THE PARLIAMENT OF THE
COMMONWEALTH OF AUSTRALIA

Witness Protection

REPORT BY THE PARLIAMENTARY JOINT COMMITTEE
ON THE NATIONAL CRIME AUTHORITY

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SUMMARY

Section 34 of the National Crime Authority Act 1984 provides that the Authority may make arrangements for the protection of witnesses appearing at hearings before the Authority. The National Crime Authority has expressed the view that it does not have sufficient resources to set up its own witness protection scheme and that there are significant deficiencies in the facilities for the protection of witnesses available in Australia.

The Committee decided in April 1987 to pursue an inquiry into witness protection in Australia. It indicated that it would examine:

(i) the nature of witness protection and its role in the fight against organised crime;

(ii) the extent to which witness protection is an essential requirement of successful organised criminal investigation and prosecutions;

(iii) the extent to which organised crime witnesses are presently protected and the nature, adequacy and cost of current arrangements; and

(iv) the options available to the Government to improve witness protection.

The Committee took evidence not only from government and academic sources but also from witnesses who had been or were under protection themselves.

Information from informers is responsible for the detection of the greater part of crime. This is particularly so in the case of the so-called 'victimless' or 'consensual' crimes in which organised criminal groups specialise such as drug trafficking, illegal gambling, the sale of pornography, organised prostitution and usury, where there is unlikely to be a complainant. The Stewart Royal Commission found that the failure of the law enforcement agencies in Australia to come to grips with the activities of organised criminal groups was directly related to the lack of a flow of information from their traditional informers. It therefore recommended the cultivation of minor figures in organised criminal groups as witnesses against the principals. To secure the co-operation of such minor figures two things were necessary: they should be assured of substantially reduced penalties in return for their co-operation and they should be assured of protection against reprisals by their former associates.

While the history of intimidation of witnesses in this country is not as extensive or as colourful as that in the United States there is ample evidence to suggest that minor figures suspected of co-operating with the police will be murdered or assaulted to prevent them testifying. Confidential witnesses before the Committee told of constant harassment, physical attacks on them and their families and 'contracts' on their lives. Moreover a single example well known within the criminal community, such as the murders of Douglas and Isabel Wilson, gives the 'enforcers' a powerful psychological edge when they come to threaten other potential witnesses.

The Committee considers that society has an obligation to protect all witnesses, not merely witnesses against organised criminal groups. However the need for protection is greater in the case of witnesses in this latter class because organised criminal groups habitually resort to the violent intimidation of witnesses in order to avoid detection and punishment. Moreover the arrangements for the protection of such witnesses will need to be more elaborate and may need to continue after the trial is over, in some cases for the rest of the witnesses' lives.

Although it has been suggested that the provision of effective protection will induce more witnesses against organised criminal groups to come forward, the Committee has concluded that protection is less an inducement to give evidence than a consequence of giving evidence. Many of the witnesses to whom the Committee spoke might not be alive today were it not for the protection that has been provided. In the context of the fight against organised crime it is clearly in the interests of the State to provide protection to witnesses. Without such protection the principals of organised criminal groups will not be brought to trial. It is in this sense that the provision of effective witness protection is of primary importance in the investigation and prosecution of organised criminal activity.

The arrangements for witness protection vary widely overseas. In the United States the Witness Security Program, instituted in 1970, has depended since 1975 exclusively on the relocation of witnesses and their immediate dependants under new identities. Congressional criticism of the Program led in 1984 to the passage of the Witness Security Reform Act codifying the assistance to be provided under the Program and attempting to ensure that witnesses did not use their new identities to re-offend or to evade their obligations under civil law or family law. In the United Kingdom, by contrast, there is no formal programme and no legislation providing for witness protection. It appears that witnesses are normally placed in 'safe houses' under 24 hour guard until the end of the trials in which they are to give evidence after which they may be resettled within the country or overseas under new identities. Witnesses who are themselves in custody are housed in special units in both the United Kingdom and the United States although in the latter country new

identities are also used in a small number of cases. In Canada the Royal Canadian Mounted Police are following the United States model while in West Germany the various Länder are responsible for developing their own witness protection arrangements as need arises.

In Australia the development of arrangements for witness protection has been left to the individual police forces. Until quite recently this was managed as part of the normal policing function and protection was limited to increased guarding in the witness' own home and, occasionally, temporary relocation to a motel or a country town. Only the Australian Federal Police, the New South Wales Police and the Victoria Police have experienced demand necessitating the establishment of formal witness protection arrangements although the Queensland Police have provided protection for two witnesses from New South Wales. The Victoria Police protects witnesses by 24 hour guard at safe locations chosen by the Protective Security Groups while in New South Wales the Special Weapons and Operations Squad is moving away from 24 hour guarding to a plan based on relocation of witnesses under new identities. The Australian Federal Police Witness Protection Branch now provides protection exclusively by relocating witnesses under new identities.

Witnesses who are themselves in custody are protected by giving them false identities, enabling them to be merged with the prison mainstream, by placing them in segregation units within the gaol system also used for other offenders in need of protection, such as certain sex offenders, or by placing them in high security units normally used to house dangerous offenders. While this latter course guarantees witnesses the maximum protection it also means that they serve their sentences under much harsher conditions than they would have done had they not co-operated with the authorities. New South Wales has led the way by establishing a special purpose Witness Protection Unit at Long Bay Gaol where custodial witnesses can be housed without forfeiting opportunities for social contact, recreation and employment. However, the Unit is a maximum security facility.

The Committee stresses that the decision to provide protection to any witness should be preceded by an assessment of the credibility of the witness and an evaluation of the importance of the evidence which he or she purports to be able to give. The response provided by a witness protection scheme must be flexible, depending on the assessed level of threat. In less serious cases it may be possible simply to provide increased protection for the witness in his or her own home. In a small number of cases, however, police forces will not be able to guarantee the safety of the witnesses if they remain in their own homes and will recommend more drastic measures. In such cases the Committee considers that relocation under a new identity should be adopted as the preferred method of protection. The use of 24 hour guarding in a 'safe house' is obviously unsuitable as a long term method of post-trial protection. In addition it imposes

unacceptable pressures both on the witness and on his or her protectors and it is resource intensive and prohibitively expensive.

Despite progress made since the National Crime Authority first raised its concerns, problems remain with the witness protection arrangements in Australia. In particular there are still difficulties with relocating witnesses across State boundaries, although this is not a problem for the Australian Federal Police. There is a lack of co-ordination and co-operation between forces and a lack of an awareness even within forces of the witness protection arrangements which are available. Although witnesses are presently living under new names in this country, only rudimentary attempts have been made to establish mechanisms whereby those new names can be entered into official and commercial records without compromising the witness' security. There are witnesses living under new names who cannot obtain social security benefits, cannot file taxation returns and whose driver's licences would not withstand close inspection.

The Committee has rejected the option of a national witness protection scheme run by a new, independent agency as a solution to these problems. The Committee believes that there is insufficient demand to justify the costs associated with the creation of such an agency. It has failed to gain the support of any government and, even if the Federal Government wished to establish such an agency, it could not force the States to place their witnesses with the national agency. Instead the Committee recommends that a National Witness Protection Liaison Committee be established under the auspices of the Australian Police Ministers' Council to provide a forum for co-ordination and co-operation between the 8 police forces in the provision of witness protection and that the Australian Federal Police should assume an expanded national witness protection role.

The Australian Federal Police Witness Protection Branch already has considerable experience in the protection of witnesses by relocation. It provides protection on a user pays basis to witnesses from one State police force and the National Crime Authority and this service could be extended to other agencies which have not as yet felt the need to develop their own services capable of providing long term protection to witnesses. At the same time the proposed National Witness Protection Liaison Committee may provide a forum for the development of arrangements for the relocation of witnesses across State boundaries by the State police forces. It could also facilitate the interchange of information concerning contacts in State and Federal agencies and non-governmental bodies who can assist in the relocation process.

Relocation should be viewed as a last resort: other alternatives should be considered first. The agency providing protection should assess the need for protection and the suitability of the witness for relocation.This assessment should include a psychological evaluation. Before being accepted into the witness

protection scheme the witness and any adult family members should be required to read over and sign a memorandum of understanding detailing the assistance which the agency undertakes to provide and the conditions under which assistance will be terminated.

The agency arranging the relocation of a protected witness should provide accommodation at the new locality. The witness should be assisted in finding employment and an allowance should be paid to meet rent, living expenses, medical and dental bills and other incidental costs until such time as the witness obtains employment. Immediately upon the acceptance of the witness into the scheme the agency should initiate the necessary steps to accomplish a secure change of name and the Committee considers that complementary State and Federal legislation is necessary to provide a mechanism to achieve this. Such legislation should also indemnify persons acting in an official capacity who alter records or issue documents to reflect the new identity of a protected witness and should create a criminal offence where a person compromises the security of a protected witness by revealing details of his or her change of identity.

Where presently unavailable, appropriate complaints mechanisms should be established so that there is an avenue of review for witnesses who believe that they have been unjustly denied protection or who are aggrieved by decisions made by the agency protecting them including decisions to terminate any assistance being provided to them. Complementary State and Federal legislation should also give clear legislative authority for the protection of witnesses by relocation. It should set out mechanisms whereby protected witnesses may be prevented from evading their civil obligations and from avoiding obligations imposed on them by the Family Court. It should ensure that, if a protected witness commits a crime, the witness' criminal record under his or her old identity will be revealed to the responsible investigative agency. The Committee envisages that this could be achieved by the establishment of a central, secure register maintained by the National Witness Protection Liaison Committee recording each case in Australia where a change of identity has been accomplished for the purpose of witness protection together with details of the criminal record of the person concerned under his or her old identity. Finally, complementary State and Federal legislation should establish procedures whereby the hearing of cases in which protected witnesses are to testify can be expedited and should clarify the law with regard to the suppression of details identifying a protected witness.

Given the absence of any Commonwealth prisons it is clearly inappropriate to contemplate a national scheme for the protection of custodial witnesses except through greater consultation on this issue between the various corrective services administrations. The New South Wales Government may be prepared to permit its Witness Protection Unit at Long Bay Gaol to be used as a national facility for the protection of custodial witnesses whose evidence has national ramifications but it would be

necessary in the first instance to amend the complementary legislation relating to the interstate transfer of prisoners to specify the protection of a custodial witness as a ground for transfer.

The Committee is generally satisfied with the adequacy of the protection provided to custodial witnesses. However it recommends that the fact that such witnesses serve their sentences under harsher conditions than would otherwise be the case should be taken into account in making decisions concerning their release on licence or parole. Further, custodial witnesses need to be assured that their families are being protected and arrangements should be made to ensure that this occurs. Finally, custodial witnesses should be given clear undertakings as to the arrangements proposed for their protection on release.

LIST OF RECOMMENDATIONS

Recommendation: The Committee recommends:

(a) that the Australian Federal Police should assume an expanded national witness protection role; and

(b) that a National Witness Protection Liaison Committee be established under the auspices of the Australian Police Ministers' Council to facilitate greater co-ordination and co-operation between the 8 police forces in the provision of witness protection. (Paragraph 5.39).

Recommendation: The Committee recommends that the legislation relating to the registration of births in each State and Territory be amended to provide a mechanism similar to that presently applying in cases of adoption whereby a protected witness may be issued with a birth certificate in a new name which does not indicate that any change of name has taken place. The original birth certificate should be kept in a closed register available only to the protected witness or duly authorised persons. (Paragraph 5.46).

Recommendation: The Committee recommends that complementary State and Federal legislation relating to witness protection should indemnify from any civil or criminal liability persons acting in an official capacity who alter records or issue documents to reflect the new identity of a protected witness. (Paragraph 5.49).

Recommendation: The Committee recommends that complementary State and Federal legislation relating to witness protection should make it a criminal offence for a person to compromise the security of a protected witness by revealing details of the witness' change of identity. An appropriate penalty reflecting the gravity of the offence should be imposed. (Paragraph 5.51).

Recommendation: The Committee recommends that, where presently unavailable, appropriate mechanisms be established to handle complaints from persons who believe that they have been unjustly denied protection or who are aggrieved by decisions made by agencies in the administration of witness protection schemes. (Paragraph 5.54).

Recommendation: The Committee recommends that complementary State and Federal legislation relating to witness protection should:

(a) give clear legislative authority for the protection of witnesses by relocation;

(b) set out mechanisms whereby protected witnesses may be prevented from evading their civil debts and from avoiding obligations imposed on them by the Family Court;

(c) ensure that, if a protected witness commits a crime, the witness' criminal record under his or her old identity will be revealed to the responsible investigative agency;

(d) establish procedures whereby the hearing of cases in which protected witnesses are to testify can be expedited; and

(e) clarify the law with regard to the suppression of details identifying a protected witness. (Paragraph 5.59).

Recommendation: The Committee recommends that the complementary legislation relating to the interstate transfer of prisoners be amended to specify the protection of a custodial witness as a ground for transfer. (Paragraph 5.61).

Recommendation: The Committee recommends that appropriate steps be taken to ensure:

(a) that the fact that custodial witnesses serve their sentences under harsher conditions is taken into account in making decisions concerning the release of such witnesses on licence or parole;

(b) that the families of custodial witnesses are adequately protected; and

(c) that custodial witnesses are given clear undertakings as to the arrangements proposed for their protection on release. (Paragraph 5.65).

CHAPTER 1

INTRODUCTION

1.1 The Parliamentary Joint Committee on the National Crime Authority is constituted pursuant to section 53 of the National Crime Authority Act 1984. Section 55 of that Act requires the Committee, inter alia, to report to both Houses of the Parliament, with such comments as it thinks fit, upon any matter appertaining to the Authority or connected with the performance of its functions to which, in the opinion of the Committee, the attention of the Parliament should be directed.

1.2 Section 34 of the National Crime Authority Act 1984 provides that a member or acting member of the Authority may make such arrangements (including arrangements with the Minister or with members of the Australian Federal Police or of the Police Force of a State) as are necessary to avoid prejudice to the safety of a person, or to protect a person from intimidation or harassment, where it appears to the member or acting member that, by reason of the fact that the person is to appear, is appearing or has appeared at a hearing before the Authority or proposes to furnish or has furnished information to the Authority, the safety of the person may be prejudiced or the person may be subjected to intimidation or harassment.

1.3 The National Crime Authority stated in its Annual Report 1985-86 that although section 34 would empower it to set up its own witness protection facilities it did not at that time have sufficient resources to do so and therefore had to rely on facilities already in existence. There were significant deficiencies in existing arrangements and the Authority took the view that specific legislation was required to permit and regulate witness protection in Australia. The Authority was also committed to the formation of a national scheme to co-ordinate witness protection arrangements throughout Australia.[1] Members of

the Authority reiterated their concern with present arrangements in meetings with the Committee and in August 1987 Mr Bingham, then a member of the Authority, made public calls for a national witness protection scheme on a statutory basis.[2]

1.4 At its meeting on 1 April 1987 the Committee decided to pursue an inquiry into witness protection. Advertisements were placed in the national press on 22 April calling for submissions and indicating that the Committee would examine:

(i) the nature of witness protection and its role in the fight against organised crime;

(ii) the extent to which witness protection is an essential requirement of successful organised criminal investigation and prosecutions;

(iii) the extent to which organised crime witnesses are presently protected and the nature, adequacy and cost of current arrangements; and

(iv) the options available to the Government to improve witness protection.

The then Chairman, Mr A.G. Griffiths MP, also wrote directly to various persons and bodies whom the Committee thought might wish to make submissions.

1.5 However the inquiry came to a halt when the members of the Committee ceased to hold office on 5 June 1987 as a result of the dissolution of the Parliament following the calling of the general election. When the Thirty-fifth Parliament met after that election a new Committee was appointed and at its first meeting on 21 October 1987 the Committee decided to resume the inquiry. A closing date of 4 December 1987 was set for submissions and all those persons and bodies previously contacted who had not yet

made submissions were again contacted and informed of the new closing date. The new Chairman, Mr P.R. Cleeland MP, also wrote to a number of persons and bodies not previously contacted inviting them to make submissions. In all a total of 71 persons or bodies were contacted and 42 submissions were received.

1.6 The Committee held in camera hearings in February and March 1988 in Brisbane (1 day), Sydney (3 days), Melbourne (1 day) and Canberra (2 days). Besides obtaining evidence from official and academic sources the Committee heard evidence from a prisoner witness in the Queensland gaol system, from seven inmates and two former inmates of the Witness Protection Unit at Long Bay Gaol in New South Wales, from two witnesses under the protection of the Australian Federal Police Witness Protection Branch and from two persons who, although potential witnesses and subject to threats and harassment, were not at the time under protection. In order to preserve the anonymity of these witnesses, where their evidence has been referred to in the remainder of this report they are identified merely as 'Confidential Witnesses A-N'. The Committee also inspected the Witness Protection Unit at Long Bay Gaol and places on record its gratitude to the former New South Wales Minister for Corrective Services, the Hon. J.E. Akister, MLA, for allowing the Committee the opportunity to make this inspection.

1.7 The Committee expresses its thanks to all the persons and bodies who made submissions and presented evidence to the inquiry. The Committee also wishes to acknowledge the assistance of the two Secretaries to the Committee during the course of the inquiry, Peter O'Keeffe (34th Parliament) and Giles Short (35th Parliament), the present and former Research Officers, John Carter and Rosa Ferranda, and the Committee's Steno-Secretary, Chris Migus.

Chapter 1 - Footnotes

1. National Crime Authority, Annual Report 1985-86 (Parliamentary Paper No. 86/1987), pp.42-3.

2. Age, 25 August 1987, p.5; 27 August 1987, p.6.

CHAPTER 2

THE NEED FOR WITNESS PROTECTION

Introduction

2.1 In considering the question of witness protection the Committee has taken the term 'witness' to refer not only to persons actually called as witnesses in court proceedings but also to persons who may at some time in the future be called as witnesses (potential witnesses). Witnesses can usefully be divided into four categories:

(i) the observer of a crime;

(ii) the informer;

(iii) the undercover agent who may or may not be a police officer; and

(iv) the accomplice in a crime or crimes who wishes to give Queen's evidence in return for certain consideration.[1]

Although the term witness is used interchangeably to refer to all four categories the distinctions between them are of importance.

2.2 Informers, for example, are likely to be used primarily as a source of intelligence. Unless they bring themselves within one of the other categories - either by witnessing a crime or by actively participating in the commission of a crime - they are unlikely to be called as witnesses in court proceedings because they will have no admissible evidence to give. Even if they could be called as witnesses the law enforcement agency concerned may choose not to do so because the informer in question is more useful to the agency in that capacity. The identity of an

informer will not be revealed in subsequent proceedings unless the judge concludes that the lack of information as to the informer's identity will cause a miscarriage of justice.[2] Informers are expressly excluded from the United States Witness Security Program unless they become witnesses: that is, unless it is proposed to call them to give testimony in court.[3] Individual law enforcement agencies are considered to be responsible for the protection of their own informers.

