eddie Trigg re advertising for the upstairs bar. And that she kept the appointment and a sum of money changed hands, I think it was about three hundred dollars, which was supposedly money for the advertising for the upstairs bar. I said that after the appointment had been kept that she left the Carousel on her own.

Q.6 Is there anything about the information you supplied on that date that was incorrect? A. Yes, she didn't leave Carousel on her own, she left with the person who she came to keep the appointment with, Eddie Trigg.

Q.7 Will you tell me why you supplied this incorrect information? A. I told you the incorrect information because I had been asked to by Eddie Trigg. In actual fact Eddie walked halfway down the stairs with Juanita Nielsen and then he came back into my office and Eddie said, 'If anyone asks sweetheart we didn't leave together'.

Q.8 What happened then? A. He walked down the stairs with her.

Q.9 When did you see Eddie again that day? A. That night when he came to work,

Q.10 Did he make any reference to the woman Nielsen when he returned to work that evening? A. At that time, no.

Q.11 Did he ever refer to it? A. When the police were making their inquiries I was again reminded by Eddie that he had not left the Club.

Q.12 Was that before or after you were interviewed? A. I think it was the night the two policewomen interviewed me about it.

Q.13 Do you have any further knowledge about the disappearance of Juanita Nielsen? A. I knew from the beginning that because of the newspaper she owned in which she had written a couple of articles concerning the Victoria Street development and the underworld pressure it [sic] was being used to get people out of the area. Then when I found out that the development had something to do with Frank Theeman the rest was basically common sense because I knew that Mr Anderson and Mr Saffron had dealings with Mr Theeman. The next I heard about it was about six months later when I went out for dinner with Lloyd Marshall who used to work with the Carousel Cabaret as a public relations officer, and he told me of numerous appointments that had been made by himself for Miss Nielsen and Mr Trigg. To my knowledge those appointments were

186. Nielsen inquest, transcript, 12 September 1983, p. 1468.

187. Nielsen inquest, transcript, 17 August 1983, p. 141.

188. Record of interview between Det. Sgt. K. Arkins and Loretta Crawford, Police Headquarters, 29 October 1976, pp. 1-2.

kept in motels. I was also told that night that Miss Nielsen's death resulted in [sic] an argument that she had with Mr Trigg. I think the motels were at Woollahra but I am not sure. I had also been told in conversation that she had been buried at Botany, somewhere near an old abandoned air strip at Botany. But I don't know where.

Q.14 What else have you been told? A. Only the reason why it all happened was because she knew too much about the dealings in Victoria Street, Lloyd told me this on that first night he mentioned it to me.

2.78 At the inquest, Crawford said that her reference to Nielsen's burial at Botany was based on no more than rumour that was circulating at the Carousel at the time.¹⁸⁹ Marshall denied he had told Crawford the information she claimed to have obtained from him.¹⁹⁰ He also said Crawford 'was given to telling lies' and was 'a renowned liar'.¹⁹¹ Trigg also said that Crawford was 'a liar and a thief and she used drugs'.¹⁹²

2.79 Trigg's record of interview on 13 July 1975 referred to Marshall as being responsible for advertising at the Carousel. However, police did not interview Marshall until 17 November 1976, when he was interviewed in Townsville. It was the information provided by Crawford that led to Marshall being sought and interviewed.¹⁹³ Arkins was asked at the Nielsen inquest:¹⁹⁴

Q. Why did it take you over a year to interview the man who you had been told on the 13th of July was responsible for advertising at the Carousel Cabaret? A. At the time of the inquiry and specifically I wasn't involved in the Lloyd Marshall aspect but he was not about and I've subsequently learnt that he did come back to Sydney. The information that we had was that Nielsen was seen entering a yellow car of her own accord in Darlinghurst Road, Kings Cross. The information that we had from the Carousel was that she had left alone and to a considerable extent that took the limelight from the doors of the Carousel.

Q. Not --- A. So the need to seek Lloyd Marshall out at that point was not great.

... Q. Until late 1976 did anyone pursue the Lloyd Marshall aspect? A. I don't think so.

2.80 Marshall told police in 1976 he had an 'all-in brawl' with Anderson's wife shortly after Nielsen disappeared.¹⁹⁵ Marshall said he had broken off contact with people at the Carousel because he feared Anderson's reaction. At the inquest he was asked:¹⁹⁶

189. Nielsen inquest, transcript, 12 September 1983, pp. 1402, 1423.

190. Nielsen inquest, transcript, 14 September 1983, pp. 1573-81.

191. Nielsen inquest, transcript, 14 September 1983, pp. 1605, 1629.

192. Nielsen inquest, transcript, 12 October 1983, p. 2738.

193. Nielsen inquest, transcript, 17 August 1983, p. 140.

194. Nielsen inquest, transcript, 17 August 1983, pp. 139, 140.

195. Nielsen inquest, transcript, 14 September 1983, p. 1581.

196. Nielsen inquest, transcript, 14 September 1983, p. 1583.

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Q. That was the situation, was it, that you were afraid of Mr Anderson's reaction to the extent that you contemplated leaving immediately for New Zealand? A. That's correct.

... Q. Now you responded to me a moment ago that if you trifled with Mr Anderson he might hurt you physically. A. Yes

Q. Would you expect him to do it to you personally? A. Yes

Q. Or would you expect him to appoint someone else to do it for him? A. I think he'd do it himself.

Q. Might he appoint someone else to do it for him? A. Possibly.

2.81 When interviewed in 1976, Marshall disclosed his part in trying to arrange appointments with Nielsen in the period shortly before she disappeared. He also disclosed the role of Trigg and Martin-Simmonds. This seems to have been when police first learned of Martin-Simmonds.¹⁹⁷ At the Nielsen inquest, Marshall was asked:¹⁹⁸

Q. At the time that you gave the record of interview to the police in November 1976 were you concerned about information that you had given to the police getting back to Anderson and Saffron? A. Yes, they assured me it wouldn't.

Q. Why were you concerned that information given to them might get back to Anderson and Saffron? A. There have been known to be corrupt police officers in Saffron and Anderson's pay.

Q. Did you know who those police officers were who were in the pay of Anderson and Saffron?

A. I knew some that frequented the Carousel.

Q. You understood that they were on the payroll of Anderson and Saffron? A. They got money from them.

Q. But you didn't know about Sergeants Arkins and Maroney? A. No, as far as I knew they could have been.

Q. But you asked them and they assured you they weren't? A. Yes.

Q. You accepted that assurance? A. They seemed pretty genuine to me.

2.82 Arkins told the Nielsen inquest that he could not recall Marshall's concern about police links with Anderson. He was then asked:¹⁹⁹

Q. Would you then have been surprised at the suggestion that there were police in the pay of Jim Anderson? A. Yes, I would be. Perhaps the way you put that doesn't really explain what you mean, police in the pay of Jim Anderson.

Q. Well what did you understand me to mean? A. Well I'm not quite sure, having said I would be surprised, I still would be but I guess there'd be various ways that people could be in the pay of people.

Q. Well in this context it would be the situation I suppose that Mr Anderson might be able to pay police for information that the police had obtained in the course of inquiries? A. Well yes I'd be surprised at that. I'm not aware of that.

Q. You weren't aware of that situation existing then? No.

2.83 Marshall also told the inquest:²⁰⁰

197. Nielsen inquest, transcript, 4 November 1983, p. 3823.

198. Nielsen inquest, transcript, 14 September 1983, pp. 1633-34.

199. Nielsen inquest, transcript, 18 August 1983, pp. 161-62.

200. Nielsen inquest, transcript, 15 September 1983, pp. 1655-56.

- Q. Were you concerned that anything you said might lead to any other person seeking to harm you? A. Yes.
- Q. Who were the persons you were concerned might wish to harm you as a result of what you would say? A. Mr Anderson, Mr Saffron possibly.
- Q. And anybody else? A. Eddie Trigg.
- ... Q. Now because of your concern about Mr Anderson were you attempting in your answers to give answers which would diminish the possibility that Mr Anderson might wish to harm you? A. Not consciously but I suppose sub-consciously I may have had that in my mind.
- ... Q. Nevertheless it was the fact was it that at least sub-consciously you were hoping to minimise any involvement on the part of Mr Anderson? A. You could say that, yes. No one likes to dig their own grave.
- Q. And that was a feeling which you had in 1976? A. Yes.
- Q. It's a feeling which you have in 1983? A. Yes.
- Q. I think in fact you indicated that your fears in relation to Mr Anderson maybe stronger now than they were in 1976? A. Well I've got a family now, I didn't have a family then.
- Q. And has that fear of Mr Anderson been present in your mind on every occasion when you've been questioned about this matter? A. It's always been there yes, the knowledge of his capability more than a fear I think.
- Q. And that has been a fear of serious physical consequences to you --- A. Not only to me.
- Q. --- somebody else? A. Yes.
- Q. And has that fear or knowledge in any way affected the answers which you gave to the police in your record of interview in 1976? A. As I said before it may have sub-consciously but it certainly, you know the fact that I'm giving evidence now which could be used against Mr Anderson worries me greatly but I think that if I am open about it I'm better off because there's less chance of him doing anything if it can be accounted that he's done something.
- Q. You see, what I want to put to you simply is this, have you been as open as you can possibly be about Mr Anderson's involvement in this affair? A. Yes.
- Q. Is there anything about Mr Anderson's involvement in the affair which you have not revealed? A. No.
- Q. Nothing at all? A. No.

2.84 In a statutory declaration made on 27 March 1978, Marshall stated:²⁰¹

I am making this declaration because since returning to Sydney I have heard rumours that the current prosecution against myself and the other two defendants may be part of a staged cover-up court case. It has also been suggested to me that Sergeant Arkins is not an honest policeman.

2.85 In the interview in October 1976, Crawford told police that Marilyn Trigg was at the Carousel on the morning of 4 July 1975. Marilyn Trigg was born Arthur Montgomery King, had changed names by deed poll to Amanda Marilyn King, and was living in a relationship with Eddie Trigg in 1975.²⁰² Police did not interview her until 19 September 1977. Arkins was asked at the Nielsen inquest why there was a delay of eleven months between Crawford's statement and the interview with Amanda King. He replied:²⁰³

201. Quoted in Nielsen inquest, transcript, 15 September 1983, p. 1694.

202. Record of interview between Det. Sgt. K. Arkins and Amanda Marilyn King, Russell St Police Station, Melbourne, 19 September 1977, p. 1.

203. Nielsen inquest, transcript, 18 August 1983, pp. 166-68. See also pp. 209-10 where Arkins further explains why it may not be sound investigative technique to interview someone without adequate background on that person.

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A. ... the decision when to interview her would at that point [October 1976] would not have been apparent, what we know about the people at that point was that Eddie Trigg, this is keeping in mind there's not a great deal of time between this interview and the one with Marshall. Once we obtained that information with Marshall, the way the inquiry was decided to be run that the last person to interview, unless there were unforeseen circumstances occur would have been Edward Trigg and depending on the availability of people and the association obviously between Marilyn King and Edward Trigg she would almost be one of the last people to be interviewed. If we'd of made efforts to contact her and speak to her at that point, we may never have got past number one base.

