

1974

PARLIAMENT OF NEW SOUTH WALES

REPORT

of

THE HONOURABLE Mr JUSTICE MOFFITT

ROYAL COMMISSIONER

appointed to inquire in respect of certain matters relating to

ALLEGATIONS OF ORGANIZED CRIME IN CLUBS

1974

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ROYAL COMMISSION
of Inquiry in Respect of Certain Matters Relating to
ALLEGATIONS OF ORGANIZED CRIME IN CLUBS

COMMISSIONER'S REPORT

Part I.—Terms of Reference

1. On 20th August, 1973, I was appointed by Your Excellency's Commission as Sole Commissioner to inquire into and report upon two matters, term 1 and term 2 set out in P. 2. and asked that within the space of two calendar months from the date of Your Excellency's Commission I certify to Your Excellency, in the office of Your Premier, what I should find touching the premises. The Letters Patent declared that the Royal Commissions Act, 1923, as amended, including s. 17 should apply to and with respect to my inquiry. A copy of the Letters Patent is set out at T. 1-2. By further Letters Patent dated 17th October, 1973, and 5th December, 1973, the time for inquiry and report was extended to 20th December and then to 20th March, 1974, and by the latter a further term (term 3), which is set out in P. 2, was added. Copies of these Letters Patent are set out at T. 407 and T. 931. By further Letters Patent dated 20th March, 1974 and dated 20th June, 1974 the time for reporting was extended to 20th June, 1974 and then to 20th August, 1974.

2. The three terms of reference of this inquiry, subdivided by me, for convenient reference, so far as term 2 is concerned, into two parts 2A and 2B, are as follows:

Term 1: "Whether the reports tabled by the Premier of New South Wales in the Legislative Assembly on the 22nd November, 1972, and the files upon which they were based and any other relevant departmental files disclose sufficient reason to take proceedings against any person in respect of alleged organized crime in or in relation to Clubs registered under the Liquor Act, 1912, as amended, or under the Gaming and Betting Act, 1912, as amended, and if so, whom?"

Term 2A: "Whether there has been any attempt by the Government of New South Wales . . . to 'cover up' the existence of such crime or the identity of any person responsible?"

Term 2B: "Whether there has been . . . any other relevant attempt to 'cover up' the existence of such crime or the identity of any person responsible?"

"The files referred to in the foregoing provisions of these Letters Patent shall be taken to include the letter dated the 30th May, 1972, the summary of information accompanying that letter, and the letter dated the 8th November, 1972, from the Commissioner, Commonwealth Police Force, addressed to the Commissioner of Police, Sydney, on the matter of organized crime of the kind referred to above if the appropriate Commonwealth authority agrees to their production to the Commissioner."

Term 3: "Whether matters disclosed in the course of the inquiry into Terms (1) and (2) provide sufficient reason to determine that the Bally Corporation of America or its subsidiary Bally Australia Pty Limited, by its continued or future operations in New South Wales, offers a risk of infiltration of organized crime into or in relation to Clubs referred to in Term (1)."

Part II.—List of Contractions and Symbols

3. (a) The following symbols will be used:

"T." for transcript of evidence before me, followed by a question reference where appropriate.

"p." for page of this report.

"P." for paragraph in this report.

"para." for paragraph in any other document.

(b) "This" or "my" "inquiry" will refer to the inquiry conducted by me as Sole Commissioner as indicated in Part I.

(c) "The police inquiry" will refer to the special inquiry by certain members of the N.S.W. Police Force under Detective Inspector (then Detective Sergeant) McNeill into certain questions related to certain criminal activity having relation to registered clubs.

(d) Because the term "Commonwealth" was appropriate at the time of most of the related events, in some situations where now "Australian" is appropriate, I propose to use the title "Commonwealth" throughout, in order to avoid confusion.

(e) For the sake of brevity, surnames without titles will frequently be resorted to.

(f) Police directly engaged upon the special inquiry will be referred to as:

"McNeill" to Detective Inspector (Detective Sergeant at the time of the police inquiry) Jack McNeill.

"Taylor" to Inspector B. Taylor (Licensing Branch)

"Knight" to Detective Sergeant (3rd Class) D. Knight.

"Day" to Detective Sergeant (3rd Class) F. A. Day.

"Ballard" to Detective Sergeant (3rd Class) B. J. Ballard.

"Chad" to Detective Sergeant (3rd Class) N. Chad.

"Bradley" to Senior Constable R. Bradley.

"Moroney" to Senior Constable N. R. Moroney.

"Wells" to Senior Constable A. Wells.

Other police officers will be referred to as:

"Lendrum" to Richard Edward Lendrum the Senior Assistant Commissioner of Police.

"Charlton" to Detective Sergeant (1st Class) F. Charlton a senior member of the Consorting Squad.

"Lucas" to Detective Sergeant Lucas.

(g) Clubs to which frequent reference will be made may be referred to as:

"South Sydney Juniors" or "SSJ" for The South Sydney Junior Rugby Leagues Club Limited.

"South Sydney Seniors" or "SSS" for the South Sydney Senior Rugby Leagues Club Limited.

"Motor Club" for Associated Motor Club Limited.

"Mariners' Club" for Associated Mariners' Club Limited.

(h) The following persons will be referred to as:

"Dean" for Walter James Dean, the President of South Sydney Juniors.

"Riley" for Murray Stewart Riley, an ex-police officer.

"Abrahams" for Lionel Arthur Abrahams.

"Morris" for John Joseph Morris.

"Brady" for John William Brady.

"Anthony" for George Paul Anthony.

"Sloss" for Albert Voss Sloss, MLA in 1972.

"Sheargold" for Reginald E. P. Sheargold.

"Elvin" for Rex Edward Elvin.

"Townsend" for Ronald Frederick Townsend.

"Saffron" for Abraham Gilbert Saffron.

"McPherson" for Leonard Arthur McPherson.

"Testa" for Joseph Dan Testa.

"Freeman" for George David Freeman.

"Miller" for Milan Petrocevic (or "Iron Bar Miller").

(i) "Mafia". I would prefer to use the more neutral term "organized crime", because my inquiry does not involve determining the extent to which there is some kind of super-government, as has been suggested by some, arising principally from the Apalachan meeting and denied by others, such as Professor Hawkins. My Inquiry is not concerned with whether "Mafia" or "La Cosa Nostra" are appropriate terms and how the place of the Jewish gangsters such as Meyer Lansky and the many others of non Sicilian or Italian race are reconciled with the terms. That there is organized crime of a nature which fits the term "organized crime" as understood, and that it operates in a massive way in America is undoubted. However, the term "Mafia" is used so extensively in the material before me, some of which I will quote, that I propose to use it at times for convenience. Such use should not be taken to involve decisions upon the foregoing matters.

(j) The following persons, corporations or organizations which are related to questions which arise concerning the Bally Organization will be referred to as:

- (i) "Bally America" to be Bally Manufacturing Corporation of America, the parent company of the Bally Organization.
- (ii) "Bally Australia" to Bally Australia Pty Limited, originally partly owned but eventually a wholly owned subsidiary of Bally America.
- (iii) "Bally Continental" to Bally Continental Limited, a company now the wholly owned subsidiary of Bally America, being based in Belgium and having extensive operations in Europe, Africa and the Middle East.
- (iv) "Runyon Sales" the exclusive distributor in the Eastern States of the U.S.A. for Bally America and its pre-decessors.
- (v) "Associated Leisure" to Associated Leisure Pty Limited (formerly known as Phonographic Hire Equipment Co. Limited) the English amusement machine company and sole English distributors for Bally America.
- (vi) "Bally" to the Bally Organization, being Bally America, its subsidiaries and other business interests directly or indirectly under the control of Bally America.
- (vii) "O'Donnell" to William T. O'Donnell, the President and principal shareholder of the Bally Corporation.
 - "Klein" to Sam W. Klein, a director/treasurer and principal shareholder of the Bally Corporation.
 - "Kaye" to Irving Kaye, a director and principal shareholder of the Bally Corporation and the Kaye Manufacturing Co.
 - "Wilms" to Alex A. Wilms of Belgium, a director and principal shareholder of the Bally Corporation, the former owner of Bally Continental and now its managing director.
 - "Green" to Abe Green, at one time a principal shareholder of the Bally Corporation and a director of Runyon Sales.
 - "Sugarman" to Barnett Sugarman who, until his death in 1964, was a director and principal shareholder of the Bally Corporation and a director of Runyon Sales.
 - "Emprise" to Emprise Corporation, a corporation of enormous wealth in the concession business, controlled by the Jacob family and original substantial shareholder in the Bally Corporation and the source of its loan moneys.
 - "Jacob" to Louis Jacob (now deceased), the principal in Emprise.
 - "Rooklyn" to Jack Rooklyn, a substantial but not principal shareholder in the Bally Corporation, and Managing Director of Bally Australia.
 - "Marks", "Shack" and "Fine", the surnames of the directors of Associated Leisure at relevant times.
 - "Itkin" for Herbert Itkin.
 - "Murray" for Mark Anthony Murray, Solicitor.
 - "Sadler" for John William Sadler, solicitor.

(viii) Persons connected or associated with organized crime or reputed so to be:

"Catena" for Gerado or Gerry Catena.

"Cellini" for Dino Cellini.

"Lansky" for Meyer Lansky.

"Raft" for George Raft.

"Bruno" for Angelo Bruno.

"Corallo" for Antonio (Ducks) Corallo.

"Stacher" for Joseph (Doc) Stacher.

"Francissi" for Marcel Francissi.

"Genovese" for Vito (Don) Genovese, or for the Genovese family.

"Segal" for "Bugsy" Segal.

"Kleinman" for Morris Kleinman.

"Dalitz" for Moe Dalitz.

Part III—Introduction

The Ambit of This Report

4. This report is detailed and complex. It is long, but I make no apology for that. It is upon diverse subject matters, touching events in Parliament and touching the Government, the State and Commonwealth Police, clubs, overseas and local businesses in several fields and the intensely difficult subject of organized crime here and overseas.

This inquiry has revealed many matters which are of concern for this State upon the subject matter of organized crime. It is not well entrenched here, so far as can be seen, but of that there can be no great certainty. It is so well established and widespread in America that it has eaten into the affairs of that great nation and, it seems, perverted standards in many quarters.

By the considerable endeavours of many upright Americans, new means have been devised to investigate and combat it, perhaps making other countries, such as Australia, which are less aware of it or not as well armed to meet it, more attractive to organized crime. Despite these endeavours, organized crime, particularly that operating under the cover of legitimate business, is said to be expanding in America.

There appears to be a very real danger that organized crime from overseas will infiltrate this country in a substantial fashion. If it does there will be little appearance of its arrival and it will be difficult and probably impossible to eradicate it. Its arrival is unlikely to be signalled by the arrival or activities of armed gangsters with black shirts and white ties. More likely it will arrive within the Trojan horse of legitimate business, fashioned for concealment and apparent respectability by the witting or unwitting aid of expert accountants, lawyers and businessmen. If the police inquiry is a fair indication of the police capacity to meet the problems of organized crime, the intelligence and investigation processes of the police are not adequate to alert governments to or to initiate action against organized crime from abroad.

Because the subject matter is in so subtle a field, requiring a somewhat different approach to ordinary dealings between persons; because it cannot be understood by generalities; because so many witnesses, who have appeared before me, have been unreliable in grades between those who have lied to mislead me, who possibly have done so, or who were merely unreliable or unco-operative; because the extensive evidence and many documents form so vast a field with all subjects mixed in together; because, therefore, no subsequent reader of the transcript and documents is in as favourable a position as I to unscramble the material and put it into some order—I have set out some matters in some detail and given detailed reasons for some conclusions reached. The recommendations cannot be truly appreciated except upon an understanding of the body of the report itself. Those, who seek to understand, must undertake the task of reading, which is as onerous as the task of composing this report. Even so, there are some subject matters which are not dealt with by me, but are indicated in the body of the report and which, it seems, should in the future attract appropriate attention by the police, the Government and perhaps others. That attention would be aided by the context of this report. To assist any such further inquiry, the exhibits and, by arrangement with counsel for Bally, the documents of Bally marked for identification, with minor exceptions, have been classified, indexed and placed together so as to facilitate access to them.

Object of Introduction

5. The purpose of this introduction is to aid the reader to have at the outset some idea of the subject matter of my inquiry and report. This is necessary because the three terms of reference raise different questions and involve different standards of proof, and yet at many points, including their background, involve the same subject matter. This introduction is neither a summary of the report nor even of relevant matters. In the hope that dealing with the matter term by term the whole will be understood, it provides a general background and disposes of a number of general matters, which need to be dealt with at the outset.

The Start of the Police Inquiry and My Inquiry

6. It was information given by an executive of a poker machine manufacturer to Detective Inspector McNeill, then Detective Sergeant McNeill in charge of the Consorting Squad, in early December, 1971, which, with other information and events, later led to the setting up of the special police inquiry, which became the subject of a number of reports which were sent to the Government and in respect of those reports together with some reports of the Commonwealth Police, various questions were asked and allegations were made in the Legislative Assembly which led to the Government recommending to Your Excellency the setting up of this Commission.

Bally, the N.S.W. Market, and the English Defamation Action Concerning Bally

7. (a) The primary subject matter of the initial information received by McNeill was of revelations said to be made in an English defamation action concerning Bally America. In June and July of 1971 there was heard in England a defamation action between Associated Leisure, the English distributor of Bally America, and Marks, Shack and Fine, the directors of such distributor on the one hand and Associated Newspapers Limited, the owners of an English newspaper, on the other. It would seem on the issues there contested that the jury made adverse findings not merely concerning criminal affiliations of Marks, Shack and Fine but also concerning those of Bally America. O'Donnell, the president of Bally America, gave evidence and when cross-examined made substantial concessions adverse to Bally and some of its directors and executives on the matter of their criminal affiliations.

(b) Prior to 1971 Bally had sold some of its machines to various clubs in New South Wales through various local agents. In 1971, continuing into 1972, more direct and vigorous attempts were made to step up the sales of Bally poker machines. Late in 1971 moves were made to acquire a half interest in an existing New South Wales agency with Rooklyn, who had long been associated with amusement equipment and poker machine sales. By early December, 1971, this interest had been acquired, accompanied by some structural company changes. Substantial increases were made in the share capital and the name of the company was changed to Bally Australia Pty Limited. In January, 1972, formal agreements were entered into which, with variations were implemented several months later by Bally America taking over completely the Australian company as its wholly owned subsidiary and taking over Rooklyn's interests, of an extensive nature, it seems principally in relation to poker machines, in South East Asia, namely, Indonesia, Thailand, Singapore, Hong Kong, Macao and the Phillipines, for a consideration, the amount of which depended somewhat on values of shares, but with cash and shares ultimately in order of six million dollars. Some of the American directors, including its president came to Sydney in 1971, in conjunction with these transactions and, presumably in aid of their plan to step up the scale of their entry into the Australian and Asian market. They believed that Victoria and Queensland would shortly legalise poker machines. It seems they were motivated towards capturing and possibly monopolizing the poker machine trade on the East coast of Australia. From reports issued in America, it appears Bally asserted a claim that, in areas where they traded in poker machines (which was virtually the whole of the western world), they had no significant competition except in Australia and the United Kingdom.

Changes in Club Entertainment

8. In 1971 there had also been a stepping-up of activity in the entertainment side of registered clubs on the part of an organization, which, it is sufficient to describe for the moment as the Arcadia group, apparently run substantially by a seemingly wealthy young man by the name of Abrahams, but with which an ex-policeman, Riley, was connected as shareholder and executive.

Information Received by McNeill Leads to Setting Up of Special Police Inquiry

9. (a) I return to the first information given to McNeill in early December, 1971. Central to it was reference to the English defamation action and its asserted significance. There were also a series of allegations of improper conduct by or on behalf of Bally in New South Wales. Shortly afterwards, an executive of Nutt & Muddie,

the other Australian manufacturer of poker machines, being in possession of a newspaper report of the English libel action, gave similar information to McNeill. He also made assertions of improper action in Bally operations in Sydney similar to those made earlier to McNeill.

(b) This information, supplemented by other information, led to a group of police from the Consorting Squad being assigned, under McNeill its head, to the special task of investigating these matters, with particular reference to the possibility of the infiltration of organized crime into the club industry via the poker machine industry and entertainment business.

Information and Allegations Received by McNeill and His Men

10. Thereafter, there were received by McNeill or his men a series of allegations, not of eye witnesses but by people speaking on information received, believed to be true. Sometimes it was second-hand and sometimes from more remote sources. It was principally directed to activities in the poker machine and entertainment industry involving particularly Bally, or the Arcadia organization, or Abrahams, or Dean, or ex-policeman Riley. Some allegations were as a result of matter volunteered to the police, but some resulted from the police seeking information. Some allegations were of a startling type of high pressure activity, criminal acts and general infiltration of organized crime into the club field through the Bally poker machine and the Arcadia entertainment enterprises.

The Press Enters the Field

11. By April, 1972, the press had taken the matter up. Then and thereafter in a substantial and startling fashion the matter of infiltration of organized crime became a matter of allegation and at times alarming assertion in the news media. It is clear now that the great majority of the assertions cannot be established and that a substantial number were not soundly based. Many assertions and suspicions were passed on as fact. There was truth in some things which were said. Some can neither be proved nor disproved.

The Recipient Public

12. The field was one where recipients of all this matter would be prone readily to receive and accept it as matters of truth or probable substance. While much of what is written concerning organized crime in the United States regrettably is true, as even a conservative and critical reading and a mere partial acceptance of the evidence and findings of the various Senate inquiries in that country and of responsible researches and writers on the subject clearly demonstrate, the subject is overlaid by such fiction, which, although at time close to the truth, has introduced under the only partially accurate and Hollywood style name of the Mafia a new kind of United States folklore and has led to too ready an explanation of some events as the acts of a super and invisible Mafia government and a too ready acceptance by the public of these explanations and folklore. The position is much the same in this country with the passage across the Pacific of this mixture of fact and fiction.

Movement of Organized Crime from U.S.A. to Other Countries

13. Due to the recent determined efforts in the U.S.A. to counter the inroads of organized crime, due to organized crime more and more entering the fields of legitimate business for a host of different reasons and operating therein in varying grades from legitimacy to crime, and due to the interest anyhow of United States businessmen to extend their activities to Australia, this country is likely to be the target for infiltration of United States organized crime probably using or accompanying the vehicle of legitimate business. The more intelligence and purposeful inquiries expose the operation of organized crime in America and by better procedures take action against it, the more likely, in this age of increasing international business, are countries less informed and less prepared, to become the targets of the business of organized crime. United States' experience indicates that persons connected with organized crime have shown a particular interest in businesses connected with gaming equipment, with gambling, legal or illegal, and with activities which, by legitimate or illegitimate extensions and operations, deal in cash transactions.

Problems of Rumours Concerning Organized Crime

14. In the setting referred to in P. 13, the activities in this country of any United States company, such as Bally America, with apparent or suspected affiliation with organized crime in America, particularly if associated in any degree with gambling or cash transactions, became, as it ought to have become, a matter for Government and police concern and inquiry. It became not unnaturally a fertile field for rumours, likely to be accepted by a receptive public, already well versed from fictional and true accounts of exploits of organized crime in the U.S., passed on under the emotional name of the Mafia.

15. As I will later indicate more fully, where there is an infiltration of organized crime into legitimate business, including where, it moves into a new country, say, Australia, particularly where initially it seeks unnoticed to do little more than establish some sort of business foothold, it is quite possible that there will be little evidence of criminal acts or even perhaps few criminal acts. If then there is, an American corporation such as Bally America expanding its operations here, and it is known to or said to have criminal affiliations, the temptation is great to explain any incident or rumour concerning it upon some theory of organized crime and treat the theory as the fact. Much of the information received and many of the reports by the news media appear to have fallen into this class. Those who read that which was published would tend not unnaturally to believe that it was known and established that the "Mafia" had certainly moved into the club business. Any statement by the Government or police to this effect could not but be accepted as confirming what the public had been told. The matter however was not as easy as that. It could not all be said to be wrong, because, on the other hand, organized crime and an efficient business will conceal its misdeeds with skill. While it was wrong to jump to conclusions, it was difficult to determine the truth.

Some Matters Were Not Rumours

16. However, there were some events occurring within the club industry of a high pressure nature to secure business and there was some illegal or criminal conduct, some of it discovered by my inquiry which was quite different to that asserted. Further, there was the English defamation action referred to the police and mentioned in some press articles. It proved important material concerning some Bally associations with persons deeply connected with organized crime. Later (May, 1972), there was intelligence information from the U.S.A. via the Commonwealth Police, that the Bally organization has affiliations with organized crime.

Allegations as to Methods Used to Expand Bally and Arcadia Operations

17. There was intensified business activity of Bally and the Arcadia interests to expand their businesses. There were positive allegations of high pressure and corrupt methods being employed to do so, and there were assertions of links between local criminals and these activities, particularly in relation to South Sydney Juniors.

No Police Investigation December, 1971, to April, 1972

18. Various allegations were received by McNeill and his men between December, 1971, and April, 1972, and it seems were not up to that time investigated. From April, 1972, there was intense press publicity on the subject.

Information from Commonwealth Police—May, 1972

19. In late May, 1972, discussions were had between Commonwealth and State Police and information acquired by the Commonwealth Police from the United States and other material acquired by them in the course of a different inquiry but on local New South Wales matters was passed to the State Police principally in 18 (or 19) pages of notes, sent under cover of a letter dated 30th May, 1972. These notes set out in some detail overseas intelligence information concerning the Bally organization. Its general effect was that in many respects Bally, or its executives, had or had had associations with well-known and leading U.S. criminals or persons associated with them. The local material, apart from some company searches, had a remarkable similarity to the matter of allegation already received by the N.S.W. Police but not then investigated.

First Police Report, 1st July, 1972

20. According to the N.S.W. Police no real investigation by them started until the 28th June when the special squad had been considerably increased in number and had attached for its assistance several members of the Corporate Affairs Commission. On 28th June there were a number of simultaneous raids, when books of various agents, particularly those connected with the Bally organization and of certain clubs, were inspected. The first police report being that composed by McNeill was dated 1st July, 1972. It was too soon to reflect those raids. However, it reported that inquiries into the allegations had been proceeding for some time, that Bally America was clearly Mafia controlled, made reference to certain matters proved in the defamation action and described some local events in terms which would lead the reader to understand that a number of allegations concerning improper or criminal activity in clubs had been found to have or were known to have substance.

Premier's Statement and Publicity Following First Report

21. This report was passed on to the Premier and, on 13th July, 1972, he made a press statement which is set out in P. 68.

This led to press reports under headings such as "Mafia in Clubs—Askin" and "Criminals in N.S.W. Clubs—Sir Robert. Some with overseas connections". These observations were the natural consequences of the first report. Added to the earlier forceful press stories, the public no doubt would accept that a serious situation existed and that there was in progress a probable infiltration of organized crime into the clubs of this State. There was then an even greater stepping up of press publicity and stories appeared, such as that in the National Times of 17th July, under the heading "Why real story behind Mafia can't be told".

Counter Press Publicity by Tomlinson for Bally

22. In mid-July Tomlinson, the attorney for Bally America, flew to Australia and, upon his request, was interviewed by the police and made statements to the press, the effect of which was that, although there had been one past association with a Mafia syndicate head, this had been terminated and there was now no Mafia influence in Bally.

The Second and Third Police Reports

23. After considerable police investigation in July and August, interim reports, dated 16th and 30th August, 1972, were composed by McNeill. The former was specifically prepared in answer to a request to the Premier by the Chairman of the Commonwealth Senate Select Committee on Foreign Ownership and Control. That Committee sought information in relation to the entry into Australia of foreign capital for investment on behalf of the Mafia. The latter report was in response to a specific request, made by the Premier on 24th August to the Deputy Commissioner of Police to furnish an up-to-date report on the alleged infiltration of criminals into registered clubs. Each report progressively was in less absolute terms than the first report. The report of 16th August foreshadowed some difficulty in obtaining evidence, but made some remarks such as that allegations of assault and stand-over tactics investigated, without exception, confirmed all had some basis, but that none of the persons interviewed were willing to make a complaint or statement or give evidence and (despite the intervening interview of Tomlinson) that information supplied (i.e. from U.S.) show a number of persons connected with Bally have criminal backgrounds. It concluded by indicating that it was felt there was considerable substance in the matters under investigation which must be regarded as being of national importance. Despite the short lapse of time between these two reports there was apparent a considerable change in the tone of the later of these reports, particularly having regard to the nature of the police investigation in the interim.

Press Reporting Between Reports and After Third Report

24. While the police inquiry had been proceeding and pending the receipt of the report requested by the Premier, newspaper publicity continued at a high level and questions were being asked in Parliament as to the progress of the police inquiry and the action being taken. Following the receipt of the third report, the Premier stated in Parliament that the police report was inclined to reduce a little the suggestion that infiltration of the criminal element into the clubs was fairly widespread and that the police were having difficulty getting persons to come forward and to give reliable and helpful information. This led to newspaper reports with headings such as "Mafia Men are Small", "Clubland Mafia Not So Strong" and "Club Crime Not So Serious—Askin".

The Final Police Report

25. The final police report, dated 23rd October, 1972, was lengthy and will be discussed in the body of the report. At this point it can be said that it gives the impression that it is complete in itself and that there is just no substance in any of the allegations which had been made, that they were not merely not proven but were allegations made in pursuance of a trade war by competitors. The inference is that they are not made bona fide and were false. The assertions made in earlier reports as to criminal affiliations of Bally no longer appear but instead claims made on behalf of Bally to the contrary are set out at length.

26. The report was sent to the Premier's Department by the Senior Assistant Commissioner of Police, under cover of the letter dated 6th November, 1972. This treated the report as the final report and indicated that the police were satisfied that the allegations received did not call for any further inquiries. It is just not possible to reconcile the reports, particularly the first and last. The Premier and some of his Ministers made inquiries concerning the difference in the reports.

The Premier Informs Parliament of Last Report

27. On 22nd November, 1972, the Premier informed Parliament that the final report had been received and that it revealed that no evidence had been found to indicate that the club industry, either in the entertainment or poker machine fields, was being controlled by criminals or that there was any move by foreign syndicated crime figures to take over in the club industry.

The Premier Tables the Police Reports

28. At the same time he tabled the report under Standing Order 57, which made it available for inspection by members of the House only. With the report were tabled earlier reports and communications between the Premier's Department and the police. The press headings were the opposite to what they had been initially and were such as "No Mafia in N.S.W. Clubs Says Askin," "Mafia Not In Clubs—Askin. Police Report Tabled", and "Clubs Not Run By Criminals—Askin".

Conflict in Reports and with Commonwealth Documents. Allegations in Parliament. This Commission Set Up.

29. The contradictions in the reports and their conflict with certain Commonwealth Police writings, reports or letters which appear to have come to the notice of some Opposition Members, but which, as will later appear, were not known to the Premier, led to further questions being asked in Parliament commencing in March, 1973, when the new Parliamentary session started. These culminated in serious statements and allegations being later made concerning the Government, which in turn led the Government to take steps to set up this Commission of inquiry.

The Commonwealth Police Notes, Reports and Communications

30. Intertwined with the N.S.W. Police inquiries was information from time to time supplied by the Commonwealth Police, particularly of an intelligence nature acquired from overseas agencies. The original information, already referred to, had been substantially incorporated in the first police report. A number of senior Commonwealth Police officers visited North America and the United Kingdom in September, 1972, and returned several weeks prior to the final report of 23rd October, 1972. No members of the N.S.W. Police accompanied them. A proposal by McNeill that they should be declined by his seniors. Inspector Dixon of the Commonwealth Police had a telephone conversation with N.S.W. Police prior to the date of the report and related some information informally concerning the Bally organization and indicated that there would be a further communication in a more formal way. This conversation was tape-recorded by the N.S.W. Police. The final report was prepared and delivered without further communication between the Commonwealth and State Police.

A letter dated 8th November, 1972, was sent from the Commonwealth Police to the N.S.W. Police Commissioner, but it or its existence was not brought to the attention of the Premier or his Department prior to his statement to the Legislative Assembly on 22nd November, 1972, and in fact until March, 1973. In substance it indicated a lack of information at the American end of any concerted efforts of U.S. organized crime cartels to enter Australia but with the reservation that the overseas agencies had made no specific inquiries in this area, but it also indicated, for reasons expressed, that the Bally organization was "still influenced by organized crime interests."

A more detailed confidential report dealing with both Bally and other matters, of no concern to the State Police, was submitted by the Commonwealth Police Commissioner to the Commonwealth Attorney General in November, 1972. It was never transmitted to the State Police or State Government. At my request it was produced for inspection by me, but for reasons of confidentiality and the preservation of Commonwealth relations with overseas agencies, it was not made an exhibit or otherwise published. It carries the matter no further, except that, from an intelligence point of view, it contains some detailed intelligence information supporting and justifying intelligence-wise the opinions expressed in the letter of 8th November, 1972, that Bally is influenced by organized crime interests. It will be seen under Term 3 I deal with the "risk" in question upon material before me other than Commonwealth intelligence information. It is there, proper to be resorted to by governments, if they think fit, in aid of the subject matter of Term 3.

31. The foregoing is but the barest general reference to the broad stream of events leading to my inquiry. It provides a lead into each of the terms of reference which, although to a degree related, have to be dealt with separately in this report. I turn now to some introductory consideration of the various terms.

Relation of Term 1 to Term 2

32. Term 1 relates only to what is apparent from the files described in the term of reference. Term 2 raises the question of whether the Government attempted to "Cover-up" in the manner there defined. Term 1 provides in aid of Term 2 a desirable preliminary inquiry, namely, whether there was material in files, and hence available to the Government, which should have led to the prosecution of persons in connection with organized crime in registered clubs. No such prosecution had been taken or recommended.

The Division of Term 2 into Terms 2A and 2B

33. Term 2 really raises two separate questions. For convenience in P. 2 I have divided Term 2 into Term 2A and Term 2B. There is no violence to the meaning of Term 2 which can be seen in T. 1-2. Term 2A raises the question whether the Government attempted to "cover-up" as described in Term 2. Term 2B raises the question whether there was any other relevant attempt to so "cover-up".

Term 2B Ruled to Apply to Any Attempted "Cover-up" by Police

34. I ruled at an early stage of the inquiry, and now confirm, that any attempt to "cover-up" on the part of the investigating police, or any of them, which otherwise fell within Term 2, would be a relevant attempt to "cover-up". It was the police duty in this special inquiry to investigate these matters and then inform the Government or an appropriate Government department. Any attempts to "cover-up" as defined, in the discharge of these duties, so that the Government was misled would be a relevant attempt to "cover-up". In the events which occurred in 1972 it became the duty of the police so to investigate and report that the Government or its department could take action appropriate to the scope and subject matter of the inquiry. Possible Government action could be in its executive function either in relation to prosecutions or Government action otherwise. It could have been to direct a continuing or different inquiry. It could have been to set up some combined Commonwealth-State action or inquiry or some closer collaboration between the two. It could have involved the initiation of legislation. If the police attempted to "cover-up" matters as defined in Term 2, so the Government did nothing, this would be "relevant" within the meaning of Term 2B.

Term 2A: No Evidence by Members of Opposition. Inquiry by Me in Any Event. My Interim Report of 23rd March, 1974, Answering Terms 1 and 2A "No".