2.3 The provision of adequate witness protection services may be a greater or lesser incentive to witnesses depending upon which category they fall within. It appears that informers are usually given minimal protection and rely instead on their identity being known only to a very few people even within the law enforcement agency with which they are dealing. They provide information in return for monetary reward, for lenient treatment by the police with respect to their own offences and, it has been suggested in some cases, in return for the provision of drugs.[4]

2.4 Accomplices and undercover agents other than police officers - for example members of organised criminal groups who have agreed to co-operate with a law enforcement agency in return for immunity from prosecution for their own crimes - generally have powerful inducements to give evidence other than the mere promise of protection. To a criminal facing a sentence of 15 to 18 years, for example, the promise of release within 2 years if he gives evidence against his co-conspirators must be an attractive proposition. On the other hand the penalty for giving such evidence may very well be death if the criminal belongs to a sufficiently well organised criminal group and if adequate protection is not provided.

2.5 Police officers are expected to give evidence in the course of their duty, whatever the risk, and it is said that private citizens who observe a crime have a duty to come forward and give evidence. However witnesses in this latter class are

peculiarly susceptible to intimidation and, as will be seen, protection may be unattractive to them if it means relocation and the disruption of their whole way of life. Such witnesses may be compelled to give evidence (subject to the privilege against self incrimination, if applicable) but it would be highly unusual for a prosecution to be based on the evidence of an unwilling witness.

The need for witnesses

2.6 In only a small percentage of crimes is the offender readily identifiable, usually because the offender is known to the victim or because he or she is apprehended in the act of committing the crime. In order to detect offenders law enforcement agencies are therefore heavily reliant in the first instance upon informers. This is particularly so in the case of the so-called 'victimless' or 'consensual' crimes in which organised criminal groups specialise, such as drug trafficking, illegal gambling, the sale of pornography, organised prostitution and usury, where there is unlikely to be a complainant. Even if surveillance, undercover agents, the analysis of financial records and so forth are used in an investigation, the initial interest will have been prompted by a tip-off from an informer.

2.7 The Williams Royal Commission was told by the New South Wales Minister for Police in 1978 that:

> 'Informants are invariably responsible for the majority of drug detections, not only in this State but throughout the world.'[5]

The term informant is used in this context to denote not only informers but also public spirited citizens and criminals awaiting sentence who may be prepared to trade information in return for more lenient treatment. The Costigan Royal Commission similarly observed:

> 'Most police investigations are dependent upon information being forthcoming. If there is no innocent bystander who observed the criminal act, then the police depend upon informers and admissions from the culprit in the vast majority of their cases. Without them, the crimes remain unsolved.'[6]

2.8 Both the Stewart and Costigan Royal Commissions suggested that the failure of the law enforcement agencies in Australia to come to grips with the activities of organised criminal groups in this country was directly related to the lack of the flow of information coming from their traditional sources. According to the Stewart Royal Commission, for example, most of the people who knew of the activities of the drug trafficking syndicate headed by Terrence John Clark 'were engaged in like activities which were profitable and which they desired to continue'. Even if law enforcement officers apprehended and charged a minor figure in the syndicate and were therefore in a position to put pressure on such a person to inform in return for more lenient treatment they were rarely successful. Mr Justice Stewart suggested this was because such minor figures simply did not trust law enforcement officers:

> 'They believe that there are police in the pay of the big man. They believe that the police cannot and will not protect them if they inform. Among such figures there is a whole folklore of police corruption; verballing, fabricating evidence, planting incriminating material, stealing money and drugs, assaulting suspects and so on.'[7]

2.9 Similarly Mr Costigan drew attention to a report on an investigation into the Victorian Branch of the Ship Painters and Dockers Union conducted by two Victorian police officers in the months before he began his inquiry. The report concluded that:

> 'Since Longley was convicted of murder in 1975, there have been no incidents of violence which are directly attributable to members of the Painters and Dockers Union in respect of their operations.
> ...
>
> Since 1975 the Union appears to have been operating without any great difficulty and there are no reported incidents to the Victorian Police of extortion, intimidation, violence or corruption by members of the Union and the companies operating on the waterfront.'

The two officers, Mr Costigan reported, were not corrupt nor were they naive, but they were compelled to rely on traditional forms of investigation:

> 'Those traditional methods required a flow of information from informants to be successful. There was no flow. This was not because there was nothing to speak about. Indeed, at that very time major drug importations were being arranged, murders committed, and significant armed robberies were taking place. In the absence of information, there was no way in which the two officers could even suspect a connection, let alone determine the scale and depth of the organisation.'[8]

2.10 The solution to this lack of a flow of information was, according to the Stewart Royal Commission, the cultivation of minor figures in organised crime syndicates as informers. Without obtaining evidence from within such groups there was little prospect of 'moving up the hierarchy' and convicting the principals responsible for the organisation of the relevant criminal activity.[9] This view has been supported in a number of submissions made to this Committee. In particular the National Crime Authority stated in its submission that:

> 'Information provided to the Authority by informants is proving to be essential in

> unravelling criminal syndicates and bringing investigations to the point where prosecutions can be launched. Undercover agents and electronic surveillance are of considerable use in the investigation of organised crime; however, in the case of closed groups, infiltration is sometimes impossible or dangerous and information is only obtainable from informants who have inside knowledge of the activities of the persons or groups under investigation. Indeed on some occasions, knowledge of the existence of a particular group, or of the activities of a group or individual, comes first from an informant.'[10]

2.11 In order to obtain the co-operation of such minor figures in organised criminal groups two things were necessary according to the Stewart Royal Commission:

> 'It appears to the Commission important that minor figures who are apprehended should realise that they face substantial penalties which may be considerably reduced if they are prepared to co-operate. Furthermore they must have confidence that the co-operation they give will not subject them to violence or other retribution from the people concerning whom they give information or the associates of such people.'[11]

The need for protection

2.12 The intimidation of informers and potential witnesses is one of the characteristics of organised criminal groups. This is particularly marked in the United States where, according to M.H. Graham:

> 'Organized crime embodies witness intimidation in the position of the "enforcer". The enforcer's duty is to maintain the organization's integrity by arranging for the threatening, maiming and killing of potential witnesses. The Justice Department has indicated that 10 per cent of all murders related to organized crime in a four year period were of prosecution witnesses. Very

> often, when a person would agree to testify against an individual connected to organized crime, whether the person was a member of the organization or a concerned citizen, they would either disappear, become involved in a fatal accident, or be murdered outright.'[12]

The annals of Congressional investigations into organised crime in the United States are replete with tales of witnesses dumped in rivers wearing 'concrete boots' or crushed, 'James Bond-like', in their cars in car wrecking yards.[13]

2.13 The Australian experience, while neither as extensive nor as colourful, indicates that organised criminal groups in this country employ similar tactics. The marihuana growing syndicate based in Griffith and found by the Woodward Royal Commission to have been headed by Robert Trimbole is considered responsible for two murders. Patrick Joseph Keenan, a New South Wales Department of Agriculture inspector, discovered a marihuana crop near Griffith and reported it to the Griffith police. Soon after a Patrick Joseph Keenan was found dead in a ditch with a blood alcohol reading of 0.225. On this occasion, although the two men had the same names and lived in the same town, the marihuana growers got the wrong man.[14] Donald Mackay, a hardware store proprietor and Liberal candidate, informed Sydney police of at least one marihuana crop in the Coleambally district. He disappeared on 15 July 1977 and it was subsequently established that, on instructions from Robert Trimbole, Gianfranco Tizzoni had hired James Frederick Bazley, a Painter and Docker, to kill Mackay. His body has never been found.[15]

2.14 The Stewart Royal Commission found that the drug trafficking syndicate headed by Terrence John Clark had committed at least five murders during its relatively brief period of operation in Australia. In September 1977 Clark killed Gregory Paul Ollard, a heroin addict and wholesaler, and his girlfriend, Julie Diane Theilman, likewise a heroin addict. The Commission found they had been killed because they were becoming unreliable

as a result of their addiction although Ollard may have been thinking of approaching the Federal Narcotics Bureau with information.[16] Harry Lewis, a principal in the syndicate, was arrested at Sydney airport on 13 May 1978 on the basis of information provided by a courier, Vivian Lorraine Sharp, who had been arrested a few days earlier carrying approximately 40kg of cannabis in the form of 'buddha sticks'. Lewis was granted bail on 19 May and the Stewart Royal Commission found that on or about 23 May Clark murdered him and dumped the body in bushland near Port Macquarie. Once again Lewis appears to have been killed as a result of disputes within the syndicate but Clark may also have feared that he might give information to the police.[17]

2.15 On 28 May 1978 Duncan Robb, a heroin addict and dealer, was arrested for possession of heroin and gave information to Customs and Narcotics Bureau officers naming Douglas Wilson and Clark as his suppliers. He was granted bail on 29 May and according to the Stewart Royal Commission on 2 June Clark and two associates picked him up and took him to Ku-ring-gai Chase National Park where Clark assaulted him with a baseball bat, breaking his left elbow and a bone in his left hand.[18] Douglas and Isabel Wilson, heroin addicts and, according to the Stewart Royal Commission, distributors for the syndicate, were arrested along with Clark in Brisbane on 9 June 1978. On 12 June the Wilsons were interviewed for three and a half hours by officers of the Queensland Drug Squad and the Federal Narcotics Bureau. They provided details of the syndicate's methods of heroin importation and distribution as well as information on the murder of Lewis and the assault on Robb. In April 1979 Clark arranged through Robert Trimbole to have the Wilsons killed because he had discovered they were informers and Gianfranco Tizzoni once again hired Bazley to carry out the murders. Their bodies were found, poorly concealed on a beach at Rye on Port Phillip Bay, in May 1979 but it was not until April 1986 that Bazley was convicted of their murders.[19]

2.16 The Stewart Royal Commission also recommended that further inquiry be made into the death of Dale Catherine Payne, a heroin addict who died of an overdose on 15 May 1978. Although unconnected with the Clark drug trafficking syndicate the matter came to light because Narcotics Bureau officers had concealed certain facts from the original inquest. Payne had told them that she feared she would be murdered by a drug overdose because she had informed them that Tony Eustace (also known as Anderson) was her heroin supplier. A new inquest found that Payne was probably murdered, although the coroner was unable to say by whom.[20] In August 1980, John Desmond Gordon, a courier with the Zampaglione drug trafficking group who had been co-operating with the Joint Victorian-Federal Police Task Force, was murdered with a shotgun shortly before committal proceedings were about to commence. The Commonwealth Attorney-General had agreed to indemnify Gordon who was an important witness against the group. The principal of the organisation was subsequently secretly taped boasting that 'no junkie' would ever get to court to give evidence against him.[21]

2.17 On 27 November 1983 Anthony William Cameron, a prisoner at the Metropolitan Remand Centre at Long Bay, was murdered by a heroin overdose. It subsequently transpired that another prisoner, Michael Robert Main, had committed the murder at the behest of a third, Charles Lo Surdo, who was awaiting trial on drug charges and feared that Cameron might give evidence against him.[22] In the three and a half years since this last example there have been allegations of conspiracies to murder and attempted murders of witnesses and informers, both in and out of gaol, and there have, of course, been numerous underworld slayings although it is unclear whether any of those murdered were killed because they were informers or potential witnesses or suspected of being so. However the attempted murder of a former undercover agent, Senior Constable Michael Drury, on 6 June 1984 and the murder of Sallie-Anne Huckstepp, a heroin addict and informer, on 7 February 1986 indicate that the threat of intimidation of witnesses remains.

2.18 The Committee has been told that potential witnesses in Griffith against the marihuana growing organisation based there are afraid to come forward.[23] Confidential witnesses before the Committee have referred to $10,000 contracts on their lives[24] and the Committee has been told that the threat to the lives of certain witnesses presently under protection is very real indeed.[25] The Committee has also been told of physical attacks on witnesses, of constant harassment suffered by them, of physical attacks made on their immediate family members and of verbal threats.[26] Moreover it has been suggested to the Committee that the death of any potential witness has ramifications beyond the immediate case in which that witness was involved. The murder of witnesses like Douglas and Isabel Wilson, for example, not only serves as a warning to other minor figures in organised crime groups who might be thinking of co-operating with the authorities but also serves to reinforce threats of punishment when these are made to maintain loyalty to the group. **A single example, well known within the criminal community, gives the 'enforcers' a powerful psychological edge when they come to threaten other potential witnesses.**[27]

Witness protection and the fight against organised crime

2.19 In an ordered society the burden of protecting citizens against the sort of violence and harassment referred to above falls upon government and, more particularly, on the police. As the former Royal Commissioner, the Hon. A.R. Moffitt, put it in his submission:

> 'A function, without more, of any civilised society is to protect from harm those who serve its institutions, and this includes witnesses in its court system.'[28]

2.20 The Committee received only one submission arguing against the concept of witness protection as a responsibility of

government. That submission clearly links the desirability of witness protection to the issue of the use of 'police spies' or informers as witnesses. The submission refers in particular to the use made of Richard John Seary in the Hilton bombing case and Chris Nakis in the Greek social security conspiracy case.[29] The Committee can see that there are legitimate civil liberties concerns in the use of undercover agents, particularly if their role verges on that of an agent provocateur. However the Committee's inquiry relates to the issue of witness protection, not the separate issue of the use of 'police spies' or informers as witnesses. Similar concerns may be raised, for example, about the conviction of offenders on the uncorroborated evidence of accomplices who have themselves been given immunity or a reduced sentence in return for their testimony. While such accomplice witnesses will often require some form of protection **the Committee considers that the ethics of relying upon such evidence can be separated from the obligation of society to protect such witnesses once a decision has been taken to make use of their testimony.**

2.21 A witness to any crime may potentially be at risk of intimidation by the accused or associates of the accused. The Law Society of Western Australia referred in its submission to a case in that State where the complainant in a charge of rape was murdered by persons at the behest of the accused.[30] The Committee accepts that any scheme which is established for the protection of witnesses should provide not merely for the protection of witnesses against organised criminal groups but also for the protection of witnesses in relation to other serious crimes where the threat to the witness in question justifies the provision of such protection.[31] However the need for protection is greater in the case of witnesses against organised criminal groups because, as noted above, such groups characteristically resort to the violent intimidation of witnesses in order to avoid detection and punishment. Moreover, whereas protection for witnesses in relation to most serious crimes will not normally need to

continue after the trial is over, witnesses against organised criminal groups may require protection in some form for the rest of their lives.

2.22 Accordingly, from the submissions there is widespread support for the view that an effective witness protection scheme is an important part of the armoury to be deployed in the investigation of organised crime.[32] Just how important a part it is difficult to say. In the United States, which has had a witness protection programme for 18 years, although studies have been done comparing the rate of convictions obtained and sentences imposed in prosecutions using the testimony of protected witnesses with all other prosecutions no studies have apparently been done comparing the performance of law enforcement agencies in combatting organised crime before and after the introduction of the Witness Security Program. Such studies may indeed not be possible, both because of the difficulty of measuring organised criminal activity and because in order to be meaningful it would be necessary to isolate the impact of witness protection from the other measures which were introduced to combat organised crime at the same time.

2.23 There is, however, plenty of anecdotal evidence to support claims for the importance of effective witness protection. Thus Rudolph Giuliani, a United States Associate Attorney-General with the Department of Justice, told the Sub-Committee on Courts, Civil Liberties and the Administration of Justice of the House of Representatives Committee on the Judiciary in September 1982 that:

> 'If one were to look at the success of the Department of Justice, the FBI, State and local law enforcement, and Federal, prior to the witness security program, prosecuting just the Mafia pre-1970 or 1971, and were to compare that with the results that have been obtained in the last 3 or 4 years, you will see a very, very drastic difference.

> When I was a prosecutor, it was a very, very unusual thing to be able to indict and convict the head of an organized crime family, or even a major member of organized crime, and those convictions were very, very rare indeed.
>
> Today, the FBI has over the course of the last 3 years, and the organized crime strike forces of the Justice Department, has [sic] prosecuted either the head or a significant figure in almost every major organized crime family in this country. There are presently nine either under indictment or convicted.
>
> Ten years ago, we would be lucky if in a given 1 or 2 year period one such person would be under indictment and that was a major event. It has now become so commonplace it doesn't get the attention it used to get.'[33]

2.24 In Australia the Stewart Royal Commission concluded that informers would not be prepared to give testimony at the trial of members of an organised criminal group if they could not be confident that they would be protected.[34] There was some dispute in evidence given to the Committee, however, as to the weighting given to protection by potential witnesses in deciding whether to co-operate with the authorities. It was suggested to the Committee that offenders already in prison were often prepared to provide information without any inducement or with only modest concessions.[35] This suggestion was borne out to some extent in evidence given to the Committee by prisoner witnesses who had provided information without any specific deals being done[36] although it was also put to the Committee that more witnesses might be expected to come forward as confidence in the protection arrangements grew[37] and that the co-operation gained through the provision of effective protection might be greater than that gained through the grant of an indemnity.[38]

2.25 There was some suggestion, however, that the offer of an indemnity for the witness' own offences or a promise of a reduction in sentence would ordinarily constitute a greater

inducement to co-operate than the promise of protection.[39] Indeed one witness who had been given an indemnity expressed the view that, in the absence of an indemnity, there would be little incentive for witnesses in custody for their own offences to co-operate:

> 'I really cannot see the point in having a system like [the Witness Protection Unit at Long Bay Gaol] because the person is going to be in gaol. He might as well shut his mouth and say nothing and still end up in the same place, in gaol. The idea is to get the witness to come forward and give his information and if he is only going to get put in gaol anyway then what is the point in saying anything in the first place?'[40]

On the other hand one of the witnesses who was an inmate in the Witness Protection Unit stated that he would not have agreed to co-operate with the police if his personal well being and safety had not been assured.[41] It was also put to the Committee that if an effective witness protection scheme were to be available many more witnesses not facing any charges might be prepared to come forward with evidence of organised criminal activity. Solicitors and accountants on the periphery of organised crime were specifically mentioned as witnesses who might come forward if their protection could be assured.[42]

2.26 The Committee was given many explanations as to the motivation of witnesses who had decided to give evidence, often against former associates, but protection, in and for itself, did not figure in most of these explanations. One reason for this is the lack of knowledge within the wider community of the witness protection services which may be made available and the Committee believes that as awareness of such services spreads so potential witnesses will pay more heed to them in deciding whether to provide evidence. However the Committee has concluded that protection is less an inducement to give evidence than a <u>consequence</u> of giving evidence.[43] Many of the witnesses to whom

the Committee spoke might not be alive today were it not for the protection that has been provided.

2.27 In the context of the fight against organised crime it is clearly in the interests of the State to provide protection to witnesses. Without such protection the principals of organised criminal groups will not be brought to trial. It is in this sense that the provision of effective witness protection is of primary importance in the investigation and prosecution of organised criminal activity.

Chapter 2 - Footnotes

1. Opinion of D.H. Peek of Counsel, published as Project Epsilon - Interim Report III (National Police Research Unit, Adelaide, 1984), pp.5-6.

2. R. v. Hallet and others [1986] Crim. L.R. 462; Oscapella, E., 'A Study of Informers in England', [1980] Crim. L. R. 136; Eagles, I., 'Evidentiary Protection for Informers - Policy or Privilege?', [1982] 6 Crim. L. J. 175.

3. 'U.S. Attorney's Manual, Title 9 - Criminal Division, Chapter 21 - Witness Security Program' (16 April 1981), incorporated as supplementary material in Marshals Service of Process: United States Congress, Hearings Before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the House of Representatives Committee on the Judiciary, 97th Cong., 2nd Sess. (9 and 10 September 1982) [hereafter 1982 Hearings], pp.257-69 at p.260.