Q. Once you interviewed Shayne Martin Simmonds, Eddie Trigg heard about it within a day or two didn't he? A. I believe so.

Q. And that is what you say you feared would happen when you spoke to Marilyn Trigg too or Marilyn King? A. Yes.

Q. That Eddie would get to hear about it and what make himself scarce? A. Well he'd already done that.

Q. He'd already done that? A. Yes.

Q. Were you looking for him between October, 1976 and November 1977? A. Not specifically, certainly inquiries were being made about him and but at no point in those early days and in that ensuring twelve months did we wish to speak to him until we'd obtained all the information we possibly could before we spoke to him.

... Q. And what I'm saying to you is that from October 76 you did have information which you weren't acting on? A. No, that's not correct. Certainly not correct.

Q. Well the Marshall, November, 1976 perhaps the Marshall interview? A. Yes certainly, to suggest that we weren't acting on it is just totally incorrect.

Q. Well you weren't specifically looking for Trigg you said? A. Not specifically looking for Trigg.

...

... Q. What I'm asking you, you see, Detective is what it was in those twelve months which gave you the impetus to arrest Trigg or to question him and then arrest him in November, 1977 which hadn't given you that impetus in November, 1976? A. Because we had reached the stage in the inquiry where we felt that there was no further information that we could gather that would assist us in the inquiry, bearing in mind that even at this point they have only been charged with conspiracy to kidnap.

Q. Yes. A. And that is not what the inquiry is all about.

Q. There's nothing further you can give us to assist us in relation to that time problem? A. Well, only you know if specifically you wish me to point out what was done during that twelve months and certainly some of it would be information that I'd prefer not to make public but certainly there are a lot of other areas that were canvassed which gives an indication as to what we did during that twelve months and it certainly wasn't delaying tactics.

2.86 When interviewed on 19 September 1977, Amanda King confirmed Marshall's version of the involvement of Trigg and Martin-Simmonds in the attempt to lure Nielsen to the Camperdown Travelodge. At a further interview on 13 November 1977, King said that Martin-Simmonds was present at the Carousel on 4 July 1975 while Trigg was talking to Nielsen. King was asked at the Nielsen inquest:²⁰⁴

Q. Before you went to Melbourne, Miss King, how much did you see Jim Anderson while you were working at the clubs? A. Practically every night he'd come in.

Q. Did you talk to him at all? A. Yes.

Q. Did you ever talk to him about Mrs Nielsen's disappearance? A. No, never.

Q. Why not? A. I think I was too scared to talk to him about anything to do with that.

204. Nielsen inquest, transcript, 8 September 1983, p. 1280.

Q. Too scared? A. Hmmm.

Q. Yes? A. Yes.

Q. Why would you have been scared to talk to him about it? A. Well because I thought that perhaps he had something to do with getting in touch with her.

Q. Getting in touch with her? A. Yes. Well, I'd seen him and Eddie talking together a lot and it was around that time.

2.87 Martin-Simmonds was not interviewed until 6 November 1977 in Sydney, by which time he was managing the Venus Room for Anderson and Saffron. In the interview, Martin-Simmonds described his part in the attempt to get Nielsen to a meeting at the Camperdown Travelodge. He also told police that at about the same time Trigg had taken him to see Nielsen's house: 'Eddie thought that we could take her from the house and take her to the people [who wanted to see her], we were going to go back there and if she was there on her own we were going to take her with us'.²⁰⁵ He also told police that the advertising story was just a ploy to get Nielsen to come for a private conversation, and said he was at the Carousel at about the time when Trigg was seeing Nielsen on 4 July.

2.88 In the interview, Martin-Simmonds was asked:²⁰⁶

Q.37. When you say you were to pick her up, was it discussed what would happen should she resist? A. It was only between Eddie [Trigg] and I, just grab her arms and stop her calling out, no real rough stuff, no gangster stuff. We thought that just two guys telling her to come would be enough to make her think if she didn't come she might get hurt.

Q.38. Was it discussed what would happen if she resisted violently? A. We didn't see how she could but we talked about when she came into the room, one of us would be standing there and the other one come up behind her and just quietly grab her by the arms and maybe put a hand over her mouth or a pillowslip over the head. That would have been all right in the motel but in the street we would have had to convince her verbally. That's why the motel would have been a better idea but she didn't keep the appointments so we didn't have to do anything.

Q.39. What would you have done if she'd been at 202 Victoria Street on the day you and Eddie called there regarding the advertising and she would have been alone? A. We talked about it and we still thought we could talk her out verbally with something about ads. But if she did resist we would have to do it as quietly as possible because it was daylight. We would have to put her in the back [of the car] on the floor with a blanket over her. She would have to be tied up because I was not going to where she was going to see the person and one guy would have to handle her.

2.89 Martin-Simmonds said in the interview that he did not know the identity of the person or persons who wanted to speak to Nielsen.²⁰⁷ After being interviewed by police, Martin-Simmonds went to Anderson's house and spoke with him about what he had told police during the interview.²⁰⁸

205. Record of interview between Det. Sgt. K. Arkins and Shayne Martin-Simmonds, CIB, 6 November 1977, p. 2.

206. *ibid.*, p. 4.

207. *ibid.*

208. Nielsen inquest, transcript, 19 September 1983, pp. 1847-48.

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2.90 On 9 and 10 November 1977 Arkins and Maroney interviewed a friend of Martin-Simmonds called Jason James Haydon. Haydon told the police officers.²⁰⁹

Initially I was approached by Shayne [Martin-Simmonds] at Glenmore Road and he asked me if I would be interested in simply confirming a booking at a motel. If the booking was confirmed I had to go to the motel, pay for the room, pick up the key and bring it back to Shayne. Shayne said that if I did it I would get \$50 to \$100. Later I got a phone call at my home and Shayne told me to forget it.

2.91 Haydon said this happened at the beginning of July 1975 and the motel in question was the Travelodge at Camperdown. He said he had some recollection of a woman who was to have an appointment with two men in the motel room.²¹⁰ Haydon also said that when Martin-Simmonds read in a newspaper about the contents of Nielsen's handbag being found alongside the freeway near Penrith he came out with the comment: 'There's no way they will find her' or something to that effect.²¹¹

2.92 Trigg was interviewed again on 11 November 1977 in Melbourne. At this stage the police were finalising inquiries with a view to making arrests. Arkins' notes describe what Trigg said:²¹²

Q. We believe now that prior to her disappearance endeavours were made to entice Nielsen to a motel for the purpose of taking her away from there, if necessary, against her will. Now, notwithstanding anything that may be contained in your statement or anything that Shayne Martin-Simmonds may have told you, is there anything you would like to say? A. Who do you say was going to do this?

Q. We believe that it was Lloyd Marshall, Shayne Martin-Simmonds and yourself. A. (Pause) All right, we did but she didn't turn up. Lloyd Marshall asked me if I would do it and he said he would get Shayne to help me.

Q. Where did this happen? A. I suppose it all started when Jim Anderson told Lloyd Marshall to invite her to a press night for the starting of the new show a few weeks before. When she didn't turn up Jim really blew his top with Lloyd. He goes like that when anything goes wrong, and it was after that Lloyd asked me.

Q. Did he tell you why this had to be done? A. He just said it was important, they wanted to see her because she was causing trouble with her paper.

Q. What sort of trouble? A. Lloyd didn't tell me.

Q. Do you know who they were? A. No, but I've got my own ideas.

Q. Will you tell us your ideas? A. No.

Q. What else were you asked to do? A. Nothing just that we had to take her to see these people so they could talk to her about the articles she had been writing in her paper.

Q. Where did you have to take her? A. She didn't keep the appointment so it was never discussed.

209. Record of interview between Det. Sgt. K. Arkins and Jason James Haydon at Russell St CIB, Melbourne, 10 November 1977, p. 1.

210. *ibid.*, p. 2.

211. *ibid.*, p. 3.

212. Notes re Trigg interview, Russell St CIB, Melbourne, 11 November 1977, pp. 2-3.

2.93 Trigg refused to elaborate on events at the Carousel on 4 July 1975. At the end of the interview he was arrested.²¹³

Prosecution of Trigg, Martin-Simmonds and Marshall

2.94 In November 1977, Trigg, Martin-Simmonds and Marshall were charged with conspiring together and with other unknown persons between 1 June and 4 July 1975 to abduct Nielsen.²¹⁴ The committal proceedings began on 28 March 1978, and on 11 August 1978 the three were committed for trial.²¹⁵ The trial commenced on 9 April 1980 in the District Court. On 28 April, Marshall was acquitted by direction of the judge.²¹⁶ There was no evidence linking him with Trigg's plan to use force if Nielsen had declined to cooperate at the meetings he (Marshall) tried to lure her to. Hence, there was no case against him to put to the jury that he was part of a conspiracy to abduct her.²¹⁷ On 30 April, the jury was unable to reach a verdict in respect of Trigg and Martin-Simmonds, and they were remanded for re-trial.

2.95 The re-trial was set down for 15 September 1980.²¹⁸ Trigg, who was free on bail, did not appear and later absconded to the United States to avoid re-trial. A warrant for his arrest was issued.²¹⁹ Martin-Simmonds was convicted at his re-trial on 6 February 1981. On 11 February 1981, he was sentenced to two years jail, and he was released from jail on 4 February 1982.²²⁰ At his sentencing hearing, Martin-Simmonds was questioned by the judge as to the identity of the people who had engaged his services for the proposed abduction. He provided no information.²²¹

213. Nielsen inquest, transcript, 16 August 1983, p. 79.

214. 'Juanita Nielsen: 30 will give evidence', *Sydney Morning Herald*, 30 November 1977, p. 9.

215. *Police v Trigg, Marshall and Martin-Simmonds*, committal proceedings, Central Court of Petty Sessions, 98 Liverpool St, Sydney, 11 August 1978, adjudication by K. Webb, SM.

216. *R v Marshall, Martin-Simmonds and Trigg*, NSW District Court, No. 832 of 1978, transcript of judgment of Redapple DCJ, 28 April 1980, pp. 1-4.

217. *ibid.*, pp. 2-3.

218. Nielsen inquest, transcript, 16 August 1983, p. 81.

219. Nielsen inquest, transcript, 16 August 1983, p. 81.

220. Nielsen inquest, transcript, 16 August 1983, pp. 81-82.

221. Nielsen inquest, transcript, 16 August 1983, p. 81; 17 August 1983, p. 133; 19 September 1983, pp. 1860-62.

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2.96 Police inquiries eventually located Trigg in San Francisco, USA. He was arrested there by local police in August 1982.²²² The arresting officer told the Nielsen inquest.²²³

When I told him that all I knew was that I was told that you were wanted for murder somewhere in Australia, he said, 'Murder, how can they say it was murder when they never found her body.' And then my own words [sic] there was a pause about five seconds and he said, 'Besides I think she's still alive until they find her body it's not murder, besides all they charged me with was conspiracy to abduct. It's all bloody politics anyway it would take me five hours to tell you the story besides Australian politics wouldn't interest anybody in America'. Well I told him that I was interested because since I have been looking for you everybody I've talked to likes you, calls you a good guy and has nothing but nice things to say about you. I am very curious about what this is all about. He said, 'It's all about crooked cops, dirty politicians and one big cover-up. I had the misfortune of being with this woman right before she disappeared so they figure I was involved, it's just one big cover-up and the guy who is benefiting from this is an Alderman who's made mega-bucks out of this. It's nothing but dirty politics it's all over the papers, the TV there's even going to be a movie, they're making all this noise over a woman who was nothing but an out-and-out Communist. No loss to society at all. I am being used as a pawn in this, if I go back I'm going to have to name names, I'm not worried though my buddy was convicted of conspiracy to abduct and he only got twelve months, so if they can't get him for murder they can't get me.' When I asked him if he was afraid about naming names when he went back to trial he stated, 'I got people back there in power who'll take care of me.'