35. As to Term 2A, despite what was said in Parliament by some Opposition members, nobody has come forward to assert that the Government has attempted to so "cover-up" or to point to or provide any evidence that it has. The failure of the Opposition members, who had made allegations in Parliament, to come forward themselves or provide evidence and my reasons, for not seeking to compel their attendance, is dealt with in P. 103. However, as my function was to inquire and report, Term 2A has in any event been carefully investigated. Although it was clear last year that the answer to Term 2A should be in the negative and, although sound reason existed not to leave such a question unresolved, I determined it more appropriate not to resolve it, until all the evidence was complete, and any person wishing to make submissions had had an opportunity to be heard and then to give answers to Terms 1 and 2A once that point had been reached. No submission was made that there should be a positive answer to either Term 1 or Term 2A. An interim report was submitted to Your Excellency on 13th March, 1974, giving negative answers to Term 1 and Term 2A, but reserving reasons for such answers. A copy of this report is attached and is Schedule A.

Term 2B: General

36. Investigation of Term 2B occupied the bulk of the time of my inquiry. It raised a multitude of difficulties and issues which can alone be referred to in reporting upon Term 2B. Some matters of general importance and some preliminary matters, however, should be referred to.

Cross References to Meanings of "Alleged Organized Crime" and "Attempt" to Cover-up

37. The question of what is meant by "organized crime" and, in particular "alleged" organized crime, and how an investigator, who is aware of or can prove the existence of a particular crime, is able to satisfy himself, and report that it should be classified as organized crime, is common to each of the terms, but, for reasons which will appear, precise definitions are not of importance except in Terms 2B and 3. Accordingly, they will not be dealt with until Term 2B is reached (*see* PP. 64, 116-20). The meaning and implications arising from the word "attempt", in the phrase "attempt to 'cover-up'", is common to Terms 2A and 2B. These words are of importance, as is P. 63 which deals in detail with their significance. As there appears, the words "attempt"

directs the question in Terms 2A and 2B to whether there was a corrupt or deliberate attempt to conceal or not to discover. The answer is not conditional upon whether or not, two years after the event, a Royal Commission can prove acts of organized crime.

Police Submission that any Criticisms should not be Included in This Report

38. It was submitted on behalf of the police, if it were found, as was submitted it should be found, that the police were not corrupt, that, then this report should simply say so and that no other incidental comment or criticism of the police should be made in my report. It was said the police had been subjected to a most thorough and rigorous inquiry and cross-examination and that, because of the publicity given to the inquiry, the inquiry had so reacted to their detriment that, if having been cleared of corruption, there were nevertheless criticisms of them, these criticisms should not be made. It was argued, first that any criticisms would fall outside the terms of reference and that anyhow they should not be made, because they would damage public confidence in the Police Force.

39. This submission was seriously made and warrants earnest consideration. It is best it be dealt with at the outset. Later observations which reflect adversely upon, so as to be critical of, a few of the police (McNeill and Knight and to a slight degree Ballard) will be made because they are germane to reporting upon my decision on Term 2B. To take an example, if police officers do not discover what there is to be discovered, or do not record what is there to be seen, or if they produce one report which cannot be reconciled with earlier reports or which is in conflict with information received, questions will arise as to how these events can be explained. Upon an inquiry such as that raised by Term 2B, the question will arise as to whether, in the absence of direct evidence, these events are consistent only with corruption, or whether there is some other explanation such as error, incompetence, inefficient organization or inefficient methods. In a public inquiry such as this, upon a matter of public concern, it would be unreal not fully and openly to discuss the alternative although unpalatable to some of the police involved if the alternative, rather than a corrupt or deliberate attempt to cover up matters, explains events which ought not to have occurred. To do less than discuss the question openly and to suppress the explanation of events which call out for explanation would, I believe, justifiably leave this inquiry open to criticism. When evidence, given in open sitting and published, is on its face suggestive of criticism of the police in some respects, it would not preserve, but more likely damage confidence in the police if, instead of criticism calculated to provide ground for future remedy, the obvious criticism was suppressed at the request of the police and the public left to speculate as to what the criticism really should be. Moreover, it would be unfair to those involved, yet who are not open to criticism.

It seems the police inquiry is the first special inquiry by police in N.S.W. into the matter of infiltration of organized crime into clubs or otherwise. My inquiry, with the able assistance of many persons, has examined the subject with some care. If it has appeared that the police inquiry was mis-directed in some way or is open to constructive criticism, it would be inconceivable that errors of the past should be allowed to be repeated in future inquiries. To criticize and correct will in the end enhance rather than diminish the respect for the Police Force.

How the Inquiry Came to be Directed to the Police Without any Specific Allegation Against Them

40. A difficulty with Term 2B was that there was no specific allegation against the investigating police, or any of them, of an attempt to "cover-up", within Term 2B, or of any conduct for which they or the Police Department might in the end be criticized. This is a problem common to many inquiries. The police became the subject of inquiry under Term 2B, because of matters, that appeared once inquiry concerning Term 2A commenced. At the outset there were the apparently irreconcilable terms of some of the reports, which led to confusion in Parliament and direct conflict in the reports of the Premier and the press. How did this happen? When they first said there was definitely something there and in the end said there was nothing, were they covering-up or attempting to cover-up in the last report? Then, soon after the inquiry commenced, a number of events were revealed, which raised serious questions concerning the conduct of some of the investigating police. These included—

- (a) negotiations of a private nature involving Knight, and to a less degree McNeill, and Rooklyn, the head of Bally Australia, found to be in progress within days of the final report and before it was received by the Premier, resulting at least in some secret business arrangement between Rooklyn and a dummy for Knight.
- (b) the failure of the State Police to investigate or record information received from Commonwealth and State sources of a series of meetings at Double Bay of leading criminals and, from at least one source, involving a member of Parliament.

One inquiry led to the next and many matters pointing to unsatisfactory features in the police inquiry appeared. In order to test the quality of the police inquiry, in aid of the issue under Term 2B, and, in order to determine whether the police had recorded what they had discovered and had reported what they had discovered, I made my own inquiry, with the aid of those assisting me, into areas selected from and areas covered by the police inquiry, called as witnesses some of the persons interviewed by the police, and examined the police records. Particular attention was paid to the South Sydney Juniors, Riley, Dean and Abrahams. The procedure was a sampling one and no attempt was made to cover the whole field of the police inquiry. The sampling was sufficient for the purpose. It revealed many deficiencies in the police inquiry later to be referred to. To have covered the whole field would have served no purpose and would have grossly prolonged an inquiry already very long. It is important, however, to understand that I did not purport to put myself in a position to be able to write my own report on the whole club scene in the areas investigated by the police. Many areas investigated by the police were not examined by me. The position in those areas depends alone on the police investigation and its thoroughness and reliability. Except in Term 3 my inquiry was directed to the police conduct in the performance of their duty to investigate and report.

Notice to Police of Matters Relevant to Term 2B

41. As the inquiry proceeded, the revelation of the various matters, including those above referred to, raised the question of the integrity of the police inquiry. In order to remedy, so far as possible the difficulty, earlier referred to, of their being no allegations which the police had to meet, I had delivered to counsel for the police, before they were called upon to give their final evidence or make their submissions, a document (*see* P. 123—m.f.i. 182). The purpose of this document was "to direct the attention of counsel concerned to the principal subject matters warranting their attention possibly for the purpose of leading explanatory, contradictory or other evidence . . . and possibly for the purpose of ultimate address." (T. 951).

42. The initial complaint on behalf of the police was that no specific allegation was made, but this was remedied, in my view fairly, in the manner just described. This document delivered in late 1973, did not call for police evidence until early 1974. It was not suggested it failed to inform the police concerned of matters relevant to Term 2B. However, it was put in the end that, if it were finally found that there had been no attempt at "cover-up" by the police, in retrospect the very searching and critical inquiry accompanied by much publicity would have acted unfairly to the police and damaged public confidence in the police.

As this was a submission earnestly made, as were all submissions on behalf of the police, it warrants being dealt with at the outset. The police are confronted with many difficulties and often have to make awkward decisions for, which they ought not be too easily criticized. It is too easy to make them the scapegoat. I think that what was really being said was that the police were, by this inquiry, being made a scapegoat for a wrangle in Parliament. Such a reaction no doubt is natural, but because I think the submission and the implied submission are both wrong I think I should remove the misconception.

The matters referred to in P. 40 and in the document referred to in P. 41 raise the question of the possible lack of integrity of some of the police in the conduct of the inquiry. It is clear that the Government, Parliament and the public had been misled by the series of reports sent to the Government. As will appear later, it is clear that, on many of the very subjects reported upon in the final report, the truth is otherwise. It was in error to have brought in a completely negative finding, coupled with an advice in effect of "investigation complete, no further inquiry required".

One of the weapons of organized crime is corruption of officials, particularly those, such as police, charged with investigating organized crime. In respect of matter (a) referred to in P. 40, there was a revelation early in the inquiry that the two senior police officers engaged upon the inquiry were in personal discussion and negotiation with a head of the principal organization which had been under investigation. This was before the Government had even received the final report, signed by these two officers. Thereafter, one entered into the secret transaction referred to and appeared to be performing duties in clubs, pursuant to it, and each made some commendatory remarks concerning Bally to potential club customers. These remarks were not justified upon the information earlier received from the Commonwealth, not justified on the information then pending from the Commonwealth, and, in fact, received by the New South Wales Police Department before the statements were made, and not justified on the material presented to me. In these circumstances, and in view of other grounds for disquiet in the police inquiries, the need for the close and critical inquiry arose from the conduct of some of the police engaged upon the inquiry. In the light of

what had appeared, no finding of lack of corruption and negative answer to Term 2B, if appropriate, would be either satisfactory or convincing, except after a critical examination of what occurred and except upon a frank, open and critical analysis of what had occurred.

Limitation of Inquiry—No Direct Report of Crime in Clubs. Comment, However, on Sample Areas Inquired Into

43. It is only under Term 1 that I am called upon to report whether ground to commence legal proceedings against any person arises. This is limited to what appears in the files. The way this term appears to be in aid of Term 1 appears in P. 32. As stated in P. 40 my inquiry made its own investigation in some limited areas, but only by way of sample to test the quality of the police inquiry in aid of Term 2B. A comparison of the revelations of the police and my inquiry was useful but needed to be, as they were, viewed with caution because, on the one hand, my inquiry had all the compulsive powers of a Royal Commission, including those provided by s. 17 of the Royal Commissions Act, 1923, and the assistance of the cross-examination processes in the hands of experienced counsel, while on the other hand, the police inquiry did not have these advantages but did have the advantage of being closer in time and place to events and in some instances had the dynamic opportunity of examining events as they occurred, whereas I am seeking to look at matters long after events, in some cases by resort to witnesses not anxious to be involved.

44. As already stated, in the circumstances my inquiry did not purport to cover the whole field of the police inquiry. The areas selected as samples, however, were the apparently sensitive areas and these were examined with some care. It might at times have appeared that the inquiry was into whether there was in fact provable crime and, in particular, provable crime, which could be classified as organized crime within the clubs. The purpose was the limited one, above indicated. No terms of reference (subject to Term 3, as to which see later) called for me to inquire and report upon the existence or otherwise of organized crime in clubs or whether there was a case for prosecution of any person. If there had been, I would have needed a team of field investigators and would have needed to span events from 1971 to 1974. My lengthy inquiry would have been immeasurably longer. It is important I state this, because it is neither my duty, nor am I in a position with the required certainty to report directly on the infiltration of organized crime into clubs, or whether particular persons should be prosecuted. If I were to so report I would feel obliged to frame my report in different terms to avoid prejudice in respect of any recommendation for a prosecution. However, having stated these limitations, I think it can be realistically stated:

- (a) The sample areas examined did reveal considerable organized activity to extort moneys from clubs being activity probably proper to be classified as organized crime, but probably limited to a few more vulnerable clubs. (See Term 2B.)
- (b) In the sample areas there was some admissible evidence of crime in a few clubs, but evidence able to be elicited in the course of my inquiry was limited and less than alleged in the newspapers and in the allegations made to the police.
- (c) While it is possible to say some press stories and allegations are false, with regard to many press and other assertions it is neither possible nor advisable to say more than there is no admissible evidence to support the allegations.
- (d) Virtually no persons volunteered to offer evidence despite my public announcements that in appropriate cases evidence would be taken in camera or secretly. It appeared that a number of persons who were called to give evidence upon conduct, possibly criminal, showed reluctance to do so and gave negative or mild versions of events, the truth of which was suspect.
- (e) In fields not inquired into by me but inquired into by the police, I am unable to express an opinion other than to say the answer depends upon the reliability of the police investigation and report.
- (f) There are fields not inquired into by the police or myself.
- (g) There is probably to date, at most, limited organized crime in registered clubs, but it is unwise to be certain of this and, as will later appear, some but not most are vulnerable to the very real risk of the invasion of organized crime.
- (h) The position of Bally is dealt with separately under Term 3.

The Decision to Make the Inquiry Open

45. A decision had to be made at an early stage, whether my inquiry should be *in camera* or substantially open. There were considerable disadvantages in either course. An open inquiry would mean that publicity would be given to many unsubstantiated allegations, statements and intelligence material, detrimental to the reputation of some persons and organizations. It could also diminish the extent and quality of the testimony given, either because persons might be less inclined to tell what they knew or, because the opportunity for some witnesses to collaborate would be facilitated. All were very real in my inquiry. Further, some material, such as the identity of informers and some Commonwealth intelligence information, would have to be dealt with *in camera* and so the difficulty of a partly open and partly closed inquiry of necessity would arise. However, an inquiry completely *in camera* posed a disadvantage which I considered was overwhelming. It determined the course I took. In substance, the inquiry was whether there had been an attempt by the Government or the investigating police to cover-up organized crime. At one stage Parliament and the public had been told in effect there was an infiltration of organized crime into the clubs and in the end had been told the opposite. Allegations were made in Parliament concerning the Government. It is well-known that a weapon of organized crime is by corruption to procure the concealment of its presence and its crimes. The subject matter of inquiry was one of great and genuine public interest and concern. As my report reveals the subject is one where rumour and speculation easily ran riot. I determined it was essential that the inquiry be an open one, except where good reason to the contrary appeared, and that I should take such steps as I could to minimize the disadvantages. Similar disadvantages are inherent in legal proceedings which, in this country, subject to minor exceptions, are in open court. I decided at the outset it was not possible, nor desirable, to prevent disclosure of material concerning persons and organizations central to the inquiry, but matters, detrimental to individuals who were remote from my inquiry were, where possible, not published. This was achieved by a scheme making various exhibits, or parts of them, confidential, and binding counsel and others to whom they were disclosed by undertakings of confidentiality. The identity of police informers was not disclosed, subject to some minor exceptions, and then in a limited way. For reasons of confidentiality, a substantial body of evidence given by the Commonwealth Police was initially taken *in camera*. Later much of it, with the assent of the Commonwealth Police, was included in the open transcript. In an attempt to mitigate damage to individuals or organizations referred to in adverse terms in evidence given or documents read in open sitting, I took a liberal approach in allowing such persons or organizations, who sought to do so, to contradict or explain any adverse material. I took this course as a matter of fairness, but most of it had some collateral relevance to the police inquiry. However, no issue under the terms of reference arose as to the truth or falsity of these statements and assertions, except so far as it reflected upon the quality of the police investigation in aid of a determination of the question raised by Term 2B.

Events Leading to the Addition of Term 3

46. Term 3 covers a field very relevant to Term 2B but requires that it be dealt with from a different point of view. One area selected as a sample area to test the police inquiry was that related to the operations of the Bally organization here and overseas. This selection was made because Bally was central to the police inquiry (see P. 44). The operations overseas were important because allegations investigated by the police were of infiltration of organized crime from U.S.A. within the vehicle of legitimate business. The principal vehicle under consideration was Bally. The inquiries of necessity had to start with the condition of that vehicle in America, namely, whether Bally America had criminal affiliations. The police reports, particularly the first and second, accept this. Moreover, the first event in the chain which led to the police inquiry was a reference to the English defamation action, the relevance of which was said to be that it established that there were Mafia influences within Bally America. Then, it appeared that, despite proposals and opportunities to obtain the transcript of these proceedings and despite the knowledge of its subject matter and importance and, that O'Donnell, the head of Bally, had made important concessions, it was never obtained by the N.S.W. Police and the final report was issued and the inquiry completed, without their having ever seen any part of the transcript. Pursuant to my procedures to test the police inquiry, my inquiry directed its attention to any available information concerning the affiliations and operations of Bally America. Soon after the inquiry commenced, a copy of the summing-up and transcript of evidence was sought and obtained from England O'Donnell, the president of Bally America had given evidence and made admissions upon the matter of association of certain directors and executives of the American company with reputed criminals and there was relevant evidence given by some other persons on the same subject matter. However, under Term 2B the issue was not whether these associations existed or whether Bally had criminal affiliations. What was there to be discovered concerning Bally but was not uncovered by the police

report was important to Term 2B. The true issue was whether, in respect of Bally, there had been a cover-up, which fell within Term 2B. This distinction became important and created difficulties in relation to Bally which led to the addition of Term 3.

47. At the outset the attitude of those representing Bally, perhaps not unnaturally, proceeded upon an erroneous view of the issues raised by Terms 1 and 2, a view which failed to appreciate considerations set out in P. 46. When counsel for Bally sought leave to appear he nominated the substantial and direct interest (Royal Commissions Act s. 7 (2)) to be to establish the "innocence" of Bally, following what had been said, particularly by Dixon of the Commonwealth Police. It seemed thereafter, at least in the early stages of the inquiry, that Bally's representatives regarded the inquiry as being directly into the criminal affiliations of Bally, so as to raise issues of the "guilt" or "innocence" of Bally, later necessarily to be reported upon by me. At an early stage counsel's attention was directed to the issues under Terms 1 and 2 and the collateral relevance of matter concerning Bally. However, in line with the attitude already referred to, O'Donnell, president of Bally America and its legal officer, Tomlinson, sought to give evidence to establish the "innocence of Bally". Counsel frequently approached matters on the basis that Bally was directly on trial and therefore claimed that Bally should have access to all documents, including all confidential Commonwealth files containing secret intelligence information, and asserted that there was some onus upon the inquiry to give particulars of any matters which might be said concerning Bally in any report issued. To have taken such an attitude was understandable, particularly as publicity adverse to Bally was given by press publication of material concerning that organization revealed in the course of the inquiry.

In accordance with the liberal approach referred to at the end of P. 45, I did not restrict Bally in its attempt to establish the falsity of assertions made concerning it. Anyhow, in the case of Bally, which was so central to the police and my inquiry, I considered it as having relevance to Term 2B. As the inquiry progressed, I persuaded the Commonwealth Police to reconsider their earlier restriction upon the confidentiality of some material. As a result Bally had access to a great deal of the intelligence information concerning it. This did not extend to recent intelligence material received by the Commonwealth Police from North America because they considered the revelation of it would prejudice their relations with the overseas agencies from whom it had been obtained.

48. The position remained, however, that the truth concerning Bally did not fall directly to be dealt with or reported upon. Despite this, it became necessary to look at it as carefully as if it did. O'Donnell and Tomlinson had pressed to be allowed to give evidence to clear the name of Bally. Their evidence had been received. When O'Donnell gave evidence before me, he was confronted with his prior evidence in England and made some important concessions. My inquiry then had O'Donnell's admissions in England and before me. The material was extensive and important. My inquiry was then in a different position to that of the police. Before me there was something more than intelligence information in respect of Bally America and its affairs. O'Donnell's concessions were not of one affiliation with one reputed criminal but of a number of affiliations or associations over some years with a number of criminals or their associates. Bally witnesses, however, claimed that these affiliations had been removed. In connection with these assertions, questions of credit had now to be considered, because of various inconsistencies and contradictions in what those connected with Bally had said and, in particular, some direct contradictions in the testimony of O'Donnell.

Then the English transcript also contained evidence of others, including that of one Herbert Itkin, to be referred to under Term 3. His testimony, if true, appeared to establish, amongst other matters, serious affiliations with reputed criminals, including criminals engaged in narcotic smuggling operations, on the part of Wilms, a director of Bally America and manager of its European, Middle East and African businesses. The relation of Itkin to the Central Intelligence Agency and the Federal Bureau of Investigation, which he asserted, was at issue in the English trial. The challenge to his credit depended substantially upon the challenge to this asserted relationship. Tomlinson, who had some prior connection with the Department of Justice before joining Bally, told the N.S.W. Police that Itkin's relationship with the F.B.I. and C.I.A. had been misunderstood in England and in effect that he only became an informer when he was caught. As the view was open that, if the defamation transcript had been looked at by the N.S.W. Police, as originally proposed, they would or should have sought to determine the status of Itkin by communication with the C.I.A. and F.B.I., I took the direct course of making such an inquiry by letters addressed to the heads of the C.I.A. and F.B.I. and received replies which are set out in the transcript and which show the substance of what Tomlinson said was wrong.

A stage was reached when it appeared that the inquiry, as it touched upon the position of Bally, was quite unsatisfactory. The further the inquiry proceeded, the greater were the revelations and in a more concrete form than mere intelligence material, of significant affiliations of Bally with criminals. Bally was asserting the affiliations had been discontinued, but was complaining it was unfair that these grave matters might be referred to adversely in my report, in the course of reporting upon the police inquiry under Term 2B, if Bally did not have advance advice of the matters, asserted against Bally, and an opportunity to meet them. There was substance in Bally's complaint. Moreover, upon the material which had appeared, if the *prima facie* indications were sustained, it was important they be reported upon by me, but only after they had been more directly dealt with by Bally being given an opportunity to meet them and, in particular, to sustain, if it could, the claim that the now admitted past affiliations had been removed. The police had not reported upon these matters in the final report and in fact discarded this aspect of their inquiry. It appeared important I should deal with it (T. 759). Following a recommendation for the addition of a term allowing the position of Bally to be dealt with directly, Term 3 was added by Letters Patent, dated 5th December, 1973.

49. When Term 3 was added, and on 6th December, 1973, I indicated the "material of *prima facie* relevance to the third term". This summary is later quoted (P. 217, and *see* T. 932).

50. The scope of Term 3, particularly as indicated by the words "risk" and "material disclosed in the course of the inquiry into Terms 1 and 2", is of importance. It realistically relates the operations of Bally and any information, relative to criminal affiliations or influence, as they can be known here and as they pose relevant risks to the operations of registered clubs here. As these considerations are confined to Term 3 no further reference need be made to them in this introduction.

Part IV.—Term 1

"Whether the reports tabled by the Premier of New South Wales in the Legislative Assembly on the 22nd November, 1972, and the files upon which they were based and any other relevant departmental files disclose sufficient reason to take proceedings against any person in respect of alleged organized crime in or in relation to Clubs registered under the Liquor Act, 1912, as amended, or under the Gaming and Betting Act, 1912, as amended, and if so, whom?"

"The files referred to in the foregoing provisions of these Letters Patent shall be taken to include the letter dated the 30th May, 1972, the summary of information accompanying that letter, and the letter dated the 8th November, 1972, from the Commissioner, Commonwealth Police Force, Sydney, on the matter of organized crime of the kind referred to above if the appropriate Commonwealth authority agrees to their production to the Commissioner."

Answer to Term 1 Does Not Turn Upon Precise Definitions of its Terms

51. Because of the paucity of material appearing in any documents which can support any argument in favour of an answer "yes" to this term, it is not necessary here to embark upon any detailed reference to the police reports or other documents. For the same reason it is not necessary to be concerned to any extent with precise definitions of the words used in this term. The answer does not depend upon these refinements.

The Files and Documents Referred to in Term 1 and Their Collection

52. Term 1 relates only to what is apparent from the "files" described in this term. The relation of Term 1 to Term 2 is dealt with in P. 32. In the course of my inquiry into Terms 1 and 2, particularly the latter, a great number of documents, particularly police documents far beyond what really could be described as "files" were looked at. There was no need to be concerned with the precise definition of "files", because, even on the totality of documents produced, it became clear, at an early stage of the inquiry, that there was little, in any of the documents or files, which could arguably raise the question as to whether there should have been a prosecution of the type referred to in Term 1. In the end, the only incidents, which it seemed open to any consideration in this respect, were four (*see* P. 56).

However, steps were taken to ensure that all relevant reports and files were before me. Pursuant to a request made by me to Mr Vidler, the Clerk of the Legislative Assembly, there was produced to me on 22nd August, pursuant to a resolution of the Legislative Assembly, and under cover of a written communication from the said

Clerk, the file tabled by the Premier in the Legislative Assembly on 22nd November, 1972. The file contained *inter alia* four police reports signed by McNeill and either Ballard or Knight, various letters of more senior police officers covering or accompanying such reports. This file became Exhibit A. Such reports already referred to in PP. 20, 23 and 25 were dated 12th July, 16th August, 30th August, and 23rd October, 1972. The "reports" referred to in Term 1 accordingly were before me. The files upon which the reports were based were taken to comprise and included the attachments to the reports, such as records of interview, the police running sheets, diaries, notebooks, shorthand books, criminal records of relevant persons and other notes taken by police officers and by the officers of the Corporate Affairs Commission who assisted in the police investigation.

"Other relevant files" could have created some difficulty. It seems they would have to be relevant to the subject matter of the special police inquiry. They were taken to include the files and documents produced by the Premier's Department (Exhibit C), the Chief Secretary's Department (Exhibit B) and the Department of Labour and Industry. It is not necessary to be more precise because of the negative content of the great volume of documents produced, whether strictly files or not.

The letter dated 30th May, 1972, the summary of information accompanying the letter and the letter dated 8th November, 1972, all from the Commissioner of the Commonwealth Police to the N.S.W. Commissioner of Police were produced to me. The production was on behalf of the N.S.W. Commissioner, pursuant to a consent to their production given by the Commonwealth Commissioner, with the approval of the Department of the Australian Attorney-General. These documents were therefore before me in conformity with the extended definition of "files" appearing in the addendum to the terms.

The Question of "Sufficient Reason to Take Proceedings"

53. The phrase "sufficient reason" raises a question, somewhat akin to that involved in the Attorney-General making a decision for a bill to be filed. However, the question has to be considered rather at the point where the police take the steps to initiate a prosecution. A determination of whether there is sufficient reason to take proceedings involves a consideration of a number of matters, but principally whether there is *prima facie* evidence of the type of crime in question, what are the chances of a prosecution succeeding or failing and whether the prosecution of the person is in the public interest.

Term 1 Relates to Prosecution of Particular Person for Particular Crime

54. While different questions are raised by later terms, Term 1 deals only with an identifiable crime against an identifiable person. Therefore, statements in early police reports that the police are aware of or have evidence of criminal acts do not call for a positive answer to Term 1 unless documents are found elsewhere which, when read with the reports, or which independently provide evidence of and reason for the prosecution of a particular person for a particular crime.

Definition of Organized Crime Defered to PP. 116-20

55. I do not find it necessary, for the purpose of Term 1, to define the ambit or significance of the words "Alleged organized crime in or in relation to clubs" (*see* later under Term 2B, PP. 116-20). This is because a negative answer to Term 1 arises whether the crime be organized crime or not.

Four Cases Only for Consideration Under Term 1

56. I agree with submissions of counsel assisting me (T. 1656-7 where references to evidence are set out), that the only incidents, as documented, which call for consideration are prosecutions of:

- (a) Riley in relation to an offer of a secret commission to Reginald E. P. Sheargold.
- (b) Riley in relation to an offer of a secret commission to John Joseph Morris.
- (c) Dean, and possibly Riley, and possibly Abrahams, in relation to an assault of Richard Gray.
- (d) Francis Baldwin in relation to an attempt to burn the car of Rex Elvin.

The discussion which follows is based entirely on what is disclosed in documents. The oral evidence before me on these matters is not relevant to Term 1 but of possible relevance to Term 2B.

Case Against Riley re Sheargold on Documents

57. Reference P. 56 (a), the act was conduct in April, 1972, possibly constituting an offer by Riley to Sheargold, the Secretary/Manager of the Parramatta Leagues Club, of a secret commission of a percentage of the fees paid by the club for artists where the engagements were made with Arcadia Top Artists Promotions Pty Limited. There are some differences in the documents (i.e. the running sheets as against the police report) as to whether the offer was to pay the secret commission to Sheargold himself, or, at his option, for the club or himself. Riley denied the offer of a commission to Sheargold and asserted the offer was only of a discount on a percentage basis to the club. There was no other witness. The running sheet states that Sheargold refused to make a record of interview and said he did not desire proceedings to be taken. The police report said he refused to make a written statement and said he was not prepared to give evidence. It can be inferred from the running sheet that, while some contemporary reference appeared in the Club's minutes, neither Sheargold nor the club went to the police. Sheargold's asserted unwillingness to give evidence gains some support in that Riley and Sheargold were both ex-police officers and had had some past association of a not unfriendly nature. The difference in the versions of Riley and Sheargold depended upon the precise words used. That of Sheargold was of the type that appeared capable of being reduced to an innocuous form (as occurred when Sheargold, an obviously unwilling witness, was called in my inquiry (T. 73-4)). The prior conviction and imprisonment of Riley for bribery in New Zealand could not aid the proof of guilt. While mere unwillingness of a witness, in itself, cannot determine whether there should be a prosecution, and while there is a *prima facie* case against Riley, on the whole recorded material there was not sufficient reason to prosecute in respect of this matter.

Case Against Riley re Morris on Documents

58. Reference P. 56 (d) the act was an offer by Riley to Morris the secretary of the Federated Liquor and Allied Industries Employees' Union, of a secret commission of \$1,000 to ensure there was no union dispute at South Sydney Juniors. According to the police documents, Morris told the police that about 18 months earlier he had been offered the "bribe", but declined to name the person, although the indications he gave led the police to infer it was Riley. The documents indicated that Morris was evasive, indicated unwillingness to talk about the matter and declined, in spite of a number of requests, to make a written statement. (It is irrelevant to Term 1 that before me Morris denied these last mentioned assertions that he declined to name Riley and concerning his attitude to helping. There was corroboration of this evidence of Morris.) In fact there was no written statement, and no record of interview. No earlier complaint to the police had been made. There was no other witness and Riley denied making the offer. Ignoring the testimony before me of Morris, and others who supported him, as I must for the purposes of Term 1, and looking just at the matters stated in the documents, i.e. running sheets and diaries, there was not sufficient reason to prosecute in respect of these matters.

Case re Gray Assault on Documents

59. Reference P. 56 (c), the assault of Gray was by Dean, and possibly Riley, and possibly Abrahams, at South Sydney Juniors in September, 1971. What follows appears from the documents. The case alleged was that Gray, the previous entertainment agent, was assaulted by Dean in the presence of Abrahams and Riley and thrown out of the club to make way for Arcadia Top Artists Limited run by Abrahams and Riley. The documents recording Gray's version would provide *prima facie* evidence of some assault but of a milder kind than second-hand accounts had alleged. However, this version was in conflict with the recorded versions of the other three present which asserted that Gray was drinking, the aggressor, and armed. The matter was not reported to the police who sought out Gray, who expressed unwillingness to give evidence and declined to give a record of interview. There was no corroboration of Gray's version as against the denials of the other three persons. Gray was unwilling to discuss the reasons for the dispute with Dean, a matter which on the recorded allegations would discredit him. Particularly in cases of organized crime or crimes of a number of persons in company against one, the unwillingness of the victim to aid the police or the lack of corroboration of the one against the many ought not be the governing factor not to prosecute. Further, in such matters of public concern, police opinion as to likely success of a prosecution should not usually be a substitute for judicial decision and responsibility where there is a *prima facie* case. However, in this instance, looking at the whole of the documents, particularly those which reveal Gray's attitudes and doubts about his own conduct, I conclude that there was not sufficient reason to prosecute. It is a difficult matter to judge these matters purely on the documents because those who make decisions at the police level to prosecute or not prosecute see people as well as documents. (I would therefore add a rider, irrelevant to Term 1, that, having seen Gray, it was clear he was unco-operative, inconsistent and unconvincing so as to confirm my conclusion on the documents.)