4. Royal Commission of Inquiry into Drugs (Commissioner: The Hon. Mr Justice E.S. Williams), Report (A.G.P.S., Canberra, 1980), p.B198; Royal Commission of Inquiry into Drug Trafficking (Commissioner: The Hon. Mr Justice D.G. Stewart) Report (A.G.P.S., Canberra, 1983), pp.419, 565.

5. Williams, op.cit., p.B197.

6. Royal Commission on the activities of the Federated Ship Painters and Dockers Union (Commissioner: Mr F.X. Costigan, QC), Final Report (A.G.P.S., Canberra, 1984), vol. 2, p.3.

7. Stewart, op.cit., p.561.

8. Costigan, Final Report, vol. 2, pp.5-6.

9. Stewart, op.cit., pp.558-63.

10. Submission from the National Crime Authority, p.2; see also Submissions from the Australian Federal Police, p.1; the Director of Public Prosecutions, p.1; the New South Wales Director of Public Prosecutions, p.1; and the State Drug Crime Commission of New South Wales, pp.7-8.

11. Stewart, op.cit., p.562.

12. Graham, M.H., Witness Intimidation - The Law's Response (Quorum, Westport, Conn., 1985), p.5.

Chapter 2 - Footnotes (continued)

13. Goldstock, R., and Coenen, D.T., 'Controlling the Contemporary Loanshark - The Law of Illicit Lending and the Problem of Witness Fear', (1980) 65 Cornell L.R. 127 at pp.207-8.

14. Four Corners, 23 June 1986.

15. Sydney Morning Herald, 17 April 1986.

16. Stewart, op.cit., pp.127-33.

17. Ibid., pp.330-40.

18. Ibid., pp.341-8.

19. Ibid., pp.349-71; Sydney Morning Herald, 17 April 1986.

20. Stewart, op.cit., p.420; Australian, 6 July 1985; Eustace himself had meanwhile been killed in April 1985.

21. Stewart, op.cit., pp.537-8, 683.

22. Sydney Morning Herald, 28 April 1987.

23. Submission from Concerned Citizens of Griffith.

24. In Camera Evidence, Confidential Witness B, p.176; Confidential Witness F, p.314; Confidential Witness L, p.858.

25. In Camera Evidence, Confidential Witness G, p.626; Australian Federal Police, p.794; N.S.W. Department of Corrective Services, p.1017.

26. In Camera Evidence, Confidential Witness A, p.87; Confidential Witness B, pp.177-8, 180, 181, 192; Confidential Witness C, p.217; Confidential Witness H, pp.821-2, 825-6; Confidential Witness K, p.850; Confidential Witness N, p.894.

27. Submission from the Hon. Mr Justice Vincent, p.1; Submission from the Hon. A.R. Moffitt, pp.4-5; see also In Camera Evidence, Confidential Witness B, p.179.

28. Submission from the Hon. A.R. Moffitt, p.2.

29. Submission from the Environment and Social Issues Coalition.

30. Submission from the Law Society of Western Australia, p.1.

Chapter 2 - Footnotes (continued)

31. See Submission from the N.S.W. Department of Corrective Services, p.1.

32. In Camera Evidence, Queensland Government, p.57; Victorian Government, p.590; New South Wales Police, p.939; Submission from the National Crime Authority, p.1.

33. 1982 Hearings, p.183.

34. Stewart, op.cit., p.563.

35. In Camera Evidence, Professor Vinson, pp.148, 160-1.

36. In Camera Evidence, Confidential Witness J, p.841; Submission from Confidential Witness A.

37. Submission from the N.S.W. Department of Corrective Services, p.2.

38. Submission from Confidential Witness M, pp.3-4.

39. In Camera Evidence, Queensland Government, p.37; Australian Federal Police, pp.776-7.

40. In Camera Evidence, Confidential Witness E, pp.285-6.

41. Submission from Confidential Witness L, p.1.

42. In Camera Evidence, Confidential Witness B, pp.202-3; N.S.W. Police, p.962.

43. In Camera Evidence, Confidential Witness G, p.635.

CHAPTER 3

THE OVERSEAS EXPERIENCE

United States

3.1 Prior to 1970 such witnesses against organised crime groups as came forward in the United States were protected on an ad hoc basis. They were often housed on military bases while giving their evidence, and although Robert Kennedy, then Attorney-General, told a Senate Committee in 1963 that protection by change of name and relocation was available, it appears that such assistance with eventual relocation might be little more than a bus ticket to some distant place.[1] Congressional concern with organised crime led in 1970 to the passage of the Organised Crime Control Act, Title V of which authorised the United States Attorney-General to provide for the health, safety and welfare of prospective witnesses against participants in organised criminal activity and the families of such witnesses.

3.2 Responsibility for witness protection was initially vested in the Criminal Division of the Department of Justice with the U.S. Marshals Service being responsible only for physical protection. However in March 1971 the Marshals Service was given responsibility for the whole Witness Security Program. Established in 1789, the Marshals Service is the oldest United States Federal law enforcement agency and up until the 1970s it was primarily responsible for handling and supervising Federal prisoners and ensuring that Federal courts were secure and free from disruption (including responsibility for the safety of judges and the security of juries). It was thus well suited to undertake the physical protection of witnesses but it lacked the personnel and training to provide the services associated with the relocation of witnesses and their families.

3.3 At first witnesses were protected by placing them in safe houses rented or purchased for the purpose but this approach was phased out by mid-1975. The security of safe houses was considered to be suspect because of disclosures by witnesses who had been placed in them, they were felt to resemble prisons because of the need to confine the movements of the inmates, they led to security breaches because witnesses exchanged information on their backgrounds and, last but not least, they were expensive to operate.[2] The new approach adopted involved the immediate physical relocation of the witness and his or her family. Witnesses would be provided with a new identity and assisted with documentation to support that identity and in obtaining employment. In exchange they would be required to return to the 'danger area' under the protection of the Marshals Service to give their testimony.

3.4 The Witness Security Program came under severe criticism in the late 1970s from participants dissatisfied with the services provided to them and from third parties who had suffered loss or damage at the hands of participants in the Program. The Marshals Service acknowledged that it had been ill-prepared for the demands placed upon it by the adoption of the new approach of relocating witnesses under new identities. It had also failed to anticipate the growth in demand for the services provided by the Program. At the time Title V was enacted it was thought that 25 to 50 witnesses a year would be protected at a cost of less than $1 million. As Table 1 shows, entries into the Program peaked at 469 in 1977 after which they were cut back by more rigorous screening. Costs continued to increase, however, partly because of continuing commitments to witnesses admitted in earlier years.

TABLE 1 - WITNESS SECURITY PROGRAM[3]

Fiscal year	Witnesses admitted	Program costs ($US million)
Beginning of program through 1973	647	(not available)
1974	324	3.1
1975	371	11.4
1976	466	12.6
1977	469	12.0
1978	441	11.6
1979	427	19.9
1980	334	21.5
1981	287	24.4
1982	324	28.4
1983	333	24.8

3.5 Following a series of Congressional inquiries the Witness Security Reform Act of 1984 was passed inserting a new chapter in the United States Code dealing with the protection of witnesses. For the first time the Attorney-General was given express legislative authority to provide for the relocation of a witness and the witness' immediate family. The Act provides that the Attorney-General may -

(a) provide suitable documents to enable the witness to establish a new identity or otherwise to protect the witness;

(b) provide housing for the witness;

(c) provide for the transportation of household furniture and other property to a new residence;

(d) provide a payment to meet basic living expenses;

(e) assist the witness in obtaining employment; and

(f) provide other services to assist the witness in becoming self-sustaining.

The Act also provides mechanisms for the resolution of disputes concerning debts and the custody of children without revealing the new identity or location of the witness, matters considered further below.

3.6 In order to be considered for admission to the Witness Security Program a person must be an essential witness in a case concerning organised criminal activity or some other serious offence. There must be clear evidence that the life of the prospective witness or some family member is in immediate jeopardy. Protection of witnesses and their families is ordinarily the responsibility of local authorities so the implementation of federal protection requires a determination that the local authorities are unable to provide adequate protection. Informants are not eligible to participate in the Witness Security Program unless they become witnesses. State or local witnesses may be provided with protection if an appropriate agreement is made with regard to the reimbursement of the associated costs.[4]

3.7 Many of the early complaints about the Program arose out of the failure on the part of prosecuting authorities or investigative agencies to anticipate that protection of a witness would be required. This inevitably led to hasty relocations, complaints about delays in moving household belongings, provision of documentation and the like and dissatisfaction because there had been no opportunity for the Program to be fully explained to the person concerned. Although provision remains for 'emergency pick-ups' the Marshals Service now insists that the maximum advance warning be given. The prosecuting attorney makes the initial application for the protection of a witness, indicating the significance of the case and of the witness' expected testimony. The appropriate investigative agency, for example the

FBI, must submit a report concerning the anticipated threat to the witness' life and a Witness Security Program Inspector from the Marshals Service visits the witness and his or her family to brief them on the Program and to make an assessment of whether or not the witness will be 'a workable case'. The Marshals Service then makes its recommendation on whether the witness should be admitted to the Program to the Office of Enforcement Operations in the Department of Justice which has the final say.

3.8 The Witness Security Reform Act now requires that before admitting a witness to the Program the Attorney-General or his or her delegate shall, to the extent practicable, obtain information relating to the suitability of the person for inclusion in the Program including the criminal history, if any, of the person and a psychological evaluation. The Attorney-General or delegate must make a written assessment of the seriousness of the investigation or case in which the person's information or testimony has been or will be provided and the possible risk to other persons and property in the community where the person is to relocated. Protection will not be provided to a person if the assessed risk of danger to the public outweighs the need for the person's testimony. In making this judgment the Attorney-General or delegate is required to have regard to the person's criminal record, alternatives to providing protection by way of relocation, the possibility of seeking similar testimony from other sources, the need for protecting the person, the relative importance of the person's testimony, results of psychological examinations, whether providing protection by relocation will substantially infringe upon the relationship between a child who would be relocated with the person and that child's parent who would not be so relocated and such other factors as the Attorney-General or delegate considers appropriate.

3.9 Once admitted to the Program the witness and any family members over the age of 18 are required to read and sign a 15 page Memorandum of Understanding, initialling each page. The

Marshals Service does not regard this as a contract but it is designed to make clear the obligations the Government accepts under the Program and the circumstances in which protection may be forfeited. The witness may have a lawyer present when entering into the Memorandum of Understanding but for security reasons neither the witness nor his or her lawyer may retain a copy of the document. The Witness Security Reform Act requires that the Memorandum of Understanding set forth the responsibilities of the witness including -

(a) the agreement of the witness to testify in, and provide information to law enforcement officials concerning all appropriate proceedings;

(b) the agreement of the witness not to commit any crime;

(c) the agreement of the witness to take all necessary steps to avoid detection by others of the facts concerning the protection provided to the witness;

(d) the agreement of the witness to comply with legal obligations and civil judgments against the witness; and

(e) the agreement of the witness to co-operate with all reasonable requests of Government officers and employees providing protection.

3.10 The relocation area is chosen jointly by the witness and the Marshals Service and the Service makes arrangements for the transportation of the witness and any personally owned household goods to the new area. For security reasons motor vehicles must be left behind and sold, and the Marshals Service cautions against the movement of household pets, in the interest of the pets. The Service requires a legal name change and arranges for

the provision of documentation in that new name such as a new driver's licence, social security card, passport, birth certificate, military discharge papers and the like. All documents are genuine, issued by the appropriate authorities and 'backstopped': that is, the original documents with supporting papers are on file at the issuing authority. Ideally, for example, if a new birth certificate is issued the original hospital records should also be altered.

3.11 Once in the relocation area the witness is given assistance in finding employment, although the Marshals Service emphasises that the primary responsibility for finding a job rests on the witness. The Memorandum of Understanding requires that the witness be given one reasonable job opportunity commensurate with his or her skills and if this is refused subsistence funding can be terminated. The Marshals Service has established a job bank drawing on offers from more than 150 national corporations and it also has an arrangement with the United States Office of Personnel Management to provide a limited number of witnesses with government jobs. Witnesses are paid a monthly tax-free subsistence allowance until employment is secured up to a maximum period of six months although this may be extended for a further ninety days. Once the witness leaves the subsistence stage of the Program the Marshals Service basically loses contact except to arrange the witness' appearance to testify or where there is clear evidence that the witness is in immediate jeopardy arising out of his or her former co-operation and not through his or her own fault. Thus while the Justice Department recognises a lifetime commitment to protect the security of witnesses participating in the Program it is a limited commitment.[5]

3.12 Prisoners are eligible for participation in the Witness Security Program provided all other criteria are met. In addition, if the prisoner is in State custody, the State concerned must agree to the prisoner serving the remainder of his

or her sentence in a Federal institution. The Office of Enforcement Operations in the Department of Justice, once notified that a prisoner is co-operating with the Government, will co-ordinate the placement of the prisoner with the Bureau of Prisons so that such prisoners are kept separate from other prisoners - including other prisoner witnesses - who may wish to harm them. The initial placement is usually in the witness protection unit at one of the three Metropolitan Correctional Centers in New York, Chicago and San Diego. Individuals housed in these units have no contact with other offenders. Food served is selected at random from food served to other prisoners, visits are conducted at other than regular visiting times and prisoner witnesses are transported by U.S. Marshals rather than by Bureau of Prisons buses. In the longer term the Bureau of Prisons makes every effort to house the prisoner close to his or her family which may involve placement in other Federal, or sometimes State, institutions. Name changes are accomplished in roughly ten per cent of cases.[6]

3.13 Among the major criticisms of the Witness Security Program is its unsuitability for the innocent bystander or victim of crime. Whereas relocation under a new identity may help give a former criminal 'a new start in life'[7] it is clearly unattractive to a businessman who already has a settled home, a profitable business, a good credit rating and so forth. As Raymond Worsham, a former Federal drug agent, told the U.S. Senate Committee on Governmental Affairs:

> 'You have, say, an extortion victim, a high level executive, an accountant without criminal past. What do you tell this witness? You have to go to him with a proposition - if you are going to be truthful and honest, you have to say, "Mr Witness, we would like you to co-operate with the Government so that we can prosecute those dangerous parasites out there. Now, all you have to do is risk your life, change your family name, sacrifice your career, give up all your friends and accept a

> much lower standard of living than you have now, and in exchange for that we will let you be of service to your country"....'[8]

It appears that at least two former businessmen who joined the Program have committed suicide and that other witnesses similarly situated may prefer the daily companionship of a bodyguard to the uncertainties and trauma of relocation.[9]

3.14 Witnesses who have entered the Program complain in particular of delays experienced in the provision of new documentation, the unsatisfactory nature of the documentation provided and difficulties in finding employment. Basic documents like a social security card - without which the relocated witness may not even be able to open a bank account - take months or even years to arrive. The United States has a contributory social security system and credits accumulated under the witness' old identity are not transferred into the name of the new identity until a claim is made, entailing further delays. Particular difficulties have been found in obtaining professional licences, marriage certificates and post-high school educational records in new identities. The Marshals Service responds that it is dependent upon other agencies for their co-operation in the provision of documentation. Some 14 States and 3 Territories do not co-operate with the Marshals Service in the provision of new birth certificates. Relocated witnesses forfeit their entire credit histories and the Marshals Service - whether as a matter of policy or as a matter of law is not clear - will not provide credit references.[10]

3.15 With regard to employment the Service provides 'sanitized' résumés which give details of the work the witness has undertaken without identifying the companies for which the witness has worked. Such documentation is regarded by many witnesses as worse than useless. The Service defends its record in assisting witnesses to obtain employment by stressing the material with which it is working: on its estimates 95 per cent

of those entering the Program are criminals although a General Accounting Office survey found that only 73 per cent of the witnesses in its sample had criminal records. Few of those entering the Program have marketable job skills and for those that do finding work may still be difficult because of the lack of verifiable experience and delays in obtaining evidence of qualifications in their new identities.[11]

3.16 Apart from the complaints of participants in the Program, criticism has also been directed at its effect on third parties. It has been claimed that witnesses under the shelter of their new identities have been able to commit crimes and evade civil obligations. The most notorious case of a criminal using his new identity to commit crimes is that of Marion Pruett who was released from prison in Atlanta, Georgia, in November 1979 after serving 10 years of a 30 year sentence for armed robbery and manslaughter. Because he had testified against an underworld figure in relation to the killing of his cellmate Pruett was given a new identity as Charles 'Sonny' Pearson. Pruett subsequently admitted killing his cellmate himself. On 3 March 1981 Pruett reported to police in New Mexico that his wife was missing. Her body was found in the desert several weeks later and Pruett was booked as a material witness but was released for lack of evidence. It appears that the local authorities were not made aware of Pruett's old identity and criminal record. Pruett subsequently embarked on a spree of robbery, committing 7 hold-ups and 4 murders.[12] The Marshals Service now believes that it has procedures in place which will enable State and local authorities to be made aware of the true identity and criminal record of suspects participating in the Witness Security Program within 24 hours of an inquiry being made. Moreover the General Accounting Office has found that the rate of recidivism of participants in the Program is 21 per cent over the two years following entry into the Program which compares favourably with the rate of 47 per cent for Federal prison releasees.[13]

3.17 Particular problems have been identified with the use of the protection provided by the Program to evade debts. In 1983 the General Accounting Office identified 32 cases where obligations totalled $US 7.3 million but it should be stressed that $US 6.4 million of this total was subject to litigation. Although the Marshals Service would serve process on the participant in the Program this did not necessarily resolve the problem since the witness might ignore the litigation and allow a default judgment to be entered. Such a judgment was impossible to enforce unless the Marshals Service was prepared to reveal the location and identity of the witness.[14] Section 3523 of the United States Code, inserted by the Witness Security Reform Act of 1984, now provides that, where the Attorney-General refuses to disclose the identity and location of a protected witness to a person who has obtained a judgment against the witness, the person may seek the appointment by the court of a guardian to enforce the judgment on his or her behalf. The identity and location of the protected witness must be disclosed to the court-appointed guardian.

3.18 Relocation under a new identity also causes obvious problems where the relocated person has custody of a child or children of a former marriage and the non-relocated parent has or may obtain visitation rights. The General Accounting Office found in its 1983 study that the Marshals Service did not have procedures in place to check the custody status of children entering the Program and that although it offered assistance in terms of transportation and protection so that such matters could be litigated in State courts it still relied on co-operation from the witness concerned in undertaking settlement of such matters. In one case two children were relocated in September 1979 with their mother (who did not have legal custody) and a witness who had testified against a motor cycle gang. Neither the prosecuting attorney sponsoring them nor the Marshals Service had checked the

custody status of the children and it took their father until May 1981 to obtain an order directing the Marshals Service to return the children.