2.97 Another San Francisco police officer told the inquest of a similar statement that Trigg made to him.²²⁴

When asked how he had gotten mixed up in this thing, conspire to abduct, he stated that he had asked, that he had been asked by some friends to invite Juanita Nielsen for a drink and to have a chat with her. He further stated that after they had had their conversation and a drink Mrs Nielsen disappeared. When asked who the friends were who asked him to have a chat with her he refused to reveal this information but did say that if the authorities attempted to charge him with murder he would start naming names and one of them is an Alderman in Sydney. That he would not be the fall guy for this. It's all dirty politics and crooked cops.

2.98 At the Nielsen inquest, Trigg denied the accuracy of the remarks attributed to him by the San Francisco officers.²²⁵ He was escorted by the officers leading the Nielsen investigation, Arkins and Maroney, back to Sydney in early September 1982.²²⁶ When later

222. Nielsen inquest, transcript, 12 October 1983, p. 2724.

223. Nielsen inquest, transcript, 8 September 1983, p. 1321. Trigg told the inquest that the alderman referred to in this passage, Anthony Reeves, was putting stories adverse to him in the media as revenge for Trigg having Reeves and Ward arrested for drunkenness: Nielsen inquest, transcript, 18 October 1983, pp. 2958-60.

224. Nielsen inquest, transcript, 8 September 1983, p. 1328.

225. Nielsen inquest, transcript, 17 October 1983, pp. 2899-2908.

226. Nielsen inquest, transcript, 16 August 1983, p. 82.

confronted with the San Francisco Police officers' versions of what he allegedly told them, Trigg told Arkins and Maroney that they were false:²²⁷

You've got them to do this, it's all f----- rubbish, I'll see you about this. I've subpoenaed Abe Saffron and that f----- Anderson, we'll see how they go and that f----- Theeman too.

2.99 On his return to Australia, Trigg obtained legal representation on credit from Malcolm Johns and Company, the firm of solicitors that handled Anderson's affairs.²²⁸ This was despite the fact that Trigg was apparently penniless and still owed thousands of dollars for legal bills from several years before.²²⁹

2.100 Trigg's re-trial was set down for 1 February 1983. On that date he pleaded guilty in court before the trial got under way. He was remanded for sentence to 8 February, when he was sentenced to three years jail.²³⁰ While in jail awaiting trial, Trigg had become friendly with another prisoner who was a law student. This prisoner said he told Trigg he would 'be mad to plead guilty' because, among other things, he had a hung jury on his first trial.²³¹ After pleading guilty, Trigg explained, according to the prisoner, why he had done so:²³²

Eddie [Trigg] said to me, and I quote, 'Money has been placed in my solicitor's trust account'. I said, 'It would have to be a considerable amount of money if you're looking at a possible three year sentence'. He then quoted a figure to me of seventy thousand dollars and I also recall that he mentioned the solicitor's trust account he said, 'Malcolm Johns trust account'. Subsequently Eddie went to court on 8 February 1983 and when he returned that same evening he told me he got three years but only expected to serve about eighteen months or less. I said 'Well that's about thirty five thousand dollars per year for sitting in the sun doing nothing'. Eddie seemed very pleased about this and also said that he had one up on Abe Saffron as he would have expected Eddie to receive a sentence of three to five years referring to the non-parole period.

2.101 The prisoner told the inquest what he thought Trigg meant by the last sentence of the passage just quoted. As the prisoner understood it from Trigg, Saffron had calculated the amount of \$70,000 on the basis that Trigg would have a non-parole period of three to five years. Trigg expected to have to serve only eighteen months of his three year sentence, so

227. Nielsen inquest, transcript, 16 August 1983, p. 85.

228. Nielsen inquest, transcript, 26 October 1983, pp. 3361, 3377, 3379.

229. Nielsen inquest, transcript, 27 October 1983, pp. 3409, 3412. In addition to the amount owed to Johns (or his old firm), Johns was aware on 12 October 1982 that Saffron had just written off as uncollectable nearly \$5,000, being the Carousel loan to Trigg for legal expenses: Nielsen inquest, transcript, 1 September 1983, pp. 891-93; 1 November 1983, pp. 3670, 3672. See para. 2.128 and 2.129 below for the background to this loan.

230. Nielsen inquest, transcript, 16 August 1983, p. 86.

231. Nielsen inquest, transcript, 11 October 1983, p. 2645.

232. Nielsen inquest, transcript, 11 October 1983, p. 2644.

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Trigg felt he had the better of the bargain with Saffron.²³³ Trigg was not explicit about who paid the money into the trust account, but the prisoner said he understood Trigg to be implying that it was Saffron.²³⁴

2.102 At the Nielsen inquest Trigg denied that he had any pertinent conversation with the prisoner.²³⁵ He denied all knowledge of a \$70,000 payment or any other payment to plead guilty.²³⁶ The solicitor whose trust account was allegedly involved in the \$70,000 payment said it was an untrue and scurrilous allegation.²³⁷ Saffron also denied all knowledge of the matter.²³⁸

2.103 Trigg told the Nielsen inquest that he had heard that the jury at his first trial was eleven to one in favour of acquittal, but that he did not believe this.²³⁹ He also told the inquest he was innocent of the charge of conspiring to abduct Nielsen, and that he had no knowledge of, or connection with, the disappearance of Nielsen.²⁴⁰ He said his decision to plead guilty was made on the spur of the moment in the courtroom.²⁴¹

the decision to plead guilty was made when I went into the box when I came in from the hallway underneath and came through the trap-door I made the decision the actual decision then yes or no whether I would plead guilty or not guilty. I had been considering the aspects of all of it for some months, I made the decision then ... The decision to plead guilty was made instantaneously on the spur of the moment when I looked around the court room and I can't really say, I don't think it was even a conscious thought, I just did it.

2.104 Trigg told the inquest that his decision was made because he 'did not believe there was a jury in Australia that I could have got an acquittal from'.²⁴² The solicitor with whom Trigg had been dealing since he returned from San Francisco was Richard Jankowski.

233. Nielsen inquest, transcript, 11 October 1983, p. 2655.

234. Nielsen inquest, transcript, 11 October 1983, pp. 2664-65.

235. Nielsen inquest, transcript, 14 October 1983, p. 2854.

236. Nielsen inquest, transcript, 21 October 1983, p. 3160; 24 October 1983, p. 3174.

237. Nielsen inquest, transcript, 26 October 1983, p. 3381.

238. Nielsen inquest, transcript, 1 November 1983, p. 3678.

239. Nielsen inquest, transcript, 17 October 1983, pp. 2883, 2884. Compare *ibid.*, 4 October 1983, p. 2326 where Anderson says the 'common knowledge around the area' was that the jury divided ten to two in favour of acquittal.

240. Nielsen inquest, transcript, 21 October 1983, pp. 3167, 3175-76.

241. Nielsen inquest, transcript, 17 October 1983, p. 2887.

242. Nielsen inquest, transcript, 17 October 1983, p. 2887.

At the inquest, Jankowski said that he was late arriving at the court on the day of Trigg's guilty plea and learned what Trigg had done when he arrived.²⁴³

I was rather surprised because at all stages it was going to be not guilty and we'd prepared the case on that basis and a lot of work had been done and I believed competent counsel was engaged, counsel who believed that there was a good chance as chances go in criminal proceedings for Mr Trigg to be acquitted.

2.105 Trigg told the inquest why he had wanted to subpoena Anderson, Saffron and Theeman to appear at his trial.²⁴⁴

The [police] officers would indicate [in interviews with Trigg] that Mr Anderson wasn't corroborating what I said; he in fact said different and I was just fed up with it so to my way of thinking the best way to clear it up was to have Mr Anderson in court and as the Crown didn't call Mr Anderson I intended to. ... I don't really think there was any reason for subpoenaing Mr Saffron looking at it in hindsight now. I was angry at the time with the police; I was angry with Mr Saffron and Mr Anderson and as Mr Theeman's name was always linked into it by the newspapers etc. I just thought well what the hell, get the lot of them in there.

2.106 In summing up to the jury, counsel for a member of the Nielsen family, J. Basten, argued that there was a different reason why Trigg wanted to subpoena Anderson, Saffron and Theeman.²⁴⁵

you may well ask yourselves why Mr Saffron's evidence at a trial for conspiracy to abduct, a trial on which Mr Trigg was the accused, would have been of any assistance to Mr Trigg. Similarly you might ask why Mr Frank Theeman would have been able to give any evidence which would have assisted Mr Trigg. There is a clear inference which may be drawn that when Mr Trigg was in America and when he came back to Australia he did intend to name names. He has pleaded guilty to a conspiracy with diverse persons unknown. It may therefore be inferred that he did know names of others who were involved. When he came back he intended to plead not guilty. That was changed under circumstances which remain a mystery. The suggestion contained in ... [the prisoner's] evidence that he changed his plea for a reason, for a financial incentive, is in my submission a credible explanation of what is otherwise an incredible set of circumstances.

The Persons behind Trigg and Martin-Simmonds

2.107 Two points can be made about the conspiracy to abduct charge for which Marshall was acquitted and Trigg and Martin-Simmonds were convicted. First, the charge did not include her actual abduction or her death. Secondly, the charge also referred to the three

243. Nielsen inquest, transcript, 28 October 1983, p. 3478.

244. Nielsen inquest, transcript, 17 October 1983, p. 2890.

245. Nielsen inquest, transcript, 8 November 1983, p. 3953.

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men conspiring with other persons, but those other persons were not identified, let alone charged.²⁴⁶

2.108 Counsel for the Nielsen estate, N.A. Newton, submitted to the Nielsen inquest jury.²⁴⁷

Now it has never been suggested, as I understand it, in all the investigations that have taken place that Trigg, Martin-Simmonds and Marshall were acting in their own interests except to the extent perhaps of a few hundred dollars or something of that order, but it's not been suggested, ... [there] certainly isn't any evidence that I am aware of, that they did it for ransom or extortion or to collect the reward of any sort. It's always been assumed, I would submit to you, and rightly assumed that they have acted at the direction of others. Now, their conviction, their acquittal on the charges with which they were charged doesn't of course mean that they can never be charged with more if other evidence had subsequently come out or had come out at this inquiry but it is the fact that they the Crown, at the trials of those Martin-Simmonds and Trigg, did not assert that Martin-Simmonds and Trigg had actually abducted Mrs Nielsen, they had no evidence to that they could not assert that fact but I would submit to you that it is clear despite the ridiculous lack of recollection of Martin-Simmonds and despite the twisting and turning of Mr Trigg in the box, that it is perfectly clear that they in fact did what the essence of their records of interview suggest.