Case Against Baldwin re Elvin on Documents

60. Reference P. 56 (d), the conduct was that Baldwin, employed by a company acting as Bally Australia's agent upon the sale of its poker machines, attempted to set fire to a car owned by Elvin, the salesman employed by Nutt & Muddle and Sons, Pty Limited, business opponents of Bally. Elvin signed the record of interview that Baldwin was seen near his car and, when observed, left. Therefore, attributing to Baldwin what was discovered and attributing a purpose depended on inferences being drawn sufficient to establish some criminal charge. The car was found to have a front window forced and to have on the dashboard a cardboard menu with a single mark on the corner, so slight as to be just discernible. Elvin stated in the record of interview that he did not desire any police action to be taken. The police recorded that he said he was not prepared to give evidence and did not report the matter to the police in the first instance, but did to his employer. These circumstances seem to have been the governing factor in the decision not to prosecute. It must be clearly said that, particularly with organized or serious crime, the mere fact that a person, who has signed a statement, makes observations, of the type above referred to, does not provide reasonable cause for not proceeding. However, the real and additional difficulty was as to the charge that might be laid and supported. The circumstances, linking Baldwin with the card and the condition of the card, provided equivocal inferences, so that the evidence did not support a criminal inference of an attempt to burn the car or of a criminal threat. The Newcastle police prosecuting staff were consulted as to whether some charge might lie under the Motor Traffic Act in respect of forcing the car window. Even if an attempt to burn the car, if open, could be classified as organized crime, a matter not necessary to decide, forcing of a car window in breach of the Motor Traffic Act could not be classified as organized crime, any more than exceeding the speed limit by a gangster would be such.

Answer to Term 1

61. I answer Term 1 "No".

Part V.—Term 2A

Term 2A: "Whether there has been any attempt by the Government of New South Wales. . . to 'cover up' the existence of such crime or the identity of any person responsible?"

"Government of N.S.W." Defined

62. "The Government of New South Wales" include Cabinet as a group or any Minister acting in the course of his duty in charge of a Department of Government for which he was responsible, for example, if relevant, the Minister of Justice, the Minister for Labour and Industry or the Chief Secretary. It would include the Premier Sir Robert Askin as such or as the Minister in charge of the Premier's Department which at the relevant time was administering the Police Department. In view of my conclusion as to the application of the words "other relevant" in Term 2B to cover the police, no purpose will be served in ruling more precisely on the word "Government".

"Attempt to Cover-up" Defined

63. The word "attempt" in the expression "attempt to 'cover-up'" raises the question of whether there was some deliberate conduct. The context of events which led to the inquiry into Term 2 appears to call for an answer whether there was a corrupt or deliberate attempt to conceal or not to discover. The word "attempt" confirms this, for it directs the question to the conduct of persons, rather than what can now or could then be proved. The question is not whether an inquiry, such as mine in 1973-4, can prove the existence of organized crime in 1971-2. Whether it did or did not then exist, and, whether there were or are indications or suspicions of its existence, are relevant to the question whether there was a corrupt or deliberate attempt of the description referred to. For example, if police had apparently reliable information that criminals were meeting to plan and execute acts, which could be classified as organized crime, so that the police had an opportunity to discover the plan and apprehend the criminals in the execution of the crime, yet they deliberately suppressed the information and took no action, so as to avoid uncovering that which was believed to be likely to be there, the view would be open that they had corruptly attempted to cover up the existence of organized crime. It would not cease to be such an attempt, because a Commission of inquiry, two years later, lacked evidence of what in fact would have been found if inquiry had not been suppressed. The same could be said if the suppression of inquiry had been at the direction of a Minister, e.g. because a member of Parliament was believed to be in the group, which was meeting. The approach I have taken is akin to that applicable upon an attempt to commit a crime where, for example, an attempt to pick a pocket can be established even if the attempt could not

succeed or where there is no evidence that there was any money in the pocket; (*R. v. Ring* (1892) 59 LJMC 47; *McMillan v. Reeves*, 62 WN 126; *Russell on Crime* 12th Ed. p. 186ff.) Thus I would reject the submission made on behalf of the police (and it would be applicable, if sound, to Term 2A as well as 2B) that the inquiry should start off by seeing whether it can now be proved that acts or organized crime existed and that if it does not succeed to do so and, in particular, by acceptable evidence for the purpose of a criminal prosecution, I should look no further at the police conduct and answer Term 2B "No." Term 2A is squarely directed to the conduct of the Government and Term 2B to that of the police engaged upon the inquiry. It is only incidental to this question that there arise questions as to what organized crime can now or could then be proved and what suspicions or indications of organized crime formerly existed.

Definition of "Organized Crime" Deferred to PP. 116-20

64. "Such crime" refers back to the words "alleged organized crime in or in relation to" registered clubs appearing in Term 1. The factual situation in respect of Term 2A is such that it is not necessary precisely to define "organized crime" in order to answer the question raised by Term 2A. The answer would be the same whether the words "crime" or "organized crime" were the subject matter of Term 2A. (It is, however, dealt with under Term 2B—see PP. 116-20.)

Cross Reference to Background History of Events—PP. 6-31

65. Reference, in general terms, is made in PP. 6-31 of the introduction to the course of events, commencing with the police inquiry and culminating in questions being asked in Parliament and this inquiry being constituted. These paragraphs should be read, as if incorporated here in relation to Term 2A, but will now be supplemented by some details of the events.

66. In order to consider the position of the Government, it is necessary to make some reference to the reports, communications and information, which came before it and to what transpired in Parliament from about July, 1972, when the first police report was received by the Government, until the time this inquiry was constituted in August, 1973. The police inquiry had been initiated by the Police Force itself in December, 1971, and intensified in late June, 1972, as referred to in PP. 6-20.

The First Report Received by the Government

67. The first police report, signed by McNeill and Ballard and dated 1st July, was to the Superintendent in charge of the Criminal Investigation Branch. Some reference is made to its nature and terms in P. 122. It is part of Exhibit A, p. 92. It contained a considerable volume of intelligence information concerning Bally, obtained from overseas agencies and passed by the Commonwealth Police to the State Police. The report was forwarded to the Under-Secretary of the Premier's Department under cover of a letter dated 3rd July, 1972, from Mr Hanson, the then Deputy Commissioner of Police, and marked "Strictly Confidential". The letter and the report bore a heading entitled "Allegations Regarding Infiltration into Registered Club Industry of N.S.W. by persons backed by American Syndicated Crime", as were the later reports of 30th August and 23rd October.

Premier's Press Statement and Press Publicity Upon First Report

68. On 13th July, 1972, the Premier, having by then the report of 1st July, made a press statement which appeared in the afternoon newspapers of 13th July and the morning newspapers of 14th July. Although leading of direct evidence before me of the statements to the press was overlooked, the general nature of the Premier's statements can be clearly inferred from press cuttings in the newspapers referred to which are included in Exhibit A, p. 165-70. Thus *The Sydney Morning Herald* reported under the headings "Some with overseas connections. Criminals in N.S.W. Clubs—Sir Robert" as follows:

"The Premier, Sir Robert Askin, said yesterday that there was a worrying infiltration of criminal elements, some with overseas connections, into certain N.S.W. clubs. He was commenting on reports that Mafia funds were being invested in legitimate and criminal operations in Australia. Sir Robert said Police were stepping up inquiries into criminal activities in N.S.W. clubs. The Acting Police Commissioner, Mr Hanson, had already presented a preliminary report. Sir Robert said the Cabinet had discussed the matter on Tuesday and took a very serious view".

The report of the *Australian*, under the heading "Mafia in Clubs—Askin", included as a quotation "There is no doubt that there is worrying infiltration of criminal elements—some with overseas connections—into some of our clubs' he said". (Exhibit A p. 167) *The Sun* of 13th July, under the heading "Criminals in some clubs—Askin", then proceeded "Criminal Elements with overseas connections had undoubtedly infiltrated the N.S.W. Club movement, the Premier, Sir Robert Askin, said today" and, later, that the Premier said that he had received a preliminary report from the Acting Police Commissioner.

On any reasonable reading of the report of 1st July, 1972, the comments the Premier made were justified. That the Premier made these statements is inconsistent with any general interest or attempt at concealment. Having regard to the stage and nature of the inquiry and the marking "Strictly Confidential" properly made upon the letter of the Deputy Commissioner, the Premier is open to no criticism for not disclosing more, but would have been open to criticism if he had disclosed the contents of the report. It will appear in the course of my report upon Term 2B that the first police report was misleading in important respects. However, it is clear the Premier did not know this and was misled by it. The public through him was also misled.

The Leader of the Opposition by Letter Offers Assistance

69. Mr Hills, then the Leader of the Opposition, sent a letter dated 13th July, 1972, (Exhibit A p. 112) to the Premier stating that he had been informed the Premier had received a report from the Police Department, seeking to see it on a confidential basis and suggesting joint consideration of means "to defeat this insidious threat to our community life". The Premier, by his letter dated 14th July (Exhibit A p. 111) indicated the Government was capable of dealing with the matter and declined the request.

Senator Withers, Chairman of Senate Select Committee, Request to Premier for Information Concerning "Mafia"

70. On 20th July, 1972, Senator Withers, Chairman of the Senate Select Committee on Foreign Ownership and Control, wrote to the Premier and stated that in the course of the Committee's investigation reference had been made to the entry into Australia of foreign capital for investment by or on behalf of the Mafia. He asked the Premier to request his Police Commissioner to supply on a confidential basis to the committee any information that had been gathered in N.S.W. in respect of any such activities.

Second Police Report Supplied to Premier for Senate Committee

71. As a result of Senator Withers' request the second police report was made, being dated 16th August, 1972, and signed by McNeill and Ballard. It was headed "Request by Chairman of Commonwealth Senate Select Committee on Foreign Ownership and Control to the Premier for any information gathered in N.S.W. in relation to the entry into Australia of Foreign capital for investment for or on behalf of the Mafia." It was addressed to the Superintendent in Charge, C.I.B. passed to the Premier's Department on a confidential basis under cover of a letter dated 18th August. The Premier transmitted it to Senator Withers under cover of a letter marked "Confidential" dated 30th August, 1972. This report is part of Exhibit A, page 84. Some reference is made to its nature and terms at P. 122.

Opposition Call for Statement on Organized Crime in Clubs and Premier's Reply—16th August, 1972

72. Mr Hills asked a question without notice in the Legislative Assembly recorded in *Hansard* as follows:

"QUESTIONS WITHOUT NOTICE

Clubs: Organized Crime

Mr HILLS: I wish to ask the Premier and Treasurer a question without notice. Is it a fact that recently the Premier and Treasurer received a report from the Deputy Commissioner of Police in relation to organized crime throughout this State particularly as it relates to the club movement? Is the Premier in a position to make a ministerial statement on this most serious problem? If not, will he lay the report on the table of the House for perusal by honourable members. What further action does the Government propose to deal with this very serious problem?"

To this the Premier, as recorded in *Hansard*, replied as follows:

"Sir ROBERT ASKIN: It is quite true that recently I received from the Deputy Commissioner of Police what I shall call an interim report concerning the infiltration of certain criminal elements into a number of registered clubs in New South Wales. I should like to stress—and I think the Leader of the Opposition who asked this question would want me to do so—that according to the police report this infiltration is affecting only a very limited number of clubs. I think it right and proper to say that in my opinion the overwhelming majority of clubs in this State are run on sound and proper lines and serve a useful social purpose. I agree that the infiltration of certain criminal elements into a limited number of clubs must be nipped in the bud, otherwise there is a danger that the infiltration will spread.

The police report referred to by the Leader of the Opposition was furnished to me on a confidential basis and not with the intention of it being laid on the table of the House. Of course, things are often said between the head of a department—the Deputy Commissioner in this case—and his Minister which would be worded differently if the head of the department knew it was to be widely publicized. I shall have a look through the report to see whether it contains anything which, if it were made known to the public prematurely, might be prejudicial to arriving at the end result that we all desire. The Police Department has three top level men investigating this matter fulltime in an effort to get witnesses and to obtain evidence. Suspicions and allegations are one thing but proof which will stand up in court is something quite different. It is of no use the police recommending that charges be laid against certain persons if, from considerable experience and backed up, perhaps, by advice from the Crown Law authorities, it is believed that there is no hope of making those charges stick. The Police Department is trying to get witnesses who can give conclusive evidence to come forward. If this evidence is obtained then without question charges will be laid.

I hope, as obviously does the Leader of the Opposition, that this trouble will be cleared up. The Government will do its utmost to see that it is. I shall again examine these papers and see if I can make any information available at this stage. Most of it has been made public already. The Deputy Commissioner of Police has assured me that his officers will pursue their activities closely and diligently in an effort to bring this matter to a satisfactory conclusion. I think the subject may be summed up by my saying that at this stage the police have not got sufficiently sound evidence and proof to take the matter to court, but they are hoping that before long they will be able to get it. I assure the Leader of the Opposition that the Government will follow this matter closely and will keep in touch with the Deputy Commissioner of Police to ensure that it is brought to a satisfactory conclusion as soon as possible."

*Police Advice to Premier that Disclosure of Contents of Reports Inadvisable—
22nd August, 1972*

73. The Under-Secretary of the Premier's Department, by letter (Exhibit A, p. 80), then sought the advice of the Deputy Police Commissioner on the matter of release of the whole or part of the report of 1st July and, by letter dated 22nd August, 1972 (Exhibit A, p. 79), the Deputy Commissioner of Police, Mr Hanson, replied, but appears to have done so in relation to the report of 16th August, which had been forwarded in the meantime. However, the considerations to which he referred would be applicable to either report. He expressed the view that "It would not only be inappropriate but dangerous", either to table the report or give any material information in regard to what the police inquiries disclosed and that the Premier had already given sufficient information to outline in general terms the nature of the inquiry. He concluded that he considered disclosure of any further information would be likely to hamper police in their inquiries.

Premier Requests Up-to-date Police Report—24th August, 1972

74. On 24th August the Premier wrote a letter (Exhibit A, p. 74) to the Police Commissioner, referring to the second report, stating that the matter had become a somewhat pressing issue in Parliament and requested that the Commissioner supply an up-to-date report, even if the inquiries were not concluded.

Premier Informs Parliament Why Contents of Reports Cannot be Revealed

75. On 30th August, 1972, the Premier then, according to *Hansard*, replied as follows to the earlier question of Mr Hills:

"Clubs: Organized Crime

Sir ROBERT ASKIN: On 16th August the Leader of the Opposition asked me a question concerning organized crime in the club movement and in the course of my reply I indicated that I would look into the matter to see if I could make

any additional information available at this stage. I have been in touch with the Deputy Commissioner of Police who has advised that police inquiries are continuing and that he considers that disclosure of any further information is likely to hamper those inquiries. I have asked the deputy commissioner to expedite the inquiries as much as possible."

Questions of Opposition Members on Licensing of Bally "5 Line Pay" Poker Machines

76. Between Mr Hills' question referred to in P. 72 and the reply of the Premier referred to in P. 75 other questions were asked, directed to the Chief Secretary by the Leader of the Opposition, and by the Deputy Leader Mr Einfeld, on the matter of the licensing of a new type of poker machine "5 Line Pay" manufactured by Bally. These questions and answers are set out at T. 48-9 and the subject referred to in the final police report. The files of the Chief Secretary's Department have been produced to this inquiry and carefully considered by those assisting the inquiry. There is no material which appears to provide room for determination of improper conduct of any Minister or any finding under Term 2A adverse to any Minister.

Third Police Report Supplied to Premier—Commissioner's Comments on Inquiry

77. In response to the Premier's request of 24th August, 1972, referred to in P. 74 a further, but interim, police report (the third), dated 30th August, 1972 (Exhibit A, p. 65), signed by McNeill and Ballard, addressed to the Superintendent in Charge, C.I.B., was sent by the Police Commissioner under cover of a letter marked "Confidential", dated 7th September, 1972 (Exhibit A, p. 64). This report was remarkably less positive than the first report upon the discovery or possible discovery of matters related to crime in registered clubs. The Commissioner's letter stated that "No concrete information has been put before the Police, nor do their inquiries disclose any such concrete information, which would call for any police action or a recommendation to the Government on any particular aspect". He also reaffirmed his earlier view, that the information should "Still be regarded as strictly confidential". He made reference to the visit of the Commonwealth Police, including their Commissioner, to North America and that such Commissioner would be in contact with him on his return.

Premier Informs Parliament of General Effect of Third Police Report

78. On 28th September, 1972, the Leader of the Opposition asked the Premier a further question and the Premier replied, according to Hansard, as follows:

"Clubs: Organized Crime

Mr HILLS: I ask the Premier and Treasurer a question without notice. Did I ask the honourable gentleman recently in this House whether it was possible for him to give an indication in detail of the reports that were coming to him on allegations of criminal activities, generally described as mafia activities, in this State? At that time did the Premier and Treasurer say that he would have further discussions with the Deputy Commissioner of Police on whether further information could be made available to the House? Has the Premier and Treasurer had an opportunity to have such further discussions with the Assistant Commissioner of Police, who is at present acting as the senior officer of the police force, as to whether any further information can be made available to the people of New South Wales?

Sir ROBERT ASKIN: What the Leader of the Opposition says is quite correct: he did ask for such information and, pursuant to his inquiry in this House, I took the matter up at once with the police authorities. The Deputy Commissioner of Police was, I think, the most senior police officer available at the time. I asked for and have since received a report additional to the one that was made to me previously. This report gives some further information which is inclined to reduce a little—not altogether, by any means—the suggestion that such activities were fairly widely spread. It is now pretty clear that the infiltration of the criminal element is on a somewhat lesser scale than was at first believed possible.

The police are pursuing their inquiries closely, but the report that I now have says they are having difficulty getting persons to come forward and give reliable and helpful information—persons who are willing to give evidence. I remember also that the report asked specifically that I should not make public any more of the details. Personally, I do not think they are of tremendous significance, but the police did ask that at this stage no further information be given. They considered it would prejudice the inquiries that were being undertaken. I felt I must abide by that but as soon as I get more information—and I am keeping in close touch with the police authorities—I shall report to the House pursuant to the inquiry raised by the Leader of the Opposition."

Forwarding Final Report to Premier's Department, by Letter Dated 6th November, 1972

79. The final police report (Exhibit A. p. 13) is dated 23rd October, 1972, but for some reason, which I have not been able to determine, but unrelated to any conduct of the Government, which had been pressing for the report, it is dated some days before it was completed or signed. It is addressed to the Superintendent in Charge, C.I.B. It is a report of 49 pages and is extensively referred to in various connections when reporting upon Term 2B. It was forwarded to the Under Secretary, Premier's Department, under cover of a letter dated 6th November, 1972, from Mr Newman, the Senior Assistant Commissioner of Police (Ex. A, p. 12). It stated the report was received in the Commissioner's office on 3rd November. It also stated:

"A perusal of the report shows that the investigating Police have been unable to elicit evidence which would justify the institution of any criminal proceedings arising from the matters investigated and they have indicated that they are satisfied that the allegations received do not call for any further inquiries by this Department.

3. In order that the Premier may be advised of the nature and result of the Police investigation without delay I forward herewith a copy of the report by Detective Sergeants McNeill and Knight. The Superintendent in Charge, Criminal Investigation Branch agrees with the opinions expressed by the Detectives. I am satisfied from their report that the matter has been fully and thoroughly investigated and in the absence of any additional information no further inquiries in this matter are warranted."

Question of Leader of Opposition and Reply of Premier in Parliament, 9th November, 1972

80. On 9th November, 1972, according to *Hansard*, the following question was asked in the Legislative Assembly by the Leader of the Opposition and the following answer was given by the Premier, namely:

"Increase in Crime

Mr HILLS: I ask the question without notice of the Premier and Treasurer, having regard first, to the most recent report of the Commissioner of Police indicating a significant increase in serious crime in New South Wales and the substantially lower clear-up rate; second, to the recent statement made on *Monday Conference* by Mr Trethowan, secretary of the Commonwealth Police Association, that police officers investigating Mafia activities in Australia had informed him that there was in this country a functioning Mafia organization; and third, to the question without notice that I asked recently the Premier and Treasurer about this serious matter. In view of all these matters, and also because no indication has yet been given of the results of investigations carried out by members of the New South Wales police force, can the Premier and Treasurer indicate when the people of this State may expect some sort of report from him and a resolution of this serious problem?

Sir ROBERT ASKIN: It is true that there is a lot of serious crime in the State. It is true also, as the honourable member suggests in his question, that the rate of clear-up by the police is not as good as we would like it to be. In fairness to our police force, I should point out that the same conditions apply in every other State in Australia, where the rate of crime is on the increase and the clear-up rate is the same as in New South Wales. This is also the position elsewhere. It could be inferred from what has been said by the Leader of the Opposition—although I do not think it was intended—that there is some reflection on the police force of this State. I am sure that the police are doing their best, as a comparison of the figures in this State with those in other States will indicate. I have not seen and have no knowledge of the reported statement to which the Leader of the Opposition referred.

I recall a question being asked of me in the House on an earlier occasion. At that time I quoted from a report that was presented to me by Mr Hanson, the Commissioner of Police, but then the Deputy Commissioner, in which reference was made to strong suspicions being held that there were some people with connections with the Mafia organization infiltrating a limited number of clubs. I stress that it was only a limited number of clubs: the report was quite specific in that regard and I made this clear at the time. One should be careful not to reflect adversely on the big body of clubs throughout the State that provide first-class amenities, good service and afford a new social life for the hundreds of thousands of their members.

The Leader of the Opposition followed up with another question on the same subject, and in response I again got in touch with Mr Hanson and asked him whether the police inquiry had been finalized, and to let me have an interim report that I could table in the House for the information of all honourable members. I received the interim report, in which Mr Hanson said that the police were pursuing their investigations closely, but were having some difficulty getting the necessary evidence. He pointed out that, unless the police had the witnesses and the evidence, it was not much good going to court without some prospect of making the charges stick. The Commissioner of Police advised me, as the responsible Minister, that the information in this second report, and some of the information in the first interim report be not made public at this stage, but perhaps later on, as it would interfere with police efforts to check up and bring these people to court.

I must say—as I said before in the House—that the second report rather left me with the feeling that there was less evidence of mafia-type infiltration of the clubs than one was led to believe in the first instance. Until I receive the final report from the Commissioner of Police, there is not much more I can do. Honourable members will understand that I am bound by the warning of the Commissioner of Police against anything that might interfere with the efforts of his team of detectives who are trying to bring any wrong-doers to book. I am sure the Leader of the Opposition does not want to interfere with any such efforts. At this stage I have received nothing further from the Commissioner of Police, but I shall keep in close touch with him and, as soon as I receive more information from him, I shall certainly make it available to the House and to the Leader of the Opposition without delay.”

Submission of Under Secretary, Premier's Department on Final Report to Premier on 9th November, 1972

81. On the same day the Under Secretary, Sir George Gray, who has since died, made a written submission to the Premier concerning the letter dated 6th November, and the enclosed final police report. It is dated 9th November and initialled by Sir George Gray. The submission refers to the matter I have quoted in P. 79 from the letter of the 6th November and concludes:

“The names of a large number of persons appear in the report, many of whom are shown to be completely innocent of any wrongdoing or criminal complicity. In the circumstances, the Premier may feel that it could be regarded as improper for details of the Police investigations to be made known publicly by tabling the report in Parliament or by releasing it in any other way.

Submitted for the Premier's information.

A draft reply informing the Leader of the Opposition of the result of the Police inquiries but adding that it is not proposed to release details of the investigations, either by tabling the report or in any other way, is attached for the Premier's consideration and use in the House, if approved.”

The Premier Receives Final Report, Notes and Discusses Difference in Final Report From First Report and Tables Report Under Standing Order 57 in Legislative Assembly

82. The reply (Exhibit A, pp. 100–11), drafted by Sir George Gray and referred to in his submission was, subject to slight changes in verbiage, in the same terms as the reply given by the Premier in the Legislative Assembly but with an important exception. The original draft concluded with the words, “and I therefore do not propose to table the report or to release any of its contents in any other way”.

The Premier, upon receipt of the submissions, did two things of relevance. First, he wrote on the submission in his own hand a note in the following terms:

“Whilst I am not aware of anything which would justify me querying any section of the latest police report, I am somewhat concerned that in tenor it should be so different to report dated 1st July last.”

Then appear the Premier's initials, the date “13/11” and then “Please discuss” “U.S.” (i.e. Under Secretary) and “discussed”. The Premier's evidence of his discussions so referred to appear in P. 99.

The second thing the Premier did was to make the decision to table the report, in spite of Sir George Gray's draft reply. The draft reply was varied to make reference to the tabling and the manner of tabling. The reply of the Premier in Parliament on 22nd November, 1972, according to *Hansard*, was in the following terms:

"Clubs: Organized Crime

Sir Robert ASKIN: On 28th September, and again on 9th November the Leader of the Opposition asked me questions without notice concerning police investigations into allegations of criminal activities associated with registered clubs in this State. In response to his inquiry whether any further information could be made available in the matter, I stated that in their interim report the police had asked that at that stage no additional information be given as they considered it would prejudice the inquiries that were being undertaken. At the same time I intimated that I was keeping in close touch with the police authorities and that as soon as I received further information I would report to the House.

I have now received a copy of the final report prepared by the investigating detectives, which reveals that, despite earlier fears, no evidence has been found to indicate that the club industry of this State through either entertainment or poker machines is being controlled by criminals or that there is any move by foreign syndicated crime figures to take over in the industry. Following a thorough investigation, the conclusion reached by the detectives is that the allegations have emanated from a trade war between various interests in two sections of the industry, namely, poker machines and entertainment. The Senior Assistant Commissioner of Police, in the absence of the commissioner, informed me that the superintendent-in-charge of the criminal investigation branch, agrees with the opinions expressed by the detectives. Mr Newman says he is satisfied that the matter has been fully and thoroughly investigated and that, in the absence of any additional information, further inquiries would not be warranted.

The names of many persons appear in the report, both in the course of the recounting of specific interviews and by way of passing reference. Although the police authorities absolve all these persons from any suggestion of criminal complicity in this context, I feel that it would be unnecessarily damaging to them for details of the police investigations to be made known publicly. I propose to table the report of the investigating police, and request that you, Mr Speaker, order that these papers be made available for inspection by members of this House only."

The Speaker indicated that he agreed that publication of the papers would cause unnecessary harm to citizens whose names were mentioned and, pursuant to Standing Order 57, said:

"Accordingly, pursuant to that standing order I direct that the papers tabled by the Premier and Treasurer are to be made available for inspection by members of the Legislative Assembly only. I emphasize that this order is not necessarily a final resolution of the matter, as it is open to any honourable member at any time to move that the papers be printed. If any such motion were carried, that would automatically remove the limited embargo which my order creates and would at once open the papers to general availability at large."

The Effect of Tabling the Four Reports and Associated Documents Under Standing Order 57

83. In fact there was tabled the file, which contained not only the final report, but also the three former police reports, accompanying correspondence between the Police Department and the Premier's Department, departmental notes concerning them, draft replies to questions, newspaper cuttings and other associated documents. This file has endorsed upon the last document "laid upon the table of the House by Sir Robert Askin. Availability restricted to Members of Legislative Assembly only in accordance with Standing Order 57. H. K. Vidler, 22nd November, 1972." This file became Exhibit A after production to me as referred to in P. 52. It appears to contain, up to the date of tabling, all the relevant documents received by the Premier's Department in connection with the four reports and the reactions and replies of the Department and the Premier concerning them.

No Criticism or Adverse Inference from Restrictions on Greater Publication or Failure to Table the Other Reports Earlier

84. Thus, soon after the police inquiry was completed, the four reports and all this relevant material was made available to Government and Opposition members of the Legislative Assembly. There is no ground whatever for criticism of the course taken of restriction of further publication. It was open as the Speaker indicated, for any member to move that the papers be printed with the consequences indicated. The Premier, moreover, had advice in strong terms from the Acting Police Commissioner and

from his Under-Secretary as to weighty considerations, which were against earlier or further publication. Parts of the reports included information supplied to the State Police by the Commonwealth Police upon terms of confidentiality. I was faced with a similar problem and the most difficult decision, I had to make in my inquiry, was whether I should publish in open sitting all or part of Exhibit A, or whether I should restrict publication to persons concerned in the inquiry. My difficulty was very similar to that of the Premier, arising from the confidential nature of parts of the reports and because of the prospect of unfairly damaging the reputation of some persons by unnecessary publication. The reports made many hearsay statements and accusations against individuals later found to be untrue. Often the later statements were in parts of documents remote from the former. The publication of such material accepted by the reports to be untrue could not fail to do some damage to the reputation of the persons named. If they were untrue, *prima facie* it would appear to be wrong to publish them under the privilege of Parliament. The difficulty was that the reference to individuals was intertwined with other matters in the reports that it would be difficult to make an intelligible publication in Parliament except of the entire reports. The alternative was to restrict publication to members. Before me, there were stronger reasons for some publication, because before me there was the question whether there has been an attempt to cover-up matters. This required me to deal with and examine the reports. This required some publication of them. My dilemma and my compromise resolution of it appears at P. 45. Some parts of the reports in Exhibit A, were incorporated into the transcript and, therefore, openly published in the course of the opening by counsel assisting me, but in accordance with guide lines I laid down at T. 22 and T. 38-40. Other parts have never been published. Copies of the file were made available to only a limited number of persons who were required to undertake not to publish or use the unpublished contents except in connection with the inquiry. A copy for such use was offered to any member of either House of Parliament (T. 12-220, T. 35, T. 37) but with the exception of one member, who was a solicitor appearing before me, the offer was not availed of. The copies have now been returned to my secretary and destroyed except those in use by those assisting me. The original file has been returned to the Legislative Assembly.

It is abundantly clear from the advices received by the Premier and the considerable problems involved in an unrestricted publication of all the reports, that there is not the slightest basis for criticism of the Premier for not making any wider publication of any of the police reports. To have published, or even tabled them under Standing Order 57, while the inquiry was in progress, would have been undesirable. The course he took of tabling the whole file, albeit with the restriction under Standing Order 57, at the first opportunity he could reasonably have done so, and in so doing overruling in effect the advice being tendered by the Assistant Police Commissioner and his Under-Secretary supports an attitude of disclosure, not of covering up.

Questions in Parliament Renewed in March, 1973, After Recess. Questions in Relation to Reports of Commonwealth Police

85. After a recess further questions were asked in Parliament in the following year, commencing in March, 1973. These questions were directed to the part played by the Commonwealth Police in the N.S.W. Police inquiry which had been completed some four or five months earlier. This inquiry had been treated as being complete according to the passage in Mr Newman's letter of 6th November, 1972, quoted in P. 79.

Material Supplied by Commonwealth Police to State Police. Premier and His Department Not Advised or Made Aware of Material or Its Import

86. The participation of the Commonwealth Police in the N.S.W. Police Inquiry and information supplied by them is of considerable importance to Term 2B, but some reference must now be made to such matters because of their significance in Parliament in 1973. Until late in March, 1973, neither the Premier nor his department had been informed, in any real sense, by the N.S.W. Police of the reports, letters or information which they had received from the Commonwealth Police. No reference had been made to the letter from the Commonwealth Commissioner, dated 30th May, 1972, that of 8th November, 1972 or the 18 or 19 page annexure to the former which contained important intelligence information concerning Bally.

The extensive overseas material concerning Bally and much of the local material appearing in the first report is taken straight from the 18 page Commonwealth document, but the report does not directly acknowledge this source. There is an ambiguous reference in para. 36 of the report, which could support the view either that much of the American material was supplied by Commonwealth Inspector Dixon or that he merely authenticated what the N.S.W. Police found, or that the N.S.W. Police were able to authenticate the material by communication with contacts with overseas agencies formed by Dixon during his visit. A reader would not get the impression from the report, as was the fact, that the N.S.W. Police had done virtually no investigation at all themselves by then and that the report was largely based on the Commonwealth report of 30th May not referred to.