3.19 Problems also arise in relation to visitation rights. In one case where a father had attempted since February 1978 to enforce his visitation rights the Marshals Service stated that it was limited to advising the mother of his request: it could not require her to allow the father to visit the children. The Marshals Service stated that it would attempt to facilitate the exercise of such rights by selecting a neutral site and providing transportation and protection but that it was not physically or fiscally possible for it to do this at intervals of less than a month.[15] Section 3524 of the United States Code, likewise inserted by the Witness Security Reform Act 1984, provides that the Attorney-General may not relocate a child along with a protected witness if it appears that someone other than the protected witness has legal custody of the child. If any participant in the Program has obligations with respect to the custody or visitation of a child under a court order the Attorney-General must ensure that the court order can be complied with or, if not, that the relocated person initiates legal action to modify the court order. The non-relocated parent must be notified as soon as practicable of the relocation of the child and the Department of Justice is obliged to pay all reasonable costs of transport and security associated with up to 12 visits a year. If a protected person fails to comply with a court order with respect to custody or visitation rights the Attorney-General may disclose the new identity and address of the protected person to the non-relocated parent.[16]

United Kingdom

3.20 Information on witness protection arrangements in the United Kingdom is difficult to come by. The Government has refused to make details of assistance provided to witnesses

publicly available on the ground that to do so might endanger their safety. There is no formal programme as in the United States, no central co-ordinating authority and no legislation providing for witness protection. Instead, the protection of informers and witnesses is regarded as an operational matter and is left to the discretion of the chief officers of the various regional police forces - 43 in England and Wales, 8 in Scotland and the Royal Ulster Constabulary in Northern Ireland. It appears that those witnesses who have been given immunity or who have not themselves been charged with any offences are normally placed in 'safe houses' under 24 hour guard until the end of the trials in which they are to give evidence. Resettlement under a new identity may then follow. According to the Stewart Royal Commission, three of Terrence John Clark's former associates - Allison Dine, Kay Reynolds and Carolyn Calder - were given protection in safe houses prior to, during and after Clark's trial for the murder of 'Mr Asia', Christopher Martin Johnstone, and they were subsequently given new identities. Witnesses who face criminal proceedings have been kept in police custody pending their own trials and have then been housed in special units in prisons while serving their sentences.

3.21 If, post-trial or on release from prison after serving their own sentences, witnesses are resettled outside the area for which the particular police force is responsible it appears that arrangements are made for nominal protection to be provided by the police force for the area in which the witness is resettled. Support in obtaining employment, counselling and advice on matters such as schooling remain the responsibility of the force for which the witness has given evidence. New identities and supporting documentation are arranged through government channels although Peter Hain has suggested that in the absence of legislative authority such creation of new identities - e.g. the issuing of passports and the allocation of National Insurance numbers in false names - necessarily entails the manipulation of government regulations by government departments. Resettlement in

other countries takes place on an ad hoc basis, usually as a result of a reciprocal agreement with the country concerned.[17]

3.22 Despite the paucity of information concerning the actual measures taken for their protection, the use of accomplice witnesses or 'supergrasses' (as they have come to be known) has been the subject of widespread debate in the United Kingdom. Although the use of accomplices who have been prepared to turn 'Queen's evidence' in exchange for lenient treatment for their own offences has a long history, the cultivation of accomplice witnesses as an important tool of law enforcement is generally considered to have begun in London in the early 1970's. The Metropolitan Police faced a situation in relation to armed bank robberies not dissimilar to that faced by Australian law enforcement agencies in relation to drug trafficking later in the decade as depicted by the Williams and Stewart Royal Commissions. Unsolved armed bank robberies in central London were running at one every five days. These crimes remained unsolved because of lack of manpower - Greater London had fewer police in 1972 than in 1920, although reported crime had risen twenty times - the fragmentation of the Metropolitan Police into 26 Divisions, the failure of detectives to pass on information to the Criminal Intelligence Bureau at New Scotland Yard and, most importantly, the lack of a flow of intelligence from informers. Old neighbourhoods with their established networks of informers were breaking down and the armed robbery gangs apparently observed strict discipline in relation to careless talk. There had been cases of informants disappearing without trace.[18]

3.23 On 23 December 1972 Derek 'Bertie' Smalls was arrested on suspicion of involvement in the armed robbery of a bank at Wembley in August 1972. Early in 1973 he offered to turn Queen's evidence and a detailed agreement was worked out between his solicitor and the Director of Public Prosecutions offering Smalls complete immunity in respect of any charge other than homicide in return for his statement. If the statement was of evidential

value Smalls and his family were promised police protection while he gave evidence and removal in conditions of secrecy to a place selected by him thereafter. Smalls made a statement admitting his part in 20 armed robberies and naming others who had taken part. His wife and children were removed to a hotel and guarded round the clock while he gave evidence in committal proceedings and he and his family then spent a year in a rented house under armed guard receiving 25 pounds a week subsistence money out of police funds.[19]

3.24 Smalls gave evidence in three trials resulting in 16 convictions and the imposition of sentences of imprisonment ranging from 5 to 18 years. Lord Justice Lawton in the Court of Criminal Appeal was highly critical of the grant of immunity by the Director of Public Prosecutions in this case[20] and, although Lord Dilhorne in the House of Lords suggested that it was not for the courts to tell the Director how he should conduct his business,[21] subsequent English 'supergrasses' have in fact been prosecuted rather than being granted immunity. However the police, the courts and the Executive have conspired to give them lenient treatment. Thus Maurice O'Mahoney admitted to taking part in 13 robberies, 66 burglaries and other crimes, including crimes of violence. On 20 September 1974 he appeared before the Recorder of London, pleaded guilty to one armed robbery and asked for 44 other offences to be taken into consideration. Prosecuting counsel told the Recorder that O'Mahoney had been of great help to the police and would be called as a witness in a number of cases and the Recorder sentenced him to only 5 years imprisonment.

3.25 O'Mahoney spent only a few weeks in prison. For the remainder of his sentence he was kept in police custody at Chiswick Police Station:

> 'He was allotted two cells and allowed to have a colour television and a record player. His

> mistress visited him frequently. She gave birth to a child on May 4, 1975. If that child is his, as he said it was in evidence, it seems probable that it was conceived while he was in custody.'[22]

O'Mahoney gave evidence in three trials at which the accused were acquitted. In a fourth trial the accused pleaded guilty and received sentences totalling 61 years and a fifth trial resulted in 3 acquittals, 4 suspended sentences, one conditional discharge and 5 sentences of imprisonment, although 2 of the convictions were quashed on appeal. O'Mahoney was released on licence after 21 months and declined to participate in further trials resulting in verdicts of 'not guilty' against another 10 accused. Instead he told his life story to the newspapers. O'Mahoney, Lord Justice Lawton observed, 'had done very well out of his informing activities'.[23]

3.26 Charles Lowe, another armed robber, was arrested in June 1976 and turned Queen's evidence soon after. He appeared in Chelmsford Crown Court on 13 December 1976, pleading guilty to 8 charges and receiving 11 and a half years imprisonment. This was reduced to 5 years on appeal, Roskill L.J. referring to the evidence of Detective Superintendent Richardson of the Brentwood Regional Crime Squad that the information provided by Lowe was helping clear up most of the serious gangs of criminals throughout the East End of London:

> 'The detective superintendent said that in these gang cases it is information of this kind which (one might almost say alone) enables these gangs to be broken up and these offenders against society to be brought to book. Anyone with experience of these cases knows that to be true. It must therefore be in the public interest that persons who have been involved in gang activities of this kind should be encouraged to give information to the police in order that others may be brought to justice and that, when such information is given and can be acted upon and, as here, has already been in part successfully acted upon,

> substantial credit should be given upon pleas of guilty especially in circumstances where there is no other evidence against the accused other than the accused's own confession. Unless credit is given in such cases there is no encouragement for others to come forward and give information of invaluable assistance to society and the police which enables these criminals - and these crimes are all too prevalent, not only in East London, but throughout the country - to be brought to book.'[24]

3.27 Lowe was released through the exercise of the royal prerogative of mercy in April 1978 after serving only 22 months of his sentence. He gave evidence in only one more trial and then apparently had plastic surgery performed to alter his appearance in preparation for a new life abroad. However shortly thereafter he was arrested on a charge of smuggling cannabis and sentenced to 3 years imprisonment.[25] Christopher Price, MP was told in answer to a parliamentary question in June 1982 that the Metropolitan Police had used 18 informers since 1 January 1979 of whom 17 had been sentenced. Five had received less than 5 years imprisonment, nine had received 5 years and the remaining three had received 6 years, 7 years and 14 years, reduced to 7 years on appeal, respectively. In nine of these cases the Home Secretary had recommended the exercise of the royal prerogative and eight of the 17 had already been released.[26]

3.28 The adoption of the 'supergrass' system in Northern Ireland appears to date from the early 1980's. The methods used by the Royal Ulster Constabulary to extract confessions had been the subject of severe criticism and with the adoption of new procedures the flow of confessions dried up. It appears that the law enforcement authorities then set out upon a deliberate path of cultivating accomplice witnesses. Between November 1981 and November 1983 at least 7 Loyalist and 18 Republican 'supergrasses' were responsible for the arrests of over 590 people. Fifteen 'supergrasses' retracted their evidence either before the trials in which they were involved began or before

they could be concluded, and in another case charges were withdrawn against all but two accused who had made confessions.[27]

3.29 'Supergrasses' were recruited with promises of total immunity or lenient treatment, police protection and a new life abroad. For many the choice to inform was not too difficult. Joseph Bennett, a U.V.F. 'supergrass', had been sentenced to death in absentia by a U.V.F. court martial for stealing money from his employer when, in May 1982, he was arrested following the armed robbery of a post office in Killinchy, Co. Down, during which the elderly postmistress was brutally murdered. He later told the court:

> 'I was inside for life or sentence of death outside... The future was bleak. The police offered a third alternative... My life depended on impressing the police and on my first day in custody I mentioned immunity... There was a strong incentive to co-operate... At the end of the day my usefulness to the police would be measured in the number of men I put away.'[28]

Bennett was granted immunity although the convictions of 14 other U.V.F. members based on his uncorroborated evidence were subsequently quashed on appeal. Other 'supergrasses' like Harry Kirkpatrick, an I.N.L.A. member, were dealt with by the courts: Kirkpatrick was sentenced to life imprisonment for 5 murders but it was suggested that he might be released after serving as little as 10 years.[29]

3.30 Prisoner witnesses were held in a special annexe in Crumlin Road Prison, Belfast, with special privileges and facilities.[30] Witnesses not in prison were provided with round the clock police protection in accommodation free of rent, rates and charges for electricity and water and with cash allowances which varied between a payment of 35 pounds a week in respect of a witness with no dependants and a payment of 120 pounds a week

in respect of a witness who had a wife and 4 children living with him. On 26 February 1985 the Secretary of State for Northern Ireland informed the House of Commons that expenditure on the protection of witnesses over the last 7 years totalled 1.3 million pounds.[31]

Canada

3.31 Like the United Kingdom, Canada has no specific legislation regarding the provision of protection to witnesses. However since 1982 the Royal Canadian Mounted Police has developed a programme for witness protection based on the United States Witness Security Program. The impetus for the development of this programme lay in two court decisions which meant that the identity of informers could be required to be revealed in a number of court proceedings. In R. v. Davies the Ontario Court of Appeal held that an informer who introduces an undercover police officer becomes an agent provocateur and must therefore be made available to be called as a witness by the defence. R. v. Jewitt, a decision of the Canadian Supreme Court, had the effect that, in cases where informant induced entrapment is alleged by the defence, the Crown must generally produce the informant concerned in rebuttal. The result of those two decisions was that, whereas previously only one or two witnesses required protection each year, demand for protection has now increased to 50 cases per year.

3.32 The Canadian programme is very similar to that operating in the United States. Applications for admission are carefully vetted and alternatives such as increased security at the witness' own home or local relocation are examined and weighed against the assessed threat to the witness. Decisions to provide greater protection are made at the Headquarters in Ottawa and may entail relocation within Canada, the provision of maintenance assistance and a change of identity. The Royal Canadian Mounted Police has established liaison arrangements with the provincial

and federal agencies responsible for issuing documentation such as birth certificates, drivers' licences, social insurance cards and passports. Provision of such documentation is predicated upon a legally effected name change. Criminal records are cross-referenced at Royal Canadian Mounted Police Headquarters and the Force serves as the connection between the witness' past and his or her new identity in relation to such matters as the collection of debts, the issue of outstanding civil or criminal process and the enforcement of family separation agreements or divorce orders.

3.33 The Royal Canadian Mounted Police has provided advice on protection to provincial law enforcement agencies and it has also provided protection to such agencies' witnesses in a limited number of cases with the responsible provincial administration being billed for this service. It is anticipated that in the future the Royal Canadian Mounted Police programme may be expanded to provide a national witness protection programme available to all Canadian law enforcement agencies.[32]

West Germany

3.34 In the Federal Republic of Germany it appears that there is, as in the United Kingdom, no legislation and no central co-ordinating body or programme dealing with witness protection. This is largely because of a lack of a perceived need for measures as drastic as those adopted in the United States. Witness protection therefore remains the responsibility of the police forces of the various Länder. Hamburg, for example, has set up a witness protection branch with two C.I.D. officers as contact and co-ordinating officers and a group of security/riot police to provide actual personal protection. The immediate impetus for this development lay in a series of cases in 1984 relating to a ring trafficking in prostitutes and engaged in associated offences such as extortion, assualt and rape in the St. Pauli district. Of 320 witnesses, 80 were categorised as

endangered and 27 as seriously endangered, that is, there was a real risk that they would be physically attacked. Measures taken for their protection included police patrols, increased technical security measures in their homes, the provision of unlisted telephone numbers, waiving written records of date of birth and address, moving the witnesses to 'safe houses' and escorting them to and from the courts. Not only was this particular operation successful in that none of the witnesses was endangered but an increasing number of witnesses in other cases - up to 49 in one year - thereafter sought the provision of protection. Measures such as relocation, change of place of work and the provision of a new identity may be used in future cases. Particular stress is laid upon the provision of psychological support to the frightened witness, although police officers providing protection always need to remain aware of the danger of being seen to have influenced the witness' testimony before the courts.[33]

Chapter 3 - Footnotes

1. Graham, F., The Alias Program (Little, Brown, Boston, 1976), p. 29; Mitchell, G., 'The Life and Hard Times of the Protected Witness Program', Police Magazine, vol. 4, no.2 (March 1981), pp.51-7 at p.52; General Accounting Office, 'Changes Needed in Witness Security Program' (17 March 1983), incorporated as supplementary material in Marshals Service of Process: United States Congress, Hearings before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the House of Representatives Committee on the Judiciary, 97th Cong., 2d Sess. (9 and 10 September 1982) [hereafter 1982 Hearings], pp.292-357 at p.306.

2. Witness Protection Program: United States Congress, Hearings before the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary, 95th Cong., 2d Sess. (20 and 23 March and 14 April 1978) [hereafter 1978 Hearings], written statement of William E. Hall, Director, U.S. Marshals Service, p.91.

3. Source: General Accounting Office, 'Witness Security Program: Prosecutive Results and Participant Arrest Data' (23 August 1984), incorporated as supplementary material in Witness Protection Act: United States Congress, Hearing before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the House of Representatives Committee on the Judiciary, 98th Cong., 1st Sess. (22 June 1983) [hereafter 1983 Hearing], pp. 235-83 at p.245.

4. 'U.S. Attorney's Manual, Title 9 - Criminal Division, Chapter 21 - Witness Security Program' (16 April 1981), incorporated as supplementary material in 1982 Hearings, pp.257-269 at pp.259-60.

5. The foregoing account draws on: 1978 Hearings, written statement of William E. Hall, pp.91-3; Permanent Subcommittee on Investigations of the United States Senate Committee on Governmental Affairs, Witness Security Program, 97th Cong., 1st Sess., Senate Report No. 97-300 (U.S. Government Printing Office, Washington, 1981), pp.44-7; General Accounting Office, 'Changes Needed in Witness Security Program', loc.cit., pp.312-4, 319; 'U.S. Attorney's Manual', loc.cit., pp.263-4; Submission from Superintendent J.B. Barclay, Appendix E.

Chapter 3 - Footnotes (continued)

6. 1978 Hearings, written statement of Norman A. Carlson, Director, Bureau of Prisons, pp.98-9; 'U.S. Attorney's Manual', loc.cit., pp.260, 264.

7. Witness Security Program: United States Congress, Hearings before the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs, 96th Cong., 2d Sess. (15, 16 and 17 December 1980) [hereafter 1980 Hearings], testimony of Gregory Baldwin, Assistant Counsel, p.6.

8. Permanent Subcommittee on Investigations, op.cit., p.9.

9. Ibid., pp.16-18; Mitchell, loc.cit., p.51; Short, M., Crime Inc. - The Story of Organized Crime (Thames Methuen, London, 1984), pp.244-5.

10. 1980 Hearings, testimony of Gregory Baldwin, p.9; Mitchell, loc.cit., p.57; Permanent Subcommittee on Investigations, op.cit., pp.39-40; 1978 Hearings, written statement of William E. Hall, pp.92, 95; General Accounting Office, 'Changes Needed in Witness Security Program', loc.cit., pp.316-7.

11. Ibid., pp.313-4; Permanent Subcommittee on Investigations, op.cit., pp.14, 47-9; 1978 Hearings, written statement of William E. Hall, pp.92, 96; General Accounting Office, 'Prosecutive Results and Participant Arrest Data', loc.cit., p.263.

12. 1982 Hearings, testimony of Congresswoman the Hon. Virginia Smith and Frank and Betty Balderson of Alliance, Nebraska, pp.31-2, 35.

13. 1983 Hearing, testimony of Howard Safir, Assistant Director, U.S. Marshals Service, pp.20, 36-7; General Accounting Office, 'Prosecutive Results and Participant Arrest Data', loc.cit., pp.266-7.

14. 1978 Hearings, written statement of William E. Hall, p.93; General Accounting Office, 'Changes Needed in Witness Security Program', loc.cit., pp.325-8.

15. Ibid., pp.321-3; 1983 Hearing, testimony of Howard Safir, p.27; see also Graham, op. cit., pp. 61-3.

16. It has been suggested that the new law will be ineffective in enhancing the rights of non-relocated parents because courts will still place the safety of the child under governmental protection above any visitation rights: see

Cooperstein, K.S., 'Enforcing Judgments Against Participants in the Witness Protection Program', (1984) 36 Stanford L.Rev. 1017 at p.1044.

17. Information provided to the Committee by the British High Commission, the Metropolitan Police and the Royal Ulster Constabulary; Kelland, G., Crime in London (Grafton Books, London, 1987), pp. 293-4; Royal Commission of Inquiry into Drug Trafficking (Commissioner: The Hon. Mr Justice D.G. Stewart), Report (A.G.P.S., Canberra, 1983), p. 538; Hain, P., Political trials in Britain (Allen Lane, London, 1984), p. 78.

18. Ball, J., Chester, L., and Perrott, R., Cops and Robbers (Penguin, Harmondsworth, 1979), pp.18-23.

19. Ibid., pp.82-6, 118; R. v. Turner and others (1975) 61 Cr.App.R.67 at 69-70.

20. Ibid. at p.80.

21. Quoted in Smith, A.T.H., 'Immunity from Prosecution', (1983) 42 Cambridge L.J. 299 at p.314.

22. R. v. Thorne and others (1977) 66 Cr.App.R.6 at 8-10.

23. Ibid., at p.10; Seymour, D., 'What good have supergrasses done for anyone but themselves?', Legal Action Group Bulletin (December, 1982), pp.7-9 at p.7.