Now, the point about that, ladies and gentlemen, is this if you accept it as a fact and I submit you clearly would that these three persons Martin-Simmonds, Trigg and Marshall were plotting away in the week or so before the disappearance of Mrs Nielsen, plotting away to get her to go and see somebody about something, not doing it of course, in a candid a way but a real plot to get her to do that, and if it would be your feeling that they weren't just doing it for Marshall, Trigg and Simmonds but were doing it at the direction of someone, then you may think it would be an unbelievable coincidence if at the very same time that these plotters were at their work, someone totally unconnected with them or any person for whom they were working, was engaged in a parallel plot to abduct Mrs Nielsen. The fact that Trigg, Martin-Simmonds and Marshall had been shown to connect, to have done this plotting to get her, in my submission leads you, would lead you to the conclusion that in some way, in some way you are being led back to the Carousel in respect what actually did happen to her, whatever it may have been. Of course, otherwise you're saying well there were in effect two posses out to get her at the same time, for two different causes altogether. And that I would submit, ladies and gentlemen, would just simply would be a very, very, unbelievable coincidence to have happened. She was, I would submit you will find without the slightest doubt physically abducted or held against her will and within the week or so before that actually happened as a fact, as a fact, these gentlemen were plotting to get her.

2.109 At the Nielsen inquest, Maroney was asked in relation to Trigg.²⁴⁸

Q. Do you have any history of him knowing Mrs Nielsen? A. No.

Q. Prior to conspiring to abduct her? A. No.

246. The charge against the three men was 'that they each between the month of May and the month of July in the year 1975 at Sydney in the State of New South Wales did conspire together and amongst themselves and with divers persons unknown to the said Xavier Gibson [the Crown Prosecutor] to seize and carry away one Juanita Joan Nielsen against her will': *R v Marshall, Martin-Simmonds and Trigg*, NSW District Court, No. 832 of 1978, trial transcript, 9 April 1980, p. 1.

247. Nielsen inquest, transcript, 7 November 1983, p. 3907.

248. Nielsen inquest, transcript, 22 August 1983, pp. 305-06.

- Q. Did you have anything to indicate whatsoever that he personally had any reason why he would want to abduct Mrs Nielsen? A. No.
- Q. I suppose it's --- A. --- Unless there was some, I don't know. Unless there was some reward involved.
- Q. Well the overwhelming probability is that he was acting by direction in this conspiracy to abduct? A. Well, they're my thoughts.
- Q. And what has Trigg's response been to questions as to who might have been directing him to conspire? A. Well of course he blames Lloyd Marshall I believe.
- Q. And Marshall blames? A. I think he blames Trigg. I'd have, I'd like to refer to my notes if I could in relation to that.
- Q. Yes, by all means. A. If I could just read from, - 'I suppose it all started when Jim Anderson told Lloyd Marshall to invite her to a press night for the starting of the new show a few weeks before. When she didn't turn up Jim really blew his top with Lloyd. He goes like that when anything goes wrong. And it was after that Lloyd asked me.'
- MRS FLEMMING: Perhaps the paragraph before that.
- WITNESS: Yes. 'Lloyd Marshall asked me if I would do it and he said that he would get Shayne to help me'. That's in relation to the Travelodge. But as far as the luncheons, businessmen's luncheons were concerned he says it was Jim Anderson's idea.
- MR NEWTON: Q. But basically Trigg was suggesting that in both cases Jim Anderson was the person behind it? A. Well he mentions Jim Anderson firstly after Mrs Nielsen didn't turn up for the press night. How Jim Anderson really complained about it and then Jim Anderson tells him to arrange these, this ad for the businessmen's lunches.
- Q. Did you have anything to suggest any prior association between Lloyd Marshall and Mrs Nielsen? A. Not that I can recall.
- Q. There were no, nothing that came to your knowledge in the course of your investigation to suggest that Lloyd Marshall had any personal reason for being associated with a plan to abduct Mrs Nielsen? A. No personal reason, no. Not that I can recall.
- Q. Did you have any reason to suppose that Martin-Simmonds had any personal association with Mrs Nielsen? A. No.
- Q. Did you have any reason to suspect that Martin-Simmonds had any reason for, personally, for wishing to conspire to abduct her? A. No. As I say, unless it was for some reward.

2.110 When he arrested Trigg in November 1977, Arkins did not believe that Trigg and Martin-Simmonds had acted entirely on their own.²⁴⁹ He told the Nielsen inquest that Trigg, Martin-Simmonds and Marshall would not reveal who had put them up to arranging a meeting with Nielsen.²⁵⁰ Arkins was also asked:²⁵¹

Q. You have never been able to discover in your investigations who were the persons to whom Trigg and Shayne Martin-Simmonds were to take Mrs Nielsen when she was abducted? No.

2.111 Later in the inquest, Arkins was asked:²⁵²

Q. Is this an investigation which so far as you and the police force generally are concerned, is an inquiry which is continuing? A. Yes.

249. *Police v Trigg, Martin-Simmonds and Marshall*, committal proceedings, Central Court of Petty Sessions, 98 Liverpool St, Sydney, transcript, 31 March 1978, p. 235.

250. Nielsen inquest, transcript, 18 August 1983, p. 211.

251. Nielsen inquest, transcript, 17 August 1983, p. 132.

252. Nielsen inquest, transcript, 18 August 1983, p. 211.

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Q. At this stage have you exhausted all of the leads which are, in your view, reasonably open to follow? A. Yes.

Q. From now on does it depend - does any further progress depend on there being either some further person coming forward with information or some person already known to you being prepared to divulge further information? A. Yes, I think that is the case.

2.112 One of the counsel at the inquest, J. Basten, in summing up to the jury, referred to the conspiracy between Trigg, Martin-Simmonds and Marshall to lure Nielsen to a meeting at the Camperdown Travelodge, and stated:²⁵³

What does not appear from that conspiracy is what the purpose of it was. Apart from the hints relating to Victoria Street development ... there is no clear evidence and the persons who were involved in it have never been willing, it appears, to tell what they knew if they did know what the purpose was.

Impact of Corruption on the Police Investigation

2.113 The adequacy of the police investigation into who might have been behind Trigg, Marshall and Martin-Simmonds can be questioned, as can the conclusion that there were no further leads that could have been followed up. In considering the adequacy of the police investigation, counsel for a member of the Nielsen family, J. Basten, submitted to the inquest jury that it was relevant to have regard to Anderson's evidence of corrupt payments by himself and Saffron to police to buy immunity from licensing laws and other police attention.²⁵⁴ Basten argued:²⁵⁵

there is no doubt in my submission that in 1975 there was a close business relationship between Messrs Anderson and Saffron. In my submission if at that time Mr Abraham Saffron enjoyed immunity from police action in certain regards then Mr Anderson would be protected too. ... Of course if ... [evidence in relation to corrupt payments to police] is accepted then it is clear that arrangements between Mr Saffron and possibly Mr Anderson and the police would have compromised both parties. The relevance to the investigation carried out here lies in just that fact. In my submission the police have not been in the past keen to investigate leads which go back to the Carousel Cabaret.

... My submissions to you have been that Mr Anderson's allegations of corruption suggest that senior police officers in New South Wales were seriously compromised with persons in organised criminal activities in the Kings Cross area and elsewhere. I have suggested to you, that that situation may have influenced police involved in this investigation whether consciously or unconsciously, to steer away from or discount evidence that would have led them towards Messrs Anderson and Saffron. Of course, the same result as I have mentioned would flow from the Krahe allegations but in my submissions those allegations lack evidence to support them.

Whatever you think of the control of the licensing laws or liquor sales in this State is irrelevant, the fact that the corruption of police involved in enforcing those laws may have led and could

253. Nielsen inquest, transcript, 8 November 1983, p. 3936.

254. See paras. 1.30 to 1.41 in this paper on the evidence of corruption.

255. Nielsen inquest, transcript, 8 November 1983, pp. 3953-54, 3957.

easily lead again to persons connected with such activities committing unrelated crimes as serious as murder and doing so with impunity is a matter which in my submission should not go unnoted by yourselves. If I am right in that submission, it follows that there will be no evidence available to show that Juanita Nielsen died or was killed at the hands of any person. The fact is that we cannot say whether Juanita Nielsen was murdered or not. If, ladies and gentlemen, you accept that the preconditions were [that] such a corrupt situation existed in 1975 and more recently and then that is a reason why we are unable to determine the nature and manner of Mrs Nielsen's disappearance and probable death, then in my view it is your public responsibility to say so.

2.114 It was noted earlier that Anderson shot and killed Donny Smith in a Saffron-owned restaurant, the Venus Room in 1970.²⁵⁶ It was also noted that, for reasons that have never been explained, the Attorney-General intervened to ensure that Anderson did not face trial for the killing. Some commentators have seen this as evidence of the immunity enjoyed by Saffron and Anderson for illegal actions that touched their club and restaurant operations.

2.115 At the Nielsen inquest, Arkins denied that police corruption had affected the investigation into Nielsen's disappearance.²⁵⁷ Counsel for the police, G.J. Graham, in summing up to the inquest jury, referred to Trigg, Marshall and Martin-Simmonds:²⁵⁸

Let me remind you that if these police were being derelict in their duty, they would never have charged those three people and they would never have pursued the evidence and pursued the people. ... If you look at the accounts which were given by those three people who were charged, they all, in the end, lead back to Mr Anderson. Mr Anderson has not been the subject of any protection or immunity from investigation by the police in this case. The real problem has been the lack of any evidence against him.

Anderson's Role in Nielsen's Disappearance

2.116 Counsel for the Nielsen estate, N.A. Newton, also highlighted Anderson's role in his summing up to the inquest jury:²⁵⁹

there is abundant evidence of many aspects of association, both personal and business between Mr James McCartney Anderson and members of the Theeman family who controlled the Victoria Point development. ... [There is] a clear link on personal business grounds as I said between those Victoria Point interests and Mr Anderson, and Mr Anderson being the physical controller of the persons who had in fact plotted her abduction ... only a week or so before she actually went away. You have, though I concede on the evidence, a lesser link, you have at least some link also between Mr Theeman senior and Mr Saffron who was the proprietor of the Carousel.

256. See paras. 1.81 to 1.88 in this paper.

257. Nielsen inquest, transcript, 4 November 1983, pp. 3852-55.

258. Nielsen inquest, transcript, 9 November 1983, p. 3984.

259. Nielsen inquest, transcript, 7 November 1983, p. 3914.

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2.117 As noted above, New South Wales Police Sergeant Brian Ballard told the Nielsen inquest that Anderson had been 'a regular police informant' in 1973.²⁶⁰ Ballard subsequently justified this public disclosure of an informer's identity by stating:²⁶¹

I am aware of the contents of Police Instruction 63 paragraph 9 which sets out that police should not disclose the identity of an informant, however even though Anderson was an informant in information relative to the Juanita Nielsen inquest he was also a strong suspect as a person responsible for her disappearance and as such to my mind was disqualified from protection as an informant, he in fact on the surface was apparently supplying information to be used to his own advantage.