The second report, which went through the hands of the Premier to the Senate, surprisingly did not acknowledge that a substantial part of that which was being sent to the Commonwealth was derived from the Commonwealth.

The third report makes no reference to Commonwealth information or co-operation, except it states in passing that the Commonwealth Police attended the interview with Tomlinson. The letter of 7th September, 1972, (P. 77, Exhibit A, p. 64) covering the transmission of the third report to the Premier's Department, refers to the then current overseas visit of the Commonwealth Police, that their principal objective was to establish better relations with overseas agencies and that the Commonwealth Commissioner would contact the State Police Commissioner on his return.

The long and complex final report, of some 226 paragraphs extending over 49 pages, does not repeat the overseas material stated in earlier reports concerning Bally but sets out, at great length, denials of Tomlinson and Rooklyn of Bally concerning criminal affiliation of persons overseas connected with Bally. The following paragraph should be quoted:

"Poker Machine Industry

116. The original report submitted by Detective Sergeant McNeill and Detective Sergeant Ballard in relation to the background of the Bally Manufacturing Corporation of Chicago was largely based on information supplied by the Commonwealth Police from the files of their Crime Intelligence Unit. They have since sent officers to the United Kingdom and the United States of America to further check on the validity of their original allegations and whilst it is almost three weeks since they returned to Australia we have had no contact from them other than a telephone conversation with Detective Inspector Dickson who stated they had learned a number of things which were considered confidential to crime intelligence agencies and that in due course we would be given that part of the information which they considered should be made available to us. We can only hope that what they supply eventually is far more reliable than the material we received from them initially."

After paras. 178-179 had dealt with both local and U.S. matters (the latter as stated by Rooklyn or Tomlinson) including, in the latter, activities outside Australia of persons such as O'Donnell, Klein, Kaye, Green, Catena, Dalitz, Lansky, Wischinski, of the parent company in relation to the New York Stock Exchange, the decisions of the Security Exchange Commission and a conspiracy charge in Louisiana against Bally and O'Donnell and Bally's shareholding, there appeared:

"200. Mr Rooklyn concluded by saying he felt it must be most obvious to any sane, clear thinking person that the net result of this investigation could only prove that all the allegations concerning his company were baseless and had been intended to remove their produce from the local market at any price. We are inclined to agree with him."

The reference must be to the Bally organization, not merely its Australian subsidiary. Then appear the following:

"209. Apart from Brady and the article published in the *Review* a considerable amount of the allegations for investigation by our detectives and officials of the Corporate Affairs Commission was supplied by Detective Inspector Dickson of the Commonwealth Police in a confidential file. It will be seen from the following that as far as it has been possible to investigate these matters in New South Wales they have been proven to be baseless.

226. From the foregoing it will be seen our inquiries have been particularly extensive and painstaking. We have not found any evidence at all to indicate that the club industry of this State either through entertainment, poker machines or any other means is being controlled by criminals of any type or that there is any move by foreign syndicated crime figures to take over in the industry. When one makes a final analysis of all the allegations that have been investigated one must come to only one conclusion and that is that they emanate from a trade war between various interests in two industries in particular, namely, poker machines and entertainment."

A reasonable reading of the final report was that the allegations concerning Bally had been not merely unsubstantiated, but were found to be baseless and that such information as the Commonwealth had supplied earlier (but which the report did not define) had proved to be false. The reasonable reading of para 116, above quoted, would be that the former Commonwealth information was found unreliable, that no information concerning Bally had been given by the Commonwealth Police on their return and that it seemed unlikely that any worthwhile information would be forthcoming. A reader of paragraph 116 might have expected that if the position turned out otherwise there would be further advice. The early reports treated any criminal affiliations of Bally as important and relevant, and the last report also treated

them as relevant by dealing with them at length, but only it would appear to find the former allegations baseless. A reader, such as the Premier, might find the last report in conflict with the first, but he would reasonably read it as a finding that any suggestions of criminal associations of Bally were baseless and that nothing was said, nor really likely to be said, to the contrary by the Commonwealth. There had been the conversation between Ballard and Dixon, which Ballard secretly taped and played to McNeill and then kept in his private possession, and on 8th November there was the letter from the Commonwealth Commissioner to the State Commissioner. These were not revealed before March, 1973, to the Premier or his Department. It appears therefore that before March, 1973, the Premier or his Department had not been specifically informed of the letters from the Commonwealth Police of 30th May, 1972, or 6th November, 1972, or the 18 pages of Commonwealth Intelligence notes. The information he had would lead him to believe that no information of value had been supplied by the Commonwealth Police. He would have no ground to believe that the Commonwealth Police had provided documents reporting matter inconsistent with the final police report.

March, 1973—Opposition Questions Upon Commonwealth Reports

87. In March, 1973, there were a series of questions asked by members of the Opposition, principally directed to reports of the Commonwealth Police. Such questions and their replies, as recorded in *Hansard*, were as follows:

(a) 20th March, 1973:

"Clubs: Organized Crime

Mr COX: My question, which is directed to the Premier and Treasurer, concerns the two reports of police investigations into allegations of criminal activities associated with registered clubs that were tabled in this House before Christmas. Do copies of the report available to members, but withheld from the public, contain a handwritten notation made by the Premier to the effect that the tenor of the second report differs from that of the first report given to him? Were combined inquiries also made into this matter by New South Wales and Commonwealth police and was a separate report forwarded to the federal Attorney-General? Was this report made available to the Government? If so, will the Premier arrange for it to be tabled? Will he agree to all reports in this matter being made public, and will he allow a debate on them to take place in this Parliament?

Sir ROBERT ASKIN: I cannot be expected to answer those questions off the cuff. I remember writing on one report. A report came in alleging that certain irregularities and criminal activities were suspected in a very limited number of clubs. I stress that this referred to a very limited number of clubs. I asked for a full inquiry and a report to be made. Then I received a report. The second report—I am speaking from memory—indicated that following intensive inquiries it was felt by the Police Department that the alleged irregularities and activities by criminal elements were not as serious and widespread as at first thought. I put a note on the report along those lines—I cannot remember the exact words—because I felt that I had acted in good faith on the first report in mentioning it to Parliament. The second report broke it down somewhat and I wanted a more detailed explanation. I received that explanation, which I accepted as satisfactory. So far as I was concerned, that was the end of it except for the tabling of papers in limited fashion, as has been done before. Whether we can go further than that I do not know; I doubt whether we can.

As I am speaking, some of the facts come back to my mind. The honourable gentleman, if he has read the report carefully, would know that it mentions a lot of reputable people in the community and makes some reference to them that could be construed as a reflection on their character. Some of them who are well-known sporting people are known to many of us irrespective of our political leanings, and I think it would be unfair for their names to be bruited around simply because they have been mentioned in some context or other in a confidential report. I should be reluctant to make their names public—not for any political purpose but simply because I think it behoves all of us not to injure the reputation of people of good standing and good character when this is not justified. I shall look at the question and study its full implications so as to see whether any further action should be taken."

(b) 22nd March, 1973:

"Criminal Activities in Clubs

Mr HILLS: I wish to ask the Premier and Treasurer a question without notice. Did reports tabled by the Premier concerning criminal activities in clubs in New South Wales refer to a report on this same matter by the Commonwealth

police? If so, why did not the Premier attach the report from the Commonwealth police to the papers tabled? Will the Premier make available that report so that members may examine it and evaluate all the relative matter particularly in view of apparent differing opinions held by the Commonwealth police and the New South Wales police?

Sir ROBERT ASKIN: Off-hand I cannot remember anything about a report from the Commonwealth police in relation to criminal activities in clubs. However, if there is such a report and the Commonwealth has no objection to my making it available to honourable members I certainly would not have any objection. I shall contact the Commonwealth authorities to ascertain whether they will agree to my adopting that course. If they have no objection I shall make the report available."

(c) 29th March, 1973:

"Clubs: Organized Crime

Mr EINFELD: I ask the Premier and Treasurer whether last week the Leader of the Opposition asked him a question relating to a report on club activities and suspicion of criminal activities in clubs. Did the Leader of the Opposition refer to the fact that in a report made available to honourable members for their careful inspection and scrutiny reference was made to a report by the Commonwealth Commissioner of Police in regard to these activities, and did my leader ask the Premier to make that report available to honourable members? Did the Premier reply that he would ask the federal authorities to see if it could be made available? Will the Premier and Treasurer inform honourable members whether he did, in fact, so ask and whether he has received permission? Will the further report be made available?

Sir ROBERT ASKIN: What the Deputy Leader of the Opposition has said is correct. As honourable members opposite who were formerly Ministers know, competent public servants sit behind the bar of the Chamber when questions are asked and when undertakings are given they make a note and start the process of complying. Although I am not able to say definitely at the moment, I should think that this procedure has been initiated. Obviously no reply has been received; otherwise I should have seen it. To make absolutely sure I will check later in the day and let the honourable member and the House know the position."

By letter dated 27th March, 1973, Mr Hanson, then the Commissioner of Police, wrote to the Under Secretary of the Premier's Department, it would seem pursuant to some inquiry arising from questions (a) and (b) asked in Parliament and set out above.

It should be observed that Mr Cox's question refers to "combined inquiries" of Commonwealth and State Police and "a separate report to the Federal Attorney-General" and whether, "this report was made available to the Government". On the other hand, Mr Hills' question refers merely to a "report". Mr Hanson's letter of 27th March, after referring to the four N.S.W. police reports said: "It will be noted that Detective Sergeant McNeill in his report says he has not received any report from the Commonwealth Police and I have no knowledge of any such report. I have spoken to Mr J. M. Davis, Commissioner of Police, who advised me no such report was furnished." The letter then referred to the receipt by him from the Commonwealth Commissioner of the two letters dated 30th May and 8th November, and that the former had with it eighteen pages of notes. The letter added "It is not known if this is the document to which Mr Hills, M.L.A., refers as a 'single' report". He referred to the endorsement upon the Commonwealth document as follows: "This document and the information contained therein remain the property of the Commonwealth Police Force and may not be disseminated to a third party without the Commissioner of the Commonwealth Police Force". Mr Hanson stated he forwarded both letters to the Premier's Department for information "on a confidential basis". The report (or letter) from McNeill (part of Ex. E), mentioned by Mr Hanson, refers to "notes" which he had taken from documents perused in Canberra, that the inquiries were not "combined inquiries", that he furnished no report to the Commonwealth except that to the Senate already referred to and that the letter of 30th May (enclosing 18 pages of notes) was the only written communication he had seen and that "no other report of any kind ever came to my knowledge".

It is not clear whether Mr Hills really was referring to the 18 pages of notes. It has appeared now, that photographic copies of these pages somehow reached the files of two newspapers, a matter for some grave concern, having regard to their markings. I did not seek to determine the source from which they came as this was not relevant to my inquiry. It was clear Mr Cox was not referring to the 18 pages of notes. It is now known that the Commonwealth Commissioner of Police did send a report to the Commonwealth Attorney-General in November, 1972 (referred to in P. 30) covering his overseas inquiries and dealing at considerable length with intelligence information concerning Bally. It is quite clear, however, that neither the

N.S.W. Police nor the Premier ever saw it. Presumably Mr Cox had some knowledge of its existence for it is the only document that he could be referring to. It is the only "report" from the Commonwealth Police to the "Federal Attorney-General" which came to the notice of my inquiry.

Premier Replies Concerning Commonwealth "Reports"—5th April, 1973

88. The Under Secretary provided for the Premier a submission and draft reply, which was based on the written advices from the Police Commissioner. Pursuant to the draft the Premier, according to *Hansard*, replied on 5th April, 1973, as follows:

"Clubs: Organized Crime

Sir ROBERT ASKIN: On 20th March the honourable member for Auburn asked a question without notice relating to allegations of organized crime in registered clubs. Subsequently, on 22nd March the Leader of the Opposition, and on the 29th March the Deputy Leader of the Opposition, asked questions on the same subject. In each case reference was made to the papers that were tabled on 22nd November, 1972, for the information of honourable members, which contained the four police reports that had been furnished up to that time by the New South Wales police in regard to the inquiries made by the detectives led by Detective-Sergeant 1st Class McNeill, who had investigated the allegations concerning mafia infiltration into the poker machine and entertainment industries. All the questions were directed to ascertaining whether a separate report had been furnished by the Commonwealth police.

The Commissioner of Police has advised me that he has no knowledge of any report by Commonwealth police; in fact, Mr Hanson has spoken to the Commonwealth commissioner, Mr Davis, who has stated that no such report was furnished. Having taken the opportunity to reread the police reports, I can only assume that the inquiries by the honourable members concerned had their basis in references by Detective-Sergeant McNeill in his report of 23rd October, 1972, to a Commonwealth police file made available for his confidential perusal in Canberra in May, 1972, from which notes only were taken. It would, of course, be quite inappropriate to contemplate the tabling in State Parliament of this Commonwealth police file. Any question of the release of its contents would be one entirely for determination by the Commonwealth authorities concerned."

In the context of the questions asked, particularly that of Mr Cox, no criticism or adverse inference can be drawn from there being no specific reference to the eighteen pages of notes. They were notes and the more so if page 19 was omitted. It is clear the Premier never saw or ever knew of this page. In any event, the whole substance of these "notes" was contained in the first police report included in the documents tabled in the Legislative Assembly on 22nd November, 1972 (PP. 82-3).

Further Questions of and Allegations Including Allegations of "Attempts to Cover-up" by Opposition Members—August 1973

89. In August, 1973, when Parliament resumed after a further recess, further questions were asked by Opposition Members. Some were in the course of Address in Reply to the Governor's speech. I quote merely the principal passages.

Allegation of Mr Hills—9th August, 1973

90. The principal allegations of "attempts to cover-up" matters connected with crime in clubs, as reported in *Hansard* are in the speech of Mr Hills on 9th August, 1973, as follows:

"Many other aspects of police administration and activities should and will be commented upon. Other Labor members will continue this line of constructive criticism during this debate. Such things as the repeated references to organized crime syndicates and "Mr Big" operations in the entertainment and other areas of public activity—allegations which have been repeatedly met by smother tactics by the Government calling on the Commissioner of Police to furnish reports which are buried in government archives—will have to be ventilated. Allegations of "mafia" involvement in the poker machine and entertainment business create an appalling situation. If it were not so dangerous—so seriously dangerous—it would provide an ideal comedy. There is also the report, or rather a series of reports given restricted publication in this House some months ago, in which there is the greatest cover-up attempt one has ever seen. Today the honourable member for Auburn asked the Premier whether it was a fact that a report had been submitted to the State Government by Commonwealth officers and in reply to this question the Premier said he could not remember. That is extraordinary. The Premier is the Minister in charge of our police force, yet he cannot recollect whether this matter was referred to in reports made to him by the police department. I have never heard such humbug in my life. The

Premier, in his usual way of attempting to cover up when he is being questioned about matters of this nature, replied that he could not remember but he will have a look at it. That sort of answer coming from the Premier of this State is not satisfactory to the people and certainly is not acceptable to the members of the Opposition in this Parliament.

The matters to which I have referred are mentioned in the reports and anybody who reads them will become aware that not only was this matter dealt with by the Commonwealth police but also that it was dealt with on 10th May last by the Senate committee of inquiry investigating the federal Attorney-General's Department expenditure. Officials of that department told the committee that they had learned in the United States of America last year that criminals operating in that country had established links into entertainment and leisure activities in Australia. The Government goes blithely on despite the fact that the Senate committee of inquiry, a committee on which all parties are represented, has heard evidence that criminals are operating in these areas. The Government merely attempts to cover up the situation. One wonders why and more importantly one wonders who the Government is trying to protect. Not only does the Government involve itself but also its actions have an effect upon the New South Wales Police Force. People begin to speculate and draw inferences involving officers of the police force, often about something that does not even exist. No government should put the police force in that sort of situation."

Assertion and Complaint of Mr Wran in Legislative Council—9th August, 1973

91. On the same day, 9th August, 1973, Mr Wran, according to *Hansard*, said in the Legislative Council:

"Another manifestation of the law-and-order syndrome, which has pre-occupied the Government in recent years, was seen earlier this year when widely accepted allegations were made by responsible people that criminals were active in the affairs of some of the larger clubs in New South Wales. In relation to these allegations the Commissioner of Police has made a report. The report has been tabled in the Legislative Assembly. It has not been released for publication. It is not available to members of this House, to the press or to the public. In other words, although the Commissioner of Police has made a report to the Premier, the Premier has shrouded the contents of that report in secrecy. Surely, with a government dedicated to law and order, the public and at least the parliamentarians, ought to be able to ascertain what action has been taken in relation to those allegations. Why the secrecy? Where does the public interest lie if there are criminal activities in clubs? Does it lie in hiding those activities and their extent? Is the non-disclosure of the extent of such criminal activities in the best interests of the club movement? Only the Government can answer those questions. However, the role the Government has chosen to play is to ensure that one of the few reports to come to Parliament in recent years from the Commissioner of Police has not yet been released to the public. As I say, so much is thought of the members of this Chamber and the bicameral system of government that none of us is entitled to read it either."

Press Statement of Premier—10th August, 1973. Proposal to Table Police Reports (i.e. for Publication)

92. On 10th August, 1973, the Premier issued a press statement in the following terms:

"Statement by Premier re "Mafia" Allegations

It is asinine of Mr Hills to suggest that the Government is covering something up when the police reports have been made available to all members of Parliament.

If Mr Hills wanted the reports made available to the public all he had to do was to make a request to me to do so. I have told Parliament fully and frankly the reason for not making the reports public.

The reason is that some people who were named would be damaged.

Suggestions of Mafia infiltration were probed by the police but they did not uncover evidence to justify court action.

Police reports to the Government in matters of this kind are written on a privilege basis and the people named and questioned do not have any legal protection.

Even though it is found there is no evidence to justify prosecution it is inevitable that the reputations of the persons named as being questioned will suffer with general publication.

I have endeavoured to do the fair thing but Mr Hills is taking advantage of this to try to gain some political advantage against the Government.

I will therefore table all the reports next week for general publication.

The public will then find among other things that some of the identities who have been questioned by the police are well known to Mr Hills in his own football club which is undergoing a financial crisis. If they feel aggrieved at the publication they can then take their troubles to Mr Hills."

10th August, 1973, Deputy Commissioner of Police Urges Premier Not To Make Reports Public, and Gives Reasons

93. Immediately upon publication of the press statement, the Deputy Commissioner of Police, in the absence of the Commissioner, wrote a letter dated 10th August, 1973, referring to the press reports and in strong terms urging the Premier not to make the reports public. He gave reasons at some length for the view he expressed, including the damage to reputation of persons, the serious effect revelation of confidential police inquiry would have on future police investigations, the endorsements "Confidential" on past communications of the Commissioner to the Premier's Department and in particular the ban, endorsed on Commonwealth documents, upon the dissemination of Commonwealth information without permission of the Commissioner of the Commonwealth Police Force.

14th August, 1973. Allegations of Mr Einfeld. Implication that lies told concerning Commonwealth Document

94. On 14th August, the speech of the Deputy Leader of the Opposition, Mr Einfeld, according to *Hansard*, included the following:

"The next item is the failure of the Government to cope with the rapidly rising crime rate and the breakdown of morality in the community. I shall not say much on this as it will be dealt with in depth by at least two members of my party who are to follow. But there is one glaring example of government participation in this decline of morality that cannot go unchallenged. It involves the police reports on the suggestion of mafia complicity in the club and entertainment industries in this State. We had the spectacle in Parliament of the Premier's refusal to make these police reports available to members of Parliament. Now the Premier has had a change of heart. Suddenly, last week, after a piercing question that left no other course open to him, the Premier announced to the Leader of the Opposition that he would table the reports and make them public, although some members of clubs mentioned in those reports were known to the Leader of the Opposition. One would have thought that the Premier would table those reports today, the first sitting day of this week, but when he left the Chamber earlier today he called out, "Tomorrow". I hope he will table them all—the two reports of the New South Wales Commissioner of Police, the report of the Commissioner for Corporate Affairs and, above all, the report of the Commonwealth Commissioner of Police, which was made available to New South Wales back in May last year.

In April of this year the Premier stood in this Chamber and said in answer to a series of questions by the Leader of the Opposition and members of the Opposition that he knew of no report to the State by the Commonwealth police of such activities. He went further and said that Police Commissioner Hanson had told him that he had no knowledge of any report by Commonwealth police and that Mr Hanson had spoken to the Commonwealth Commissioner, Mr Davis, who had stated that no such report had been furnished. I know there was a report from the Commonwealth. Others, including the press, know that there was a report from the Commonwealth police. We want to know who is lying. The Premier says there is no report and the New South Wales Commissioner of Police says there is no report, yet there is a report. Who is lying? Who is trying to fool the community? Is there a liar in government circles? Is it the Premier, the Commissioner of Police or some other administrator?

Mr JAGO: Certainly not the Premier.

Mr EINFELD: He said there is no such report and we all know there is such a report. I hope that tomorrow the Premier will have the guts to present the report, the existence of which he denied, together with the other reports. Someone within this Government's administration is covering up, is lying. Can one wonder then, with such an example from the Government, that there are in the community liars, cheats and all kinds of criminals who have no regard whatsoever for morality, or for law and order?"

15th August, 1973—Request from Premier's Department For Commonwealth Police Commissioner to Lift Embargo on Publication of Letters and Notes

95. On 15th August the Under-Secretary of the Premier's Department wrote to the Commissioner of Police, asking him to write to the Commonwealth Police Commissioner, saying there had been a demand in Parliament that Commonwealth communications, i.e. the letters of the 30th May and 8th November, 1972 and the 18 pages of notes accompanying the former, be made public and whether, in view of the requests in Parliament he was willing to lift the embargo against dissemination ordered in the documents.

16th August, 1973—Premier Announces Proposal For Appointment of This Commission

96. On 16th August, in the Legislative Assembly, the Premier announced the proposed establishment of this Royal Commission of Inquiry. His remarks, which preceded this announcement according to *Hansard*, were as follows:

"Criminal Activities in Clubs

Sir ROBERT ASKIN: On 9th August the honourable member for Auburn asked me a question without notice about inquiries that had been made in relation to alleged criminal activities in licensed clubs in this State and I promised him further information. Reports by New South Wales police as to the outcome of these inquiries were tabled by me as long ago as 22nd November last. In fact, I tabled the whole departmental file so that there could be no suggestion that the Government had anything to conceal. For the reasons I stated at the time when tabling the papers I asked Mr Speaker to order that they be available for inspection only by members of this House and Mr Speaker did, in fact, so order.

In my initial reply to the question the other day I said that if anyone wished to move that the file be made available for general information I would give serious consideration to it. However, I pointed out the harm such publication could do—not to the Government, but to the reputations of individuals named in the reports. Even though it has been found that there is no evidence to justify prosecutions, their reputations would inevitably suffer if the reports were published.

Out of concern for those who would be adversely affected I have endeavoured to do the fair thing, but advantage has been taken of this by the Leader of the Opposition and also by the Deputy Leader of the Opposition in an endeavour to make political capital at the Government's expense. Because of this, I said I intended to make the file available for general information instead of being restricted to honourable members as at present. I now believe this would not be adequate.

I have received a letter from the Deputy Commissioner of Police—written in the absence of the commissioner from his office on duty—advising in the strongest terms that the file should not be made available for general publication and setting out sound reasons. So that honourable members can see precisely what he has written I shall table his letter. The honourable member for Auburn and his colleagues should study it well, noting not only the effect publication of the reports would have on the named individuals but also the effects it could have in future police investigations. I have also been advised by prominent members of registered clubs that it would be unjust to publish the reports on the grounds that they would have no opportunity to answer any unwarranted aspersions of criticisms damaging to their reputation.

As regards a Commonwealth police report, I can again only assume that the honourable member is referring to papers made available by the Commonwealth commissioner to the New South Wales commissioner for confidential perusal and mentioned by Detective Sergeant McNeill in his report of 23rd October, 1972. I say "again", because on checking since the question was asked last Thursday I find that the same honourable member asked virtually the same question on 20th March, and I explained the situation fully in my reply on 5th April.

That document—which, incidentally, is not a report but comprises two letters and some eighteen pages of notes—has been classified confidential by the Commonwealth police commissioner and the notes are marked as follows:

This document and the information contained therein remain the property of the Commonwealth Police Force and may not be disseminated to a third party without permission of the Commissioner, Commonwealth Police Force.

As I said in my reply on 5th April, any question of the release of the contents of this document would be one entirely for determination by the Commonwealth authorities. Clearly, it could not be tabled in this House without first obtaining the Commonwealth police commissioner's permission. In view of false statements made during the past few days I have sought the necessary permission. A statement from the Attorney-General's Department in Canberra on 13th August which bears on this aspect is set out later for information. The Government has nothing whatever to conceal. All it is trying to do is to protect the reputations of persons—who have no connection with the Government—named in the reports but against whom no charges have been made.

As members who have perused the file know, the police authorities have stated emphatically that following close investigation no evidence has been forthcoming which would justify charges being made. However, although the Government has done what it considers to be the best and fair thing, it cannot allow to go unchallenged the grave statements made by the Leader of the Opposition on 9th August and subsequently, and reported in the *Daily Telegraph* of 10th August, 1973, and statements on 14th August, 1973, in Parliament by the Deputy Leader of the Opposition. These statements can be construed only as a direct attack on the Government's integrity. The Government has therefore decided to appoint a Royal commission into these allegations. The terms of reference will be as follows:

(1) Whether the reports tabled by the Premier of New South Wales in the Legislative Assembly of the 22nd November, 1972, and the files upon which they were based and any other relevant departmental files disclose sufficient reason to take proceedings against any person in respect of alleged organized crime in or in relation to Clubs registered under the Liquor Act, 1912, as amended, or under the Gaming and Betting Act, 1912, as amended, and if so, whom?

(2) Whether there has been any attempt by the Government of New South Wales or any other relevant attempt to "cover up" the existence of such crime or the identity of any person responsible?

The files referred to in the foregoing provisions of these Letters Patent shall be taken to include the letter dated the 30th May, 1972, the summary of information accompanying that letter, and the letter dated 8th November, 1972, from the Commissioner, Commonwealth Police Force, addressed to the Commissioner of Police, Sydney, on the matter of organized crime of the kind referred to above if the appropriate Commonwealth authority agrees to their production to you as Commissioner.

The Royal commissioner assigned by the Chief Justice will be the Honourable Mr Justice A. R. Moffitt, Acting President of the Court of Appeal. Senior counsel will be briefed to assist the commission. The statement released from the Attorney-General's Department in Canberra on 13th August, 1973, reads as follows:

The Commissioner of Commonwealth Police, J. M. Davis, said yesterday that reports which had appeared in some newspapers over the weekend that Commonwealth Police had uncovered new evidence about the activities of a "Mafia style organization" was incorrect.

Mr Davis also said that the reports contained statements that the Commonwealth Police had told members of the unions involved in the liquor and entertainment industries that the New South Wales Police Force could not be trusted.

These statements were untrue.

Co-operation in this type of investigation was essential.

The Attorney-General had made this clear in an address to all Police Commissioners in Canberra last March when he encouraged all people in the Liquor and Entertainment Industries who are concerned about organized crime to assist the local Police Force in whatever investigations that might be undertaken."

Fullst Possible Disclosure of N.S.W. Police Reports by Premier

97. The mere relation of the events between June, 1972, and August, 1973, based on contemporary documents, leaves no doubt that the Premier went as far as he reasonably could on the material before him toward disclosure of matters material to the police inquiries, including the impact on their inquiry of any material from Commonwealth sources. As indicated in P. 84, up to and including the tabling under Standing Order 57, of the file containing the four reports, there was the fullest disclosure

that would have been reasonable, and this was quite against any attempt or desire to conceal. In the circumstances it was unrealistic of Mr Wran to suggest the reports should be made "available to the press" and "to the public" and it was unfair to assert the Premier had "shrouded the contents of the report in secrecy" (P. 91). The reports were not tabled in the Legislative Council, but, although 9 months had elapsed since they were tabled for inspection of members of the Legislative Assembly, so far as appears, no request was made in the Legislative Council that a similar course be taken there (and see P. 83). Events after the file was tabled in November, 1972, until the Commission was set up in August, 1973, do not alter the conclusion that there could not have been any greater disclosure than had occurred. When accusations were made by Opposition members of "Attempting to cover-up" (Mr Hills, P. 90) and of "lies" (Mr Einfeld, P. 94), the Premier contemplated going further than previously and tabling the N.S.W. police reports fully so they would have been published at large (P. 92), but was reasonably and properly deterred from doing so for the valid reasons given by the Deputy Commissioner of Police (P. 93). Further public disclosure could only occur in a selected way as in an inquiry such as this.

Premier Truthful in Reports Made to Parliament Concerning "Commonwealth Police Report". Mr Einfeld's Accusations of Lies Unfounded and Unjustified.

98. The events after November, 1972, arose from fresh matters raised by Opposition members principally in relation to the Commonwealth information or reports. It must be surmised that by early March, 1973, some Opposition members had some information from some sources as to at least the existence of Commonwealth documents. There existed the 18-page document of May, 1972, and there was the November, 1972, report, to the Commonwealth Attorney-General. By reason of some highly improper conduct on the part of somebody the 18-page document, clearly stamped with confidential markings and containing confidential intelligence information from overseas agencies, was photographed and given to and received by the press. The contents of the report to the Commonwealth Attorney-General were regarded as so secret that eventually it was disclosed to me, but only accompanied by a request, which was virtually a term of its production, that it be not disclosed otherwise. I fully accept the restriction, which was obviously proper, if sensitive relations with overseas intelligence agencies are not to be damaged. It is clear no copy of this ever reached the State Police or State Government. There was a reference by Opposition member Mr Cox to a report to the Attorney-General (P. 87 (a)) and by Mr Einfeld to his own knowledge and to press knowledge (P. 94).

The assertions and allegations made in August, 1973, by Opposition members particularly those concerning "lies" and "attempting to cover-up" need now be looked at from two points of view: (a) the facts as known by the Premier up to the end of March, 1973, and his statements, then, and (b) the apparent basis of the Opposition assertions and allegations:

- (a) It is quite clear that before 27th March, 1973, the Premier neither knew nor ought reasonably have known of the existence of any of the Commonwealth Police letters, notes, or report. I have set out in P. 86 an analysis of the reports and documents before the Premier up till then, which establishes the foregoing. He had not been told of the eighteen pages of notes, or the letter of 8th November, 1972. The fault for the Premier being unaware of those documents, but particularly that of 8th November, rests squarely upon the Police Department. The effect of the final police report was that allegations concerning Bally were baseless. The letter of the senior Assistant Commissioner of Police, dated 6th November, which accompanied this report in effect said "Investigation complete". The final report in effect said earlier information from the Commonwealth (on which the earlier assertions concerning Bally overseas were based) was, in effect, unreliable. While it expressed the hope that further Commonwealth material would prove more reliable, it referred to the Commonwealth overseas trip and left open for there to be some difference of conclusions upon Commonwealth material not then supplied. Then, two days later, came from the Commonwealth Police the letter of 8th November, 1972. It included a statement that the Commonwealth inquiry indicated a continued involvement between "organized crime interests and the Bally concern" and that it was then subject to four inquiries in the U.S.A. This letter was dated some 14 days before the Premier made his statement to Parliament upon the final police report (P. 82). The alleged Mafia affiliations of Bally overseas had virtually initiated the inquiry and had been much publicized in the press. It is hard to understand why the Premier was not informed of the Commonwealth advices when he had been told no further inquiry was necessary. He should have been informed of the Commonwealth views, at least as expressed after the visit of their Commissioner to Northern America.