24. R. v. Lowe (1978) 66 Cr.App.R.122 at 125.

25. Soothill, K., 'The rise and fall of the supergrass', New Society, vol.61, no. 1032 (26 August 1982), pp.337-8.

26. Seymour, loc. cit., p. 9.

27. Greer, S., 'Supergrasses and the Legal System in Britain and Northern Ireland', (1986) 102 L.Q.R. 198 at 230-1.

28. Ibid., p.236.

29. Holland, M., 'Using tainted evidence', New Statesman, 23 September 1983, pp.8-9 at p.9.

30. Grant, E., 'The Use of "Supergrass" Evidence in Northern Ireland 1982-1985', (1985) 135 New Law Journal 1125 at p.1126.

31. United Kingdom, House of Commons, Parliamentary Debates, 6th series, vol.47, written answers, col. 469; vol. 74, written answers, col. 124.

Chapter 3 - Footnotes (continued)

32. Information provided to the Committee by the Royal Canadian Mounted Police through the Canadian High Commission.

33. Sielaff, W., '"Aussageverbot" vom Täter', (1986) 2 Kriminalistik 58; Hammes, M., 'Nachholbedarf beim Zeugenschutz', (1986) 2 Kriminalistik 57.

CHAPTER 4

THE AUSTRALIAN EXPERIENCE

Introduction

4.1 The Williams Royal Commission recommended in 1980 that a proposed national uniform Drug Trafficking Act should include provision for the Attorney-General to make arrangements for the protection of witnesses.[1] The Stewart Royal Commission found in February 1983 that Commonwealth and State law enforcement agencies had no specific programmes or guidelines for protection of witnesses. It declined to make detailed proposals in this area but expressed the hope that agreement might be reached between the States and the Commonwealth on a national witness protection scheme.[2] The Australian Police Ministers' Council referred the matter to the National Police Research Unit for study in November 1983 and in October 1984 the Unit reported, recommending that State police forces should designate a senior investigative officer as their Witness Protection Officer with the task of screening applicants for protection, oversight of protection and the arrangement of relocation of witnesses with other States. The Unit also recommended that the Australian Police Ministers' Council should establish a National Witness Protection Committee to develop relocation arrangements between States on a user pays basis.[3]

4.2 The Australian Police Ministers' Council considered the National Police Research Unit's report at its meeting on 31 May 1985 and, noting advice from State and Territory Police Commissioners that existing bilateral arrangements were working satisfactorily, decided not to establish a national system to protect witnesses. It decided instead to rely on each jurisdiction to make provision for the protection of witnesses as

needs dictated.[4] The Australasian Crime Conference of police personnel held in Perth from 21-24 April 1987 resolved against a national witness protection scheme, affirming that it was for each State and Territory to manage the protection of witnesses from its own resources or with the assistance of the Australian Federal Police or other Australian police forces.[5] The Police Commissioner's Conference in Darwin in July 1987 took a similar line, calling for greater co-operation and co-ordination of State and Territory schemes while rejecting a proposal for the establishment of a national scheme modelled on the United States Witness Security Program at this point in time.[6]

Present arrangements: Non-custodial witnesses

4.3 The lack of national co-ordination and co-operation in the field of witness protection contrasts markedly with the co-operative approach to the fight against organised crime and corruption which led to the establishment of the National Crime Authority. Indeed one witness before the Committee drew forcible attention to this disparity in approach:

> 'Unfortunately the National Crime Authority's existence and the existence of an honest leadership in the New South Wales police force has actually worsened the situation. The purge against corruption, federally and in New South Wales, without the accompanying facilities for the protection of witnesses, has meant that it has worsened the situation. The onslaught against the criminals came without any thought for what would happen to the witnesses in the process.'[7]

The New South Wales, Victoria and Federal Police forces, faced with a sudden increase in demand for the protection of witnesses, have established systems to meet this demand which are still being further developed.

4.4 Within the Victoria Police witness protection is handled by the Protective Security Groups. Formed in March 1981, the Groups have diverse responsibilities including court security, V.I.P. security and counter terrorism. Members undergo four weeks training in protective security. Initially witnesses were protected by 24 hour guard in their own homes and allowed to continue their employment and maintain their ordinary social lives. This proved prohibitively expensive. Operation Aries, involving the protection of 2 witnesses plus the wife and child of one of them between September 1982 and August 1983, has been costed by the Victoria Police Force at $4.5 million. At its peak it involved 36 personnel and 6 vehicles. Witnesses are now protected by 24 hour guard at safe locations chosen by the Protective Security Groups. The period of relocation may vary from 3 days to 12 or 18 months and between April 1985 and December 1987 some 17 witnesses have been protected in Victoria in this fashion at a cost of $850,000 per annum.

4.5 Requests for the protection of witnesses are initiated by the responsible investigative officers and vetted by a committee consisting of the Commander (Crime), the Superintendent (Protective Security Groups), the Chief Inspector (Homicide) and the Chief Inspector (Drug Squad). There is little capacity to provide any form of protection after the trial in which the witness is to testify is over: some assistance may be made available in the form of fares to travel interstate and a small sum to assist the witness to establish himself or herself but there is no follow-up or continuing commitment to provide protection in case of need. Little work has been done in relation to changing the names of protected witnesses or providing them with documentation to support a new identity although informal contact has been made with Medicare and the Department of Social Security at the Federal level and with the Victorian Road Traffic Authority in respect of drivers' licences in new names at the State level.[8]

4.6 The Australian Federal Police Witness Protection Branch has been in operation for about four years. Although it began by providing a 24 hour guard, as under the Victoria Police scheme, it soon found this unsatisfactory and it now provides protection exclusively by relocating witnesses. As in the United States, close personal protection is only provided when the witness returns to the 'danger area', for example to testify. The corollary of this is that the Australian Federal Police is not prepared to provide protection for witnesses who wish to continue to live in their own homes, to carry on their businesses and so forth. Witnesses have been accepted into the programme from a State police force, from the National Crime Authority and from the Commonwealth-New South Wales Joint Task Force as well as from the investigative arms of the Australian Federal Police. The programme presently provides protection to 14 witnesses at an annual cost of $1.3 million although the costs of providing protection to witnesses from other agencies (other than base salary costs) are recovered from the relevant agency.

4.7 The judgment whether a witness should be admitted to the programme is made by a committee of senior police officers. Safe premises have been or are being established where witnesses may be housed temporarily pending relocation and while giving testimony at trials. Since witnesses are relocated prior to giving their testimony they may remain in that location after the trials in which they are involved have concluded or move on, as they wish. State police forces are not informed when an Australian Federal Police witness is relocated in their State. The major obstacle to the success of the programme lies in the very limited ability of the Australian Federal Police to provide documentation to support a new identity. Thus the Committee was told by one witness that, although relocated under a new name, he was not able to secure social security benefits or to file income tax returns. Discussions are proceeding with the Department of Social Security and the Taxation Office on these issues.

Relocated witnesses can find employment difficult to obtain, not least because of their obligation to testify in often lengthy court proceedings. The Australian Federal Police meets the cost of their accommodation and pays them a subsistence allowance as close to the dole as possible during periods when they are unemployed.[9]

4.8 Prior to 1984 witness protection was managed in New South Wales as part of the normal policing function. During that year guidelines were developed for the New South Wales Police Special Weapons and Operations Squad to provide 'on call' protection and 24 hour guarding of witnesses at selected safe premises. The New South Wales Police have found this approach to be prohibitively expensive, human resource intensive and traumatic for witnesses and police alike. It is estimated that protection of a witness in a safe house costs $400 per day. During 1987 a Witness Protection Plan was developed which will provide for the relocation of witnesses under new identities as the preferred option for long term protection. However as with the Australian Federal Police programme there are problems in providing the documentation necessary to support a new identity and legislation is required to overcome these problems.

4.9 Under the Witness Protection Plan it is envisaged that applications for protection will come from investigative officers and will be vetted by a committee consisting of the Commander (State Investigation Group), the Officer in Charge (Special Weapons and Operations Squad) and the Commander (State Drug Group) or the Commander (State Intelligence Group) as appropriate. Witnesses will spend a maximum period of two weeks in a 'safe house' prior to being relocated. Of 22 witnesses protected in the past year it is considered that only 2 would have required long term protection exceeding two years. Protection after a witness has given his or her evidence would normally only be necessary in a very limited number of cases where the witness has testified against an organised crime group

which may pursue the witness in order to make an example of him or her. However even short term relocation creates the need for documentation supporting a new identity such as a new driver's licence, educational records if children are involved and so forth.[10]

4.10 Until recently, Queensland has not experienced any demand for long term protection of witnesses. The Committee was informed that, even where witnesses had given evidence against organised criminal groups, such groups did not form part of larger networks and so lacked the capacity to seek revenge against the witnesses after the trial was concluded. Where informants had sought protection the Queensland Police would try to persuade them to relocate themselves, for example with a family member living in another town, and would arrange any further protection through the local police in that town. In late 1986, however, the Queensland Police handled the protection of two witnesses relocated from New South Wales. One of these, a single man, was given a 24 hour guard. The constraints imposed by this form of protection proved irksome to him and he subsequently opted out of the programme. The other witness had a wife and family and was relocated under a new identity. Employment was secured for him and the Queensland Police maintain contact with him but essentially he has resettled himself successfully.[11]

4.11 In Western Australia witness protection has been dealt with by ad hoc measures. In most cases increased protection in the witness' own home - e.g. through police patrols - has proved sufficient though there have been cases where witnesses have been advised to move interstate. The Western Australia Police have, however, developed a strategy plan for the management of witness protection in that State. Relocation to another State is looked upon as one option and the Western Australia Police would look favourably on reciprocal arrangements between the States in this regard.[12] South Australia likewise has experienced little demand for the protection of witnesses. The Committee was informed that

where problems had arisen in the past they had been dealt with by bail conditions on the individual accused although such an approach would clearly not be adequate in dealing with organised criminal groups. Should the need arise the Committee was informed that the South Australian Police would prefer relocation as a response 'although doubts exist as to the efficacy of this strategy in reducing either the risk to the witness or the cost to the state'.[13] In the Northern Territory witness protection has been handled as part of the normal policing function and Tasmania has apparently not formulated a policy on witness protection.[14]

Present arrangements: Custodial witnesses

4.12 Witnesses who are themselves in custody either awaiting trial or serving sentences for their own offences present special problems. Not only are they in danger from those against whom they are giving evidence but, because informers are held in low esteem within the prison community, they may be in danger from any of their fellow prisoners. Three approaches are used in the protection of custodial witnesses:

(i) 'low profile' protection, under which witnesses are given false identities, enabling them to be merged with the prison mainstream;

(ii) 'standard protective custody', under which witnesses are integrated with other prisoners (such as certain sex offenders) under protection in segregation units; and

(iii) 'special protective custody', under which witnesses are held in special units set aside for their protection.[15]

4.13 The Committee was informed that in Western Australia a number of witnesses have been accommodated through the provision

of false identities enabling them to be merged with the prison mainstream. On the other hand the New South Wales Department of Corrective Services takes the view that Crown witnesses cannot be given new identities or relocated within the gaol system as their identities are too well known. The Queensland Government also considered that false identities were likely to break down through indiscretion on the part of the custodial witness and through a lack of security among the prison staff. In one case an interstate transfer and change of identity arranged by the Queensland Prisons Department broke down within 24 hours because the prisoner discovered someone from his own town in the gaol to which he had been relocated.[16] The computerisation of admission procedures may also create problems in the use of false identities.[17]

4.14 Queensland has experienced little demand for protection of custodial witnesses: it would have perhaps a dozen within its system at any one time. These are handled by placement in the protection unit at Wacol, B Division, which also houses other prisoners in need of protection such as child molesters, or by relocation within the gaol system. Often the threat disappears quite quickly: in one case where five co-accused gave evidence against each other on murder charges friendships were re-established within a matter of months. Three new gaols are being constructed which will have 12 cells to a block in maximum security areas with self-contained recreational, dining and kitchen facilities, and one of these blocks could be used for witness protection.[18]

4.15 In Victoria, custodial witnesses may likewise be housed in the standard protection areas or in high security units such as K Division (Jika Jika), now closed, and a new 34 bed high security unit at Barwon. The Victorian Government acknowledges that housing custodial witnesses in such units is not entirely satisfactory and that the interests of humane containment and secure protection come into conflict:

> 'In terms of visits, of access to education programmes, to industry programmes, to welfare programmes, to virtually everything except health care, the prisoner is missing out.'

However, given the capital cost of the construction of such secure units, estimated at $250,000 per cell, the Victorian Government could not at present justify the construction of a specific witness protection facility on current projections of demand.[19] Western Australia similarly considers that with projections of only 5-10 custodial witnesses in the 'high risk' category it could not justify the capital cost of a specific facility, estimated at $800,000 for 8 beds, and recurrent costs estimated at $420,000 per annum.[20]

4.16 Until recently New South Wales also provided protection by utilising de facto protection prisons such as that at Berrima, the segregated areas within prisons or transfers within the gaol system. However in May 1987 one section of the recently completed prison hospital at the Long Bay Correctional Centre was converted for use as an interim specific purpose Witness Protection Unit. The unit can house up to 30 inmates in single cell accommodation and is physically separated from the other hospital areas. Adequate space is available for prisoner employment and recreation. The security is such that the unit can hold maximum security prisoners as well as those of a lesser security classification. Because of the high staff to prisoner ratio required by the special needs of the Witness Protection Unit the recurrent cost is estimated at $200 per prisoner per day as against an average of $68 per prisoner per day across the whole of the New South Wales gaol system and an estimated $142 per prisoner per day in the special care unit at Long Bay where prisoners who are difficult to manage are placed.

4.17 At present only 13 inmates are housed in the unit but it is believed that this figure would have been higher but for the

adverse publicity surrounding the removal of certain of the early inmates from the unit. Both the admission and the removal of prisoners must, except in emergencies, be considered by an Assessment Committee comprising representatives of the New South Wales Department of Corrective Services, the New South Wales Police, the Australian Federal Police and the National Crime Authority. Officers have been specially selected to staff the unit and in addition to providing internal security they perform duties such as the escort of prisoners outside the gaol. The families of inmates are also escorted to and from the unit so that they do not have to walk past 3 maximum security gaols on their way to visit the unit.[21]

4.18 At the invitation of the former New South Wales Minister for Corrective Services, the Hon. J.E. Akister, MLA, the Committee inspected the Witness Protection Unit. The Committee was favourably impressed by the physical security of the premises and by the quality of accommodation and facilities made available to the inmates. The unit has a relaxed atmosphere without the usual hostility between prisoners and staff which characterises prisons and there is some suggestion that prisoners who have been in the system a long time (and some staff) may find this difficult to handle. Every effort has been made to give the inmates some meaningful work to do and some are employed in woodworking and the collation of papers while others undertake cooking, cleaning and gardening so that the unit is to a degree self-servicing. Most of the inmates to whom the Committee spoke at separate hearings were happy with conditions in the unit although there was some evidence of friction between different groups in the facility.

4.19 This particular problem may be overcome when the new permanent Witness Protection Unit is constructed. The New South Wales Government has allocated $10 million for the construction of a 60 bed facility on land available at the Long Bay Correctional Centre. The new facility will enable witnesses to be

housed in groups of 10, 5, 2 or even 1. There will also be two assessment cells entirely separate from the main body of the unit where prisoners may be housed while a decision is made as to whether they should be admitted to the unit. Inmates who take a dislike to each other will therefore be able to be separated in the new unit and it will also be possible to set aside space for specific groups, for example female custodial witnesses. The Department is also examining the need in the longer term for a witness protection facility that is not a maximum security facility. For prisoners with lengthy sentences to serve and who would not otherwise be housed in maximum security conditions the Witness Protection Unit may be unduly arduous.[22]

4.20 Interstate transfer of prisoners provides a method of protection of witnesses which may be used in conjunction with any of the methods referred to above. However the complementary State and Commonwealth legislation dealing with interstate transfers does not specifically advert to witness protection as a ground for transfer. The Committee has been informed that two federal offenders have in the past been transferred from one State to another on welfare grounds following advice that a co-offender who was in the same prison system had taken out a contract on them.[23]

4.21 There is no provision for the interstate transfer of offenders subject to non-custodial sentences such as community service orders. Such persons and prisoners released on licence or parole present problems from a witness protection perspective because they are usually required to reside in particular places and, in the case of parolees, to accept the supervision of the relevant State probation and parole service. The Committee has been informed of one case where a federal offender's release on licence did not contain the usual supervision and related conditions because of fears for the prisoner's safety on release, and another case where a prisoner released from the New South Wales Witness Protection Unit reports directly to one of the

correctional services administrators and not to a parole officer. However these cases are exceptional.[24]

Chapter 4 - Footnotes

1. Royal Commission of Inquiry into Drugs (Commissioner: The Hon. Mr Justice E.S. Williams), Report (A.G.P.S., Canberra, 1980), pp.F39-40.

2. Royal Commission of Inquiry into Drug Trafficking (Commissioner: The Hon. Mr Justice D.G. Stewart), Report (A.G.P.S., Canberra, 1983), pp.537, 540.

3. McGrath, G., Project Epsilon - Interim Report II - Immediate Measures (National Police Research Unit, Adelaide, 1984), pp.5-9.

4. Senator Evans, Answer to Question on Notice, Senate Hansard, 16 September 1986, p.460; National Crime Authority, Witness Protection - Discussion Paper for Operations Conference (unpublished, 1986), p.14.

5. 1987 Australasian Crime Conference, Record of Proceedings (unpublished, 1987), pp.179-80.

6. In Camera Evidence, Victorian Government, pp. 593-4; Superintendent J.B. Barclay, pp. 529-30.

7. In Camera Evidence, Confidential Witness B, p. 205.

8. Barclay, Det-Insp. J.B., 'Protective Security - The Victoria Police Approach', Australian Police Journal, Jan-Mar 1984, pp. 6-9; In Camera Evidence, Superintendent J.B. Barclay, pp. 532-5, 554-7; Victorian Government, pp. 596, 601; Submission from the Victorian Government, p. 1.

9. In Camera Evidence, Australian Federal Police, pp. 780-91, 794; Confidential Witness E, pp. 276-7, 280-1; Confidential Witness G, p. 624; Submission from the Australian Federal Police, pp. 4, 12.

10. In Camera Evidence, New South Wales Police, pp. 941, 947-8, 957-8, 960-1, 971, 975; Submission from the New South Wales Police, pp. 1-2, Annexures A and B and Witness Protection Plan.

11. In Camera Evidence, Queensland Government, pp. 25-7, 31-4, 48; Submission from the Queensland Government, pp. 3, 6, 11.

12. Submission from the Law Society of Western Australia, p. 2; Submission from the Western Australia Police, p. 2.

13. Submission from the Premier of South Australia; Submission from the Secretary to the South Australian Attorney-General.

14. Submission from the Northern Territory Government; Letter from Northern Territory Commissioner of Police; Record of Proceedings, p. 179.

15. Submission from Western Australian Department of Corrective Services, p. 2.

16. Ibid.; Submission from the New South Wales Department of Corrective Services, p. 1; In Camera Evidence, Queensland Government, pp. 21, 30; Submission from the Queensland Government, pp. 7-8.

17. Submission from the Commonwealth Attorney-General's Department, p. 19; Submission from the Victorian Government, p. 2.

18. In Camera Evidence, Queensland Government, pp. 68-9, 72-3; Submission from the Queensland Government, p. 9.

19. In Camera Evidence, Victorian Government, pp. 578-80, 584.

20. Submission from the Western Australian Department of Corrective Services, p. 9.

21. Submission from the New South Wales Department of Corrective Services, pp. 2-3; In Camera Evidence, New South Wales Department of Corrective Services, pp. 993-5, 1005, 1026.