2.118 At one point in the inquest, Anderson agreed he was a logical suspect on Nielsen's disappearance. He was asked:²⁶²

Q. You see, Mr Anderson, there are a number of factors which have raised suspicions about your involvement with Mrs Nielsen's disappearance are there not? A. That seems to be obvious, yes.

However, Anderson denied 'completely and utterly' that he had anything to do with Nielsen's disappearance either directly or through agents or employees.²⁶³

2.119 Anderson was the immediate superior to Trigg and Marshall at the Carousel (and later, to Martin-Simmonds at the Venus Room). Reference has already been made in this paper to suggestions by Trigg and Marshall that Anderson was directing their attempts to lure Nielsen to a meeting in the weeks prior to her disappearance. The evidence suggesting that Anderson had been party to the 1973 abduction of another Victoria Street activist, Arthur King, was also set out above. Other evidence suggesting his involvement in the Nielsen disappearance is referred to below.

2.120 No-one has suggested that Anderson had any personal financial involvement in Victoria Street, or any personal motive for acting against Nielsen. At the Nielsen inquest, counsel for a member of her family, J. Basten, submitted to the jury:²⁶⁴

I do not for a moment suggest that there is any evidence that Mr Anderson himself had any interests in Victoria Street. Nevertheless the situation is that Mr Anderson had friends who were involved in the development of Victoria Street and Mr Anderson was in the habit of doing favours for such friends it seems.

260. Nielsen inquest, transcript, 30 August 1983, p. 752.

261. Memo from Sergeant 1st Class B.J. Ballard to Deputy Commissioner (Administration) John Perrin, 6 February 1984, para. 5. The memo constitutes Annexure 13 to the Perrin submission (see para. 1.128 above).

262. Nielsen inquest, transcript, 30 September 1983, p. 2277.

263. Nielsen inquest, transcript, 4 October 1983, p. 2374.

264. Nielsen inquest, transcript, 8 November 1983, p. 3942.

2.121 On his own admission, Anderson had the sort of reputation around Kings Cross that led people to turn to him if they wanted someone killed. In a very self-serving magazine interview published in February 1985, Anderson was asked:²⁶⁵

Q. What other sorts of things have people asked you for? A. Oh, the number of people I've been offered money to kill you would not believe. I could lead a good life just on contracts ... truly. I think the cheapest one I was ever offered was \$15,000. I said to him, 'That's not bad, but is it worth it?' When he said, 'Why?' I replied, 'Suppose I get this done ... with a man in your position, I could live off your back for the rest of your life'. 'Oh', he said. 'I never thought of that, Jim'. I said, 'If you approach somebody else, just remember what I'm telling you.

The point about blackmail is suggestive, given inferences (discussed below) that Anderson was blackmailing Theeman in relation to Nielsen's disappearance.

2.122 Despite the evidence linking Anderson with Nielsen's disappearance, the attempt by police to investigate the role of Anderson seems to have been cursory. For about a month in September 1975 police tried to obtain an interview with Anderson. He was seen at the Carousel on 2 September 1975, but said he could not be interviewed as he had other business to attend to.²⁶⁶ Appointments with police were not kept by Anderson.²⁶⁷ He provided police with a letter on 26 September. In it he said he had 'had no contact, personal or otherwise, with Miss Nielson [sic]'.²⁶⁸ As noted earlier in this paper he also supported Trigg's second version of the story about advertising in Nielsen's newspaper. On 2 October, Anderson declined to be interviewed at CIB. He did, however, agree to a brief interview at the Carousel.²⁶⁹ In the interview he repeated his support for Trigg's story on advertising, and said he was in Surfers Paradise on 4 July 1975.

2.123 Anderson was not interviewed again until 26 October 1977. In this interview he repeated his alibi for the day of Nielsen's disappearance, saying that he flew with TAA to Surfers Paradise on the afternoon of Thursday, 3 July and stayed there about three days.²⁷⁰ He offered as corroboration the fact that a man flew up with him and remained with him. Police did not attempt to contact this person to verify Anderson's story.²⁷¹ Nor did they check airline

265. 'Penthouse Interview: James Anderson', *Penthouse*, February 1985, p. 134.

266. Nielsen inquest, transcript, 22 August 1983, p. 271.

267. Nielsen inquest, transcript, 22 August 1983, pp. 271, 280.

268. Letter to 'The Police Department' from James Anderson, 26 September 1975.

269. Nielsen inquest, transcript, 22 August 1983, p. 280.

270. Record of interview between Det. Sgt. K. Arkins and James McCartney Anderson, CIB, Sydney, 26 October 1977, p. 4.

271. Nielsen inquest, transcript, 3 November 1983, p. 3819.

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records to see if Anderson was a passenger.²⁷² Anderson also claimed that his car was left at Sydney airport and received two parking tickets while he was away. Arkins told the Nielsen inquest that he could not recall any police check being made to see if this was correct, and he doubted if any check was made.²⁷³ Arkins explained at the inquest.²⁷⁴

I didn't consider it necessary [to further verify Anderson's whereabouts]. With the inquiries that we'd made at the hotels in relation to the phone calls, the registration cards, the meal slips, it was my consideration that there was sufficient there to establish that the people were in Queensland at the time that we had checked.

2.124 One of the counsel at the Nielsen inquest, J. Basten, commented on Anderson's alibi in his summing up to the jury:²⁷⁵

... of course there is no evidence apart from Mr Anderson's story and a docket for two cups of coffee and cream in Surfers Paradise that Mr Anderson was in Queensland at any time after 3rd July and a cup of coffee and cream is something that one might well have before returning to Sydney on 4th July. Why would one draw that inference apart from the material provided by Mr Trigg [suggesting Anderson might have been back in Sydney on the 4th]? Well, in my submission one can draw that inference from the fact that Mr Anderson has lied to the police about his whereabouts at that time. Mr Anderson was questioned by the police admittedly in 1977 concerning his whereabouts on 4th July but he has no doubt about it. He doesn't say, 'I don't recollect'. He says at question 24 of his record of interview, 'I was in Surfers Paradise on the 4th staying at the Chevron'. And he was later asked, 'How long were you there?' And he said, 'I went up on the Thursday afternoon either 2.00 or 5.00. I went by TAA with Mr Max Workingham'. Now that ladies and gentlemen has all the hallmarks of a deliberate attempt at an alibi. The details of the flight, the details of who he went with and the time at which he went and in my submission he did not go on that Thursday nor did he stay three days from the Thursday as he suggests in answer to the next question because he was in Surfers Paradise I suggest on the 1st July, 1975 and the inference may be drawn from that evidence that he was deliberately attempting to mislead the police as to where he was on that weekend and of course ladies and gentlemen it is then necessary to ask why he should need to say that and say that so definitely.

Investigation of Saffron's Role

2.125 Witnesses in the Nielsen investigation referred to Saffron in relation to the Victoria Street development and to Theeman. They also referred to his ownership (through a company) of the Carousel and the fact that he employed Anderson and, through Anderson, Trigg and Marshall (and later in 1975, Martin-Simmonds). Despite this, police did not attempt to interview Saffron until 1978,²⁷⁶ although they did make inquiries earlier in the investigation about his alleged interests in properties in Victoria Street through the records of the City

272. Nielsen inquest, transcript, 3 November 1983, p. 3821.

273. Nielsen inquest, transcript, 3 November 1983, p. 3820.

274. Nielsen inquest, transcript, 4 November 1983, p. 3821.

275. Nielsen inquest, transcript, 8 November 1983, p. 3940.

276. Nielsen inquest, transcript, 17 August 1983, p. 127.

Council and the Corporate Affairs Commission.²⁷⁷ The inquest was told that these inquiries produced negative results.²⁷⁸ Maroney gave as a further reason for not interviewing Saffron earlier the fact that the reported sighting of Nielsen getting into a yellow car (see para. 2.54 above) had taken the inquiry away from the Carousel.²⁷⁹

2.126 Saffron was eventually interviewed by Arkins and Maroney on the evening of 27 March 1978. No statement was taken, but the brief police note of the interview states:²⁸⁰

Saffron stated that he had not met Juanita Nielsen and was questioned as to his knowledge of any papers she might have had connecting him with the Victoria Street development or any other papers. He replied 'No, I'm not connected with Victoria Street'. He denied that he was being blackmailed by Nielsen and although he was friends with Frank Theeman, the developer, he had no business dealings with him. Saffron was interviewed as a result of suggestions put forward by Marshall and Crawford.

2.127 During the interview, Saffron was not asked any questions about the extent of his personal involvement in the Carousel, about whether he knew anything about advertising for businessmen's lunches there in July 1975, or about anything relating to Trigg, Marshall and Martin-Simmonds.²⁸¹ The interview took place on the doorstep of Saffron's house: he was not asked to attend at a police station for interview.²⁸²

2.128 Maroney told the Nielsen inquest²⁸³ that, at the time of this interview with Saffron, he was unaware of the amount of \$4,956.36 shown in the 1976 accounts of Apsley Investments as a loan to Trigg for legal expenses. Apsley Investments was a company owned by Saffron which operated the Carousel. The 1982 accounts showed that the loan had been written off as uncollectable.²⁸⁴

2.129 Following questions in the New South Wales Parliament,²⁸⁵ the issue of the loan was followed up in October 1982 with Saffron and a solicitor by an investigator from

277. Nielsen inquest, transcript, 23 August 1983, pp. 332, 343.

278. Nielsen inquest, transcript, 19 August 1983, p. 231.

279. Nielsen inquest, transcript, 23 August 1983, p. 332.

280. Police running sheet, 27 November 1978, 'Interview with Abe Saffron re knowledge of Nielsen', Arkins-Maroney.

281. Nielsen inquest, transcript, 23 August 1983, p. 344.

282. Nielsen inquest, transcript, 3 November 1983, p. 3802.

283. Nielsen inquest, transcript, 23 August 1983, p. 343.

284. Nielsen inquest, transcript, 1 September 1983, pp. 890, 896.

285. Nielsen inquest, transcript, 1 September 1983, p. 903.

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the New South Wales Corporate Affairs Commission. The investigator was told that the loan was given to Trigg without security to cover various legal actions Trigg was involved in.²⁸⁶ These included a defamation action Trigg was bringing against the media and the cost of a watching brief on Trigg's behalf in the prosecution of Ward and Reeves.²⁸⁷ Details of three cheques totalling the amount of the loan were given to the investigator: they were made out to a barrister and two firms of solicitors.²⁸⁸

2.130 Trigg supported this story in his evidence at the Nielsen inquest, saying Anderson had granted the loan, with no involvement on Saffron's part that he was aware of.²⁸⁹ Saffron told the inquest he was unaware that Trigg was employed at the Carousel until he read it in a newspaper.²⁹⁰ He said he only became aware of the loan when his accountant pointed out the entry in the accounts when preparing the tax return.²⁹¹ Saffron said Anderson had no authority to make such loans.²⁹²

2.131 At the inquest, Saffron said he first learned of Nielsen's disappearance from the newspapers.²⁹³ He was asked:²⁹⁴

Q. Did you speak to Mr Anderson in relation to Mrs Nielsen's disappearance at any time shortly after you read about it in the newspapers? A. No, I didn't.