However, it is clear that the Premier did not know of these documents until 27th March, 1973 (P. 87). This letter appears to have been pursuant to some request by the Premier's Department. It is clear, upon receipt of the letter of 27th March informing the Premier of the documents received by the State Police from the Commonwealth, that the Premier's statement to Parliament (i.e. on 5th April, 1973—P. 88) was fair and accurate (see in amplification P. 88). There is certainly not the slightest basis in any of these events or statements of the Premier to suggest that he either lied or attempted to cover up any matter.

- (b) The Opposition accusations came after an interval and after a Parliamentary recess. In August, 1973, reference was being made back to the file of reports produced to members of the Legislative Assembly in November, 1972 (9 months earlier) and answers given by the Premier concerning Commonwealth documents in April, 1973 (four months earlier). It is obvious, as indicated above, that Opposition members had acquired some information concerning Commonwealth Police documents. It seems Opposition members, or some of them, were themselves confused by their information as to documents received by the State Police. In March, Mr Cox spoke of a report of Commonwealth Police to the Commonwealth Attorney General, and whether it had been made available to the State. In March, Mr Hills referred to a Commonwealth Police report referred to in the State Police report. In August, Mr Einfeld referred to a "report" from the Commonwealth Police and to press knowledge of it. He said the State had it in May, 1972. This must refer to the 18 pages of notes which the press improperly had. These were in no sense a "report" from the Commonwealth Police. Mr Einfeld is in somewhat of a dilemma. If he saw the document in the possession of the press, which, on every page, has the confidential markings, so the "leaking" of the contents of which would obviously be prejudicial to relations with overseas intelligence agencies, it is difficult to see how accusations could be made, concerning a failure to make it public and, why something was rather not done in respect of this serious breach of Commonwealth security. Further, if he had seen the document, he would have observed that its material contents were in the State Police report, tabled in Parliament 9 months earlier. If he had not seen the document, it is difficult to see how, responsibly, he could make so serious an allegation as "We want to know who is lying. The Premier says there is no report, yet there is a report. Who is lying? Who is trying to fool the community? Is there a liar in Government circles. Is it the Premier, the Commissioner of Police, or some other administrator." There was no report. The notes were in substance already before Parliament. It is a serious matter, except on very sure grounds, to make accusations of lying, possibly applying to or, as in this case, really pointed at the Premier. Neither the Premier nor the Commissioner of Police had lied. There was not ground to suggest either had.

Premier's Action Upon Observing Differences in Police Reports. No Challenge to Premier, Who Asked to Give Evidence

99. Before leaving the documents, there remains the question whether any inference relevant to Term 2A can be drawn from the differences in the reports and any action taken consequent upon the Premier observing the differences, as referred to in P. 82. One would expect a departmental head, and in the same way a Minister, normally, to rely upon those under him to supply accurate and reliable information. However, in appropriate cases, one might expect that some additional checks might be made by such head or Minister to satisfy himself upon the reliability of any presented report or material, where there is presented an unusual or unexpected report, or one in conflict with other material. Even so, a failure to make additional inquiry may well only be a matter of criticism for not taking charge of the department. In an extreme case a failure to inquire might with other material, point to a conspiracy with the person reporting, corruptly to cover-up the matter.

In the present case, I think there is not the slightest basis to make any such inference as last referred to. In fact the Premier, in my view, made all reasonable inquiry. He queried the difference in tenor, as confirmed by his contemporary note. He gave evidence before me of the inquiries made, having indicated, through counsel, his desire to be called to give evidence. He also swore that he had never been motivated to cover-up organized crime in New South Wales or elsewhere. Despite ample prior notice, no person sought to appear to ask questions of the Premier and

counsel for neither of the two unions represented (which unions had expressed genuine concern on the matter of crime in clubs not being covered-up) sought to ask the Premier any questions. No question was put that he had lied in Parliament or attempted to cover-up any matter. In the circumstances, as I had a duty to inquire, Mr Needham, Q.C., assisting me, asked the Premier detailed and searching questions. I accept the Premier's evidence. There is no basis to do otherwise. He was not challenged by any evidence, or even by any question any person sought to put to him.

The evidence of the Premier was that he discussed the difference in the reports with Sir George Gray, whom, he had the impression, had discussed them with the Police Department, and that Sir George Gray, in effect, informed him that the difference in the reports arose from the fact that the first was a preliminary report, before investigations were complete, and relied upon allegations, hearsay, newspaper headlines and in addition some information supplied by the Commonwealth Police, whereas the latter report was made after a full investigation. (T. 274, 279-83).

Three Other Ministers Satisfy Themselves Upon Differences in Reports

100. The final report came to the notice of other Ministers, as had some of the earlier reports (e.g. first report), as various departments of Government had particular interests in the subject matter of the reports. Mr Hewitt, as Minister for Labour and Industry, had an interest, as his department administered the Industrial Arbitration Act and so had responsibility for the issue of licences and permits to theatrical agencies and theatrical employees. Mr Maddison had an interest as Minister of Justice, and administered the Liquor Act, which regulates the licensing of registered clubs. Mr Griffith, had an interest as Chief Secretary as the Minister responsible for the licensing of poker machines and tax relating thereto. Each, of course, as Minister in charge of a particular department, had a limited interest. Differences in the report were observed. Following some approval, informally given by the Premier, these three Ministers met the Assistant Commissioner of Police, Mr Lendrum, on 8th December, 1972, in the office of Mr Hewitt. Mr Lendrum was asked about the differences in the reports as "They did not appear to reconcile". He said he had observed the difference in approach in the two reports and for this reason had given the matter particular attention. He answered the Ministers that he was satisfied the final report was a complete one, made after a thorough investigation, and that he considered it should be accepted. He said McNeill had great experience and an unblemished record. In answer to Lendrum's question whether McNeill's honesty was being questioned, he was assured this was not so, but only that the Ministers wished to satisfy themselves that a complete and thorough investigation had been done. He was asked why the reports seemed to be different, and Lendrum replied that a lot of the first report was hearsay, that the last was after a thorough investigation, that extra men had been put on and that he was satisfied the last report was correct. The substance of this evidence is supported by the testimony, before me, of the three Ministers earlier referred to. I accept their evidence.

Summary of Assurances Received by Premier and Three Ministers as to Police Reports

101. In summary, therefore, it appears first that there was the letter dated 6th November of the senior Assistant Commissioner of Police that he was satisfied that the matter had been "fully and thoroughly investigated", and that the Superintendent-in-Charge, Criminal Investigation Branch (also Mr Lendrum) agreed with the opinions expressed in the report; second, that the Premier had the assurance of his Under-Secretary above referred to, and finally, three other Ministers had assurances in convincing terms from Mr Lendrum. It is obvious that a Minister could not well discharge his busy functions unless he relied upon the ability and integrity of senior members of the Public Service, including the Police Department. If upon a specific matter of concern a Minister raises the matter face-to-face with his head of department or senior police officer and receives convincing assurances, it is difficult to see how he could do more, unless he is to assume the role of private investigator. Having seen Mr Lendrum as a witness and observed his independent stand on some matters concerning police administration, I can see no conceivable ground to criticize any Minister who accepted the written and verbal assurance they received.

102. For the reasons set out in the foregoing paragraphs, there is no basis at all to conclude from an examination of the reports, contemporary documents and what was said in Parliament, according to *Hansard*, that the Premier, or any member of the Government made any attempt to cover-up any relevant matter concerning the State or Commonwealth investigations into organized crime in or in relation to registered clubs.

No Other Basis to Find and No Assertion of Government Attempt to Cover-up. Opposition Members did not give Evidence. Reasons why such Members not Subpoenaed

103. There remains the question whether there is any other ground to base any argument that there was "an attempt to cover-up" by the Government, for example, that the Premier or any other Minister was trying to protect somebody. There is just no evidence or basis to support other than a "no" answer to Term 2A. I made a series of public statements, which could have left no doubt in the minds of the Members of Parliament who had made the statements quoted in PP. 87, 90, 91 and 94, that if they had or were aware of any evidence in relation to Term 2A, i.e. which related to the Government, that they should communicate with the secretary of the inquiry. No Opposition Member of Parliament did so. In Parliament they did not assert that they had any information outside the documents in support of what they said. Having not elected to come forward and either give evidence themselves or put the secretary in possession of evidence which could be given by others then, as a matter of common sense and in accordance with a well-known legal approach in relation to a witness not giving evidence, I can only infer and do infer that they were not in possession of any particular material in relation to Term 2A, other than would appear to my inquiry upon an examination of the documents and *Hansard*. I should add that I took the view that I should not myself take the initiative of having them compulsorily called. Although the Legislative Assembly appears to have waived the privilege of that Assembly, in passing a resolution on 21st August "giving leave to Members of the House to attend, if they think fit, as witnesses before the Royal Commission" (T. 2-21), the privilege of individual Members remained. There is no issue before me, under Term 2A, which calls upon me directly to investigate the meaning to be attributed to what Opposition Members said or to determine what such Members in fact meant by their words. That is a matter for Parliament and its Members and not for me. The only issue before me is whether there was in fact an attempt to cover-up as referred to in Term 2A. Consideration of that question has involved me in examining what happened in Parliament and what appeared to have been asserted there. Beyond that it was not relevant to go. In fact, I considered it would be undesirable for me to attempt to enter the irrelevant field of examining and perhaps having Members cross-examined as to what they meant by their words, or how they justified what they said in Parliament.

Conclusion and Answer

104. It follows, despite the assertions made in Parliament, that no witness has come forward to give evidence in support of a positive answer to Term 2A, that no submission has been made to that effect, and that upon a detailed inquiry made by those assisting me and a detailed examination by me of all the relevant documents and material, there is just no basis at all to support a positive answer to Term 2A. On the contrary, it appears positively that the Government uncovered all the available material from police sources, so far as was practicable in the circumstances.

105. I answer Term 2A "No".

Part VI.—Term 2B

Term 2B: "Whether there has been . . . any other relevant attempt to 'cover-up' the existence of such crime or the identity of any person responsible?"

"Relevant" Attempt to Cover-up applies to Investigating Police

106. Reference is made at P. 34 and the decision there indicated that an attempted cover-up by those charged with inquiring and reporting to the Government (i.e., the police) would be an "other relevant attempt to cover-up" within Term 2B.

No Evidence Against any Person Except Three Police Officers

107. I say at the outset that there is no evidence of or pointing to any police officer, or any member of the Corporate Affairs Commission, who assisted the police, being concerned in any "attempt to cover-up" falling within Term 2B, with the exception of three police officers, to whom reference will shortly be made. The others are persons of good character and service and a number have awards or commendations for good service or bravery. They are dissociated, so far as the evidence shows, from matters of inference or criticism, arising from the terms of the reports or from the general conduct of the inquiry. No police officer, other than the three, signed any

of the reports or was responsible for their composition. It is very clear that McNeill made the decisions as to the method and areas of inquiry and required his men to adhere to his limitations. There is no evidence of any officer more senior to McNeill falling within Term 2B.

108. The three police officers, in respect of whom the evidence calls for analysis and decision under Term 2B, include, first, McNeill and Knight. The third officer is Ballard, whose name I include, because of his involvement with McNeill in some matters of possible relevance to Term 2B. These matters will be dealt with. In fairness to Ballard, I should say now that, on any view, his relation to the serious questions which arise concerning McNeill and Knight is slight and leads, on ultimate analysis, to a clear answer "no" to Term 2B, so far as Ballard is concerned. The position of Ballard is a strange one. At one point, there are some indications that he was concerned with a change of interest of his seniors to the inquiry, sufficient to mention it to the Commonwealth Police. He referred at the same time to an intelligence report of moves of Rooklyn to see somebody in authority to take the heat out of the inquiry. The interviews by Ballard were purposeful. The final interviews of Knight were not. Ballard was the second signatory to the first three reports, but Knight replaced him on the contentious final report. On the other hand, on some matters which concerned Ballard with McNeill, there is suspicion against them both. However, wherever McNeill participated, he made the decisions. I have found some of Ballard's testimony not acceptable. In the end, I think Ballard's position is explained by my conclusion that, before me, he has endeavoured to "close the ranks", in aid of his senior officer McNeill, in meeting the difficulties that arose for McNeill in the course of my inquiry. In respect of his testimony Ballard is open to some criticism. I was otherwise impressed with him as a witness and a police officer. He is a man with a fine police record.

Cross References to my Procedures and some Preliminary Questions. PP. 38-44

109. No allegation had been made against any police officer, but it became my duty to investigate. The course of events in my inquiry, which led to the occasion to investigate the police inquiry in some depth and the procedures then adopted, are set out at some length at P. 40. The circumstances which led to counsel for the police being handed a document (quoted in P. 123) drawing attention to relevant matters, is set out in P. 41. Submissions of counsel, as to the conduct of the inquiry and whether any criticism should be made of the police conduct of the inquiry, are dealt with, as preliminary matters, in PP. 38-9, 42. My method of taking sample areas to test the quality of the police inquiry, and the procedure, generally adopted by me under Term 2B, are set out in PP. 43-4.

Meaning of "Attempt to Cover-up"—cross-reference. P. 63

110. Of critical importance is the meaning of the words "attempt to 'cover-up'." This is dealt with in P. 63 (and see P. 37), which should be deemed to be incorporated in Term 2B. It there appears that "attempt" directs the question to whether there was a corrupt or deliberate attempt to conceal or not to discover. The answer is not conditional upon whether or not, two years after the event, a Royal Commission can prove acts of organized crime. The example, there given, has some similarity to events arising in the police inquiry.

Cross-references to Facts in Introduction and Under Terms 2A and 3

111. It is not possible to deal with Terms 2A, 2B and 3 in separate compartments, nor convenient to cover the same ground in each. The general history of events and a general reference to the police reports and Commonwealth Police documents is set out in PP. 6-30. The additional history of events, particularly the passage of the reports to the Premier and the happenings in Parliament, concerning the police reports and Commonwealth documents, with some reference to some parts of such reports and such documents, is set out under Term 2A, particularly in Pp. 68-96. An area, in which my inquiry itself examined the same subject matter as did the police, was of the affiliations overseas of Bally with criminals. While what was discovered by my inquiry was considerably more than was reasonably discoverable by the police, some substantial matters discovered were discoverable by and ought to have been uncovered by the police. For a full understanding of what was discovered by my inquiry concerning Bally overseas, cross-reference must be made to Term 3.

General Reference to Questions Concerning Three Officers, McNeill and Knight, and to a lesser degree Ballard

112. I can recapitulate to a degree. The police reports, particularly the first and the last, cannot be reconciled. Moreover, the last report does not fairly and accurately state what had been discovered. Upon a fair reading, it is misleading as to what ought to have been reported in the final report. In fact, it covers up the true position, on the subject matter of organized crime, in relation to Bally, as it ought

to have been reported on the material, then before McNeill. In fact, to a serious degree it covers up the true position concerning Bally, as it ought to have been reported, if the police had made, from New South Wales, the inquiries concerning that organization, which were open to them and, which ought to have been made. In material respects the Government was misled by a report, which did not present the truth concerning Bally. I will deal with my reasons for these conclusions later, in the course of dealing with the present term. McNeill signed all the reports. Ballard signed the first three and Knight signed the last report. McNeill, somewhat in military fashion, conducted the inquiry, or the basis, substantially of directing each officer what to do. Those officers were expected to inquire strictly only within his directions. All the reports were McNeill's composition, but, of course, after some consultation and reading of some notes, made by his men. While an individual officer is open to any relevant criticism concerning performance of any particular duty assigned to him, e.g. Knight assigned to South Sydney Juniors, the responsibility for the inquiry, otherwise, falls upon McNeill. My inquiry revealed matters, not revealed by the police inquiry, which ought reasonably to have been. Those, which concern Dean and Riley and South Sydney Juniors, fall within Knight's province. Those, which concern Bally overseas, fell within the province of McNeill and perhaps Ballard. Again, McNeill and Knight, but particularly Knight, were parties to some private dealings with the head of Bally in Australia, which is a ground for possible inferences against Knight, but to a lesser degree against McNeill. Ballard's position requires consideration upon a much narrower basis. Except so far as the first report is open to some criticism (and even then he did not compose it), nothing against him arises from the reports. When it came to the last report, Knight was substituted for him as signatory. No responsibility for its composition rests upon Ballard. His position needs consideration because he was the principal go-between the State and Commonwealth Police. Because of what appears to have been an unjustified discarding and, perhaps, at some points, suppression of important information from the Commonwealth Police, McNeill's and Ballard's part in such events requires careful scrutiny. However, in the end, the question under Term 2B is whether the matters, referred to, occurred because of a deliberate or corrupt attempt to cover-up matters in relation to organized crime.

Proof of Likely Operation or Existence of Organized Crime, Where No Legally Admissible Evidence Exists

113. Very little evidence, admissible upon a criminal prosecution, of actual crimes in New South Wales, capable of classification as organized crime, was revealed either by the police or my inquiry. American experience is that, with organized crime, this is, more often than not, the case. A weapon of "organized crime" is by planning to avoid generating evidence of its crimes, or, if there is evidence, to suppress it, by intimidation or corruption. However, there is at times other evidence of varying quality that crimes, not provable in a court, are or may be occurring, or that criminals are operating within legitimate businesses. There may be sufficient material to be satisfied that there has been some assault or threat or bribe, yet the participants or the victims, when interviewed, will not provide admissible evidence of the crime. Generally speaking, there was some material of this type, revealed in the police and my inquiry. Where it can be so deduced that organized crime is or probably is in operation, law enforcement agencies and governments need to know what is happening and certainly not to be misled, by being told there is no crime or there is no movement of criminals into some vulnerable field or there is no penetration of legitimate businesses by criminals, when there is sufficient indication there is. Much has been done in the United States in the war against crime, because the authorities know what is occurring. This was particularly so following the special inquiry set up by President Johnson.

Scope of Police Inquiry not merely to prosecute, but to advise Government generally as to infiltration of organized crime

114. The matters stated in P. 113 require that the scope of the police inquiry be stated, as a preliminary to a judgment of its quality. McNeill, before me, and counsel on his behalf, claimed the limit of his inquiry was, in effect, to apprehend desperate gangsters from the United States, upon collection of admissible evidence. It was claimed that it was neither his function, nor within his jurisdiction, to make findings concerning criminal influences in the United States in the operation of Bally, and that reporting upon whether there was or was not infiltration of organized crime from the United States depended upon whether there was evidence, which would sustain prosecutions. It is fundamental to my inquiry that I examine these claims with care. In my view these claims are unfounded and inconsistent with contemporaneous police documents. In any event, to seek to impose such a limitation upon any inquiry, police or otherwise, into the general subject of organized crime or its infiltration within legitimate business into this country, would dangerously misconceive the operation of organized crime and fail to perceive the only realistic logic apt to acquire awareness of its operation, in an attempt to counter it.

115. The context, in which the police inquiry continued over some months, was one, where there was direct Government and Parliamentary concern and Senate interest in the subject generally of infiltration of organized crime into the clubs, so as to constitute a present and future threat to the clubs. This was so widely publicized, that the investigating police must have been fully aware, certainly from July 1972 onward, that the subject matter of their investigations and reports was a matter of Government and public concern, not limited to the prosecution of persons where satisfactory evidence could be produced, but also to what infiltration of organized crime was in the process of moving into the lucrative club industry fields in New South Wales. There is some acknowledgment in documents that it was so understood.

Scope of "alleged organized crime"

116. Term 2B uses the words "such crime" in the expression "other relevant attempt to 'cover-up' the existence of such crime or the identity of any person responsible". The word "such" relates "crime" to the words "alleged organized crime in or in relation to clubs registered . . ." appearing in Term 1. However, the words "organized crime", adopted into Term 2, are upon a wider basis than in Term 1. In Term 1 organized crime is only relevant, where proceedings can be taken. This pre-supposes that the person committing the crime is identified. In Term 2 the subject matter of a relevant attempt to "cover-up" would include, as an alternative to an attempt to cover-up "the identity of the person responsible", an attempt to cover up the existence of the alleged organized crime itself. In the case of organized crime, often the existence of a crime is provable by evidence admissible in a court of law, or, alternatively, may be determined to exist by some less strict proof. It may be it can be deduced that such crime is organized crime and yet the identity of the person is unknown or incapable of proof. Proof of the existence of organized crime, where the identity of the person is unknown, pre-supposes proof other than in a court of law and for a purpose other than prosecution. In this situation, such lesser knowledge or proof, concerning the organized crime, may be regarded as acceptable to base Government and law enforcement policies concerning such crimes. In these contexts it is habitually so regarded in America. An attempt to cover-up the existence of organized crime itself, say, operating by unknown persons in some connection with a legitimate business, would fall within Term 2.

117. The term "organized crime" can lead to some debate as to definition. For my purposes, resolution of the academic conflict between writers as to its meaning is unnecessary. I am not concerned with the differences of view as to the extent to which there is or is not some all encompassing under-world government. I would be inclined to the view that such concepts are in-substantially based, and that a greater degree of organizing, co-ordinating or governing of crime groups has been assumed, than is logically justified upon available material. However, equally unjustifiable is the tendency of some, in reaction to these insufficiently substantiated assumptions, to write off "organized crime" as no different from any other crime, or to appear to dispose of it by the confused and ambiguous statement "There is no Mafia". The strong body of American opinion, well supported by material elicited in various Senate and other inquiries, and by apparently balanced views of law enforcement authorities, is that "organized crime" at least operating in groups, some family type groups, has a degree of organization and methods of operation, including operation within legitimate business, such as described in the report of President Johnson's inquiry, referred to by me elsewhere. Much of what is written by Professor Cressey as to the methods of operation, if applied to individual groups, should be regarded as probably sound. I am not concerned with questions of super-organization over all of groups, if it exists. I am concerned with that which was being investigated by the police as organized crime. Thus, the word "alleged" brings the subject matter of my terms of reference realistically to that which in the police inquiry was being referred to and investigated as organized crime "in or in relation to" registered clubs. What did the police set out to investigate, and what did they investigate and report upon in their various reports, which might be said to be organized crime? However, it will be necessary to refer to the methods of operation of organized crime in the United States of America, particularly within the vehicle of legitimate business, because, basically, the police investigation was concerned with whether persons, connected with organized crime in the United States of America, had infiltrated certain legitimate businesses there or had affiliations with or influences upon their operations there, and by these vehicles, in the course of apparently legitimate operations in New South Wales, were bringing criminal activity or the threat of it or the potential for it into the registered club industry.

How is Crime proved to be organized? What are standards of Proof?

118. Irrespective of the definition of organized crime or the subject matter which is the "alleged organized crime", a critical question, which has to be faced up to in any inquiry, is how it is to be established the crime is "organized" or, more correctly, how is the element proved which constitutes it organized crime. There is not in this State any criminal offence, which has as an element that which attracts to the crime

the term "organized". Despite some recommendations in the United States of America that there should be some special offences with such an element, this has not occurred. There are, for example, the crimes of bribery, offering or receiving a secret commission, assault or murder. A particular act constituting any one of those crimes may or may not fall within the description of "organized crime". Whether it does depends upon elements other than the necessary ingredients of the crime. The same is true even of conspiracy. This is usually an element of planning in any conspiracy, but it would be quite inapt to describe many conspiracies as organized crime. Thus the conviction of Vito (Don) Genovese, the head of the Genovese family, for conspiracy in connection with narcotics was a part of organized crime, because the persons involved were reputed members of a crime syndicate. Perhaps this classification would, in any event, have been made, because of the highly organized system of narcotics smuggling which was the subject of the conspiracy. Even if a police inquiry were limited to whether actual acts of organized crime have taken place (i.e., as distinct from some broader inquiry into activities of criminals), the inquiry would be into two quite separate matters. Each, according to the purpose of the inquiry, would possibly call for different standards of proof. The first step would be whether there had been committed a crime known to the law. If the inquiry were for the purpose of criminal prosecution, then the ordinary requirements as to legally admissible evidence would be required. To the extent that the inquiry is for some other purpose, such as for Government or police information, in order to base some executive action, some lesser standard might be acceptable. The second step would be to endeavour to come to some conclusion, whether there are collateral elements, which establish that the crime is part of organized crime. As the second step is not a necessary element to found a charge or convict the perpetrator, its investigation can only be for some other purpose. If the crime is organized crime, it is a matter for graver public and governmental concern, and knowledge that it is may aid future planned preventive or detective action in relation to similar future crimes. A weapon of organized crime is to insulate from the crime those who organize it. This may be done by having the crime committed by persons or in a way, remote from those who organize, or, by a planned absence of evidence of the crime or at least of the links with those who organize, or, by the suppression, by intimidation or corruption, of evidence which may exist. For these reasons, in seeking to make decisions as to the presence and operation of organized crime, investigators, and hence governments, will normally have to rely on evidence of a different character to that necessary to prove the crime itself. This is the clear pattern that emerges from all the principal inquiries in the United States in relation to organized crime.

119. Criminal acts may become acts of organized crime, because they are organized, controlled or executed by persons engaged in the business of organized crime or, because the acts can be shown to be part of such an organized pattern, that they answer the particular definition of organized crime. A conclusion is open that the crime is organized if there is any satisfactory evidence of connections of persons in the business of organized crimes with the operations in which the crime is committed. For example, bribery, blackmail or assault, in the course of a legitimate business gaining a monopoly, could be regarded as organized crime, where it is shown that gangsters are connected with the operation of the business or have invested their monies in it. The actual link would rarely, if ever, be provable by any direct evidence, but the connection of the criminals with the business and the connections of the business with the crime may be sufficiently proximate to enable the probability of the link to be inferred, for the purpose for which the inquiry is made. The connections may be shown to exist or have existed, but be so remote that the inference should not be made. Whether the inference should be made may depend upon the inquirer having a deep, but balanced, knowledge of the modes of operation of organized crime.

120. If the inquiry is wider than merely whether particular acts of organized crime have in fact been committed, and is as to whether a legitimate business is expanding its operation or seeking to monopolize a field of business and is backed or controlled or influenced by persons engaged in the business of organized crime, so as to offer a present or future threat of crime, then, while it would be very important to inquire whether acts of organized crime have been committed, the true focus of the inquiry should be upon the character of the expanding and apparently legitimate business operation.

Scope of Police Inquiry

121. Whether there were shortcomings in the police investigation or in the police reports, and whether any such shortcomings evidenced an "attempt to cover-up" within Term 2B, can only be judged by making a preliminary finding as to what the police inquiry set out to do, i.e., what was its scope. If it fell short, why? Was it an attempt to cover-up? Or was it for some other reason? There is a conflict, as to the scope of the inquiry, in the evidence, and counsel for the police sought to explain or excuse various apparent short comings by a claim, in effect, that the inquiry was into whether specific persons could be shown, by legally admissible evidence, to have

committed particular alleged crimes for which they could be arrested and charged. It was asserted that the police concept of their duty was to locate and charge the desperate gangsters they expected to find. This, however, is quite in conflict with contemporaneous documents. While evidence of its scope otherwise is shown at points throughout the documents, including parts of the final report, it is best indicated by reference to the first police report. By then the allegations and intelligence information had been in the course of collection for over six months. The force of investigating police had been enlarged to form a squad to make a special investigation, and the first major and planned raid had just been set on foot. If there was any attempt to cover up the existence of alleged organized crime this, it would seem, occurred primarily by reason of the negative terms of the final report, coupled with any failure to inquire or suppression which preceded it. Hence the scope of the inquiry should be best shown by the first report.

The central question of the police inquiry was whether organized crime in a general sense was infiltrating the registered clubs, to the great danger presently, and in the future, to club operation. Basic to this general question was the knowledge that the many millions of dollars involved in club operations was an attractive and possible target for criminals. Also basic to it was the realization that, if organized crime gained a foothold within the clubs, it might be difficult to remove and would constitute a threat of serious crime and expansion of crime into other areas related to clubs operation. The real subject matter was not so much whether there were particular criminal acts within the operations of the clubs, but whether any organized criminal groups were moving into the industry under the cover of legitimate businesses. Of course, if they were, it might well be expected they would demonstrate their presence by some criminal conduct.

The police inquiry was primarily concerned with organized crime of a particular origin and the use of particular types of legitimate businesses, as the vehicles for the infiltration of organized crime into the club business. The organized crime was of American origin or American pattern, moving into or infiltrating the club industry, but by the particular method of using the vehicle of legitimate business, in the poker machine and entertainment fields. This broad question spread out into related questions, as to who were or might be behind such moves; whether American criminals were associated with or using these legitimate fronts, to enlarge or monopolize the fields of legitimate business here, as a possible step to "skimming" some of the large profits of the club industry, and as a possible step to expansion into other fields of legitimate, but criminally backed, business or into straight fields of criminal activity; whether the American criminals were combining with local criminals in these operations; whether local criminals, on their own initiative, were themselves entering these legitimate fronts, in the style of American organized crime; and, whether, in the process of penetration of the poker machine and entertainment fields and in the process of gaining monopolies in them, methods of organized crime were being used, such as corruption and intimidation of club officials.

There became and are mixed in with the broad question, above referred to, questions whether some officials, e.g. Dean of South Sydney Juniors, with others, such as Riley and Abrahams, in some organized way, were corruptly cheating and exploiting the clubs. This class of conduct came to be examined in a context, where it might be found that it was part of organized crime in the American sense, in that there were links between this conduct and the professional criminals, e.g. McPherson, who perhaps was linked with the American, Testa, participating in or organizing these activities. There were some allegations that links of this description existed. In a sense, particularly in cases such as Dean and Riley, there were two inquiries (see P. 118-9), namely, an inquiry into the conduct of the officials and an inquiry as to the existence, or otherwise, of the links. Thus, it became appropriate to examine and report upon the conduct of club officials, irrespective of whether any conclusion could be come to concerning whether the links, being investigated, existed. If the conduct of the officials was improper or criminal it remained so, whether linked with professional crime or not. Of course, if it were found it was so linked with American style organized crime, or if there were indications that it might be so linked, a serious matter of grave public concern would have been revealed. If the conduct of officials, although not shown to be linked with organized crime in the American sense, was of an organized character, in the sense that it was part of a planned operation to exploit clubs, for example, if it was shown that persons, in an organized way, sought appointments as club officials to exploit clubs to their profit and the detriment of the clubs, or, while holding office in clubs, in a calculated business-like way engaged in a series of planned acts to exploit the clubs, then this would be crime which was organized, but would not be "organized crime" in the somewhat special way used by writers concerning American organized crime. However, having investigated the conduct of such officials, or having made their activities the subject of the inquiry, as a step in the inquiry concerning organized crime, and having reported concerning the alleged criminal activities of these officials, the conduct of such investigation and this report upon them could have relevance to Term 2B (P. 117).

Scope of inquiry as defined by documents—as demonstrated by Police Report

122. The scope of the inquiry is contrary to that asserted now by McNeill. Many parts of the documents show this. A few examples will suffice. The subject matter of the inquiry is expressly stated in the headings of the first, third and last reports, i.e., "allegations regarding infiltration into the Registered Clubs in N.S.W. by persons backed by American syndicated crime". The first paragraph of the first report, in enlarging upon this, treated "American syndicated crime" and "American syndicated criminals" as the same. This appears to accept that activity, backed by "syndicated" criminals, may be sufficient to establish the nature of the activity. This, anyhow, is in accordance with the allegations and content of the early reports, and to a degree the last report, in that the matter of concern was the connections in America between the businesses, or the persons interested in or running them, and criminals. Local activities were looked at in relation to possible connections with local criminals or, via legitimate business, with American criminals. Paragraph 1 of the first report continues, by stating the allegations were that the persons so backed by "American syndicated criminals" were "moving into" the club industry "per medium of poker machines and entertainment with the ultimate intention of eventually taking over food and cleaning services in the industry." The first report then continues:

"3. The Bally Manufacturing Corporation of America and its subsidiaries are clearly Mafia controlled and criminal involvement in this organization will be dealt with at length in due course, as it is through the Bally poker machine, produced in America, and imported into this country that the alleged Mafia takeover is being made".