22. Submission from the New South Wales Department of Corrective Services, pp. 3-4; In Camera Evidence, New South Wales Department of Corrective Services, pp. 1022-5; see also Confidential Witness D, pp. 251-3; Confidential Witness H, p. 828.

23. Submission from the Commonwealth Attorney-General's Department, p. 18; Submission from the New South Wales Department of Corrective Services, pp. 5-6.

24. Ibid., pp. 4-5; Submission from the Commonwealth Attorney-General's Department, p. 16-17; In Camera Evidence, New South Wales Department of Corrective Services, pp. 1002-3, 1009.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

Introduction

5.1 Before proceeding to assess the adequacy of the present arrangements for witness protection in Australia and the options for improvement it is desirable that the Committee give some indication of its thinking on the shape which witness protection arrangements should take.

5.2 As noted in Chapter 2, the Committee accepts that any scheme which is established for the protection of witnesses should provide not merely for the protection of witnesses against organised criminal groups but also for the protection of witnesses in relation to other serious crimes where the threat to the witness in question justifies the provision of such protection. Given that the resources of government to provide protection are not limitless, the decision to provide protection must be preceded by a rigorous assessment of the threat to the witness and the most appropriate response to that threat.[1] Police informers, for example, tend to leap at shadows but their best protection remains the secrecy which surrounds their dealings with the police. To provide them with some form of overt protection will inevitably draw attention to them and this should ordinarily be done only where it is intended that they will be called as witnesses in court proceedings.

5.3 The provision of protection should also be preceded by an assessment of the credibility of the witness and an evaluation of the importance of the evidence which he or she purports to be able to give. A person who comes forward with information will not normally be in danger until it becomes known that he or she

is a potential witness. To accord such persons protection while their credibility is being assessed and then to terminate that protection when it is discovered that their evidence is of no value may affect the perceived integrity of the witness protection arrangements. Particular problems have been caused in the New South Wales Witness Protection Unit, for example, by the placement of prisoners there whose evidence has subsequently proved to be unreliable. By their placement in the Witness Protection Unit such prisoners have been publicly identified as informers and so cannot be returned to the mainstream of the gaol system.[2]

5.4 The response provided by a witness protection scheme must be commensurate with the assessed level of threat. It follows that the scheme must be able to provide a range of responses. Depending on the level of threat it may only be necessary to provide increased security for the witness in his or her home, for example by technical devices and increased police patrols, rather than making use of measures like 24 hour guarding or relocation under a new identity.[3]

5.5 Even some witnesses against organised criminal groups, it was put to the Committee, may only require psychological support and help in obtaining community health and welfare assistance to which they would in any case be entitled. Some witnesses may reject options which would require them to leave their homes and businesses and to adopt a new identity. As noted in paragraph 3.13 relocation under a new identity is clearly unattractive to the innocent civilian witness such as an extortion victim. The ideal with such witnesses should be to enable them to live as normal a life as possible. The Hon. A.R. Moffitt in his submission alluded to the fact that Robert Kennedy, when United States Attorney-General, had criticised the concept of relocation under a new identity, but only because he considered it deplorable that a great nation such as the United States was so powerless that, in order to protect its citizens

who aided it by testifying in its courts, it had to send those citizens out of their country to live under false names.[4]

5.6 However, while it is important that any witness protection scheme should be able to respond to the needs of innocent witnesses, the reality is that the majority of witnesses likely to be in need of protection will have had some involvement in the criminal activities in respect of which they are giving evidence. Having decided to co-operate with the authorities they will have been granted an indemnity in respect of their own offences or they will have pleaded guilty and their co-operation will have been taken into account in reaching an appropriate sentence. Where offenders who have already been sentenced decide to co-operate with the authorities their co-operation may be taken into account through the grant of Executive clemency, for example by release on licence.[5]

5.7 The use of accomplice witnesses raises a number of issues which should be mentioned at this point. First, the grounds upon which an indemnity may be granted should be clearly laid down so that disquiet is not caused to the public by the ease with which indemnities appear to be granted on the one hand and so that offenders who are refused an indemnity may have it clearly explained to them why that decision was taken in their case on the other. Although the Committee did not take evidence on this issue it appears that there is a degree of concern about discrepancies in practice between cases. The issue is also complicated by the fact that indemnities may have to be sought from both Federal and State authorities and that there is no uniformity in the practice of these authorities.

5.8 Secondly, there is a degree of distaste on the part of many people for any proposal that deals be done with criminals. This distaste runs through the common law which we have inherited from England but it is also a legitimate question posed by the community: why should we provide criminals with reduced sentences

or indemnities and protection, perhaps extending to relocation either within Australia or overseas under a new identity? What have they done to deserve this? The answer, the Committee believes, is to be found in the conclusions reached in Chapter 2. Without the evidence of such participants in organised criminal activities it would not be possible to obtain the convictions of the principals of organised criminal groups or syndicates and without the provision of appropriate protection these witnesses would very likely not be available to give evidence.

5.9 The Committee does not wish it to be thought, however, that it is advocating the systematic reliance on the testimony of accomplice witnesses to the exclusion of the pursuit of other avenues of investigation. This was the criticism made, for example, of the 'supergrass' system adopted in Northern Ireland in the early 1980's.[6] The law distrusts accomplice witnesses, the classic statement being that of the Chief Justice, Lord Mansfield, in R. v. Rudd in 1775:

> 'There is no doubt, if it were not absolutely necessary for the execution of the law against notorious offenders that accomplices should be received as witnesses, the practice is liable to many objections. And though, under this practice, accomplices are clearly competent witnesses, their single testimony alone is seldom of sufficient weight with a Jury to convict the offender; it being so strong a temptation to a man to commit perjury, if by accusing another he can escape himself.'[7]

5.10 The law presently requires that the jury be warned that it is dangerous to convict on the testimony of an accomplice witness in the absence of corroboration and the lack of such corroboration may influence the decision whether to prosecute. The Australian Law Reform Commission has recommended that the requirement for this warning should be abolished on the ground that the testimony of accomplice witnesses is no more unreliable than other forms of evidence - for example eyewitness

identification - in respect of which no warning is given.[8] However the experience with the use of 'supergrasses' in England and Northern Ireland indicates that the testimony of accomplice witnesses should be treated with caution: there are strong inducements for such witnesses to name persons to please their protectors, they may substitute the names of the innocent for their confederates with whom they are friendly and they may tell the truth about crimes in which they have been involved but alter the roles of the participants so as to present themselves in the most favourable light.[9] Cases based solely on the uncorroborated testimony of accomplice witnesses will succeed or fail on the jury's view of the credibility of the witnesses concerned.

5.11 The Committee therefore would not wish to see Australian law enforcement agencies becoming dependent on the testimony of accomplice witnesses without seeking corroboration of that testimony from other sources. Nonetheless, in the limited class of cases with which the Committee is particularly concerned, namely those relating to organised criminal groups or syndicates, the Committee believes that it is inevitable that reliance will be placed on accomplice witnesses. Without their testimony it may not be possible to link those carrying out criminal acts to the principals of the groups or syndicates. In summary the Committee considers that the benefits of relying on this type of evidence in the limited class of cases where no other evidence may be available outweigh the detriments outlined above.

5.12 Quite apart from the ethics of relying on the testimony of accomplice witnesses there is also a legitimate concern within the community that criminals who have turned Queen's evidence should not be seen to have gained substantial benefits by doing so. As discussed in Chapter 3, the lenient treatment of a number of such criminals in the United Kingdom has given rise to serious disquiet. So far as the provision of protection to such accomplice witnesses is concerned this means that any arrangements which are put in place should not be open to the

criticism that the criminals concerned have been allowed to profit from their involvement in crime. Their living standards should not be improved by the protection arrangements and lump sum payments should not be held out to them on the successful conclusion of the proceedings in which they are testifying.

5.13 A witness protection scheme which rewarded accomplice witnesses in this fashion would very likely prove unacceptable to the community. It could also lead to suggestions that the evidence of the witnesses concerned had been affected by a desire to gain such rewards from their protectors. This issue of 'inducement' as it is called in law, meaning the potential for witnesses to be induced to tell lies or at least to colour the truth, was raised in a number of submissions. The Committee considers that it can largely be avoided by establishing accepted measures of assistance which will be provided and by setting out the assistance to be provided to particular witnesses in written agreements - referred to as 'memoranda of understanding' - entered into at the time the witness in question enters the scheme. In any event the Committee considers that the mere provision of protection, as distinct from the grant of an indemnity, for example, does not constitute an 'inducement' at law. It would be a foolhardy defence counsel who raised the fact that a witness had had to be protected from reprisals by his client as a matter going to the credit of the witness. If anything it would bolster the credibility of the witness concerned.[10]

5.14 While recognising the need for costs to be contained to retain community acceptability the Committee nevertheless feels it important to emphasise that at least some accomplice witnesses make considerable sacrifices as a result of their decisions to co-operate with the authorities. Many of those to whom the Committee spoke believed that they would be living in fear of reprisals for the rest of their lives. As one confidential witness before the Committee put it:

'What has happened with me - and I suppose it happens to a lot of the other people in the same situation - is that the people I gave evidence against got X amount of time in gaol and one day they are going to get out and they are going to be free to continue with what they have been doing before.... I cannot see my family. I am very restricted in what I can do.

CHAIRMAN - In other words, you are saying that they have paid their penalty, their debt to society, but you are still paying for ever.

WITNESS - I will pay my penalty until the day I die, and that is the real sad fact about it. I have got a wife and a child who are going to have to pay the same penalty as I have.'[11]

5.15 As another protected witness told the Committee, 'it is not fun being in witness protection'. Ties with family and friends are cut. The witness lives in constant fear, continually looking over his or her shoulder. The community at large does not value highly the criminal who has betrayed his or her former associates.[12] The Committee considers that it needs to be said that such witnesses are valuable and that the cost of providing them with appropriate protection is justified by the benefit to the community accruing from their testimony.

5.16 To recapitulate then, any witness protection scheme should be sufficiently flexible to provide a range of responses depending on the level of threat. In less serious cases it may be possible simply to provide increased protection for the witness in his or her own home. In a small number of cases, however, police forces will not be able to guarantee the safety of the witness if he or she remains in his or her own home and will recommend more drastic measures. At the option of the witness - and it must be stressed that participation in such schemes must always be voluntary - protection may be provided either by 24 hour guard in a 'safe house' or by relocation under a new

identity. For a variety of reasons the Committee considers that the latter alternative should be adopted as the preferred method of protection in these more serious cases.

5.17 First, 24 hour guarding in a 'safe house' does not provide a suitable method of long term protection continuing after the witness has testified in all the trials in which he or she is involved. Yet it is clear that in these more serious cases the threat does not disappear just because the witness has given his or her evidence. Revenge and the need to make an example of someone who has betrayed the principals of an organised group or syndicate make powerful motives for reprisals. Given that the threat remains, an effective witness protection scheme must of necessity provide protection after the trials in which the witness is testifying are over.[13] Equally it is impossible to contemplate a system under which witnesses would remain in safe houses for the rest of their lives or at the very least for indeterminate periods.

5.18 Secondly, 24 hour guarding in safe houses, if continued for any length of time, imposes unacceptable pressures both on the witness and on his or her protectors. The witness cannot engage in ordinary social activities and cannot work. Where children are involved their schooling is interrupted and the safe house situation cannot provide them with adequate recreational opportunities. Witnesses may develop a dependent relationship with their protectors alternating with periods of acute hostility. Even if the police officers investigating the case in which the witness is giving evidence are not involved in the provision of protection it may be argued that the relationship developed between the witness and his or her protectors over a lengthy period of close confinement has contaminated the evidence which the witness is to give. If ordinary premises are used as safe houses, as distinct from expedients such as the disused army bases briefly utilised in the United States, the attention of neighbours will immediately be

attracted by the comings and goings of the protectors. It will therefore prove impossible to maintain the security of the premises on a 24 hour basis for any length of time.[14]

5.19 Thirdly, 24 hour guarding in safe houses is resource intensive and prohibitively costly. As noted in Chapter 4, Operation Aries, involving the protection of two witnesses plus the wife and child of one of them by 24 hour guard between September 1982 and August 1983, required 36 personnel and 6 vehicles at its peak and has been costed by the Victoria Police at $4.5 million. The Australian Federal Police have advised that the 24 hour guarding of a single witness for one year would cost about $300,000. By contrast relocation of a witness would involve a one-off cost of between $3,000 and $12,000 depending on whether the witness had a family, maintenance costs ranging from a few hundred dollars a year to more than $35,000, and the costs of 24 hour guarding for periods during which the witness was required to return to danger zones - for example to attend court hearings - estimated at $2,500 per day. On any analysis relocation is cheaper and requires fewer resources. The Australian Federal Police Witness Protection Branch, which now uses relocation exclusively, presently protects 14 witnesses for an annual cost of about $2 million. If it were required to employ 24 hour guarding it would incur recurrent costs of more than double that sum to say nothing of the capital and equipment costs involved in establishing multiple safe houses.[15]

5.20 Among those bodies appearing before the Committee only the National Crime Authority advocated that 24 hour guarding should be used in the long term protection of witnesses and then only in limited circumstances. The Authority's views appear to have been coloured by their experience with one witness who was relocated and who subsequently absented himself from the programme in order to talk to the media. The Authority advanced

the view that some witnesses need to be protected from themselves. If simply relocated and left to their own devices they get lonely and get themselves into trouble.[16]

5.21 The Committee believes that the Authority's experience with this particular witness may perhaps reflect more on the Authority's assessment procedures prior to taking the witness into protection than on the suitability of the protection that was provided, although the Committee realises that it is easy to be critical of such decisions with hindsight. In any event, once an assessment of the witness' credibility was made it was decided that he was unreliable and of no value to the Authority as a witness. Given that entry into any witness protection scheme is always voluntary there is nothing to prevent witnesses from absenting themselves from the scheme even though it may be against their best interests to do so. The body providing witness protection cannot take upon itself the burden of protecting witnesses from themselves. While 24 hour guarding can obviously have unintended side benefits - the Committee was told of one case in Victoria where the witness, a female drug addict, had come off all drugs and was even going for runs in the morning with her protectors after 3 months of being under 24 hour guard[17] - the Committee believes that the primary purpose of a witness protection scheme is simply to keep the witness safe from external threat. On that basis relocation under a new identity is clearly to be preferred to 24 hour guarding in safe houses. However the effectiveness of schemes relying on relocation in Australia at present is severely hampered by their inability to provide appropriate documentation to support new identities and it is to the adequacy of the present arrangements for witness protection in Australia that the Committee now turns.

Adequacy of current arrangements: Non-custodial witnesses

5.22 It is convenient to consider the adequacy of current arrangements for witnesses not in custody, and the options for

reform of those arrangements, separately from the arrangements for custodial witnesses. The survey in Chapter 4 indicates that in those police forces experiencing a demand for the protection of non-custodial witnesses considerable progress has been made in the last few years in developing appropriate services to respond to that demand. The National Crime Authority, which prompted this inquiry by noting in its Annual Report 1985-86 that there were significant deficiencies in existing arrangements, has indicated that the Australian Federal Police, New South Wales Police and Victoria Police schemes 'go some way to meeting current needs'.[18]

5.23 Problems, however, remain, and regrettably some of these problems are the same as those identified by the National Crime Authority in its Annual Report 1985-86. In particular, there are still difficulties with relocating witnesses across State boundaries (although this is not a problem for the Australian Federal Police) and the police forces still have only a limited capacity to provide documentation in support of identity changes. Part of the blame for this lies with the individual police forces which have been reluctant to develop co-operative arrangements and formal liaison structures. However a major part of the responsibility for the lack of action on these problems must be borne by the Federal and State governments. The Commonwealth Attorney-General's Department, for example, told the Committee that, although the issue of the necessary support for identity changes had been raised with the Department as an issue of concern which ought to be attended to, no work had been done within the Department on developing proposals for legislation in that regard.[19]

5.24 The problems caused by the lack of co-ordination and co-operation between the individual police forces are well illustrated by the case of one confidential witness who appeared before the Committee. The witness had provided information to the Victoria Police Internal Security Unit (I.S.U.) concerning a corrupt policeman and the I.S.U. accepted that because she had

provided that information she was at risk. They made arrangements themselves, rather than through the Protective Security Groups, who have notional responsibility for the protection of witnesses within the Victoria Police, to relocate her to South Australia. After only two weeks the South Australian Police raided the house she was renting. There are two possible explanations of this: either the Victoria Police had not informed the South Australian Police that she was a protected witness and the raid therefore took place in the course of normal police operations, or the South Australian Police were informed and simply took advantage of this information.

5.25 The witness fled to Tasmania but after some months was forced to return to Victoria by lack of funds. The I.S.U. now denies that she is in any danger and has declined to make any arrangements for her protection. She has been contacted by the New South Wales Police and asked to assist them in a current investigation. The New South Wales Police lack jurisdiction and cannot provide protection for her in Victoria. There is no mechanism whereby the New South Wales Police can request protection for a witness in whom they have an interest who is residing in Victoria. When the Committee raised the question of the protection of this witness with the Victoria Police it was advised that it should take the matter up directly with the New South Wales Police as the witness was 'currently not viewed as a person of high level interest to this Department'.[20]

5.26 The lack of interstate liaison arrangements was compounded in this case either by an ignorance of the protection which could be made available through the Protective Security Groups or by professional jealousy which led the I.S.U. to attempt to run its own protection operation. The area of witness protection is one bedevilled by territorial jealousy and mistrust, a fact admitted by some of the police forces.[21] While this problem will always remain, the Committee believes its effects may be alleviated by ensuring that there is a greater

awareness of the witness protection arrangements which may be made available, both among investigators and among witnesses and potential witnesses.

5.27 Some concern was expressed to the Committee that any action to raise the profile of witness protection might lead to unjustifiable expectations in the criminal community.[22] While the Committee is aware that there is a natural tendency for the informer or accomplice witness to exploit 'the system' and to attempt to obtain the best deal available,[23] the Committee considers that the way to counter this is by rigorous assessment of applications for protection. A higher profile for witness protection could have four salutary effects. Investigators would be less inclined to attempt to 'go it alone', possibly endangering their witnesses. More witnesses might come forward if they had confidence that their safety from reprisals could be assured. Once the scope of witness protection arrangements became better known, potential witnesses would disregard unrealistic promises made by investigators and thus would not become disaffected - and possibly refuse to testify - when it became clear that those promises could not be fulfilled. Lastly, as noted above, if an accepted tariff of witness protection is established there will be less room for arguments by defence counsel that witnesses have been induced to falsify their evidence by the prospect of grandiose rewards for their co-operation.

5.28 However the most significant problem with existing witness protection arrangements in Australia is undoubtedly the inability of agencies to make appropriate arrangements to support identity changes and so the lack of a capacity to provide effective long term protection. In a modern society a change of identity is a necessary prerequisite to any attempt to provide protection by relocation. If a witness who has been relocated applies for social security benefits, withdraws money from a bank or charges a purchase to a credit card, his or her whereabouts

can be traced by anyone who knows the name the witness is using. Hence successful relocation is dependent upon a secure identity change.