Q. You were aware, were you not, or were you aware that the Carousel Cabaret was one of the last places that Mrs Nielsen had been seen at? A. Yes, I read that also of course.

Q. Did you speak to anybody involved with the management of the Carousel Cabaret about that?

A. No, I didn't.

Q. Was there any reason for not doing so? A. No, no reason.

One of the counsel suggested to the inquest jury that it was difficult to believe that Saffron took no interest in whether Nielsen disappeared from one of his clubs, even after he learned of the loan by the Carousel to Trigg.²⁹⁵

286. Nielsen inquest, transcript, 1 September 1983, p. 892.

287. Nielsen inquest, transcript, 1 September 1983, pp. 892, 897-98. The prosecution of Ward and Reeves arose from the 1975 incident in which Trigg forcibly took them to Darlinghurst Police Station: see para. 2.62 above.

288. Nielsen inquest, transcript, 1 September 1983, p. 893.

289. Nielsen inquest, transcript, 13 October 1983, p. 2755; 18 October 1983, p. 2954.

290. Nielsen inquest, transcript, 1 November 1983, p. 3665.

291. Nielsen inquest, transcript, 1 November 1983, p. 3666.

292. Nielsen inquest, transcript, 1 November 1983, p. 3668.

293. Nielsen inquest, transcript, 1 November 1983, p. 3665.

294. Nielsen inquest, transcript, 1 November 1983, p. 3666.

295. Nielsen inquest, transcript, 8 November 1983, p. 3948.

Anderson's Links with the Theeman Family

2.132 A great deal of evidence was given at the Nielsen inquest about the social and business links between Theeman and his sons Michael and Timothy, and Anderson. Theeman had first met Anderson at Michael's wedding in 1971.²⁹⁶ Michael and Tim had become friendly with Anderson when they were customers in the Latin Quarter night club in the 1960's and later at the Showbiz.²⁹⁷

2.133 Theeman told the Nielsen inquest that in the period 1971-75 he saw Anderson perhaps once a month or once every two months, mostly chance meetings when they happened to run into each other.²⁹⁸ He said he had been to the Carousel a few times as a paying patron.²⁹⁹ However, Anderson gave a different version of their relationship. He said that he had no meetings or contact with Theeman between the 1971 wedding and some date after Tim Theeman returned from overseas.³⁰⁰ (Tim Theeman said he returned about September 1974.³⁰¹) According to Anderson, at some stage after Tim Theeman's return he went to see Tim's father at Tim's request to discuss Tim's wish to go into the restaurant business.³⁰² Anderson said that he was aware of Theeman's involvement in the redevelopment of Victoria Street, but claimed he never spoke to him about it.³⁰³

2.134 In April 1973 when Arthur King was allegedly abducted by people associated with Anderson (see para. 2.14 above), Michael Theeman was active in arranging security guards in Victoria Street for his father's company's properties.³⁰⁴ Anderson told the Nielsen inquest he did not have any recollection of what Michael Theeman was doing at this time.³⁰⁵

2.135 The evidence on the Theeman-Anderson links is capable of supporting the conclusion that, if Theeman wanted assistance in 1975 to deal with Nielsen, it would not be surprising if he had turned to Anderson. The evidence also appears to be capable of

296. Nielsen inquest, transcript, 5 September 1983, p. 1084.

297. Nielsen inquest, transcript, 23 September 1983, p. 2144.

298. Nielsen inquest, transcript, 6 September 1983, pp. 1153-54.

299. Nielsen inquest, transcript, 6 September 1983, p. 1154.

300. Nielsen inquest, transcript, 23 September 1983, pp. 2155, 2158; 30 September 1983, p. 2244.

301. Nielsen inquest, transcript, 20 September 1983, p. 1920.

302. Nielsen inquest, transcript, 30 September 1893, p. 2244.

303. Nielsen inquest, transcript, 23 September 1983, pp. 2157, 2158.

304. e.g. see Nielsen inquest, transcript, 5 September 1983, p. 1028: Michael Theeman contacted Joe Meissner in April 1973 to hire his services.

305. Nielsen inquest, transcript, 30 September 1983, pp. 2246, 2247.

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supporting the conclusion that, at about the time Nielsen disappeared, Theeman paid money to Anderson for a purpose that may have been other than its stated purpose.³⁰⁶ This invites the question whether the true purpose was to pay Anderson for dealing with Nielsen's opposition to Theeman's Victoria Street plans.

2.136 The Committee has been told that there is a view that Anderson was blackmailing Theeman in the late 1970s and into the 1980s, that Theeman was paying him, and that somehow this was related to the disappearance of Nielsen. The suggestion is that Theeman, unlike someone such as Saffron, did not have access to large amounts of untraceable cash. It was suggested that it was not practical for Theeman simply to make payments by cheque or to draw large amounts of cash from bank accounts without arousing suspicion. On this view, any payments to Anderson had to be concealed behind a facade of seemingly proper commercial transactions that Theeman could explain to his accountants and auditors, and to tax officers if need be. The Committee has been told that, for this reason, the attention of those dissatisfied with the police investigation into who was behind Trigg, Martin-Simmonds and Marshall has focused on the ostensibly commercial dealings between Anderson and the Theeman family, especially Frank Theeman.³⁰⁷

2.137 Theeman, through his solicitors, had offered on 21 July 1975 to make himself available to the Nielsen investigators. Police interviewed him over two days on 5-6 August 1975.³⁰⁸ Theeman told police that he had known Saffron socially for a number of years, but had had no business dealings with him. He was then asked if he knew Anderson. He replied that he did.³⁰⁹

It goes back to my son, Tim. I have known Jim for some years. As you know, Tim has been in trouble and all he is interested in, that is Tim, is clubs, not gambling clubs but legitimate clubs. I saw Jim Anderson and came to an arrangement with him a couple of months ago and arranged for him, that is Jim, to set Tim up in a partnership without him knowing. There are three possibilities for this club, one in Sydney, one in Brisbane and one in Canberra. The arrangement, as far as Tim is concerned is that he will be employed there and when he works hard he will eventually earn his share. I must point out that it is imperative that my son does not know of this arrangement, nor should any other person. The only people that knew of this agreement are my accountant, Jim and I. This whole arrangement has gone through the books of the accountant in the usual way.

306. See the Nielsen inquest, transcript, 8 November 1983, pp. 3942-47 where one of the counsel summing up at the inquest provides an analysis of the Nielsen-Anderson-Theeman links.

307. For an example of this focus, see Peter Rees, 'Juanita Nielsen - the questions that were never asked', *Sydney Morning Herald*, 10 November 1990, pp. 76-77.

308. Letter to the NSW Police Commissioner from White Murray & Carew, Solicitors & Attorneys, 21 July 1975.

309. Record of interview between Det. Sgt. K. Arkins and Frank Theeman at CIB, Sydney, 5 August 1975, pp. 4-5.

2.138 Accounting records showed that \$25,000 was paid by a Theeman company to Anderson on 26 May 1975.³¹⁰ Theeman told the Nielsen inquest that this was to be used, under the arrangement, to set Tim up in a business.³¹¹ He said a business called the Charleston Club at 108 Campbell Parade, Bondi was eventually bought, the purchase being handled by Anderson without close involvement by Theeman. Tim Theeman took possession in December 1975 and renamed it The Here.³¹² Theeman said that neither Anderson nor Saffron put any money into the business.³¹³ Theeman also said Anderson never asked for payment for helping Tim Theeman, and that, other than the \$25,000, he had never paid any money to Anderson or any company with which Anderson was associated.³¹⁴ He said he did, however, expect Anderson to deduct from the \$25,000 any expenses he incurred in helping to set Tim up in a business.³¹⁵

2.139 Tim Theeman told the inquest that he was always aware that his father was financing the purchase of The Here: his father had told him the previous year, 1974, that he would help him into a business.³¹⁶ This seemed to remove any need for Frank Theeman to keep the payment of \$25,000 to Anderson a secret, if indeed its purpose had been to set his son up in a business.

2.140 Tim Theeman said he had worked briefly at the Carousel for about five weeks in April-May 1975 to obtain some experience.³¹⁷ He told the inquest that he met Trigg, Martin-Simmonds, Marshall and Crawford while working there.³¹⁸

2.141 Tim Theeman told the Nielsen inquest that the purchase price for the Charleston comprised \$10,000 for the goodwill and some \$16,000 for furniture, fittings and stock.³¹⁹ Tim Theeman said he also obtained a \$5,000 bank overdraft, for which Anderson was guarantor.³²⁰ Tim Theeman operated The Here until July 1983, at which time the business

310. Nielsen inquest, transcript, 26 October 1983, pp. 3326-27.

311. Nielsen inquest, transcript, 6 September 1983, p. 1117.

312. Nielsen inquest, transcript, 6 September 1983, p. 1117.

313. Nielsen inquest, transcript, 5 September 1983, p. 1068.

314. Nielsen inquest, transcript, 6 September 1983, p. 1131.

315. Nielsen inquest, transcript, 6 September 1983, p. 1149.

316. Nielsen inquest, transcript, 20 September 1983, pp. 1930, 1945, 1956.

317. Nielsen inquest, transcript, 20 September 1983, p. 1920.

318. Nielsen inquest, transcript, 20 September 1983, pp. 1924, 1945.

319. Nielsen inquest, transcript, 20 September 1983, pp. 1932, 1935.

320. Nielsen inquest, transcript, 6 September 1983, p. 1150; 20 September 1983, pp. 1935-36.

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closed.³²¹ The accuracy of the Theemans' version of the transaction came under close scrutiny at the Nielsen inquest.

2.142 The Charleston had earlier been called Gilligans. Under that name it had been operated by Anderson. Licensing records showed him as the sole person responsible financially for the business in 1972.³²² However, accounting records from Gilligans produced at the Nielsen inquest showed payments in 1973-74 to 'Mr Saff', which Anderson said he could not explain.³²³ The inference was that these payments went to Saffron, and under persistent questioning at the Nielsen inquest Anderson conceded that Saffron had some interest regarding the licence for Gilligans.³²⁴ Anderson was vague on the precise nature of this interest.

2.143 In a New South Wales Police investigation of Saffron in 1986, it was alleged that Saffron had an interest in Gilligans in 1973, and that he misled the Nielsen inquest in suggesting he knew nothing about the business.³²⁵ It was also alleged that Saffron tried to bribe New South Wales Police Sergeant Warren Molloy in 1973 to not enforce licensing laws regarding Gilligans.³²⁶ This latter allegation formed part of the background to the NCA investigation that led to Saffron being charged in 1987 with conspiracy to bribe Molloy in 1981.

2.144 Whatever Saffron's interest might have been,³²⁷ it was clear that Anderson was actually running Gilligans at one stage in 1973-74.³²⁸ Anderson told the inquest that he later sold Gilligans, but he was unable to say to whom.³²⁹ At the inquest it was stated that licensing

321. Nielsen inquest, transcript, 20 September 1983, p. 1936.

322. Statement by Insp. Warren Molloy in the matter of Abraham Gilbert Saffron, Office of Superintendent of Licences, Sydney, 17 February 1986, para. 3.