Thus, the proposition is, first, that in America, in this American legitimate business, there are criminal connections and influences and, second, that it is in connection with the introduction of the Bally poker machine into N.S.W. clubs that the "alleged Mafia takeover is being made". Having in mind what I have earlier said (P. 118-9), quite central to the inquiry was the first part of the proposition. The first matter, to be established or rejected, was whether the Bally organization in America had the criminal influences in question. In order to determine whether U.S. criminal influences are entering N.S.W. within a legitimate U.S. vehicle, it is necessary, first, to find whether they entered the vehicle in U.S. The U.S. vehicle, i.e. Bally, did in fact have many and continuing connections with criminals and reputed criminals, such as were likely to lead to criminal influences in their operations, a matter to be dealt with under Term 3. However, as will appear, the overall message of the final report in its context and the conduct and statements, at about that time, of McNeill and Knight, who signed that report, was that the Bally organization was "clean" or free from any criminal influences. So far as it was sought, by McNeill in his evidence, and by counsel's submissions on behalf of the police, to escape from the consequences of this view of the report and these statements, by assertions that it was not part of the N.S.W. police function to inquire into the criminal connections in America of Bally, this must be emphatically rejected, for many reasons, not the least of which is that they in fact treated it throughout as part of their inquiry.

Because this is a fairly critical matter, I have paused to explain my conclusion that the scope of the inquiry encompassed determination of the criminal affiliations of Bally America. The very first matter brought to the attention of the police, which ultimately led to the police inquiry, was the report to McNeill that the American company was "Mafia controlled" and that this could be demonstrated by the English defamation action. Newspaper reports of that action were available here and transcripts could have been obtained, as they were by my inquiry, without any person leaving New South Wales.

I return to the first report. Paras 4-15 relate the details of operations in America of Bally, the association and connections of various persons within it with reputed criminals, being material stated in support of the conclusion in para. 3, quoted above. It stated the shareholdings in Bally America in 1963, when a consortium took over its operations. It traced some of the changes thereafter. It stated the various connections of the leading shareholders and directors. It stated the hidden shareholding in 1963 of Catena (a very leading member of organized crime in U.S.A.). It revealed that shareholders Sugarman and Green, were party to this manoeuvre. It dealt with Runyon Sales, the Bally distributor on the East coast of the United States over many years and continuing, and the shares of Sugarman, Green and Catena in it. It stated the business connection of Kaye, a Bally director, with Catena. It stated the connections of Klein, a Bally director, with various reputed criminals. It stated the history of Catena. It referred to the English defamation action and some of the matters there revealed as to the criminal connections of Bally's English distributor, and also the criminal links in America of the Bally organization. It included the passages, "During the hearing . . . it was shown that the proprietors of the company (the English distributors) had dealings with a number of well-known American criminals and that Bally poker machines and slot machines were produced in America

by a Mafia controlled organization," and "During the hearing, Sam Klein and Irving Kaye were mentioned unfavourably because of their proven association with the Mafia." It appears, elsewhere, that the police, in particular McNeill, were aware that O'Donnell, the Bally president, gave evidence and made some admissions. In fact, as appears in my report upon Term 3, the principal source in that action for the view, that the Bally organization had criminal associations, was the evidence of O'Donnell. Of course, it can be argued that, at some points, but certainly not all, there was difficulty for New South Wales Police to obtain overseas information. That does not exclude material, that had been received or was capable of being obtained in New South Wales from overseas, from the scope of the inquiry. It does not justify the discarding what they already had.

The report of 16th August (that intended to be passed to the Senate), described the scope of the inquiry on lines similar to the earlier report. It indicated the police had information from crime intelligence agencies "that a number of persons connected with the Bally Manufacturing Corporation have criminal backgrounds including some of the major shareholders". It added, "However, we have been informed that these persons were bought out by the Bally Corporation in an effort to clean up the company . . ." and "At the present time we are unable to establish if the movement of stock through the American Stock Exchange was a legitimate transaction or if the stock was transferred only to whiten the company." the report then states:

"9. It would appear in any case, that the principals of the Bally Corporation in America are still connected with persons who are alleged to be members of the organized crime syndicates, but it is very difficult to establish these connections, from inquiries we have been able to make, at this stage, in this country.

19. We have endeavoured to make inquiries through the . . . agent in the . . . , to establish the background of some thirty-two individual American persons and some five American entertainment agencies, connected with the local entertainment group. At least some of these persons are alleged to be connected with the organized crime syndicates in America, however, to date we have not received any information back to verify our suspicions. In addition we have endeavoured to identify some fifteen individual persons and twenty-five American Companies and their backgrounds who are connected with the Bally Manufacturing Corporation of America and Bally Australia Pty Ltd, some of whom are alleged to be connected with Syndicated crime in America. Reports that we have received confirm that this is the case, however, again we have not been supplied with any definite information that would establish this position beyond any doubt."

The source of the inquiry (the name being omitted by me for reasons of confidentiality) was one resorted to directly by the N.S.W. Police. It is a well-established reputable overseas law enforcement agency which directly supplies the N.S.W. Police with information concerning American criminals.

The report continues:

"20. From newspaper articles appearing in the English Press it appears that a libel action taken out by Associated Leisure, an English distributor for the Bally poker machines, against the London Daily Mail, failed, and the Court found that in fact the Bally Company had "Mafia" links. It would appear that evidence given on oath at this hearing would be most beneficial to our inquiry and we are endeavouring to get a certified transcript of these proceedings."

Reference was then made to some local incidents and allegations, particularly upon the subject-matter of assaults and stand-over tactics, and the final paragraph provided as follows:

"27. We feel that there is considerable substance in the matters under investigation which must be recognized as being of national importance."

This report (supplied to a Commonwealth authority) and the statements it makes, indicating the direct involvement in and inquiry into overseas matters by the N.S.W. Police, is completely against and discredits the claim, now made, which in effect is that the final report did not really purport to deal with criminal connections outside Australia and that this was outside the jurisdiction of the N.S.W. Police and was left for the Commonwealth authorities to inform the N.S.W. Government upon it, if they thought fit.

While the third and fourth reports progressively direct greater attention to the question of evidence of criminal activities in New South Wales, in relation to registered clubs, they do so still under the same heading as the first report and, accordingly, upon the basis of whether there had been an infiltration by persons "backed by American syndicated crime". The final report omits, or discards, the earlier references and findings concerning the criminal affiliations in America related to Bally, but still treats that subject matter as material and important. Paragraph 116 of the final report

(earlier referred to) appears to discard it, not as irrelevant, but because it is now found not to be "reliable". Having regard to the terms of the earlier reports, the earlier references to the defamation action and the absence of any ground to find unreliable, that which was earlier accepted, the change is quite extraordinary. However, the change has nothing to do with it being outside the scope of the police inquiry or outside their jurisdiction on the ground it relates to matters outside New South Wales. Moreover, paras 174, 176, 179, 180, 181, 183, 184, 185, 192, 209 and 211 deal with overseas relations of Bally and treat inquiry into them as within the province of the N.S.W. Police.

Material which supports prima facie, a cover-up by some police. Particulars given to police—m.f.i. 182

123. My inquiry into whether there was an attempt by the police to cover up, which falls within Term 2B, must start by examining the inferences which are open to that effect and then, by an examination of the entire evidence determine whether there are reasons why the inferences should not be drawn.

The material, which, *prima facie*, appeared to point to an inference to an attempt at cover-up by some of the police, appears in a document M.F.I. 182, which was handed to counsel for all of the police, at the end of the tender of evidence by counsel assisting me. As it forms a convenient summary of that material, and as I will refer only to parts of it, it is convenient to set it out in full as follows:

"Some indications of material apparently warranting attention of legal advisers of investigating police for the purpose of explanatory or other evidence or attention ultimately in submissions

1. What appear to be discrepancies between final report and earlier reports.
2. Conclusions expressed in final report which appear not to be justified:
 - (a) having regard to the material considered by the police;
 - (b) having regard to material reasonably available to the police.
3. The exclusion, rejection or suppression in police reports of 30th August, 1972, and 23rd October, 1972, arguably without apparent reason or without justification apparent from police writings in diaries, notebooks, running sheets and other police records in August and thereafter of:
 - (a) Findings;
 - (b) Allegations apparently reasonably based;
 - (c) Intelligence information and particularly that originating from Commonwealth sources concerning the Bally organization;

which appear in the earlier N.S.W. Police reports, running sheets or Commonwealth communications.

4. Statements in the report of 23rd October, 1972, and in police oral statements otherwise. e.g., to Jack Rooklyn and to Lionel Abrahams and by Detective Sergeant McNeill to others either to the effect that all allegations or those against the persons were false or disproved (i.e., were not merely not established) or were false statements made by interested parties, whereas the view is open that such conclusions in such general and unrestricted terms were not justified. In the same context apparently unwarranted statements apparently intended to convey in the end that all the allegations made being baseless, the inquiry was closed and complete, so no need existed for any continued or further inquiry or future vigilance into any of the matters earlier ascertained or reported upon.

5. The view is open that there was a failure properly or adequately to inquire into, find and reveal conduct and matters incompatible with the police findings in their ultimate reports, being conduct and matters revealed in the course of the inquiry by the Commission. Some leading examples which appear to warrant consideration in this connection are activities within or in relation to the South Sydney Junior Rugby Leagues Club, South Sydney Rugby Leagues Club, the Associated Mariner's Club, the Associated Motor Club, Aviation Club, Mandarin Club, Blacktown Workers Club, Northern Suburbs Polonia Soccer Club, and concerning Walter Dean, Murray Riley, Lionel Abrahams, Raymond Smith, Leslie Furness, Philip Gardiner, Geoffrey Gardiner, Graham Palmer, Eric Jury, Leonard McPherson and their connections with registered clubs and each other and in respect of a certain meeting referred to in Exhibit Y.

6. The view is open that there was a failure to inquire into or report the many indications of associations of the Bally organization and those connected with its operations with organized crime or reputed criminals including failure to inquire into or report upon matters having relation to or revealed by or capable of being revealed by reference to the English defamation action.

7. The possible view that there was inadequate investigation of the backgrounds and associations of persons connected with Bally Australia Pty Limited including Leonard Holt, William Lambert, Bob Baldwin and Jack Rooklyn.

8. The view is open that there was a neglect or rejection in the report of 23rd October, 1972, of material showing connections of the Bally organization with reputed criminals and that there was a failure to acknowledge that there was an apparent absence of any satisfactory or reliable basis to accept that past connections or influences had been eliminated so as to be irrelevant.

9. The view is open that there was an uncritical acceptance of the statements of Rooklyn and Tomlinson on the subject of connections of the Bally organization with organized crime or reputed criminals apparently without any real attempt to question them or to set their statements against positive intelligence information concerning such reputed connections and that in the report of 23rd October, 1972, such statements were reported as apparently the only information finally relevant concerning the Bally organization which resulted from all the police information and inquiries.

10. The view is open that conclusions in apparently over exculpatory terms and apparently not justified in the circumstances were expressed in relation to many material aspects of the inquiry but particularly concerning the Bally organization, Lionel Abrahams, Murray Riley, Walter Dean and the South Sydney Junior Rugby Leagues Club and that there was an condemnation of some of the informers to an extent not justified upon the police inquiry, e.g., alleged letters of Brady and alleged reluctance of Morris to help the police.

11. The view is open that the terms of the final report and of interviews of many persons being inquired into as possibly inculpated, were unjustifiably exculpatory or not designed to inquire. Purely as examples of the former reference is made to inquiries in relation to Sheargold, moneys received by Sloane and the purpose of the visit of Testa to N.S.W. and as examples of the latter reference is made to interviews of Jack Rooklyn, Walter Dean, Lionel Abrahams, Murray Riley, Leonard McPherson, William Tomlinson and William O'Donnell.

12. The view is open that at many points the inquiry was conducted in an incompetent fashion having regard to its subject matter and importance and therefore not designed to uncover available material of importance on the question of infiltration of organized crime within the scope of the inquiry. Matters of possible incompetence requiring consideration include the following:

- (a) Whether there was a proper evaluation of the likely or possible methods of infiltration of organized crime having regard to American and other experiences.
- (b) Whether a proper appreciation was made of the significance of intelligence information and methods of investigation appropriate to organized compared with conventional crime.
- (c) Whether there was a failure to use appropriate or conventional methods to record significant information discovered and to follow the police practice when organized crime is investigated.
- (d) Apparent full recording of exculpatory statements and material and scant or non-recording of inculpatory and some intelligence material.
- (e) Apparent failure to recognize that legally admissible evidence of the infiltration of organized crime into legitimate business could be minimal and the significance of this in relation to other material available and in reporting for eventual use of a Government.
- (f) The view is open that at least from August onwards that the inquiry was not directed to nor motivated to uncover crime of the organized type.

13. Police conduct which may require consideration as to whether it fell short of what can be said to be expected standards of police in any inquiry and particularly in the subject inquiry the question arising whether it was conduct tending to indicate a relationship inconsistent with a proper objective policy inquiry in particular:

- (a) Conduct of Det. Sgt Knight and Det. Sgt McNeill in the course of the interrogation of Jack Rooklyn and in relation to the meetings of them both with Rooklyn shortly after the 23rd October.

- (b) Conduct of Det. Sgt Knight and Det. Sgt Ballard in relation to the social functions of the Bally organization late in 1972 including Det. Sgt Knight's interview with O'Donnell.
- (c) Conversations and conduct of Det. Sgt Knight and Det Sgt McNeill with and in relation to Jack Rooklyn and poker machines following 23rd October, 1972.
- (c) Conversations and conduct of Det. Sgt Knight and Det. Sgt McNeill with Sydney Junior Rugby Leagues Club before the inquiry was complete.
- (e) The failure of Det. Sgt McNeill to produce any notes or records made by him in the course of the inquiry.
- (f) The apparent failure of the various members of the investigating police to keep records which would appear appropriate of material matters discovered in the course of the inquiry, particularly of those which might have tended to support or point to any positive findings by the investigating police and further of the material passing between the State and Commonwealth Police in August, 1972, and the State police action consequent thereon.

14. The significance of the matters referred to in Exhibit Y, and in the evidence concerning these incidents including the police conduct consequent thereon.

15. The inferences to be drawn from the following and the police investigation and reporting upon them

- (a) the Willis allegation
- (b) the Morris allegation
- (c) the Anthony allegation
- (d) the Sheargold allegation
- (e) the Rooklyn/Saffron allegation
- (f) the information provided by the Commonwealth about meetings of criminals
- (g) the links between Testa and Australian criminals
- (h) the links between Testa and United States criminals
- (i) the Raymond Smith, Murray Riley promissory note allegation.

16. It appears that a conclusion that the investigating police or particular members thereof made an attempt to "cover up" which falls within Term 2 should be regarded as arguably open upon the whole of the evidence but with particular regard to the above matters and any explanatory or other evidence thereon."

I confirm now that the quoted material, as a whole and upon the major matters, does support, against some of the three police earlier named, a *prima facie* inference of a deliberate or corrupt attempt to "cover-up", within Term 2B. To a substantial degree, the matters referred to were sought to be met by pointing to other events and circumstances, said to be inconsistent with corruption, rather than by denials of each of the primary matters listed. As it is clear on any view, that, upon a reasonable inquiry, very many of the matters listed in the document should not have happened, it follows that, if they are not to be explained by some wilful attempt to cover-up, it is because the lesser alternative explanation of incompetence or like criticism should be preferred.

Primary matters of concern are the negative nature of the final report compared with the earlier reports, particularly the first, and the suppression of discarding of material from the Commonwealth Police, which ought not to have been discarded. These were the matters, which led to there being contradictory statements in Parliament and the press and to the questions and accusations in Parliament, which are set out under Term 2A.

124-153. Prima Facie Case of Attempted "Cover-up" by McNeill and Knight in Relation to Bally

The Principal Prima Facie Matters

124. The matter, which raises great suspicion against McNeill and Knight, is the conjunction of the unjustified negative attitude and findings in relation to Bally in the final report, which McNeill signed, and which Knight signed as second signatory in place of Ballard, who signed all three earlier reports and the failure of McNeill to acquire material, known to him, to be adverse to Bally and to be available to him, before sending off his report and the meetings and dealings on a personal plane between Bally and McNeill and Knight within days of their signing the final report.

Final Report Negative on Bally. Earlier Reports Positive on Bally

125. The final report purports to be comprehensive. It does not profess to be supplemental or to leave as valid findings in earlier reports, particularly, where the same subject matter is dealt with in some different way in the final report. The final paragraph of the report supports this view.

"226. From the foregoing it will be seen our inquiries have been particularly extensive and painstaking. We have not found any evidence at all to indicate that the club industry of this State either through entertainment, poker machines or any other means is being controlled by criminals of any type or that there is any move by foreign syndicated crime figures to take over in the industry. When one makes a final analysis of all the allegations that have been investigated one must come to only one conclusion and that is that they emanate from a trade war between various interests in two industries in particular, namely, poker machines and entertainment."

The conclusion is, first, that there is "no evidence at all" of the matters there stated. The second conclusion, being the very last sentence of this final report, goes further and states as an inescapable conclusion that all the allegations investigated emanate from a trade war. It carries the obvious implication of lack of bona fides of each of those who have made any of the allegations, and of the positive falsity of each of these allegations. Nothing could better put upon the inquiry the stamp of "Inquiry concluded". The last statement was unjustified and misleading. In the body of the report (e.g. para. 116, ref. P. 86, and para. 209—see later) there were some reservations made principally concerning information from the Commonwealth Police, which are now sought heavily to be relied on, on behalf of McNeill, but these reservations are in such faint hearted terms and would be of such negative impact upon any reader, particularly when read with paras 200 and 226, that they do not appear really to be intended to cut down the ultimate findings stated by McNeill in para. 226. It will suffice to give examples of the differences between the reports in relation to Bally.

First and Second Reports Positive on Bally Criminal Affiliations

126. In the first report it is stated that Bally America and its subsidiaries "are clearly Mafia controlled" and it then sets out details of the relevant criminal connections of Bally and what was established in that regard in the English defamation actions (see P. 122 where details are shown). The second report, but with somewhat less force, is to a similar effect, the details of which are set out in P. 122. It also referred to the importance of the English defamation action and the proposal to obtain the transcript (set out in P. 122). Prior to making this report (dated 16th August) and on 20th July, 1972, Tomlinson, the Bally U.S. attorney, and Rooklyn, the head of Bally Australia, had been interviewed by the police in a tape recorded interview. The interview was lengthy and both men went into considerable detail, concerning matters touching the Bally organization in America and concerning the English defamation action. Rooklyn made reference to the position of Catena and Green and their interests being bought out, and the S.E.C. inquiries. The assertions of Tomlinson and Rooklyn in this interview were obviously not regarded as warranting a displacement of the earlier material which had led McNeill to make the statements concerning Bally in the first two reports, to which I have referred. As the Senate would obviously be concerned to a major degree with the criminal connections overseas of a corporation trading here, the non-acceptance at this stage of Tomlinson could have been no accidental matter. The final reference in the second report, that the matters under investigation "must be recognized as being of national importance", must be taken as strongly influenced by McNeill's then views of the significance of the material, then before the N.S.W. Police, concerning the affiliations of Bally, the principal subject matter of this second report.

Third Report—No Cancellation of Earlier Findings. Bally Claim of Buying Out Criminal Interests requires proof

127. The third report, in an interim way, almost entirely confines itself to police investigation of events in New South Wales, but in paras 23-5 made reference to the interview of Tomlinson on 20th July. However, the only reference to Bally's criminal affiliations was that Tomlinson "was eager to impress that whilst certain Mafia personalities had, at one stage, held interests in the Bally Manufacturing Corporation they had since been bought out", but that "This (i.e. the buying out presumably of Catena and Green referred to in the interview, but not in the third report) can only be proved by thorough investigation overseas." No suggestion appears that any other affiliations earlier reported were no longer to be accepted. The concession of Tomlinson was noted, but the claim, of buying out made by him, was not accepted, without proof upon further investigation.

Final report—negative terms re Bally on overseas affiliations

128. The final report first deals at great length with local incidents, in paras 3–42, concerning South Sydney Juniors, a club which had no Bally poker machines, and in paras 43–115 with local events, which in part touch some operations in Australia of Bally. It is not until para. 116 that any reference is made to the background of the Bally organization (*see* P. 86). This paragraph appears to discard, as unreliable, all material concerning the overseas connections of Bally, or at least does so, so far as it originated from the Commonwealth police. The paragraph at this point stands upon its own, because the report (paras 117–70) then turns to deal with the investigation of particular allegations or with particular inquiries undertaken concerning the operations in New South Wales of Bally Australia or of the distribution of Bally poker machines or concerning trips to America by N.S.W. persons connected with Bally poker machines. Paras 171–192 deal with the information supplied by Tomlinson and Rooklyn in the interview of 20th July, earlier referred to, and a later record of interview of Rooklyn on 23–24 October, 1972. These paragraphs mostly deal with affairs in America. Many of the statements of Rooklyn can only have been second-hand. The source of his information is not stated. Paras 193–199 deal with local matters affecting Bally. Paras 200–1 are as follows:

“200. Mr Rooklyn concluded by saying he felt it must be most obvious to any sane, clear thinking person that the net result of this investigation could only prove that all the allegations concerning his company were baseless and had been intended to remove their product from the local market at any price. We are inclined to agree with him.

201. During the interview Mr Rooklyn appeared quite genuine in his assertions. He answered all questions asked without hesitation and one could only be impressed by him.”

To the above paragraphs should be added para. 178, as follows:

“178. On the 23rd and 24th October, 1972, Mr Jack Rooklyn, who is a director of Bally Australia Ltd, 43 Forbes Street, East Sydney, and lives at 112 Balfour Road, Rose Bay, was interviewed regarding the Bally Manufacturing Corporation of Chicago: the allegation that that company was part owned by members of a syndicated crime organization and also in relation to Bally Australia Pty Ltd. From the outset Mr Rooklyn was most co-operative and said that in his opinion the allegations which originally appeared in the newspaper *Review* were false and that both the parent company and Bally Australia Pty Ltd were well run businesses with no affiliations with any person involved in crime.”

Para. 204 states that “One of the original sources of information which led to the commencement of the inquiry stemmed from ‘the *Review* article’.” Para. 205 states that all the information in that article “has been proven, as far as the inquiries in this State can be taken, to be false”. That article deals with many local events, but also asserts, with some emphasis and detail, that Bally has Mafia links. It refers to the subject matter and findings of the English defamation action. It quotes part of the summing-up which refers to the operation of gangsters within legitimate businesses using fronts of respectability. Its front page heading refers to “A huge Chicago-based poker machine company with established links with mafia gangster money”. The words, “as far as inquiries in this State can be taken” may well have been regarded as a convenient reservation and a convenient advance excuse for any inadequacies in the conclusions. The earlier reports, surely, were based on material before the police “in this State”. In this matter of “national importance”, in which the transcript of the defamation action was considered important, it surely would be erroneous to say that inquiries in this State could not extend to obtaining that transcript, could not extend, at least if there was urgency, to oral inquiry from the Commonwealth Police so as to obtain the substance of that which was set out in the letter from the Commonwealth Police Commissioner of 8th December, 1972. If these steps had been taken, it is inconceivable that the final report could have been in the form it was.

The report then deals in paras 209–221 with the “allegations for investigation” (para. 209) by the N.S.W. Police, which had been supplied by the Commonwealth Police. This must refer to the 18 or 19 page Commonwealth document (P. 19). It dealt extensively with the criminal affiliations of the Bally organization in the United States and also with some allegations concerning events in New South Wales. Apart from references to some other companies and Testa, not relevant for present purposes, the above paras (209–225) have no reference or relevance to the American affiliations of Bally in the English defamation action, with the exception of those parts of paras 209 and 211 now to be referred to. The former says, “It will be seen from the following that so far as it has been possible to investigate these matters (i.e., the matters ‘alleged’ in the Commonwealth document) in New South Wales they have been proven baseless”. The only matter to be “seen” from the following paras (210–225) on the subject of Commonwealth references to allegations about the Bally affiliations in the

United States is part of para. 211 as follows: "Although the Commonwealth Police, who recently visited the U.S., might come up with something different from what we have been able to learn, O'Donnell, Klein and Scheer are reputable business people with no affiliations with American crime". These paragraphs, shortly thereafter, lead on to the ultimate conclusion of the report in para. 226, already quoted (P. 125), which, it will be remembered, includes the passage that, on final analysis, all allegations investigated can only lead to the conclusion they emanate from a trade war.

Throughout this last report, the affiliations of Bally, i.e., overseas, are regarded as a subject matter of allegation and for inquiry, as they were regarded and dealt with in all the earlier reports. These allegations were those first made by trade opponents of Bally to McNeill, based on the English defamation action, which he regarded as vital but never inspected. On a general reading of the report, one could only be led to the belief that it was being reported that it was false to assert Bally had any criminal affiliations. After a careful analysis of the detail of the report, I am of the view this was the meaning the writer intended to convey. Why was this done? The assertions of Tomlinson and Rooklyn, made well before the second report, must have been regarded as not sufficient to displace the views, expressed in that second report. On the subject matter of the Bally affiliations, as confirmed by the last report, McNeill only had the statements of these two men to found the apparently opposite view and to discard the earlier finding. The final report accepts and was intended to convey to the reader that it accepted, as reliable, their statements, where earlier reports had not. References to Rooklyn are now accompanied by references to his co-operation and his impressiveness. The final interview of Rooklyn was not on a new subject matter from his former interview with Tomlinson. There would be no basis to put it on a higher plane than that earlier interview. It is obvious, from the terms of the interview, it was somewhat of a formality. There is some direct evidence it was so regarded. It demonstrates no real interest of Knight, who conducted it, to test the matters which led to the earlier conclusions adverse to Bally. Numerous obvious questions were left unasked. The solicitor who accompanied Rooklyn to the interview, for protective reasons, did not find it necessary to attend on the second day of the interview.

Some Changes in reports on local matters concerning Bally

129. There are some matters in the first report, which can only be construed as findings of fact or findings that allegations were established. They cannot be reconciled with the terms of the final report. Some of the matters so stated relate to Bally's operations in New South Wales. Some are not derived from the Commonwealth 18 page document, so cannot be attributed to any misunderstanding of it. I will refer to two such matters. They appear in paras 21-2 of the first report, which are as follows:

"21. It is known that large amounts have been offered in secret commissions to club officials who are prepared to install Bally machines and in fact \$750 per machine is the current amount quoted on their most expensive line. It is alleged that one large club in the Newcastle district installed some sixty of these machines and a commission of some \$30,000 changed hands. Currently we are concentrating on this particular angle but, as will be realized, this is a wide and difficult inquiry to follow.

22. Recently two Directors of a City club were approached by a senior member of the Davidson, Donaldson, Rooklyn group who offered to put new machines through the club in return for 25% share in the business. It has been alleged that these same people have approached clubs with offers to finance them for extensions, etc., provided they are prepared to install Bally poker machines."

It is in point to add that in the following paragraph (23), after a reference to intelligence information as to recent increased interest or investment here of "Mafia money", it adds:

"Our information indicates that large amounts of American currency are being brought into the country illegally and it is this money, when converted, that is used in the payment of secret commissions. Rooklyn has stated he believes poker machines will be legalized in Queensland and Victoria within the next two years and he wants to take over the lot."

Para. 25 made reference to the future aims of Bally for extension into other club fields as being "strongly urged by responsible people." As already seen, all matters against Bally were clearly negated in the final report. In view of the terms of paras 21-2 of the first report, how could this be done? Were those paragraphs wrong or was the matter discovered suppressed, when the final report was composed? The matter in para. 22 is explained in para. 203 of the final report. As will be seen, on examination, the explanation had some unsatisfactory features. McNeill could not explain the matter in para. 23 at all, although he composed it. It is not suggested some other police officer was the source of this para., because McNeill said none of them had started inquiries then and had only been recipients of allegations. There is nothing in their diaries and notebooks produced. McNeill had in fact done at least some

work of inquiry, because he admits he was the author of the matter ascertained and reported in para. 22. The difficulty is that McNeill had two diaries and claims to have lost both. I will return to this matter. The consequence is there is none of McNeill's writing, (except the reports) to check what he did on the inquiry over ten months. The same matter as in para. 21 is dealt with in para. 10 of the second report as follows:

"10. The distribution of the Bally poker machines to the club industry allows for a commission of up to \$750.00 per machine, from the Bally Corporation through its agents, and a lot of allegations of payment of "secret commissions" to club officials have been made. These matters are still under investigation, however, we are in a position to definitely state that commissions are being offered to some club officials as an inducement for them to install Bally poker machines in their clubs."

McNeill's answers to questions put to him on para. 10 of the second report are (T. 1564):

"Mr NEEDHAM, Q.C.: "However we are in a position to definitely state that commissions are being offered." Now there is a clear distinction there, is there not, between allegations which you are investigating and conclusions to which you have come?—That is right.

To whom did that conclusion relate, that is that commissions are being offered to some club officials?—That is incorrect. I don't know.

You did not know anybody?—No.

COMMISSIONER: Is that all you can say about that?—Yes, sir.

You have looked at this, I suppose?—Yes.

You cannot give any explanation at all in respect of that?—No, sir.

Is it true or is it not true?—It is something I can't substantiate. It must be something that is not true.

Why would you put in something that is not true in your report?—I can't understand it.

Surely there would be something?—I can't understand how it got there."

He conceded the subject-matter of the two paragraphs is the same.

The matter referred to in para. 22 of the first report was derived by McNeill from an interview on his own with a director of the Motor Club, who related to McNeill the offer from the group whose business became Bally Australia. It is not now suggested the offer did not take place, but that it was not seriously made, in that the persons concerned had been drinking and made the offer as a joke and did not know the police inquiry was on. This is as stated in the final report (para. 203). However, McNeill claimed that, from the first interview, it appeared the offer was not serious. If so, why did he first report it as a serious and not a joking offer? If, of course, it really was serious, there would be less warrant to accept a later inconsistent version, particularly in the organized crime field. McNeill's explanations (T. 1602-4) have elements of inconsistency. I am left unsatisfied by what he has said. He said he recorded the first incident in his diary, but the diary was not produced. The incident was a significant one. The club was the Motor Club, which was very vulnerable because of its bad history of mis-management and improper dealing and because of its financial difficulties. Dean and Riley have demonstrated it was a club vulnerable to entry from outside by persons seeking to exploit it (*see* P. 175). It was the very type of club where it could be expected that poker machine interests, if wrongly inclined, might seek, contrary to the law, to share directly in part of the great poker machine profits. In fact the avowed policy of Bally in their latest reports is to shift their efforts and emphasis into sharing in the proceeds of poker machines where permissible (*see* under Term 3). A criminally influenced business may use devices to do so contrary to the law (*see* under Term 3). For some reason McNeill did not reveal the name of the club or the actual person who made the offer in either report or in his written statements to my inquiry. These matters were only revealed when McNeill (the last witness) was asked for these details. To avoid re-opening the inquiry the persons were not called.

I am left without explanation, which satisfies me, how matters could be reported, in respect of these matters concerning Bally operations in New South Wales, in the first report and a report so absolutely negative as the final report could be issued. No police records, in relation to the matters as referred to in the first report, have been produced. McNeill blankly failed to explain one matter, and his explanation on the other does not satisfy me. In any event, as will be seen, I do not find his general testimony acceptable except where satisfactorily corroborated (P. 212). The matter is unexplained. Should I infer matters were uncovered concerning Bally and then covered up? This must be deferred.