5.29 Unfortunately, although witnesses are presently living under new names in this country, only rudimentary attempts have yet been made to establish mechanisms whereby those new names can be entered into official and commercial records without compromising the witness' security. It is perhaps ironic that, whereas criminals can be paid social security benefits in false names, can maintain bank accounts in false names and can obtain passports in false names, these advantages are denied to witnesses who are living under new names. However the police forces providing protection must remain within the law and they believe there are legal obstacles to accomplishing secure name changes. Moreover administrative mechanisms - for example departmental procedures to counter social security fraud - can place obstacles in the way of witness protection. The result is that there are witnesses living under new names who cannot obtain social security benefits, cannot file taxation returns and whose driver's licences would not withstand close inspection. The Committee will return to the question of what can be done to remedy this situation below, but first it is appropriate to examine the issue of the form which the machinery for the provision of witness protection should take in this country.

A national scheme?

5.30 The Committee was in essence presented with four models for the provision of witness protection in Australia:

A: a national scheme run by a new, independent agency;
B: a national scheme based on an existing agency;

C: the retention of the existing schemes, co-ordinated by a national witness protection liaison committee; and

D: no change to the existing arrangements.

For the reasons given above the Committee considers the existing arrangements unsatisfactory and therefore views option D as untenable.

5.31 The National Crime Authority advocated a national witness protection scheme run by a new, independent agency. This view was also supported by the State Drug Crime Commission of New South Wales, the Victoria Police Association and Superintendent J.B. Barclay. It was suggested that there would be significant advantages in a single national scheme such as uniformity in policy and procedure, an avoidance of duplication resulting in savings in costs and resources and greater ease in relocation across State boundaries. The new agency would be staffed by non-police personnel. Stress was laid on the fact that many operational police dislike the task of providing protection to accomplice witnesses whom they regard in the same light as any other criminal. Furthermore many witnesses distrust police and there are sound arguments for not having police guarding witnesses who are giving evidence against corrupt police officers. The most significant disadvantages of option A would be the long lead time necessary to establish a new national agency and the costs involved. It was anticipated that besides national headquarters the agency would require personnel and premises in each capital city.[24]

5.32 The Committee does not believe that the creation of a new, independent national agency for the purposes of witness protection can be justified. In the first place, there is insufficient demand to support the creation of such an agency. The National Crime Authority itself anticipates that it will have

only 5 or 6 witnesses a year requiring protection. The Australian Federal Police Witness Protection Branch is presently protecting 4 National Crime Authority witnesses, 5 witnesses for a State police force and 5 Australian Federal Police witnesses, making a total of 14. Of 17 witnesses protected by the Victoria Police over the period April 1985-December 1987 the Committee was told that only about a dozen would have required long term protection by means of relocation had it been available. Similarly only 2 out of the 22 witnesses protected by the New South Wales Police over the last year were regarded as long term relocation prospects. Annual demand at present would therefore appear not to exceed 20 witnesses and their dependants. Even if demand were to rise to the level it has in the United States the number of witnesses to be protected annually would not exceed 40 for the whole of Australia. The Committee does not believe that this level of demand warrants the creation of a new national agency with staff and premises in each capital city.[25]

5.33 Secondly, the proposal is politically unrealistic. It was not supported by any government in submissions to the Committee and even if the Federal Government wished to establish such an agency it could not force the States to abandon their existing schemes and to place their witnesses with the national agency.[26] Thirdly, the arguments advanced in favour of a new independent agency are questionable. It is submitted, for example, that the present arrangements for witness protection do not result in duplication and that therefore no savings could be anticipated through centralisation: the same resources would be required to protect the same number of witnesses.[27] The Australian Federal Police experiences no difficulty with the relocation of witnesses across State boundaries and appropriate co-operative arrangements between the State police forces should diminish the force of this argument. While operational police clearly dislike providing 24 hour guarding services for witnesses for any length of time, the Committee has seen for itself the commitment which the members of the Australian Federal Police

Witness Protection Branch bring to their task and it has no reason to doubt that police personnel can provide effective witness protection within a framework where relocation is the preferred method of long term protection. As to the issue of witnesses mistrusting police, the Committee believes that this will be cured as the agencies providing protection build reputations for integrity over time.

5.34 Option B envisages a national scheme based on an existing agency. There are only two agencies which have the requisite national reach and which could be considered for the operation of such a scheme, the Australian Federal Police and the Australian Protective Service. The Committee received two submissions suggesting that the Australian Protective Service might be an appropriate body to assume the national witness protection role.[28] The Department of Administrative Services, which has responsibility for the Australian Protective Service, also provided a submission briefly outlining the current responsibilities of the service. In essence the service presently provides physical security guarding services in a variety of situations and custodial services for immigration detention centres and detainees in transit. Had the Committee favoured 24 hour guarding as a method of providing protection for witnesses then the Australian Protective Service would clearly have merited consideration as a national agency. However for reasons given above the Committee favours relocation as a method of protection and the Australian Protective Service has no prior experience in providing such a service.

5.35 By contrast the Australian Federal Police Witness Protection Branch already has considerable experience in the protection of witnesses by relocation. The Commonwealth Attorney-General's Department suggested that, even if the police forces in those States already experiencing a demand for witness protection services continued to develop their own independent capacities to provide protection to State witnesses, the

Australian Federal Police should assume an expanded national witness protection role. It is the only agency capable of providing such services on a national basis. Although its Witness Protection Branch is a dedicated unit based in Canberra, it can call on the assistance of Australian Federal Police personnel in all States if the need arises. The Witness Protection Branch already provides protection on a user pays basis to witnesses from one State police force and the National Crime Authority. This service could be extended to other agencies which have not as yet felt the need to develop their own services capable of providing long term protection to witnesses.[29]

5.36 The application of the user pays principle should make this option more attractive to some State governments which may have been concerned by the cost implications of establishing what could have become another national common police service.[30] The user pays principle should also ensure that agencies make a rigorous assessment of the threat to the witness and the value of his or her evidence before putting a candidate forward for relocation under the scheme.[31] The Australian Federal Police presently recovers overtime, penalty rates and other incidental costs incurred in providing witness protection for client agencies but does not recover base salaries. The advent of programme budgeting should, however, facilitate the identification of such costs and their recovery from users. The Committee accepts that if the Australian Federal Police is to take on this expanded role the Commonwealth may at least initially face a substantial increase in appropriations depending on anticipated demand for the service but the Committee considers it appropriate that the Commonwealth should bear these initial establishment costs given the national impact of organised criminal activity. There is also a balancing element through the revenue generated by forfeiture of assets and the raising of taxation assessments against those involved in organised criminal activity.[32]

5.37 The Committee does not believe, however, that Option B is incompatible with Option C. It accepts that those States which have already established witness protection arrangements will wish to retain them and that State police forces may be reluctant to hand over control of their witnesses to a Federal body except in unusual circumstances. Moreover, even if the function of relocating witnesses were in future to be handled solely by the Australian Federal Police, the State police forces would still have to take responsibility for all witness protection measures falling short of actual relocation. A similar situation obtains in the United States where the Marshals Service Witness Security Program will not accept a witness unless the local law enforcement authorities are unable to provide adequate protection. The Queensland, New South Wales and Victoria Police and the Australian Federal Police have all expressed support for the concept developed by the National Police Research Unit of a National Witness Protection Liaison Committee to be formed under the auspices of the Australian Police Ministers' Council and to be composed of Witness Protection Officers appointed by each force. Such a Committee could provide a forum for the development of arrangements for the relocation of witnesses across State boundaries by the State police forces. It could also facilitate the interchange of information concerning contacts in State and Federal agencies and non-governmental bodies who could assist in the relocation process. Although the States would retain control of their own witness protection services the Committee could promote greater uniformity in approach between the various organisations.[33]

5.38 The Committee envisages that the secretariat to the Australian Police Ministers' Council would also provide the necessary secretariat services for the proposed National Witness Protection Liaison Committee. The Liaison Committee would be an appropriate body to consider the question of complementary State and Federal legislation to overcome certain problems that may arise with the adoption of relocation under a new identity as the

preferred method of protection, a matter returned to below. Client agencies such as the National Crime Authority and the State Drug Crime Commission could be called upon to assist the Liaison Committee in this regard and it would be anticipated that the Commonwealth Attorney-General would then take any proposals for legislation forward to the Standing Committee of Attorneys-General. As this process could take up to two years (whatever the outcome), the Liaison Committee should in the interim develop administrative procedures to facilitate the relocation of protected witnesses to the greatest extent this is possible without supporting legislation.[34]

5.39 **Recommendation: The Committee recommends:**

(a) that the Australian Federal Police should assume an expanded national witness protection role; and

(b) that a National Witness Protection Liaison Committee be established under the auspices of the Australian Police Ministers' Council to facilitate greater co-ordination and co-operation between the 8 police forces in the provision of witness protection.

The need for legislation

5.40 The Committee envisages that the steps recommended above will mean that protection by way of relocation can be made available to a witness anywhere in Australia. Agencies should examine both the threat to the witness and the value of the witness' evidence before seeking such protection. Other alternative approaches to protection should be considered: relocation should be viewed as a last resort. The agency providing protection should conduct its own assessment of the need for protection in each case and should also assess the suitability of the witness for relocation. This assessment should

include a psychological evaluation. It is obviously undesirable if the operation of a witness protection scheme results in a dangerous psychopath being relocated into the midst of an unsuspecting community. On the other hand it needs to be recognised that in our society former offenders are free to live where they choose.

5.41 The National Crime Authority stated that it would wish to be assured that any of its witnesses would be accepted into a witness protection scheme without further question provided that they met previously agreed eligibility criteria. The Committee does not believe this to be desirable. It believes that the witness protection agency should make an assessment of the witness' need for protection and suitability for relocation independently of the sponsoring investigative agency. However there is merit in the proposal advanced by the National Crime Authority that the witness protection agency and its client agencies should enter into written agreements specifying the ground rules under which protection will be provided. One issue which could arise in this context, for example, is whether witnesses addicted to narcotics should be admitted to the witness protection scheme and, if so, on what conditions. The National Witness Protection Liaison Committee may provide a forum for the discussion of such issues and also for the determination of estimates of demand so that appropriate resources can be obtained. The Director of Public Prosecutions has noted that a major difficulty with existing schemes has been that protection has not been available for some witnesses due to resource constraints.[35]

5.42 Before being accepted into the witness protection scheme the witness and any adult family members who are also being relocated should be required to read over and sign a memorandum of understanding detailing the assistance which the agency undertakes to provide and the conditions under which assistance would be terminated. The witness should have legal advice on the

implications of entering the scheme and should be provided with legal aid to obtain such advice if necessary. It has been suggested to the Committee that the essential obligations accepted by the witness in the memorandum of understanding should be set out in legislation. The Committee does not, however, consider this to be necessary. The memorandum is not a contract binding on either party. It simply seeks to set out the obligations accepted by both sides. It can serve as a mechanism to rid the witness of any misconceptions which promises by investigators have given rise to and it may also assist in countering arguments of inducement to give false testimony when the witness comes to give his or her evidence.[36]

5.43 The agency arranging the relocation of a protected witness should provide accommodation at the new locality. An allowance should be paid to meet rent, living expenses, medical and dental bills and incidental costs until such time as the witness can obtain employment. It should be recognised that commitments to testify in various trials and the need for associated meetings with lawyers and investigative officers may impede the witness' efforts to obtain settled employment.[37] The agency should be able to call on financial counsellors and social workers to assist in smoothing the path of relocation. The Commonwealth Employment Service may be able to assist in obtaining employment and the agency providing protection could also follow the United States precedent in establishing through employer organisations a register of companies prepared to accept protected witnesses as employees. The possibility should also be explored of relocating witnesses overseas on a reciprocal basis with the receiving countries. This has been done by both the United Kingdom and the United States and the Committee has been informed that the U.S. Marshals Service may be interested in relocating some of its witnesses to Australia.[38] In such circumstances it may be necessary to consider the payment of a lump sum in lieu of the subsistence allowance.

5.44 A most important element in any witness protection scheme depending on relocation is, as noted above, a secure identity change. The Committee envisages that the necessary steps to accomplish such a change will be initiated immediately after the acceptance of the witness into the scheme. At common law a person may change his or her name at will provided this is not done with intent to deceive and thereby to inflict financial loss on some other person.[39] For a variety of reasons, however, a person may wish to produce evidence that the name he or she has assumed is his or her real name. The normal method of doing this would be to obtain a birth certificate in the new name but the procedures for obtaining such a document are in most cases unsuitable for the purposes of a witness protection scheme.

5.45 Queensland, for example, retains the deed poll as the instrument for effecting a change of name and the deed poll register is a document of public record. New South Wales requires a statement that the new name has been used exclusively for a period of 12 months supported by three documents in evidence of this such as a bank account, medical receipts or a driver's licence. Victoria and South Australia merely require a statutory declaration accompanied by reasons for the change of name, an original birth certificate, passport or some other form of identification and full family details including details of marital status. In South Australia and Victoria the birth certificates issued to persons who have changed their names do not record the original name, although the names of parents are recorded. In New South Wales and Queensland the birth certificate issued will indicate whether any change of name has taken place.

5.46 Recommendation: The Committee recommends that the legislation relating to the registration of births in each State and Territory be amended to provide a mechanism similar to that presently applying in cases of adoption whereby a protected witness may be issued with a birth certificate in a new name which does not indicate that any change of name has taken place.

The original birth certificate should be kept in a closed register available only to the protected witness or duly authorised persons.

5.47 Further complications arise in respect of the provision of documentation such as driver's licences, passports and educational, trade and professional qualifications in new names and the alteration of records referring to the protected witness in his or her old identity such as Department of Social Security, Taxation Office and Electoral Commission records. Some of these complications relate less to any obstacles which may be placed in the way of changes of name as such than to the need to maintain security so that as few persons as possible can link the person's new name to his or her old identity. The Department of Social Security, for example, will implement a change of name where it is satisfied that there is good reason for the change and that the person intends to use the new name exclusively. However it would clearly not be appropriate for a protected witness simply to go to the local office and inform the officers of his or her change of identity.

5.48 The Committee suggests that the Australian Federal Police should establish contacts in Federal agencies and that the Witness Protection Officer in each State police force should establish contacts in State Government agencies to facilitate the issue of documentation such as driver's licences and the secure alteration of official records. Contacts will also have to be made in educational institutions and bodies responsible for the licensing of persons to carry on certain trades or the admission of persons to practice certain professions. It may also be desirable for contacts to be established in financial institutions and in the Credit Reference Association of Australia so that protected witnesses when they come to apply for loans do not appear to have no financial history. Judgment will have to be exercised where, for example, a person has a financial history which reflects the person's past income from criminal activity.

Equally an accountant or a lawyer may have engaged in conduct disentitling them to practice. Full disclosure should take place. Doubts on the part of the bodies being approached may be eased if it is provided that no civil or criminal liability shall attach to any person only because the person has altered a record or issued a document in a new name for the purpose of the protection of a witness.

5.49 Recommendation: The Committee recommends that complementary State and Federal legislation relating to witness protection should indemnify from any civil or criminal liability persons acting in an official capacity who alter records or issue documents to reflect the new identity of a protected witness.

5.50 Law enforcement agencies may object to the procedure proposed in the previous paragraphs because it means that too wide a range of persons will be able to connect the old identity of a protected witness to his or her new name and that the security of the identity change will thereby be compromised. However there is no sensible alternative. To require an educational institution, for example, to issue evidence that a person under a new name has achieved a certain qualification without allowing the institution to check that the person, under his or her old identity, did in fact gain that qualification would be tantamount to requiring the institution to issue a false document. Equally the institution must be informed of the person's new identity not merely so that a new certificate as to the qualification may be issued in that name but also so that, if anyone enquires, the institution may vouch for the bona fides of the new certificate. One safeguard which may go some way towards allaying the law enforcement agencies' concerns would be the creation of a criminal offence carrying a heavy penalty where a person compromises the security of a protected witness by revealing details of the witness' change of identity.

5.51 Recommendation: The Committee recommends that complementary State and Federal legislation relating to witness protection should make it a criminal offence for a person to compromise the security of a protected witness by revealing details of the witness' change of identity. An appropriate penalty reflecting the gravity of the offence should be imposed.

5.52 It was suggested to the Committee that agencies providing witness protection services should be indemnified from all liability both in respect of their own acts and in respect of the acts of protected witnesses.[40] The Committee does not believe that any alteration to the ordinary common law in this regard is justified. The proposal appears to derive from the provision in the United States Witness Security Reform Act to the effect that no civil liability is to flow from the decision to provide or not to provide witness protection. However the Committee believes that this provision is the product of considerations peculiar to United States law, in particular the development by the courts in that country of a duty to protect government witnesses and informers giving rise to liability to damages if protection is not provided.[41] The Committee does not believe that there is any reason why liability should not attach to a witness protection agency if it has been negligent in accordance with ordinary concepts, for example by failing to carry out a psychological evaluation of a protected witness as required under its own standard procedures.

5.53 The Committee also considers that an appropriate complaints mechanism should be established so that there is an avenue of review for witnesses who believe they have been denied protection although the threat to their safety warrants it and for witnesses aggrieved by decisions made by the agency protecting them including decisions to terminate any assistance being provided to them. At the Federal level the appropriate person to exercise this complaints jurisdiction would be the Ombudsman. At the State level other expedients may need to be

devised depending on the machinery for the resolution of complaints against the police in each jurisdiction.

5.54 Recommendation: The Committee recommends that, where presently unavailable, appropriate mechanisms be established to handle complaints from persons who believe that they have been unjustly denied protection or who are aggrieved by decisions made by agencies in the administration of witness protection schemes.

5.55 There are a number of other matters in respect of which the Committee believes that legislation, while not essential, may be desirable. Express legislative authority for the protection of witnesses by relocation, for example, is probably not necessary but may be desirable to give the imprimatur of Parliament to the proposed witness protection scheme. Appropriate administrative mechanisms may be devised whereby protected witnesses may be prevented from evading their civil debts and from avoiding obligations which may have been imposed on them in respect of access to, or the custody of, children by the Family Court. Again, however, it may be considered desirable to set out these mechanisms in legislation and the provisions of the United States Witness Security Reform Act may provide some assistance in this regard.

5.56 Similarly, appropriate administrative steps can be taken to ensure that, if a protected witness commits a crime, the witness' criminal record under his or her old identity will be revealed to the responsible investigative agency, but once again it may be desirable to set this matter out in legislation. The Committee considers that the proposed National Witness Protection Liaison Committee should maintain a secure register recording each case in Australia where a change of identity has been accomplished for the purpose of witness protection together with details of the criminal record of the person concerned under his or her old identity. Where a person who may have been relocated under a new identity comes under suspicion of involvement in

criminal activities a request should be made through the Witness Protection Officer of the investigating force for the details on the register, if any, concerning the person to be revealed to the investigating officers. It should rest with the Witness Protection Officer concerned to satisfy himself or herself that the request for information is made in good faith and not, for example, with the intention of revealing the person's true identity and whereabouts to his or her former criminal associates. The criminal penalty recommended in paragraph 5.51 above would, of course, apply to any such misuse of the information. Requests for information could also come from overseas law enforcement agencies, and these would be handled by the Witness Protection Officer appointed by the Australian Federal Police. The Committee believes that the proposed register would provide a valuable safeguard against former criminals using the new identity provided by the witness protection scheme as a cloak to hide their criminal past. The Committee has also been informed that fingerprint records may provide a ready means of linking the old and new identities for this purpose.[42]

5.57 Finally, two proposals have been made to the Committee which affect the way the courts deal with protected witnesses. First it has been suggested that a procedure should be established whereby the hearing of cases in which protected witnesses are to testify can be expedited. Such a mechanism for 'queue jumping' would ensure that the time which a protected witness spends waiting to testify in various trials is minimised so that the witness may resume a normal lifestyle as soon as possible. While the adoption of relocation as a preferred method of protection will mean that delays in the courts do not result in an escalation of costs of the same magnitude as would have been the case if witnesses were being kept under 24 hour guard while waiting to testify, the Committee nevertheless believes that cost savings of a substantial order will accrue if the time witnesses spend waiting to testify can be kept to a minimum. Furthermore, it should be recognised that the long delays

presently experienced in the court system are particularly stressful to protected witnesses.