323. Nielsen inquest, transcript, 11 October 1983, p. 2635; 24 October 1983, pp. 3217-18.

324. Nielsen inquest, transcript, 24 October 1983, pp. 3227-28, 3229-30.

325. Statement by Insp. Warren Molloy in the matter of Abraham Gilbert Saffron, Office of Superintendent of Licences, Sydney, 17 February 1986, para. 10.

326. *ibid.*, para. 6.

327. In his judgment in *Saffron v Federal Commissioner of Taxation (No.2)* (1992) 92 ATC 4,859 at p. 4,868, Justice Beaumont noted the existence of a bank signatory card dated 23 October 1972 in respect of an account for 'Gilligans Restaurant' stated to be 'c/- Venus Room' at 6 Orwell Street. The card bore the signatures of Saffron and Anderson and against each name someone had written the word 'partner'. Justice Beaumont stated (p. 4,885): 'In my opinion, Ex. 3 [ie. the signatory card] warrants the inference being drawn that Mr Saffron was a proprietor of this business'.

328. Nielsen inquest, transcript, 11 October 1983, p. 2635; 24 October 1983, pp. 3217, 3227.

329. Nielsen inquest, transcript, 23 September 1983, p. 2150; 4 October 1983, p. 2356; 11 October 1983, p. 2635.

records showed Anderson was the owner in possession of Gilligans at the end of February 1975.³³⁰ Anderson could only suggest that he was still shown on the licensing records as part of a sham to keep the licence current for the true owner of the business.³³¹ He denied that it was his interest in the business that had been sold to Tim Theeman.³³² Anderson initially told the inquest that he had no connection with the business at the time Tim Theeman bought it in December 1975.³³³

2.145 When Tim Theeman bought the business - by then renamed the Charleston - the vendor was purportedly John Lee Shepherd, known then as John Lee. A document produced at the Nielsen inquest revealed that Anderson had merely given John Lee's partner, Hoogland, a 1-year lease in February 1975, with an option to renew for a further year.³³⁴ Another document dated 8 July 1975 and addressed to Anderson was a notice by Hoogland of termination of the lease.³³⁵

2.146 While Lee was operating the business, Anderson continued to show some interest in it according to Lee, arranging for pinball machines to be installed (apparently with some involvement by Saffron).³³⁶ A document signed by 'J Anderson' was produced at the inquest which read: 'Received from John Lee on behalf of Charleston Nightclub the sum of six hundred dollars only. Rent for two weeks'.³³⁷ Moreover, Anderson's partnership tax return with his wife for the year 1974-75 included income stated to be from Gilligans.³³⁸ The return also included other Gilligans financial data as at 30 June 1975. The tax return for the 1975-76 year stated that the Anderson received rent from sub-leasing Gilligans during part of the year.

2.147 Anderson said that he, acting for Theeman, paid Lee the total amount for the purchase of the Charleston as a single payment in cash.³³⁹ He happened to have the cash on hand, and he reimbursed himself from the proceeds of Theeman's cheque which he had earlier banked.³⁴⁰ Anderson said he had no documentation relating to the transaction, and had not

330. Nielsen inquest, transcript, 11 October 1983, p. 2636.

331. Nielsen inquest, transcript, 11 October 1983, pp. 2636-37.

332. Nielsen inquest, transcript, 4 October 1983, p. 2375.

333. Nielsen inquest, transcript, 23 September 1983, pp. 2152-53.

334. Nielsen inquest, transcript, 24 October 1983, pp. 3219-20; 1 November 1983, p. 3623.

335. Nielsen inquest, transcript, 24 October 1983, pp. 3621-22.

336. Nielsen inquest, transcript, 1 November 1983, pp. 3608, 3618, 3629-30.

337. Nielsen inquest, transcript, 24 October 1983, p. 3221.

338. Nielsen inquest, transcript, 25 October 1983, p. 3290.

339. Nielsen inquest, transcript, 23 September 1983, p. 2153.

340. Nielsen inquest, transcript, 23 September 1983, p. 2154.

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obtained a receipt for the cash payment.³⁴¹ He said he did not receive any reward or benefit for assisting Tim Theeman or out of Tim Theeman's purchase of the Charleston.³⁴²

2.148 John Lee appeared at the Nielsen inquest. He was vague as to the financial aspects of the Charleston, but said he received no payment for either the business or the stock when the business passed to Tim Theeman. He said that as the business was not profitable, he simply walked away from it.³⁴³ He did not believe that either his partner or his financial backer received any payment on transfer to Tim Theeman.³⁴⁴

2.149 Anderson said the purchase of the Charleston cost about \$23,000 or \$24,000, of which about \$15,000 was for fittings and the like.³⁴⁵ He was evasive as to what the remaining \$8,000 or \$9,000 was for.³⁴⁶ As counsel pointed out at the inquest, it is far from clear why anyone would have paid \$23,000 or \$24,000 for a very bad business proposition and some fixtures.³⁴⁷ Anderson was vague, telling the inquest that the remainder was for 'bills, money that he [Lee] owed'³⁴⁸, or for 'ensuring there was an ongoing lease for the premises'.³⁴⁹

2.150 Under questioning and when confronted with documents that contradicted his story, Anderson fell back on his characteristic witness box response to awkward questions: 'I've got no recollection'. The following is a representative example:³⁵⁰

Q. Now you've told us Mr Anderson that after your wife was shot you sold the Gilligans premises because I think you said you couldn't get rid of them too quickly, is that so? A. That's correct, that's correct.

Q. And so your recollection is that it was sometime shortly after your wife was shot [on 23 February 1974] that you disposed of your interest in the Gilligans premises? A. To the best of my recollection at this moment yes.

341. Nielsen inquest, transcript, 23 September 1983, p. 2154; 29 September 1983, p. 2223.

342. Nielsen inquest, transcript, 29 September 1983, pp. 2204, 2206.

343. Nielsen inquest, transcript, 1 November 1983, p. 3613.

344. Nielsen inquest, transcript, 1 November 1983, p. 3614.

345. Nielsen inquest, transcript, 23 September 1983, pp. 2151-52. See also 24 October 1983, pp. 3225-26 where Anderson refers to \$24,000 to \$25,000 as the total price.

346. Nielsen inquest, transcript, 23 September 1983, p. 2152; 24 October 1983, pp. 3224-26.

347. Nielsen inquest, transcript, 8 November 1983, p. 3942.

348. Nielsen inquest, transcript, 23 September 1983, p. 2152.

349. Nielsen inquest, transcript, 24 October 1983, p. 3224.

350. Nielsen inquest, transcript, 24 October 1983, pp. 3218-19.

Q. Do you recollect whether there was a time where you sub-let the premises that you had at Gilligans? A. Not that I can recollect; it may well have been but I have no recollection of it at this stage.

Q. Do you recollect that there was a considerable period of time where you were receiving rent from persons who were running the establishment at Gilligans? A. No I have no recollection of that.

Q. Do you deny that that happened? A. I'm not denying anything.

Q. Wasn't there a period of time when you entered into a sub-leasing agreement with a person called Candy Hoogland or Candy Van Diemen and that she would run the premises and pay a rent to you? A. No, I've no recollection of that.

Q. Do you recollect a person called Candy Hoogland? A. Is that male or female?

Q. A female? A. Not really. I've very little recollection of that period at all.

Q. I'm suggesting that this happened in a period of 1975. A. No, I've got no recollection really of that period. I'd be guessing.

Q. Do you not recall sub-letting the premises known as Gilligans, 108 Campbell Parade, Bondi Beach in February of 1975 to Candy Van Diemen? A. No, I've got no recollection of that.

Q. I suggest to you that in consideration of the sum of eight thousand dollars you let those premises to Miss Van Diemen for three hundred dollars per week. A. No, I've got no recollection of that.

Q. Do you deny that it happened? A. I'm not denying anything Mrs Flemming. I'm stating I've got no recollection of it. It's some considerable time ago.

2.151 Anderson told the inquest that after he broke up with Saffron towards the end of the 1970s, he tape recorded his version of various events.³⁵¹ He lodged the tapes with a *Sydney Morning Herald* journalist for safe keeping.³⁵² The tapes were produced at the Nielsen inquest and transcribed. At one point on the tapes Anderson says:³⁵³

I said to young Timmy [Theeman], 'Look Timmy I'm interested in this corner here'. 'Oh,' he said, 'I'd love a place in the Cross' because in the meantime we'd sold The Here to Timmy. This was after mother getting shot and all the drama and all the problems that was involved in it. That was sold because Timmy just carried on the same thing. He used to have to pay Abe's one hundred and fifty a week blah, blah, which was supposed to be for equipment that was on lease and all the other s— which is rubbish. He said, 'Oh, good, I'll take it'. Anyway young Timmy took it with me and we got the place and got it opened up.

2.152 Anderson explained that the 'we' who are spoken of as selling The Here referred to himself and his wife.³⁵⁴ But Anderson said the statement that they had sold The Here to Tim Theeman was an error.³⁵⁵ 'Abe' presumably was Abe Saffron, but Anderson said

351. Nielsen inquest, transcript, 5 October 1983, pp. 2412, 2414. Anderson said that the recordings took place over a number of years: pp. *ibid.*, 2412, 2416; 7 October 1983, p. 2539. However, the tapes were all apparently recorded in January and February 1983: *ibid.*, 24 October 1983, p. 3232.

352. Nielsen inquest, transcript, 5 October 1983, pp. 2412, 2414.

353. Nielsen inquest, transcript, 24 October 1983, p. 3235.

354. Nielsen inquest, transcript, 24 October 1983, p. 3235.

355. Nielsen inquest, transcript, 25 October 1983, p. 3295.

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Theeman never paid Saffron anything.³⁵⁶ Anderson could only suggest to the inquest that when he made the tape he had mixed Theeman up with someone else who was making payments to Saffron.³⁵⁷ However, Anderson told the NCA in 1986 that Saffron was still getting 'sling money' from The Here after Tim Theeman began operating it. The payments were, according to Anderson, disguised as equipment rentals.³⁵⁸

2.153 Counsel for the police at the Nielsen inquest, G.J. Graham, submitted to the inquest jury that Anderson's story about Gilligans and The Here:³⁵⁹

was a story which he was putting forward which was intended to mislead you. It was intended to mislead you by distancing himself in time and interest from connection with those premises in Bondi. The reason he didn't want to indicate that he was closely tied up with them and remained tied up with them at least until August, '75 and perhaps later if you accept Mr Lee's evidence was that he knew that that linked him too closely to the suspicion generated by the twenty five thousand dollars from Mr Theeman. So he was whether it was because there was in truth something very suspicious about the payment or merely because he'd cheated Mr Theeman ...