Police failure properly further to investigate from New South Wales Bally's overseas affiliations with organized crime

130. As elsewhere indicated (P. 43), a procedure, adopted by my inquiry was to select areas of the police inquiry and make my own inquiry, to test the quality of the police inquiry, in aid of the question raised in Term 2B. Because the police intended to see the defamation transcription, but did not, I made my own inquiry into what was discoverable, if it had been looked at. I then examined what they did about getting it, and why they did not. The course I took, first, was to obtain the transcript of the English defamation action. This led to Tomlinson and O'Donnell, being asked questions upon it and, my asking to see some of Bally's documents. I also looked at information in the possession of the Commonwealth Police concerning Bally. By the later addition of Term 3, these matters acquired their own direct relevance. Accordingly, it is preferable to deal with them under Term 3. As will be seen, a vastly different state of affairs was disclosed than the Government was led to believe the position to be by the final police report. This material, however, is only relevant under Term 2B so far as it can be said the matter uncovered ought to have been uncovered by the police.

Matters which police ought to have uncovered re Bally. Police ought to have obtained English transcript

131. What further should have been uncovered by the police? I have already dealt with the scope of the police inquiry and the accepted relevance of the criminal affiliation of the Bally organization (P. 122), a matter of considerable significance for present purposes. The English transcript was of major importance to the police inquiry. McNeill was aware of its existence and of its quite fundamental importance, as already demonstrated. The early reports show this. McNeill knew of its importance in December, 1971. Yet, he wrote a report without seeing it ten months later. He admits he then knew a copy was in Canberra. The report was inconsistent with what he had been told the transcript would establish. If the summing-up alone had been seen, no inquirer could reasonably not have sought at least a transcript of O'Donnell's and Itkin's evidence. On 20th July, 1972, in the interview of Tomlinson and Rooklyn at which McNeill and Ballard were present, Tomlinson, as the record shows, said he would send McNeill a copy of the summing-up. McNeill did not press the matter and made no inquiry even of Rooklyn, the Australian Bally manager.

When the Commonwealth Police were going to England at the end of August, 1972, and the N.S.W. Police were not, McNeill asked them to obtain the transcript from England for him. They did obtain a transcript of the summing-up. They were back here some three weeks before the final report was completed. Ballard had a telephone conversation with Dixon within a week of their return (on 6th or 7th October) and certainly before 19th October. Ballard, at McNeill's direction or suggestion, secretly tape-recorded this conversation. Dixon referred to a number of matters in the judgment (i.e. summing-up), so it was clear he had the transcript. It was Ballard's understanding that he had or saw the "judgment" (T. 962). In my view, McNeill was aware of the contents of this conversation. In any event, McNeill conceded that, before he wrote the final report, he knew the Commonwealth Police had the summing-up (T. 1608).

McNeill's explanation for writing the report, without seeing it, or asking again for it, was that it was not the province of the State Police, but the duty of the Commonwealth Police to investigate overseas matters and to obtain the transcript, and it was up to them to send it on, and that because the report was urgent he could not wait for it. Looking at what was earlier said in McNeill's reports, this is incredible. I do not accept that McNeill could have so believed. His further attitude in evidence was, in effect, that if the Commonwealth had something to report it could be passed on to the Government in due course. However, the inquiry was that of the State Police reporting to their Government. They already had reported on overseas information, some collected from their own sources. They were sending a final report, which McNeill must have known was on a subject of much dispute. The report being drafted by McNeill could only mean that the earlier information concerning Bally affiliations was unreliable, and, hence, wrong. This was in conflict with what was known to have been admitted by O'Donnell in England. It was the province of the N.S.W. Police to see they received the report. They, and not the Commonwealth Police, knew when their report had to be completed. It was their responsibility to decide whether the transcript was relevant or vital to their report. The attempt to shift the blame to the Commonwealth Police is irresponsible. In my view it is a false excuse which covers McNeill's true motive in declining to do that which obviously should have been done and what could have been done with ease. The failure of McNeill to avail himself of any one of the many courses available to see this material documents was irresponsible. In view of his information concerning it, it was irresponsible of him to report in the way he did (T. 1607-8). Having regard to the known and conceded importance of this document, these failures and reporting in this fashion strongly suggest that

McNeill did not want to see material, which could be expected to establish that Bally had criminal affiliations. The possible view, just referred to, gains some force when, as will appear in P. 135 ff, within a few days, McNeill is found, with Knight, in personal negotiations with the Bally organization and, thereafter, their saying things in clubs concerning Bally, quite in conflict with what, they must have realized, would appear in the document, which McNeill did not concern himself to see. These considerations point to an attempted cover-up in terms of 2B. However, they must be considered in the light of other counter considerations (see later). This is the high water mark in the direction of a finding under Term 2B adverse to any police officer, and I have found decision upon it a matter of difficulty.

Taped conversation, Ballard and Commonwealth police. Failure to Report conversation and suppression of tape

132. This conversation needs to be considered in the light of the final report, drafted within days of it, in effect, saying that it was false to assert Bally had any criminal affiliations (see before). Paragraph 116 of the final report refers to this telephone conversation in the limited terms that Dixon had "stated they had learned a number of things which were considered confidential to crime intelligence agencies and that in due course we would be given that part of the information which they considered should be made available to us". This paragraph referred to the purpose of the visit of the Commonwealth Police to America, as one to "further check on the validity of their original allegations". These, of course, were not treated in the earlier reports as "allegations" but as the basis for the positive conclusions already referred to. This was not the purpose of the visit, which was rather to make contacts with overseas agencies and, when there, find out anything further they could, including matters relating to Bally. The last sentence of para. 116, "We can only hope that what they supply eventually is far more reliable than the material we received from them initially", first, puts the stamp of unreliability on the former "allegations" and, the wrongly stated purpose of the visit, stamped them as matters for investigation. It is a convenient twist of emphasis. Second, para. 116 puts the stamp of anticipated unreliability upon further information from the Commonwealth Police.

However, the conversation with Dixon gave some idea of the available material concerning Bally's criminal affiliations. The conversation, because information was informally given, was one which might have been disregarded, if followed up by the anticipated formal disclosure of material, in this case by Dixon in Sydney the following week. While Dixon indicated the information was collected in "confidence from intelligence groups" (as, of course, was the original information passed on in the eighteen page document), he neither bound Ballard to any personal confidence, nor anticipated relevant material would be withheld.

In any event, both by the form of the conversation and its content, it was apparent that much of the material came from the English defamation action which, of course, was a matter of open record. In any event, even if the conversation were considered "off the record" (but not treated as such in para. 116), it was information, which should have led any recipient of its contents to have sought the promised information, at least by telephone call, before completing the final report, and certainly a report in conflict with it. The final report was not completed until at least 2 weeks after the telephone call. The conversation is set out at T955-7, with the omission of two passages for reasons of confidentiality. It did indicate that there was an absence of direct evidence (i.e., from America), but "in terms of intelligence information you know it is definitely on". Reference was made to the defamation action, to O'Donnell, and that he did not fare well in the defamation action and made admissions, that there was a lot of evidence by Itkin, to Green, to Catena, to Klein, to the "involvement" of Cellini, who was referred to as Lansky's right-hand man, and to Kaye and Catena's shareholding in Kaye's business. It was obviously not all mere intelligence information, because there had been reference to admissions made by the head of Bally. There was Dixon's statement that a director of Bally America (i.e., Kaye) was in business association with Catena the top Mafia man of New York. Dixon did not say whether the source of this was O'Donnell's admission or U.S. Intelligence. In fact, it was O'Donnell who had made this admission in England. He had admitted that Kaye was a "close business associate of a man who is reputed and named as a member of the Mafia" (Catena) (T. 1431). McNeill could expect, and ought to have expected, that material of this type would be available on inspection of the transcript. This is demonstrated by the first report, para. 15, where he stated that "during the hearing . . . Kaye (was) mentioned unfavourably because of (his) proven association with the Mafia".

Questions arose as to McNeill's knowledge of the contents of this conversation, when he wrote the final report. The effect of the evidence of Ballard and of McNeill is to reduce any criticism of McNeill, in that it was asserted, in effect, he was not aware of the detail of this conversation. However, this end result was asserted, on versions of Ballard and McNeill, which are in conflict and discredit the claim of lack of full knowledge of McNeill. In substance Ballard, who gave evidence first, said he taped

the conversation, because he did not do shorthand and McNeill wanted an accurate account of any information Dixon had, that he could not recall what he told McNeill, except that he played the tape back with Bradley present, and told McNeill briefly of the contents, namely, that Dixon had no direct evidence, but what documents and information he had, he would call around next week and supply. He said McNeill knew of the tape but he, Ballard, did not think he asked to listen to it. Of course, on this version McNeill would be open to criticism as he knew there was a tape, had asked for an accurate record of Dixon's conversation, had not other material from the Commonwealth Police and wrote the final report without bothering to hear the tape.

McNeill's version, given somewhat later, however, was that he heard the tape within two days of it being taken and that Ballard played it through, but that acoustically it was bad and he could not understand it. No suggestion was ever made by Ballard, and no such suggestion was made by counsel or otherwise, until raised by McNeill, as the last witness. A transcript produced to me earlier was produced, without any suggestion as to its reliability.

What happened to the tape later is important. It was kept privately and intact. It was not produced to my inquiry, despite quite concerted earlier endeavours of an inspector of police on my directions to get all relevant police material following some earlier failures to produce material which met with some criticism. The conversation was referred to in the police report; the tape record was taken at the direction of McNeill, so there would be an accurate record. As McNeill ultimately conceded, it was not private property (T. 1608). It was not treated as private property, in that it was produced from its private custody when apparently it was considered it might serve a police purpose, namely, to discredit Dixon (T. 938-30111-3; 30118; 30516-23). No reference to this conversation was made in any police records or the running sheets, although referred to in the final report. I do not accept McNeill's evidence that he lacked knowledge of the material contents of this conversation (see P. 212 as to McNeill's credit).

McNeill then claimed that he could not act on the Commonwealth material until he saw it in writing. This has the appearance of a manufactured excuse, for the reasons indicated in P. 131 in respect of similar excuses of McNeill.

Available inferences from failure to seek English transcript or to seek or report Commonwealth material on Bally

133. What explanation is to be given for not seeking, almost to the point of not desiring to receive and record, available material concerning Bally's criminal affiliations overseas, which McNeill knew was available and which he must have realized would reflect more adversely on Bally than his impending report concerning Bally? Was it that because of some sinister reason he sought to suppress the truth concerning Bally, or was it for some reason of personal animosity, directed to the Commonwealth Police, or was it because of some lack of appreciation concerning organized crime and the significance of the available material? Again, the answer must be deferred until the matter is looked at in the context of the whole inquiry.

Intelligence report Ballard to Commonwealth Police that Rooklyn, via Saffron, to have person take heat out of police inquiry. N.S.W. Police reaction

134. On 17th August, 1972, Ballard spoke to two Commonwealth Police officers, Sergeant "B" and Constable "C". It is common ground that Saffron, Rooklyn, and the progress of the police inquiry was the subject matter. There is an important conflict as to the details. The contemporary note of the Commonwealth Police in their running sheets, a copy being sent to their Commissioner, is, subject to minor omissions, as follows:

"Information from Detective Sergeant Ballard, N.S.W. Police Consorting Squad, indicates Abraham Gilbert Saffron, born 6th October, 1919, N.S.W. (References), has effected some type of affiliation with Jack Rooklyn. According to Ballard, Rooklyn has made an approach to Saffron to exert some pressure on an unidentified person in authority to take some of the "Heat" out of the current investigations. Ballard intimated that his Commissioner's office appears to be cooling towards the inquiry. He also stated he had received information from a reliable source, that although Rooklyn sold his distribution points to the Bally Corporation, he retained his Casinos and gambling interests in Djakarta, and now Saffron is purchasing or leasing premises to be used as brothels in conjuncture with Rooklyn's casinos. This Section has received no other information to confirm the above."

"B" and "C" gave confirmatory evidence concerning this conversation. However, I think the reference to the Commissioner's office, "cooling" toward the inquiry was not a direct statement by Ballard to that effect, but their inference from a statement by Ballard concerning loss of police interest, because the inquiry was getting nowhere. Ballard gave evidence that he said "our bosses were becoming a bit concerned at the

amount of men involved in the inquiry and the amount being spent on the inquiry and we were getting nowhere with it. We were having no support from any persons we interviewed", which I would accept was the substance of what Ballard was saying on this score. However, if either version of what Ballard said, concerning loss of police interest were true on 17th August, it is difficult to reconcile it with parts of the second report signed by McNeill and Ballard the day before.

There is a conflict between Ballard and "B" and "C" and the document as to what was said concerning Rooklyn and Saffron. Ballard said he received the information from a N.S.W. sergeant, since deceased, and that what he said to "B" and "C" was merely that Rooklyn had sought Saffron's advice to see somebody to take some of the heat out of the current publicity in the newspapers, that he had information that Rooklyn had sold his distribution points in Djakarta, but retained his casinos, and that Saffron had purchased premises there probably to be used in conjunction with Rooklyn. On this aspect, I accept the contemporary note in the Commonwealth running sheets, as setting out the probable version of what was said. There is no note or record whatever in the N.S.W. Police documents concerning the receipt by Ballard or his transmission of this information.

There is no evidence or other material to establish that Rooklyn or Saffron used pressure on some person in authority, police or otherwise, to take the heat out of the inquiry.

I think that the conversation is of significance, as indicating Ballard's reaction to what appeared to him some change of police interest in the inquiry. Did he wonder if there was some reason for it, such as the matter concerning Rooklyn and Saffron he passed on at the same time? No investigation was made of the matters concerning Saffron and Rooklyn, nor any attempt apparently made to inquire into any links between the two, despite the police files concerning Saffron's activities, and suspected activities. McNeill conceded a relationship between Rooklyn and Saffron would have changed his views on the respectability of Bally's Australian business. Saffron conceded before me that he had had business interests with Rooklyn in the past and that he had had discussions, at Rooklyn's invitation, on the matter of some kind of joint venture into restaurant-nightclubs in Djakarta, Saffron looking after the restaurants and entertainment, and Rooklyn the gambling. He claimed no business was set up and denied any prostitution or strip entertainment was involved but conceded he had had interests in the latter in Sydney. He denied seeking to put pressure on anybody concerning the club inquiry. I will in the end return to this incident because of its reference to loss of police interest by mid-August, 1972.

Meetings and Personal Negotiations and Dealings between Rooklyn, McNeill and Knight in early November, 1972

General

135. It was admitted by Rooklyn, McNeill, and Knight that they met and had private talks or negotiations or dealings on the matter of these police officers being on some employment or business basis with Bally. It will be seen my inquiry, somewhat accidentally, stumbled on this matter and, thereafter, it was revealed, step by step, and, then, only revealed in part. A difficulty, which I have, is that upon their testimony concerning this incident and related matters, I do not find I can place reliance upon that of any of the three principal participants, McNeill, Knight or Rooklyn, as to what really occurred in relation to these events. This does not mean that some parts of the story cannot be established. It means that it is highly likely that more occurred, than is now conceded and that the limitation put on what was done and the asserted losses of memory of what was done is not evidence, which I can accept. Cross reference is made to P. 212 appearing later where McNeill's lack of credibility is dealt with (Do. P. 144 re Knight and P. 150 re Rooklyn). So far as the two police officers are concerned, my non-acceptance or disbelief of their testimony leaves me without evidence, at that point, as to what really occurred. It may have other consequences, but it, itself, does not establish what was done in aid of the serious finding which would involve a "yes" answer to term 2b. Somewhat different considerations will arise under Term 3 having regard to its different provisions (see later).

The basic facts of the incident

136. The basic facts eventually established are simple. It is the detail and the full import of what occurred which is obscure. Basically, on a date prior to 7th November, 1972, there was a meeting of Rooklyn, McNeill and Knight in the office of Murray, who was Rooklyn's solicitor. Something preceded this meeting, being, at least, an arrangement of the meeting. At least it is clear some offer of employment and some business partnership was or had been offered by Rooklyn to each of these police officers. McNeill did not take it up in Murray's office. Knight showed interest

and sought time to decide. On a later date, probably 7th November, 1972, Sadler, who was Knight's solicitor, signed an application for registration of Metropolitan Club Services as a business name. The document had then been signed by Rooklyn. It was dated 7th November, and it was lodged by an unknown person for registration on 7th November. The application stated the nature of the business as poker machine and sales service, and 6th November, (i.e. the day before,) as the proposed date of commencement. The names of the persons shown as carrying on business were Rooklyn and Sadler. Sadler was a dummy for Knight, with Knight's full assent and at his request. At various times after the meeting, McNeill made commendatory remarks to officials of some clubs concerning the Bally poker machine or its connections. At a date after 7th November, a business did operate with Rooklyn's assent under the name of the Metropolitan Club Services. Activities were conducted by Townsend and Morgan, who were either present or past employees of Rooklyn. On occasions Knight accompanied them and acted in a way consistent with being a member of the business group.

Various claims were made seeking to put an exculpatory gloss upon events. As the testimony of each of Rooklyn, McNeill and Knight, to say the least, could not be relied upon, some of the claims are, I think, untrue and others may or may not be true. I turn now to examine these obscure and obscured events even more closely. There were no documents except the application for registration of the business name. Neither solicitor had an instruction cover or any other note whatsoever. No fee was charged. Nobody had any note of the registration of the name or any payment of the filing fee. There was no evidence, except the suspect evidence of the participants and the limited evidence of two solicitors, in these highly suspicious negotiations and the transaction between Rooklyn and the dummy for Knight.

Need to Examine Incident As Evidence Unfolded after its Accidental Discovery

137. To understand the evidence and to evaluate the credibility of the witnesses and the inferences open, it is necessary to study it dynamically, as the story unfolded before me, after it was accidentally stumbled upon. It is necessary to appreciate the knowledge and probable views, as the story unfolded, of the participants, as to what was known by counsel assisting me or provable. When Knight was first asked about this matter, he gave answers, which conceded only a little, but even these became inconsistent with what he later said as he realized other evidence might be set against his. I am satisfied that he told deliberate untruths at many points of his evidence, but particularly concerning the events which led to the production of the Metropolitan Club Services document and its signature by his solicitor.

Knight is Called and Partly Reveals the Incident

138. The course of evidence was as follows: There was some material passed to those assisting me which indicated that soon after the police inquiry was concluded, Knight, with Morgan and Townsend, as a group making some references to a firm Metropolitan Club Services, visited certain clubs and made some remarks to club managers on the matter of poker machines. For this reason Knight was called, early in the inquiry, upon an announced subject matter. This procedure was frequently used to inquire into unknown matters. It happened that he saw, in the precincts of the court, and spoke to one of the club managers, waiting to be called upon the same subject. A firm search, by those assisting me, had shown that Metropolitan Club Services was a business name registered on 7th November, 1972, showing Rooklyn and a person by the name of J. W. Sadler as proprietors and as business having commenced on 6th November, 1972. It was not then apparent who Sadler was. There were persons of this surname connected with the entertainment side of the inquiry, but as events transpired, it was a different Sadler. Knight, when asked, said Sadler was his solicitor. When Knight was first called some questions were put to him concerning Morgan's connection with Metropolitan Club Services. Then he was asked if he had any association in a business sense with Townsend, Rooklyn, and Morgan, and he said "Not really". When pressed, he made reference to Rooklyn's offer of a job and said that his visit to clubs was to consider this offer and he said he ultimately rejected it. This led to his being asked then and there for the full details of what had occurred concerning the making of the offer and thereafter. Eventually he was shown the document. He made concessions to the effect that Sadler, his solicitor, signed the document as a dummy for him. It is clear this was to conceal that a police officer, while still such, was registering a firm name, in partnership with Rooklyn. On Knight's evidence the final report, although dated 23rd October, was completed on Friday, 27th October. The record of interview (as it shows) of Rooklyn was completed on 24th October. The date of the document (7th November) and that given it for commencement of business (6th November) shows that Monday, 6th November, would be the latest date of the Rooklyn, McNeill, Knight meeting in the office of Rooklyn's solicitor. How much earlier was this meeting or any other discussion or arrangement depends on the credibility of Rooklyn, McNeill and Knight (see before). On Knight's version, Rooklyn telephoned Knight, at his office, the day before the

meeting. Knight agrees it could not be the Saturday or Sunday as he was off duty. If the meeting was on 6th November, as claimed on behalf of the police, the telephone call would be on Friday, 3rd November. It was not until this very day that the Acting Commissioner received the final report and, on 6th November, the asserted date of the meeting, it was being despatched to the Premier's Department.

Confidence in Police Inquiry Undermined by Police Participation—particularly Knight

138A. Thus even accepting these dates, while this report was on its way to the Government, upon a matter which had excited such widespread public interest and the attention of questions in Parliament, upon a matter which in an earlier report it had been said was a matter of national importance, we find the alarming spectacle of the two senior police on the inquiry in some kind of private negotiation with the principal target of their investigation, and we find the more alarming spectacle of Knight, so intimately connected with the inquiry, implementing whatever was on foot, by becoming, by use of a dummy, what was at the very least a partner with Rooklyn in a business name in a business said already to be in operation.

I was pressed by Knight's counsel merely to answer Term 2B directly and to refrain from offering any criticism of police conduct of the inquiry, lest it undermine public confidence in the police (P. 38). The mere revelation of the facts provides the criticism, but, undeterred by counsel's submission, let me say that one instrument of organized crime is to corrupt officials, and that, in this inquiry of the police into organized crime, which had become a matter of such anxiety and concern at various levels from Parliament to the public, and called for the police conduct to be above suspicion, it is difficult to imagine conduct more calculated to undermine confidence in the police investigation than Knight's conduct, even, if one restricts attention to the mere document itself, entered into by Knight under the concealment of a co-operative solicitor acting as a dummy. The position has been aggravated by the false and unreliable evidence given before me concerning the document and associated events. These observations are based on what was revealed. Matters are aggravated by my being unable to ascertain the whole truth of these events, despite the presence there of two senior police officers.

Lunch with Rooklyn during Record of Interview. Record of Interview. Rooklyn Telephones Knight

139. I return to the revelation of events. When Rooklyn telephoned Knight, an arrangement was made for McNeill and Knight to visit Murray's office. Murray had acted as Rooklyn's solicitor and was present at Rooklyn's record of interview on 23rd October and was at the luncheon on that date with Knight, McNeill and Rooklyn, in the course of the record of interview. This was an interview which Knight conducted in the presence of Chad, but the persons who went to lunch were McNeill and Knight. Chad did not go. It was said by the police having lunch with Rooklyn was for convenience. This could be so. It has been asserted, as there was nothing against Bally this interview was not really to find out anything, but rather to give Rooklyn an opportunity to say what he wished. Many inquiry type questions could have been asked but were not. It was a mere formality and when finished the remark was "That wraps it up".

In the telephone call to Knight, Rooklyn said he had an offer he wanted to make to McNeill and Knight. Knight understood it was a personal offer of a position or something of that description.

McNeill attends the meeting with Rooklyn

140. Knight gave evidence that he told McNeill, who was on leave, of Rooklyn's call and that an offer was to be made to them. They went together to Murray's office, at 5.30 p.m., probably on 6th November. McNeill eventually conceded that in an inquiry such as this, in the stage it was in, there was some impropriety in the suggested offer, but explained his going along on the basis that he did not know until he was in Murray's office that the offer was to be made, that he personally rejected it but stayed until the end, was disinterested, and did not attend to what was being arranged with the police officer under him. While I accept that in Murray's office he exhibited no personal interest in any offer to him, and while I accept that no arrangement involving him was entered into in Murray's office, I do not accept that he did not know, until in Murray's office, that an offer was to be made, or that he did not know what was being offered to Knight. Knight's initial version, and Murray's evidence, satisfies me that some other events preceded the entry into Murray's office, that there had been some prior discussions, and that, by the time McNeill came into Murray's room, he was well aware of the proposition. While I approach the evidence of Murray with some caution, because of some problems of recollection, I prefer his version to the effect that, by the time the three entered his room, they must already have had some discussions and the matter had reached the stage, where it could be announced that

Knight was thinking of joining the Bally organization. The probability is that the terms of any employment and any business proposition had been already discussed and that the discussion in Murray's office was as to ways and means of implementing the proposal, at that time being considered by and proposed to be further considered by Knight. It may well be that Rooklyn wanted to be open about the matter, or to give the appearance of being open, and for this reason wanted to make some mention of the matter before Murray. That there was a bona fide wish to be open about the matter, is destroyed by what happened concerning the document.

The Mystery as to the Steps Preceding Signature of Business Name document by Dummy for Knight—Date of meetings?

141. At this point of the story, there is a curious absence of information concerning the business name application. It seems clear that Murray drafted it and that he did not do so on the day of the interview. If his recollection is correct, that it might have been drafted quite some time after the interview, it would, of course, put the interview well prior to 6th November, and more into coincidence with the completion of the back-dated final report.

142. It is probable that the meeting was not on Monday, 6th November, and in the preceding week (30th October to 3rd November) at the latest and that, after the meeting, there was some private communication, involving Knight and Rooklyn, which led to some arrangement which had relationship to the proposed firm Metropolitan Club Services, with Rooklyn and Knight as partners, and to Rooklyn going to Murray and having the application form drafted. There was probably some discussion, which led to Monday, 6th November, being selected the commencing day for some purpose. It should be observed on Knight's evidence the final report was completed by Friday, 27th October, but ante-dated to 23rd October. It was not received in the Commissioner's office until 3rd November. I am unable to say one way or the other whether the meeting or the conversation or conversations which preceded it took place before, more or less coincidentally with, or after the completion of the final report.

143. Murray's recollection is that Rooklyn came to him, at some time after the interview and asked him to prepare the document. Murray wanted to check on the availability of the name, but Rooklyn assured him it was available. Rooklyn must have either given Sadler's name to him, and the commencing date for the business, or Rooklyn must have filled them in. Rooklyn must have then signed the document and passed it to Knight. Knight then rang Sadler and made an appointment to see him. Sadler thinks the call was the day before. Knight then took the document to Sadler. The document was then complete, apart from Sadler's signature. Sadler signed it and returned it to Knight. The document was lodged for registration. Sadler says he did not know the application was lodged and the name registered with himself as a proprietor. He had no file or record and charged no fee. Contrary to his usual practice, Murray had no copy of the application. He had no file or instruction sheet and charged no fee. Murray did not see the application after he gave it to Rooklyn, had no recollection of having it filed and his records show no record of filing fee or otherwise concerning it.

Knight in evidence, which was obviously false at many points, was most evasive concerning this document and his part in its coming into being. On his version, he certainly would not have registered it. Rooklyn's attitude in evidence was to escape from awkward questions concerning the document, by claiming an almost entire absence of recollection of events surrounding it. He claimed he did not know it was registered and only found out later Sadler was registered with him as the proprietor of the name.

I am satisfied that the arrangements to register the name were made by Rooklyn and Knight and that the solicitors merely implemented what was arranged. It is more likely that Rooklyn caused the application to be registered. I think both Rooklyn and Knight have deliberately, and therefore untruthfully, suppressed what did occur outside the solicitors' offices concerning some arrangements which were made concerning Metropolitan Club Services. The document dated 7th November referred to the business commencement date as the 6th and Knight is found, in small glimpses of evidence, attending at clubs in a way consistent with his already being in business, in circumstances where the registered business name is being used.

While I think Sadler's evidence as to how the document was brought to him and signed by him is probably correct, his evidence otherwise is suspect. He sought to excuse his part in the transaction, by saying that, before he signed the document, he had assurances from Knight that the firm would not be trading. However, he, a solicitor, signed a document showing the commencing date as the day before the date of the document. His story is that the document was brought to him without his prior approval and with his name already inserted. I think he lent his name for use in the transaction in fact described in the document for the purpose of concealing that a

participant was a police officer, when he knew, for him openly to become registered, would have exposed him to criticism or perhaps departmental action. I think the meeting in Murray's office was designed by Rooklyn to give a deal privately arranged an apparent air of respectability which it did not have.

Dishonest testimony of Knight

144. As I have made significant findings as to the dishonesty of Knight's testimony, I think I should refer at least to an example of it, although, of course, the view is based on his testimony generally and numerous other specific parts thereof. The matter to be quoted should be read with what later appeared concerning the document and with an appreciation of Knight's unawareness at earlier stages of his evidence of the opportunity for challenge to what he said. His evidence, set out below, commenced prior to the document being mentioned. He became more informative when aware that it was in counsel's possession. Some things were shown to be false when other later witnesses were confronted with objective matters. This evidence is:

"Mr NEEDHAM: Do you know a Mr John William Sadler?—Yes.

What do you know him as?—He is a solicitor.

With what firm?—I do not know.

Do you know him as a proprietor of Metropolitan Club Services?—No, that is not right.

Why do you say it is not right?—Well, when Mr Rooklyn was speaking about the position of the public relations officer in addition to mentioning the amount of money and the car and all that sort of thing he mentioned setting up the company, setting up a company and whoever, if anybody, took the position he could have shares in the company. It was mentioned that it would be set up later if and whenever anybody decided to accept the position. He asked me if I had a solicitor and I said that I had. He said who was it and I said "Mr John Sadler had done a couple of conveyancing matters for me". I rang Mr Sadler and I told him the position and I asked him to consider my position and that I would be in touch with him again at a later date if I accepted the position and if the company was to be formed.

Do you understand that Mr Sadler took any further steps about that matter?—I rang Mr Sadler back a few weeks later, the same as I did with Mr Rooklyn, and told him I was not interested in forming the company.

You just informed Mr Sadler of this fact. You did not ask him to do anything?—I just asked him to consider my interests in the matter.

Did he give you any advice?—Yes.

What advice did he give you?—To stay where I was.

It is your understanding that Mr Sadler took no further part in the matter?—Yes.

It would not be correct, as you have said, he was an equal proprietor of the Metropolitan Club Services?—I do not know if the company was formed or not.

Did you mention the name Metropolitan Club Services to Mr Sadler?—Yes.

Did you tell him that was the name of the company Mr Rooklyn was going to form?—Yes.

Will you have a look at that document being shown to you. Will you agree that the registration of that name "Metropolitan Club Services" shows as equal proprietors Mr Jack Rooklyn and Mr John Sadler?—Yes.

Is he there as your nominee?—I asked him to watch my interest in the matter should I decide to take the position and resign.

Did you ask him to take shares in the company on your behalf?—The company was never formed.

Can you explain how it comes about that Mr Sadler, your solicitor, is an equal partner with Mr Rooklyn in this firm?—I did not know there was a firm.

You are completely unaware of that fact?—As far as I know no company was ever formed.

But you have no knowledge of how Mr Sadler came to be a proprietor of that firm; is that right?—Unless it is because of the fact I rang him and asked him to watch my interest in the matter. I do not know much about these things.

Did he discuss with you the possibility of his taking an equal interest in this company on your behalf?—No. Mr Sadler would not be interested in that.

But did he discuss it with you?—I just forget now. I do not know much about these company matters.”

(T. 210-2, and *see also* T. 211—5047-89.)

Some of this evidence was plainly false as reference to the preceding paragraphs show (*see* PP. 135-143).

Knight's claim as to Rooklyn offer. His association with Raymond Smith

145. The evidence was that the proposal had been that Knight would be a public relations officer at a salary and would have an interest in a business Metropolitan Club Services. Knight said he considered the offers for a few weeks and then rejected them, and that that explained his visits to clubs with various persons. He said it was for the purpose of considering the offer. He claimed he sought the advice of Raymond Smith, whom he had known for some years, and that he went round the clubs, with him, to see what public relations work was like, and that Smith, who was in opposition to Bally, also offered him a job. Of course, Smith was the subject of a substantial police dossier, was an associate of McPherson, and an associate and business partner of Riley. Further, the police inquiry did not delve very efficiently into the relationship and very suspect conduct of Smith and Riley in relation to poker machines. There is a note in Knight's diary that he went and saw Raymond Smith "re Special Inquiry" on 30th October, 1972, which is after the final report was said to have been completed, but, on any view, very close to the time of the Rooklyn offer. Despite the reference to "Special Inquiry", Knight claimed it was not in that connection. This claim is most suspect.