5.58 Secondly, it has been suggested that the law with regard to the suppression of details identifying a witness requires review. At present a judge may order that such details not be published but in exercising this discretion judges are guided only by the interests of justice. In New South Wales at least there is doubt as to whether an appeal lies to a superior court in respect of a refusal by a judge to exercise this discretion in favour of a protected witness. It also appears that an order made in one State does not bind media outlets publishing in other jurisdictions. Obviously a system of protection which depends on the adoption of a new identity by a witness is vulnerable if the witness' new identity or the locality to which the witness has moved is made known or if, for example, pictures of the witness are televised which would enable persons who know the witness under his or her new identity to connect the witness with his or her past.[43] The Committee does not advocate that the discretion to suppress details identifying a witness should be removed from the courts but it does consider that the law should be reviewed to ensure that the courts must take account of the threat to the safety of the witness in the exercise of this discretion, that a clear right of appeal lies in respect of a refusal to exercise the discretion and that an order suppressing the publication of details identifying a witness has effect throughout Australia.

5.59 Recommendation: The Committee recommends that complementary State and Federal legislation relating to witness protection should:

(a) give clear legislative authority for the protection of witnesses by relocation;

(b) set out mechanisms whereby protected witnesses may be prevented from evading their civil debts and from avoiding obligations imposed on them by the Family Court;

(c) ensure that, if a protected witness commits a crime, the witness' criminal record under his or her old identity will be revealed to the responsible investigative agency;

(d) establish procedures whereby the hearing of cases in which protected witnesses are to testify can be expedited; and

(e) clarify the law with regard to the suppression of details identifying a protected witness.

Custodial witnesses

5.60 Certain of the recommendations made above - for example as to the way the courts deal with protected witnesses and the need for an appropriate complaints mechanism - are also relevant to protected witnesses in custody. However given the absence of any Commonwealth prisons it is clearly inappropriate to contemplate a national scheme of protection for custodial witnesses except through greater consultation on this issue between the various corrective services administrations. The New South Wales Government may be prepared to permit its Witness Protection Unit at Long Bay Gaol to be used as a national facility for the protection of custodial witnesses whose evidence has national ramifications provided appropriate cost-sharing arrangements can be arrived at and other governments may look favourably upon such a proposal. However it would be necessary in the first instance to amend the complementary legislation

relating to the interstate transfer of prisoners to specify the protection of a custodial witness as a ground for transfer.[44]

5.61 Recommendation: The Committee recommends that the complementary legislation relating to the interstate transfer of prisoners be amended to specify the protection of a custodial witness as a ground for transfer.

5.62 The Committee is generally satisfied as to the adequacy of the protection provided to custodial witnesses. However three matters have been raised with it as of particular concern in the context of the current arrangements. First, the more serious the threat to the custodial witness, the more likely it is that he or she will be held under maximum security conditions, often in a unit designed for prisoners who are dangerous rather than in danger themselves. This results in prisoners being denied privileges they might otherwise have and generally serving their time under harsher conditions. These considerations apply equally to the Witness Protection Unit at Long Bay Gaol which, although a laudable initiative, is nevertheless a maximum security unit. Several of the custodial witnesses who appeared before the Committee commented on the need for a lower security alternative for those custodial witnesses who would otherwise merit such a classification.[45] In the absence of such an alternative the Committee considers that greater account should be taken of the fact that custodial witnesses generally serve their sentences under harsher conditions than they would have had they not co-operated with the authorities when decisions are made concerning the release of such prisoners on licence or parole.[46]

5.63 Secondly, custodial witnesses need to be assured that their families are being protected. A strong and continuous theme of the evidence given by custodial witnesses appearing before the Committee was their very real concern for the adequate protection of their families. A simple remark such as 'How's the wife?' may be misconstrued, causing sheer panic. The Committee suggests that

the Witness Protection Officers in each jurisdiction should liaise with the respective corrective services administrations to identify cases where families may be in need of protection and to take appropriate measures. In some cases this may mean the relocation of the custodial witness' family under a new identity. It should not be left to the families themselves to take appropriate steps for their own protection as seems too often to be the case at the moment.[47]

5.64 Thirdly, custodial witnesses need to be given clear undertakings as to what will happen to them when they are released. The Committee considers that the agency responsible for the provision of witness protection in the relevant jurisdiction or the Australian Federal Police as the national agency should be given access to custodial witnesses and should be able to enter into memoranda of understanding with such witnesses concerning arrangements to be made for their protection upon their release. It will also be necessary for the Witness Protection Officers to establish liaison with the relevant State probation and parole service to reach some arrangement regarding the supervision of custodial witnesses on parole. Ideally such witnesses should be placed under the supervision of the witness protection agency although amendments to the relevant legislation may be necessary to achieve this result.[48]

5.65 **Recommendation: The Committee recommends that appropriate steps be taken to ensure:**

(a) **that the fact that custodial witnesses serve their sentences under harsher conditions is taken into account in making decisions concerning the release of such witnesses on licence or parole;**

(b) **that the families of custodial witnesses are adequately protected; and**

(c) that custodial witnesses are given clear undertakings as to the arrangements proposed for their protection on release.

Peter Cleeland
Chairman

May 1988

Chapter 5 - Footnotes

1. Submission from the National Crime Authority, p. 3; Submission from the State Drug Crime Commission of New South Wales, p. 9.

2. Submission from Professor T. Vinson and Ms E. Diesendorf, p. 12; In Camera Evidence, Mr R.G. Haebich, p. 263; New South Wales Department of Corrective Services, pp. 1005, 1013-4, 1017.

3. Submission from the Hon. A.R. Moffitt, pp. 10-11; Submission from Professor T. Vinson and Ms E. Diesendorf, p. 12; In Camera Evidence, Professor T. Vinson, pp. 145-6.

4. Ibid.; Submission from Professor T. Vinson and Ms E. Diesendorf, pp. 5, 14; In Camera Evidence, Confidential Witness B, pp. 190, 193; Australian Federal Police, p. 790; Submission from the Hon. A.R. Moffitt, p. 24.

5. Submission from the Attorney-General's Department, pp. 15, 17, citing R. v.Perez-Vargas (1987) 8 NSWLR 559 especially at p. 565.

6. Greer, S., 'Supergrasses and the Legal System in Britain and Northern Ireland', (1986) 102 L.Q.R. 198 at 198-9.

7. (1775) 1 Leach 115 at 120; 168 E.R. 160 at 163.

8. Australian Law Reform Commission, Evidence (Interim Report, ALRC No. 26, A.G.P.S., Canberra, 1985), vol. 1, pp. 558-61; Evidence (ARLC No. 38, A.G.P.S., Canberra, 1987), p. 132.

9. Greer, loc.cit., at pp. 202-3; McCann, E., 'Tainted Witnesses', New Statesman (23 July 1982), pp. 8-9, at p. 9.

10. Opinion of D.H. Peek of Counsel, published as Project Epsilon - Interim Report III (National Police Research Unit, Adelaide, 1984), pp. 3-5; Submission from the Honourable Mr Justice Vincent; Submission from the Attorney-General's Department, p. 10; In Camera Evidence, National Crime Authority, p. 1080.

11. In Camera Evidence, Confidential Witness E, pp. 277-9.

12. In Camera Evidence, Confidential Witness G, pp. 635-6.

13. Submission from the Law Institute of Victoria.

Chapter 5 - Footnotes (continued)

14. Submissions from the Hon. Mr Justice Vincent; the Australian Federal Police, p. 3; the Hon. A.R. Moffitt, p. 18; the Queensland Government, p. 6; In Camera Evidence, Australian Federal Police, p. 785; Superintendent J.B. Barclay, p. 533; Victorian Government, p. 599.

15. In Camera Evidence, Superintendent J.B. Barclay, pp. 532-3; Submission from the Australian Federal Police, pp. 10-12; see also Submissions from Mr R.F. Redlich; the National Crime Authority, p. 6; the State Drug Crime Commission of New South Wales, p. 19; In Camera Evidence, New South Wales Police, p. 939.

16. In Camera Evidence, National Crime Authority, pp. 1066, 1073-4.

17. In Camera Evidence, Superintendent J.B. Barclay, p. 565.

18. National Crime Authority, Annual Report 1985-86 (Parliamentary Paper No. 86/1987), p. 43; Submission from the National Crime Authority, p. 4.

19. In Camera Evidence, Attorney-General's Department, pp. 724, 736.

20. In Camera Evidence, Confidential Witness F, pp. 309-15, 318, 320; Victorian Government, p. 607; Internal Minute from Assistant Commissioner, Internal Investigations Department, to Deputy Commissioner, Administration, dated 4 March 1988, forwarded with letter from Victoria Police of 8 March 1988.

21. In Camera Evidence, Victorian Government, p. 588; Attorney-General's Department, p. 717.

22. In Camera Evidence, Queensland Government, pp. 35-6, 44-5.

23. In Camera Evidence, Professor T. Vinson, p. 145.

24. Submission from the National Crime Authority, pp. 5-8, 12; Submission from the State Drug Crime Commission of New South Wales, p. 11; Submission from the Victoria Police Association, p. 1; Submission from Superintendent J.B. Barclay, pp. 23, 25; Submission from Mr H.J. Murray, p. 4; In Camera Evidence, National Crime Authority, pp. 1064, 1067; Ms E. Diesendorf, pp. 163-4; New South Wales Police, p. 947.

Chapter 5 - Footnotes (continued)

25. In Camera Evidence, National Crime Authority, p. 1076; Australian Federal Police, p. 789; Superintendent J.B. Barclay, p. 566; New South Wales Police, pp. 947-8; Submission from the Attorney-General's Department, p. 21.

26. Submission from the Australian Federal Police, p. 10; Submission from the Police Board of New South Wales, p. 3.

27. In Camera Evidence, Attorney-General's Department, p. 741.

28. Submissions from Mr H.J. Murray and Mr F. Rasmussen.

29. Submission from the Attorney-General's Department, pp. 22-4; Submission from the Australian Federal Police, p. 14.

30. In Camera Evidence, Queensland Government, p. 20; Submission from the Northern Territory Government; Submission from the Victorian Government, p. 3.

31. In Camera Evidence, Attorney-General's Department, p. 712.

32. Submission from the Australian Federal Police, p. 12; Submission from the Attorney-General's Department, p. 8; Submission from the National Crime Authority, p. 24; In Camera Evidence, National Crime Authority, p. 1075.

33. McGrath, G., Project Epsilon - Interim Report II - Immediate Measures (National Police Research Unit, Adelaide, 1984), pp. 5-9; McGrath, G., Project Epsilon - Interim Report V - Epsilon Revisited (National Police Research Unit, Adelaide, 1987), pp. 12-15; In Camera Evidence, Queensland Government, pp. 28, 41; Submission from the Victorian Government, p. 2; Submission from New South Wales Police, pp. 3-6; In Camera Evidence, Australian Federal Police, p. 764.

34. Submission from the Attorney-General's Department, p. 24; In Camera Evidence, Attorney-General's Department, p. 744.

35. Submission from the National Crime Authority, pp. 10, 12; Submission from the Director of Public Prosecutions.

36. Submission from the Australian Federal Police, p. 8; Submission from the National Crime Authority, p. 13; Submission from Superintendent J.B. Barclay, pp. 30, 34.

Chapter 5 - Footnotes (continued)

37. In Camera Evidence, Confidential Witness F, p. 330; Confidential Witness G, p. 624.

38. Submission from Superintendent J.B. Barclay, p. 32.

39. Earl Cowley v. Countess Cowley [1901] A.C. 450 at p. 460 per Lord Lindley.

40. Submission from the Australian Federal Police, p. 6; Submission from the Police Board of New South Wales, p. 5; Submission from the New South Wales Police, Annexure B, p. 2. A separate issue, raised in a submission from Mr E.T. Skuse, concerns the question whether the Commonwealth ought, by legislation, to assume a duty of care under the law of negligence in respect of the safety and security of persons within its court houses. The Committee determined that this issue fell outside the scope of its inquiry.

41. Goldstock, R., and Coenen, D.T., 'Controlling the Contemporary Loanshark - The Law of Illicit Lending and the Problem of Witness Fear', (1980) 65 Cornell L.R. 127 at pp. 209ff.

42. In Camera Evidence, Australian Federal Police, p. 792; New South Wales Police, p. 955.

43. In Camera Evidence, Confidential Witness G, p. 627.

44. In Camera Evidence, New South Wales Department of Corrective Services, p. 992; Victorian Government, pp. 585-6; National Crime Authority, p. 1089. The Committee took evidence on this issue before the recent change of Government in New South Wales.

45. In Camera Evidence, Confidential Witness D, pp. 248, 251-3; Confidential Witness H, p. 828; Confidential Witness K, p. 849; Confidential Witness L, p. 862; Submission from Confidential Witness H, pp. 4, 10.

46. Ibid., p. 5; Submission from the National Crime Authority, p. 23; Submission from the Attorney-General's Department, p. 17; Submission from the New South Wales Department of Corrective Services, p. 4.

47. Submission from Professor T. Vinson and Ms E. Diesendorf, pp. 8, 11, 14; Submission from the Queensland Government, p. 8; Submission from Confidential Witness L; Submission from Confidential Witness H, p. 6; Submission from Confidential Witness M, p. 16; In Camera Evidence, Confidential Witness C, pp. 209, 228; Confidential Witness J, p. 845;

Confidential Witness N, p.894; Victorian Government, p.609.

48. Submission from the New South Wales Department of Corrective Services, pp.5-7; Submission from Confidential Witness H, p.8; Submission from Confidential Witness O; In Camera Evidence, Confidential Witness D, p.265.

APPENDIX 1

Individuals and Organisations Who Made Written Submissions to the Committee

1. Concerned Citizens of Griffith
2. Mr R.F. Redlich, QC
3. The Hon. Mr Justice Vincent
4. Confidential Witness A
5. Mr E.T. Skuse
6. Confidential Witness O
7. Mr James Moore, JP
8. Mr C.S. Bitter, Secretary to the Attorney-General, South Australia
9. Mr Howard J. Murray
10. Mr F. Rasmussen
11. Mr P.J. Breen
12. Australian Federal Police
13. Environment and Social Issues Coalition
14. The Hon. J.C. Bannon, MLA, Premier of South Australia
15. Western Australia Police Department
16. The Hon. A.R. Moffitt, CMG, QC
17. Law Society of Western Australia
18. Mr Ian Temby, QC, Director of Public Prosecutions
19. Professor Tony Vinson and Ms Eileen Diesendorf, School of Social Work, University of New South Wales
20. Queensland Government
21. Mr R.O. Blanch, QC, Director of Public Prosecutions, New South Wales
22. Law Society of the Australian Capital Territory
23. Department of Corrective Services, Western Australia
24. Police Association of South Australia
25. National Crime Authority
26. Confidential Witness G
27. Commonwealth Attorney-General's Department
28. Police Board of New South Wales
29. Department of Administrative Services
30. Mr R.G. Haebich
31. Northern Territory Government
32. New South Wales Department of Corrective Services
33. State Drug Crime Commission of New South Wales
34. Victoria Police Association
35. Victorian Government
36. Superintendent J.B. Barclay
37. Law Institute of Victoria
38. New South Wales Police Force
39. Confidential Witness L
40. Confidential Witness H
41. Confidential Witness M
42. Law Institute of South Australia

APPENDIX 2

Individuals and Organisations Who Appeared as Witnesses Before the Committee at In Camera Hearings

Date of Hearing	Individuals or Organisations	Represented By
1988		
8 February (Brisbane)	Queensland Government	Mr L.J. Scanlan, Executive Officer, Inter-Governmental Relations, Premier's Department
		Mr B. Stewart, Director, Legislation and Policy Branch, Department of Justice
		Mr A. Lobban, Comptroller General, Queensland Prisons' Department
		Mr A.J. Hilker, Assistant Commissioner, Administration, Queensland Police
		Senior Sergeant N.E. Sprenger, Queensland Police
		Sergeant C.J. Thomas, Officer-in-Charge, Legal Section, Queensland Police
	Confidential Witness A	
9 February (Sydney)	Professor T. Vinson, Professor of Social Work and Head of School of Social Work, University of New South Wales, Sydney, NSW	

Date of Hearing	Individuals or Organisations	Represented By
	Ms Eileen Diesendorf, Research Associate, School of Social Work, University of New South Wales, Sydney, NSW	
	Mr P.J. Breen, Balmain, NSW	
	Confidential Witness B	
	Confidential Witness C	
	Mr R.G. Haebich, Engadine, NSW	
	Confidential Witness D	
	Confidential Witness E	
February 10 (Melbourne)	Confidential Witness F	
	Superintendent J.B. Barclay, Melbourne Victoria	
	Victorian Government	Mr J. Frame, Deputy Commissioner, Operations, Victoria Police
		Mr P. Harmsworth Acting Director-General, Office of Corrections
		Mr T.W. Abbott, Director of Prisons, Office of Corrections
	Confidential Witness G	
February 15 (Canberra)	Commonwealth Attorney-General's Department	Mr A.D. Rose, Associate Secretary

Date of Hearing	Individuals or Organisations	Represented By
		Mr C. Fogarty, Acting Senior Assistant Secretary, Law Enforcement Branch
		Ms M. Kelleher, Principal Legal Officer
February 18 (Canberra)	Australian Federal Police	Mr J.C. Johnson, Deputy Commissioner
		Detective Inspector P.R. Scott, Commander, Witness Protection Branch
		Inspector C. Banson Strategic Planning Branch
March 7 (Sydney)	Confidential Witness H	
	Confidential Witness I	
	Confidential Witness J	
	Confidential Witness K	
	Confidential Witness L	
	Confidential Witness M	
	Confidential Witness N	
March 8 (Sydney)	New South Wales Police	Executive Chief Superintendent F.J. Parrington
		Inspector F.B. McGoldrick
		Detective Senior Sergeant W.C. Hanington, Co-ordinator, Special Weapons and Operations Section

Date of Hearing	Individuals or Organisations	Represented By
	New South Wales Department of Corrective Services	Mr D. Grant, Deputy Chairman, Corrective Services Commission
		Superintendent R. Woodham, Acting Assistant Director, Special Operations
	National Crime Authority	Mr P.H. Clark, Member
		Mr L.P. Robberds, QC, Member
		Mr D.M. Lenihan, Chief Executive Officer
		Mr G.T. Blewitt, Acting Senior Adviser (Legal)