2.154 Counsel for a member of the Nielsen family, J. Basten, similarly submitted:³⁶⁰

that whole story about The Here was a total concoction by Mr Anderson. There are of course two possible explanations for that concoction. One is that he cheated Mr Frank Theeman in an amount of twenty five thousand dollars and depending on your assessment of Mr Anderson you will have to consider whether or not you think that a plausible explanation. The second explanation is that Mr Frank Theeman did in fact pay Mr Anderson twenty five thousand dollars but to his knowledge for a different purpose. If so it was a purpose that needed to be concealed by an elaborate story of the sort which has been presented in this inquest.

2.155 In about 1979, Tim Theeman said he participated with Anderson in the purchase of a share in a Kings Cross restaurant called La Bastille.³⁶¹ Anderson told the inquest that Tim Theeman had paid him about \$5,000 for the share.³⁶² Saffron, according to Anderson, purchased Tim Theeman's interest a matter of weeks later.³⁶³ Saffron subsequently reorganised

356. Nielsen inquest, transcript, 25 October 1983, p. 3296.

357. Nielsen inquest, transcript, 24 October 1983, p. 3238.

358. NCA, transcript of conversation between James Anderson, Ryan and Mengler, 11 July 1986, NCA Headquarters, Sydney, p. 19. This and other parts of this transcript were released in the context of the prosecution of Saffron and Allen for conspiracy to bribe Warren Molloy.

359. Nielsen inquest, transcript, 9 November 1983, p. 4002.

360. Nielsen inquest, transcript, 8 November 1983, pp. 3943-44.

361. Nielsen inquest, transcript, 20 September 1983, pp. 1940, 1951.

362. Nielsen inquest, transcript, 29 September 1983, p. 2226.

363. Nielsen inquest, transcript, 29 September 1983, p. 2227.

the ownership of the business, and, according to Anderson, excluded him without compensation.³⁶⁴

2.156 Tim Theeman told the inquest that he later re-purchased La Bastille for \$100,000 from Anderson and Saffron.³⁶⁵ Tim Theeman told the inquest that his father provided \$80,000 of this amount.³⁶⁶ However, Saffron told the inquest that he only received \$40,000 for the business.³⁶⁷

2.157 Theeman told the inquest he had been involved as an investor and shareholder in a boat-building venture of Anderson's.³⁶⁸ Anderson agreed that Theeman had put money into the venture,³⁶⁹ which was a commercial failure. In addition, evidence at the Nielsen inquest showed that one of Theeman's companies, Victoria Point Pty Ltd, had lent a Anderson company, Limaku Pty Ltd, \$132,500 in October 1980. The loan was at a commercial rate of interest for 12 months on the security of a second mortgage on a property then owned by Anderson (through Limaku Pty Ltd) at 157 Victoria Street, Kings Cross.³⁷⁰ The second mortgage was registered under the Real Property Act. Anderson gave Theeman's company a personal guarantee for the loan.³⁷¹ It was also suggested at the inquest that Theeman had some role in providing backing for a club Anderson was trying to establish in 1981, with at least some of the \$132,500 loan being for this purpose.³⁷²

2.158 Despite the trappings of a normal commercial loan, there are curious aspects to this \$132,500 loan. A few months before Theeman lent the \$132,500, the property was valued at about \$250,000³⁷³ but was subject to a first mortgage of \$180,000.³⁷⁴ Thus it was

364. Nielsen inquest, transcript, 29 September 1983, p. 2227. See also *ibid.*, 27 October 1983, p. 3419, where Anderson's solicitor stated that when Saffron later sold the business to Tim Theeman, Anderson did not have any corporate or direct interest in it.

365. Nielsen inquest, transcript, 20 September 1983, pp. 1937, 1940, 1954.

366. Nielsen inquest, transcript, 20 September 1983, pp. 1937-38, 1957.

367. Nielsen inquest, transcript, 2 November 1983, pp. 3744, 3756-57.

368. Nielsen inquest, transcript, 6 September 1983, p. 1120.

369. Nielsen inquest, transcript, 4 October 1983, p. 2352.

370. Nielsen inquest, transcript, 25 October 1983, pp. 3282, 3286; 27 October 1983, pp. 3419-20, 3431.

371. Deed of Guarantee between James McCartney Anderson and Victoria Point Pty Ltd, 16 October 1980.

372. Nielsen inquest, transcript, 26 October 1983, pp. 3328-29, 3361-62; 27 October 1983, pp. 3431-32.

373. Letter from Malcolm Johns & Company to Citicorp Limited, 7 May 1980, re application for mortgage advance on security of 157 Victoria Street, Kings Cross.

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not attractive security for a second mortgage of \$132,500. Anderson's solicitor told the Nielsen inquest that the interest rate on the Theeman loan was 'a reasonable rate towards the lower end of the scale' then prevailing in the loan market.³⁷⁵ However, documents produced at Anderson's bankruptcy appear to indicate that the rate on the second mortgage was over two percentage points less than that on the first mortgage. Second mortgage interest rates are normally higher than those on first mortgages, reflecting the greater risk to the lender. In March 1982, the loan was extended, with no interest payments due until October 1985.³⁷⁶

2.159 Victoria Point Pty Ltd changed its name to Stavex Pty Ltd on 24 August 1981.³⁷⁷ Anderson became bankrupt in 1983 and the statement of his affairs lodged on 13 September 1983 shows Stavex Pty Ltd as an unsecured creditor for the amount of \$72,500 plus interest.³⁷⁸ At his bankruptcy hearing in April 1984, Anderson said he had no recollection of either this creditor or of the amount owed.³⁷⁹

2.160 From the incomplete documentation available to the Committee, the security for the \$132,500 loan, the property at 157 Victoria Street, appears to have eventually been sold by the first mortgagee for less than the amount owing to it.³⁸⁰ Nothing was left over for Theeman's company. As far as the secretariat can determine from the documents made available to it, Theeman's company eventually seems to have ended up as an unsecured creditor of a bankrupt Anderson and his bankrupt company in relation to the \$132,550 plus interest.

2.161 Theeman contacted NSW Deputy Police Commissioner Perrin in January 1984, when Perrin was investigating Anderson's allegations of police corruption made at the Nielsen

374.(...continued)

374. Statement of account attached to proof of debt owed to Citicorp Australia Ltd, lodged under the Bankruptcy Act 1966, 1 December 1983. The date of the mortgage was 14 July 1980.
375. Nielsen inquest, transcript, 27 October 1983, p. 3431.
376. Supplementary deed of guarantee between James McCartney Anderson and Stavex Pty Ltd, March 1982.
377. NSW Corporate Affairs Commission, certificate of incorporation on change of name of company, 24 August 1981.
378. Bankruptcy Act 1966, Statement of Affairs, Bankruptcy District of NSW and the ACT No. 859 of 1983, Re James McCartney Anderson, Part II, Unsecured Creditors.
379. Examination of James McCartney Anderson under section 69 of the Bankruptcy Act, transcript of proceedings, 17 April 1984, p. 56.
380. The property was apparently sold for just over \$181,000, while the first mortgagee's outstanding principal, interest and costs amounted to nearly \$233,000: statement of account attached to proof of debt owed to Citicorp Australia Ltd, lodged under the Bankruptcy Act 1966, 1 December 1983.

inquest. In his subsequent report on the allegations, Perrin stated:³⁸¹

He advised me that he was concerned that there was an opinion in certain areas that following the bankruptcy proceedings taken against Anderson that he, Anderson, was indebted to Theeman or one of his companies. Mr Theeman stated he knew Anderson very well and wanted to clarify with me the fact that Anderson was not in fact indebted to him or any of his companies and that he, Theeman, was not involved in any of the companies that were listed as creditors in the article in the Sydney Morning Herald dealing with the subject bankruptcy proceedings.

This statement seems difficult to reconcile with the listing of Stavex Pty Ltd as an unsecured creditor in Anderson's bankruptcy only a few months earlier, unless Theeman had written off the debt in the interim.

2.162 Clearly there are aspects of these financial links between Theeman and Anderson that require further explanation. In addition, it appears from the documents available to the Committee that there were further commercial links between the two men. While it is true that Frank Theeman died on 24 January 1989, much documentation appears to be available to enable investigation of these links.

2.163 There is a further aspect to the Anderson-Theeman links. Anderson allegedly tried to use the fact that he was talking to the NCA to pressure Saffron into paying him to 'lose his memory'. According to Anderson, a principal go-between in these Anderson-Saffron negotiations was Theeman.

2.164 A non-financial link between Theeman and the Nielsen disappearance arises by inference from phone records. As noted above, Lloyd Marshall was travelling interstate with Mrs Anderson in early July 1975, when Nielsen disappeared. Marshall said he made a second attempt to lure Nielsen to a motel meeting early in the week she disappeared by trying to phone her when he and Mrs Anderson were in Brisbane. According to Marshall, Mrs Anderson attempted to persuade him against becoming involved, and gave Marshall the impression she knew about the attempts to lure Nielsen to a meeting.³⁸²

2.165 On 8 July 1975, Marshall and Mrs Anderson were in Canberra. Police obtained the records of phone calls charged to their hotel rooms. Mrs Anderson told the inquest she was trying to obtain support from businessmen and others for a charity night to aid UNICEF. Arkins told the inquest that the phone records showed calls to Trigg's home, to Martin-Simmonds' home and place of work, and to the Carousel. There were also four phone calls to the numbers for FWT Investments Pty Ltd, a Theeman family company.³⁸³ Mrs Anderson

381 Deputy Commissioner John Perrin, 'Submission to the Commissioner: Allegations made by James McCartney Anderson at the inquest into the disappearance of Juanita Joan Nielsen alleging misconduct by certain Police Officers in association with Sydney businessman Abraham Saffron', 14 February 1984, para. 37.

382. Nielsen inquest, transcript, 14 September 1983, pp. 1600-01.

383. Nielsen inquest, transcript, 3 November 1983, p. 3815.

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told the inquest it was possible that she had phoned Theeman, but it was 'completely ridiculous' to suggest it was in relation to Nielsen's disappearance.³⁸⁴

2.166 Counsel for a member of the Nielsen family, J. Basten, submitted to the Nielsen inquest jury that it could draw an inference from phone calls to Theeman.³⁸⁵

Mrs Anderson ... said she would have rung her husband Jim Anderson to get the telephone number and she doesn't recall the reason for the calls but believes they related to the UNICEF night. That explanation in relation to Mrs Anderson's business in Canberra I've already suggested is open to some doubt. She said she was contacting many businessmen about the UNICEF night but it has been indicated from the contents of the information obtained by the police in relation to the telephone calls, that apart from her dentist and Mr Theeman and Mr Nader, a solicitor who used to act for the Anderson's we've heard, there were only two or three calls which could possibly have been to business men ...

Conclusion

2.167 Had NCA staff examined the Nielsen inquest material carefully, they could have drawn a number of pertinent conclusions. First, of course, was that Anderson was clearly a suspect in relation to Nielsen's disappearance and presumed murder. Second was his obvious animosity towards Saffron. Third, was his willingness to make statements that incriminated himself in offences such as bribery and tax evasion in his apparent enthusiasm to 'get' Saffron. Fourth, there was his patent lack of credibility as a witness.

384 Nielsen inquest, transcript, 22 September 1983, p. 2082.

385. Nielsen inquest, transcript, 8 November 1983, p. 3947.