Knight's personal involvement with persons or organizations who were investigated, e.g., Bally and Raymond Smith, both of whom were inefficiently investigated, demonstrates that it was unsatisfactory that Knight was involved in these investigations and, on the most favourable view, unwise to have him at this time in these personal dealings with these persons. It can be added concerning his association with Raymond Smith, what confidence can there be in Knight's dealing with the Morris affair, where union officials were left with the belief they should not "tangle" with Riley? What confidence can be put in his inquiry into the affairs of Smith and Riley, and then Riley's partners, Dean and Abrahams?

Knight Visits Clubs. Connection with Arrangement with Rooklyn

146. I return to Knight's private activities in November and December, 1972. He visited some clubs with Morgan and Townsend. Metropolitan Club Services was mentioned. Knight at least said things to persuade the placing of business with a new business being set up. It appears that Morgan and Townsend at some stage became identified with and commenced some business using that firm name, and Knight appears to have participated in some way, consistent with the document signed by his solicitor. It is possible it was on tentative basis or on a basis that he would withdraw. No finding can be made.

Knight's public relations interview with O'Donnell

146A. I think that the interview of O'Donnell, recorded in the back of Knight's notebook, was not part of his police duty, but was to be used in public relations, if he went ahead with the proposal which, contrary to his claim, had not been then rejected. The interview was arranged at a party and was made at a time when he had left the special inquiry and returned to his own unit. It was recorded in the back of a book which he, kept privately, until its production to my inquiry was expressly sought. Its subject matter was obviously for public relations, but poorly framed in the form of a police interview, thought capable of being treated as such if he later so desired. It never reached any police running sheet or file. No senior officer knew of the intention to interview O'Donnell or of its terms. I think the probability is that Knight had in fact embarked upon some arrangement upon some terms to work for the Bally organization, but was still considering, right up until the interview with O'Donnell, whether he would really go on with it permanently. I do not think the O'Donnell interview is otherwise explicable. That he had brought Ballard along to the party is not inconsistent, for he could have been additional or alternative if Knight discontinued.

Morgan and Townsend do Business as Metropolitan Club Services. Knight with them. Unsatisfactory cash dealings of that firm

147. There is material evidence concerning the operations, under the name of Metropolitan Club Services, of Townsend (who previously had variously worked for Rooklyn and Nutt & Muddle and came back to work with Rooklyn), and Morgan (a Rooklyn employee). The evidence of each, particularly that of Morgan, is unreliable and quite unconvincing. It seems that they were invited by Rooklyn, as Bally distributors, to use the name of Metropolitan Club Services. This happened in about December.

1972, but most likely by the time Knight was visiting some clubs with Townsend and Morgan. The inference is compelling that Rooklyn knew all about the name registered with Knight and that, on some basis, these men were using his name or his share in it, on some basis with Knight.

Because all persons connected with this matter are unreliable and I think untruthful, and because the dealings, including the bankings, are in cash, there is no evidence that Knight received any money from the business being conducted under the trade name in question. There was a bank account opened in the name of Morgan and Townsend. I shall not analyse the lengthy evidence concerning the cash transactions in and out of this account in January, 1973, and thereabouts, and the improbable explanations given by Morgan (T. 398-405).

At about the time Knight was active, in the manner earlier referred to, the Morgan-Townsend account was opened by the deposit of \$2,000 cash, of which it was said Townsend contributed \$450 and Morgan the balance. It was said the partnership ceased in early 1973. A cash receipt said to be in respect of a poker machine sale early in December, was paid in in January. The same sum was drawn out immediately. In early February, \$1,900 in cash was drawn out. Morgan gave quite unacceptable explanations as to these cash dealings and some alterations in cheque butts. He claimed his share of the deposit came from cash at home and that it went back there, although the bank account was still in use. In the result, the account, used at about the relevant time in respect of Metropolitan Club Services, which name was registered as to part in the name of a dummy for Knight, had cash dealings for which no satisfactory explanation has been given. Knight said he put no money into the proposal. Did Morgan really put in the \$1,550, or did Rooklyn contribute some cash? Who received the cash drawings in later January and early February. I do not know.

Inferences from Knight's part in these Incidents

148. The whole affair raises grave suspicion against Knight. He is to blame for being in this compromising situation. To make it worse, he has been untruthful about it. On any view, his involvement lays him open to severe criticism as a police officer. The question, however, is whether, taken with the failure to properly report concerning Bally, it points to a positive answer to Term 2B.

McNeill's and Knight's Statements in Clubs that Bally "Clean"

149. It is clear that an object of Rooklyn, in seeking to make some arrangement with police engaged on the inquiry, was to use them to proclaim in the right quarters that Bally had no criminal affiliations. I have already indicated that the true import of the final report was that that organization had no such affiliations and that the earlier assertions were the malicious assertions of their competitors, a matter which is untrue in many respects. It is clear and in fact conceded, that both McNeill and Knight made some such assertions in clubs, soon after the final report, despite some evidence, mainly later evidence, which rather put that what was really said was that there was no evidence of Bally's criminal affiliation. It is undoubted Rooklyn wanted the clear assertion that there were no such affiliations. The overall view of the evidence, particularly that first given, is that what McNeill and Knight were saying to Rooklyn and in clubs was in substance that the inquiry found Bally was "clear" (clean) i.e., in fact had no criminal affiliations. What really happened in these private talks with Rooklyn cannot be satisfactorily established, but soon after the end of the inquiry, from the small glimpses that are available, it appears both police were making laudatory remarks in clubs concerning Bally rather to the effect that it was "clean" or had no criminal affiliation. Some attempt was made to say that only Bally Australia was referred to, but I reject this claim. In any event, as it is a wholly owned subsidiary of Bally America, if the holding company has criminal affiliations or influences the same must be said of the subsidiary. McNeill said that the job offer would mean that "they would want us to go around and say we had investigated them and found them clean." (T. 249). He refers to Rooklyn's inquiry as to whether he was satisfied Bally had no affiliations with the Mafia and is quite clean, and he said "Our inquiries show that you have a good reputable firm" and he referred to the absence of anything to the contrary from the Commonwealth Police (T. 248). He also said that, after the inquiry, in answer to questions of various club managers whether "Bally has Mafia affiliations" he told them "Our inquiries indicated that is not the case." (T. 1450).

Credibility of Rooklyn

150. There remains to be referred to Rooklyn's evidence concerning this affair, for, it is in respect of troublesome events, such as these, that an opportunity arises to examine the general credibility of an important witness. Rooklyn is such a witness, and in any event his credibility is material to Term 3. I found Rooklyn alert and shrewd, with a greater awareness of evidence earlier given before the inquiry, than

he would concede. In demeanour he was evasive and unconvincing. In content, much of his evidence was unacceptable. It will suffice that I specify two of the specific instances, where I regard him as untruthful. His evidence concerning the Metropolitan Club Services document and dealings under that name was evasive in the extreme. I have already indicated some of the matters which must have occurred concerning this document in relation to him (PP. 141-3). He would have been aware of what he did. To escape difficult questions, he resorted to almost complete lapses of memory, which I am convinced did not exist. He resorted on other matters to a similar dishonest lapse of memory to conceal the truth. The other example is his attempt to assert that his reason for selecting particular police officers to offer them jobs was because of the thorough and efficient way he observed they did their job. He said he selected them because they would work efficiently for him. He observed how efficiently they investigated Bally.

Credibility of McNeill (cross-reference P. 212)

151. I found that I could not rely upon the testimony of McNeill, except where there was independent support from other acceptable evidence or inferences. This is a conclusion based upon a view of his evidence, as it touched many aspects of this inquiry, and upon a view of the form in which he framed the reports. It cannot be dealt with compactly in relation to the Rooklyn meeting, therefore, I will discuss my reasons later (see P. 212). The Rooklyn meeting, however, is a contributing factor. His version in substance is that he was on leave, that Knight said Rooklyn wanted to see them, that he went into Murray's office totally unaware of the purpose of the visit, so it might have been on police duties, that after referring to the result of the inquiry, offers of jobs were made, he immediately declined, stayed, but really took no interest in and did not know what was being said, returned to leave, on reflection considered the offer improper, but then learnt Knight had rejected it. Having regard to other evidence, elsewhere discussed, I do not think this is a truthful account, and, as appears in other parts of his evidence, he resorted to exculpatory versions of events and often resorted to lack of interest or memory, which are quite contrary to the truth as otherwise revealed.

Inferences concerning McNeill from Rooklyn Meeting

152. As earlier indicated, not to accept McNeill or Knight as a witness does not establish what happened. With Knight there is other evidence. With McNeill there is very little. There is suspicion and criticism for his part, as inferred from other evidence, but there is no evidence of any agreement or arrangement he made with Rooklyn. The evidence goes no further than that he went there knowing of a proposed offer, that same offer was made to him, but not taken up by him in Murray's office.

Summary of Prima Facie case of an attempted cover-up within Term 2B by McNeill and Knight in respect of Bally

153. The early police reports implicated Bally upon some local matters, treated as established and, in a major way, on overseas criminal affiliations. The final report exculpated Bally here and, in substance, in respect of overseas affiliations. Upon some matters, earlier found concerning Bally here, it is not possible now to ascertain if they were found and are true. The writer, McNeill, cannot be relied upon as a witness, has no notes and claims he has lost his diaries. Upon the overseas material there was no good reason to abandon or reverse what was said in earlier reports. Further, there was material, readily available, known to exist and known to reflect on Bally, but no step was taken by McNeill to acquire this information. If the earlier material had been properly dealt with, or if the available material had been procured, the final report should have disclosed matters, which it did not, adverse to Bally. There is no direct evidence that, for some corrupt motive, matter adverse to Bally on the subject of organized crime was deliberately suppressed. There is the intelligence report between the first and last reports that Rooklyn was in touch with Saffron to see somebody in authority to take the heat out of the inquiry, and there is evidence that, at about that period, there was a lessening of police interest in the inquiry. However, there is no evidence to support the intelligence report that Saffron so acted. There were the negotiations and/or dealings, involving Rooklyn, McNeill and Knight, so recently referred to that it is not in point again to refer to them. The whole dealings, particularly of Knight, are suspicious, but provide no direct evidence of any corruption related to suppression of matters adverse to Bally. The true nature of the transaction could not be ascertained, because its details have been smothered by the participants. In the absence of direct evidence of a deliberate and corrupt attempt to cover-up within Term 2B, the inference of it, which is open, ought not to be drawn upon so serious a matter if there is another reasonably possible competing inference. To determine this the whole police inquiry must be looked at.

**154-194 Prima Facie Case of Attempted Cover-up by Knight and/or McNeill
in Relation to Arcadia, Dean, Riley or Others**

General

154. The general scope of this material is the negative form of the final police report, signed by McNeill and Knight, compared with earlier reports, the writing down in police notes of information received (e.g. Morris matter), the writing down in the final report of matter recorded in police notes, and the failure properly to inquire and discover and, hence, report material matters concerning Dean, Riley, Arcadia, South Sydney Juniors and the Motor Club capable of classification as organized crime. This part is directed to the entertainment side, but encompasses other activities in clubs by persons who came under notice of the police inquiry.

Positive findings in first report

155. On the entertainment side of the inquiry, some matters of knowledge or finding were dealt with alongside matters of allegation. After referring to the Abrahams-Riley association in the entertainment field, and Riley's conviction for offering a bribe, it was said that Dean, McPherson and other persons of doubtful character "are connected" with this field. Another example is, "We know conclusively" of at least two incidents of pressure and threats to agents to cease making bookings in opposition to the Abrahams-Riley group. It was stated it was "known" Gray was seriously assaulted by Dean and Riley at the time they moved to take over entertainment in the South Sydney Juniors Club. It was stated that "Riley and McPherson have visited various clubs offering entertainment" with "implied threats" by virtue of McPherson's presence. In para. 35 it was said "It was known" that certain officials were receiving weekly secret commissions in connection with the Arcadia operations. It seems the choice of words as to knowledge and fact was deliberate, because in contrast in the same paragraph (35), it was said of another matter, "although we are not in a position to substantiate it at this stage it is strongly suggested . . .". These examples demonstrate that the first report cannot in terms be reconciled with the last report at many material points.

Procedure To Test Sample Area—Arcadia, Dean and Riley

156. The doubts raised concerning the police inquiry, led my inquiry to make two types of investigation. One was to examine the police records, first, in order to compare the materials upon which the inconsistent reports were based, in an endeavour to ascertain the reason for the later changes and, second, in order to see whether the final report fairly reported matters recorded by the investigating police, or whether matters were suppressed or covered-up. The other procedure already referred to was for my inquiry itself to examine some of the subject matters examined by the police, first, to see whether the police had fairly recorded and reported that which witnesses said they had reported or stated and, second, to see what was discoverable upon inquiry. (See Pp. 40, 43.)

157. It was the second of the matters, namely, my inquiry into some of the subject matters of the police inquiry, that occupied the major time of the inquiry. I have already indicated the limited purpose of this type of inquiry, that it was merely a procedure to test the police inquiry by sampling, that it was not within the terms of reference directly to decide whether proceedings should be commenced against persons implicated by my inquiry (except under Term 3) and that my inquiry was not such as enabled me to express final conclusions on these matters (P. 43).

A sample area for direct inquiry was a selection of matters touching the Arcadia entertainment group. This spread into the relationship of Abrahams with Dean and Riley. Many matters, so dealt with, had little apparent connection with entertainment. There was an extensive inquiry into the operations of Dean in and outside South Sydney Juniors Club (SSJ), into matters concerning Riley, McPherson and various other persons reputedly associated with Abrahams, Dean or Riley. It extended to relations with Testa, who was described in Commonwealth intelligence material from Chicago as an American gangster. SSJ occupied a substantial part of the final police report and Dean, Abrahams, Riley, McPherson and Testa were also extensively referred to.

No evidence or acceptable intelligence Bally and Arcadia (poker machines and entertainment) linked

158. There were allegations originally that this entertainment group was linked with Bally. One suggestion was that the link was through Testa. From the police inquiry and from my inquiry there has not appeared any ground, even upon an intelligence type approach, to justify a view that there is such a link. Unless and until there is at least some reasonable intelligence material to this effect, it is proper

to regard as separate any questions touching entertainment having relation to the Arcadia group and poker machines having relation to Bally. SSJ do not have the Bally poker machines and there was no indication of any link between either Dean or Riley and Bally.

*Inquiry Into South Sydney Juniors, Dean and Riley. Relevance of my inquiry.
Need for further future action*

159. Reference again is made to P. 43, as to the limited purposes of my direct inquiry into particular matters. Thus, it is not my province to report concerning Dean or Riley or any other person or to advise whether there is ground to prosecute except for cases within Term 1. To have undertaken that task, I would have proceeded to examine some matters to the end and doubled the length of my inquiry. In the first instance it is a police matter, not a matter for a Royal Commission. It would involve questions of the admissibility of some evidence in view of the operation of the Royal Commissions Act, s. 17 (2), (3) (b). However, having stated this limitation, the inquiry into these fields has served my inquiry in relevant ways and, in a collateral way, no doubt, will serve some useful purposes. It surely has indicated the need for an inquiry that the police did not make. To take merely the example of Dean and SSJ, there has been disclosed what appears to be criminal conduct of Dean, obviously with the co-operation of others, including the secretary Lawler, in extracting, by virtue of his office, in predatory fashion, and, by devious and grossly improper methods, money from SSJ and other clubs. The police report concerning SSJ was innocuous. The police ought to have discovered more than they did. The lead in was before their eyes in the minute book references to matters raised by the auditors. The police inquiry, led by Knight was negative and grossly incompetent. What ultimate deduction should be drawn under Term 2B, when all matters are considered together? This was the only relevance of my inquiry. However, as earlier stated, it served collateral purposes. For the purpose of Term 3, it shows the vulnerability of some clubs to the invasion of persons, by themselves or dummy directors, using the clubs for the profit or even crime of themselves or those who promote them.

Finally, my inquiry has demonstrated that the police inquiry did not reliably reveal what was occurring. It demonstrates that some better steps, either by more efficient police inquiry, or by other means, need be taken to prevent crime and exploitation of office in some clubs. The transcript of evidence has been carefully indexed, including the subject matters dealt with by various witnesses, by Mr Officer of counsel, and the exhibits and some documents marked for identification carefully put together in permanent form. In these fields, where my inquiry has "lifted the lid" a little, this material is available for those who would use it, as they should, to see what action should be taken as to past matters but, more importantly, what should be done in the future to prevent a repetition of these exploitations, by better vigilance and by some administrative, and perhaps some Legislative, changes. (See Part VIII and P. 319.)

Some areas not examined by my inquiry—conclusions open

159A. As indicated in P. 44 (e), I am not in a position to make findings, even if within my terms of reference, as to conduct, criminal or otherwise, in areas not directly inquired into. For example, South Sydney Seniors was only just touched on at several points by me. The position elsewhere must depend upon the efficiency of the police inquiry in those areas, a matter at least open to doubt, because of demonstrated failure to reveal matters in other areas and because the inquiries in many of the clubs was mainly directed to matters, e.g., club books, unlikely to reveal criminal conduct, particularly any that could be classified as "organized". However, it must be said, that with the clubs, more under member control, there is probably little likelihood of improper conduct or crime.

Comparison of police notes with final report—report more innocuous

160. I return to the two different types of inquiry described in P. 156, one, a comparison of police recordings and the other an examination outside the records. The first, which involved comparison of police notes with the reports, principally the last report, revealed, first, that, at many points, there was support from police records, properly kept by some police officers; second, due to some serious deficiencies, in some of the notes taken, the method of taking them, omissions to record and the absence of some note books or proper records, there was no satisfactory police record available in respect of some important matters; third, that many parts of the final report represented a writing down of incidents to a more innocuous form.

My Independent Inquiry Concerning South Sydney Juniors and Bally revealed matters seriously in conflict with final police report

161. My own inquiry into some matters revealed many matters, particularly in respect to SSSJ and Bally criminal affiliations, in conflict with the negative findings in the final police report.

Subject matters of P. 160 and P. 161, to be dealt with together

162. The inquiry into the police records, their absence, what was told the police and what was discoverable cannot conveniently be discussed separately. It is not possible, nor, I think, necessary to deal with the great detail of these matters. I propose, therefore, to deal with each in a general way and then refer to some matters as a whole as recorded and not recorded.

Deficiencies in Police records. Avoidance of Police Procedures by Unsatisfactory Unofficial System. Serious difficulties caused to my Inquiry

163. At the outset, I refer to difficulties, due to deficiencies in the police records. The police kept individual diaries, as they are bound to do, under Police Instruction 43. They also used individual shorthand note books. From time to time, often after some delay, summaries were made of the result of inquiries on to "running sheets", available to all the police involved.

The diary system, applicable to all police officers in this inquiry, and certainly including McNeill, required that a diary be kept with continuous and uninterrupted entries, showing the salient facts and purpose of inquiries, with a ban on mere general entries (Police Instruction 43 (4)). There was a system of recorded issue, inspection and recorded return. The system is an important one, designed to protect both the public and the police, the former against later invention or suppression, and the latter against allegations of later invention or suppression. While, as with any routine, there must be room, in the course of active work, for a sensible and not over-technical application of the instruction, the instruction is of first importance and should not be just disregarded. Where the inquiry concerns organized crime, which often seeks to corrupt police, there is overwhelming reason for police, in the public interest and for their own protection, to observe these directions.

There is some conflict of evidence as to the direction given by McNeill to his men. Evidence was given (Bradley and Ballard) that he informed the men that Mr Lendrum had directed the men, via McNeill, for security reasons, to disregard the police instructions concerning diaries. I am satisfied Lendrum gave no such direction. There was no ground for McNeill to permit departure from the instruction. He had no discretion so to do. Some officers kept diaries, substantially in accordance with the instruction, others did not.

The shorthand books were used as a substitute for diaries, but were not kept as diaries should be. They are not recorded and returned as police property, as are diaries. They remain in the private possession of the officer. They are issued as shorthand books but are used to write longhand. There is no check of them. There were gaps, more than one book being used at a time, and no reference or no proper reference to some quite material matters. There were notes added at the side in some instances. These are not academic departures. They caused me difficulty in finding the truth.

A particularly bad example is Knight's book concerning the important Morris interview, a matter much in contest before me. Whereas other matters often of no importance are dealt with in detail, this note is quite meagre, although it concerns the interview of the man himself, said to have been offered a bribe. Notes are added at the side. Two books were in progress together with entries in each on the same day. On any view the note is confusing and totally unsatisfactory.

Another bad example is the note of an interview between Knight and O'Donnell. This is merely recorded in the back of a shorthand notebook, after Knight had left the inquiry, and then kept in his personal possession. The interview is almost a one-way affair from O'Donnell and is more like a public relations statement, that a business head would issue to the press after some bad publicity. However, this is explained now by Knight as a police interview, officially recorded.

Non-production of McNeill's diaries

164. McNeill did not produce any diary of his own or any notes of anything, done by him in the events, he was engaged on the inquiry. In giving evidence, he was in a sense free to say what he wished, but suffered the detriment that he had no contemporary note to support what he said, including some unsupported matters, open to severe suspicion. At an early stage of the inquiry, in answer to a question, he said his diary, covering the inquiry, had been lost. When the police diary register was produced, it appeared that the period of the inquiry was covered by two diaries.

McNeill then gave evidence that the earlier diary had not been returned by him and that he could not now find it. He could give no valid reason for not returning it. Thus, the diaries before and after the inquiry were produced, but the two diaries touching the period of the inquiry were not produced. No corroborative evidence was called as to loss or search for the diaries. The loss had not been reported to his senior. Because of the view I have formed of McNeill overall as a witness, including on this matter (see P. 212.), I am not persuaded the diaries could not be found. I just do not know.

Serious consequences of absence of McNeill's diaries

165. The absence of McNeill's diaries is a serious matter, particularly as it relates to the first and second reports. He sought to explain the terms of the first report, which indicated conclusions after investigation, by his evidence that the investigation had not really then started and that he translated the matter in the Commonwealth 18 page document into findings. If he did do so, he had no justification for so doing from the Commonwealth 18 page document. He denied he ever saw page 19 but, even if this were so, still, on the combination of the evidence of Dixon and Ballard, I am satisfied he knew that the N.S.W. information was only the basis for investigation. In any event, I do not accept his evidence that he never saw page 19. The absence of McNeill's diaries meant there was no means of seeing whether McNeill had found material before 1st July, upon which he based the conclusions in that report and, therefore, suppressed them in the final report. Before 28th June, 1972, McNeill only had a few assistants, and their records show they were engaged upon the task of collecting allegations and then did nothing until the raids of 28th June. Although McNeill claimed he did no investigation himself before 28th June, he must, on his own concession, have been doing something. There appear in paras 22 and 23 of the first report matters of positive finding, concerning two sets of activity associated with Bally locally. These were serious matters and are dealt with in P. 129. McNeill's explanations are not satisfactory and his diary is not produced. There is suspicion McNeill established matters concerning Bally. There was on any view some matter which led to paras 22 and 23 being inserted. The diary should provide the answer. If he did establish matter, it is not in the final report.

Police treated their records as their own property. Tape recording kept privately and produced only when it suited police purposes

166. There can be added to the deficiencies in recording material matters, the attitude of some of the police that some records could properly be treated as the private property of individual police. McNeill gave the impression that he was not concerned with what the instruction was and acted as though the diaries were his personal property. An important tape recording made, it was said, because Ballard did not do shorthand, was kept as Ballard's private property, although McNeill knew of its existence and asked for it to be taken. "Shorthand" note books, used to write longhand, the main recording means of the police, were kept in private police possession and were not produced when all documents were called for. They had to be asked for. Some were not produced because lost. Despite my repeated requests for all relevant material, including at my request a special inquiry by an independent inspector, the tape recording was not produced until near the end of the inquiry and, then, only when it appeared it might help the N.S.W. Police by discrediting a Commonwealth Police officer, in respect of a version he had given of the conversation at the very beginning of the inquiry.

Comment on Deficient Police Documentation—McNeill Responsible

167. The officer responsible for the documentation of the police inquiry (McNeill) is open to severe criticism for its deficiencies. He was fully aware of the deficiencies and was a party to most of them. They were a matter of substance beyond technical breaches. Regrettably, the Commissioner himself merely regarded using the shorthand book system in the place of notebooks or diaries kept under the police instruction as perhaps a "weakness". In fairness, of course, he was not then aware of the elementary disregard at many points in this inquiry of police requirements for recording material matters and for their security thereafter, as police department property.

Final police report—writing down and understatements from other police records

167A. When compared with basic police records of their inquiry, such as running-sheets and note books, etc., the final report represented an understatement or writing down of what had been found. Where there was not admissible evidence, but indications of some allegation or indications of activity or relevant associations of criminals or those associated with them, so that ultimate police findings could be no more than absence of evidence, with matters left open for further observation because of suspicious happenings or associations, the collateral matters were written down to a point of no significance, where findings that allegations were false and no further inquiry was needed, could be made.

The process of writing down these collateral matters was aggravated in some cases by the deficiency of the inquiry itself, which led to the initial note being inadequate, to the point of appearing to favour the person investigated. This was particularly so in the case of Riley and Dean which appears to be due to the inadequacies of Knight's work.

The process of writing down these collateral matters was also aggravated, in some cases, by the basic notes inaccurately or inadequately recording significant matters, for example, Knight's record of Morris interview.

As to the mere writing down in the final report from police records, the fault lies with McNeill, and many of these appear by concession or inference from his evidence. I use the expression "under-statement" or "writing down" to include over-statement of exculpatory matter or statement of exculpatory explanation without warranted criticism or contrary statement. I do not find it necessary to be comprehensive or to explain these understatements. Cases where they occurred were in reference to Riley, McPherson, Holt (employed by Bally Australia), the efficient running and status of SSI, Dean, the Willis incident (concerning the bombing of his car), the Leslie Uggams payment, Riley (re the Sheargold incident), Riley (re the Morris incident), statements of club managers approving the Bally poker machine with disregard of recorded disapprovals, Testa's reasons for Australian visit, Testa, Riley (re Damien incident), Baldwin (re Elvin's car), Bally's direct or indirect criminal affiliations, alleged interest of Brady in poker machine business, his bias, and concerning the anonymous letters.

168-193. South Sydney Juniors. Dean, Riley, Abrahams

General

168. I propose now to refer to revelations made in my inquiry, concerning SSI and Dean and incidental to them Riley and Abrahams, but to do so in conjunction with reference to the treatment of them in the police reports. The final police report (para. 3) set out seventeen allegations having relation to this club and dealt with these matters in paras 4-42). The allegations were of Dean in various ways having financial interests in club affairs, including the club entertainment agency, namely, the Arcadia group, of assault or intimidation of various persons such as Willis, James, Parrott, Wintle and Gray, for varying purposes, of activities of McPherson and Riley in association with Dean, of various activities of Riley, including an attempt to bribe Morris, a union secretary. The police records did not provide material that would have founded criminal charges (*see* Term 1) and showed lack of evidence in most matters. However, in respect of many matters, there was ground disclosed to suggest that some of the kind of events alleged were occurring, despite the lack of legally admissible evidence. To some degree, the report, in some instances, made some references to there being perhaps some basis for some of the allegations but, in the way I have earlier indicated, many incidents as against police records or earlier reports were written down to a more innocuous account. My inquiry revealed that matters were vastly different to those recorded or reported by the police.

Dean, his exploitation of SSI, his devices, his false testimony—general

169. Within SSI, by devious means, Dean used his position as president to enter into business dealings with the club or to receive monies from persons with contracts with the club. In evidence he made many concessions, which demonstrated, on analysis, exploitation of the club and abuse of his position. These were made, upon his being questioned upon matters which appeared in documents. The transcript of evidence is available for those who ought to inform themselves of the revelations concerning this grasping, dishonest man who continues to hold office. He is shrewd and made concessions, it seems, only where he was aware of what could be shown by documents, available or possibly available. It is reasonably clear that the records of Garson Enterprises Pty Limited (the vehicle and cloak for many improper dealings), after subpoena to the accountant who held them, and, after they went to Dean's office instead of to my inquiry, were not "lost", but were most likely looked at and dealt with by Dean in some way. It is likely that the documents were interfered with. Some cheque books certainly were. The documents were mysteriously "found" in Dean's office, when pressures were applied by my inquiry, concerning their disappearance. On this and many other matters, in my view, Dean knowingly gave false evidence. Except where his testimony was a concession or supported by other acceptable evidence, it is impossible to be relied upon.

It would be difficult to think that the pattern of his conduct of exploitation of the club and abuse of his position would not extend to similar conduct, where he did not have the misfortune to have documents to show what occurred. Even on the material that was available, the devices and manoeuvres, at times, were hard to follow precisely, except to see that, in the end, it was to Dean's profit. In Dean's activities

generally, names of office holders in firms and companies are changed with little regard to company procedures. Dean's wife-to-be, or his father, or Riley, often appear as a cloak and move into some position for Dean, or Dean moves out of a position as director to wage earner or receiver of rent for premises. Aesthetic Arts Pty Ltd used a number of trade names in its dealings with the club, obviously for concealment.

Garson Enterprises Pty Limited. Dealings of Dean, Riley and Abrahams—General

170. Monies were paid in and out of Garson Enterprises Pty Limited, without regard to rights or company structures. There are cash dealings in substantial sums. Monies were paid out, after consulting Riley, not then a director, and without reference to Gardiner, then a director. Large amounts of money were paid out in cash to Dean to be kept at his home. Substantial money was paid out with a notation of a "joint venture" —Riley and Dean, which cannot be explained. There were dealings involving Dean, Riley and Abrahams which do not observe any correct business pattern and seem to be able, sometimes by later obliteration or alteration, to change from loan to dividend or to some other character. It is clear that all three at times had dealings involving substantial monies either in relation to the Motor Club, some motel property, SSJ or some other matter, that each had a very close association with the other, that all three were overseas together at times and were close friends. There is little doubt each must have been aware at least in a general way, of the true nature of the activities of the others, in relation to the clubs with which they were associated, namely, Dean and Riley in the Mariner's Club, all three in relation to the Motor Club and SSJ.

Dean's activities and exploitations in SSJ

171. I will content myself with the barest general reference to only some of Dean's clearer activities relating to SSJ.

- (a) Dean forced upon Martin (All Clubs Cleaning Co. and Coronet Carpet Co. Pty Limited), the apparently reputable cleaning contractor for the club at about \$3,500 a week, the payment to Dean of \$150 per week as "public relations" officer. Dean's duties were a sham and the weekly payments a "kick-back" dishonestly extracted.
- (b) Dean received money from Kays Constructions Pty Limited, allegedly for work done for it, shortly before that company received a very lucrative construction contract, without any other tenders being called for. Sinclair, the moving force in that company, had also been associated with Aesthetic Arts Pty Limited in its foundation, this company being the vehicle under various names by which Dean had numerous dealings with the club.
- (c) Dean was a director of and, it seems, received wages from Tracy Burns Pty Limited (of which Sinclair, referred to above, was a director), and this company supplied fancy goods to the club.
- (d) The club discontinued its wrestling contract. The contractor owned the ring. The club was starting boxing and its minutes show the club was looking to buy a ring. Dean bought the ring himself for \$1,500 and, under the name of M. & D. Sports Hiring Service, hired it to the club at \$60 per week. After three years, during which the rental exceeded the price, the ring was sold to the club for \$3,000.
- (e) W. J. Dean & Son Supply Co. sold novelties to the club.
- (f) A club contractor was induced by Dean to hire Dean's taxi truck in supplying the club.
- (g) Design and decor work for some \$5,500 was carried out for the club by Aesthetic Arts Pty Ltd and at a time Dean, Sinclair and one Green were directors or shareholders, but this was invoiced to the club in the name of Green. There were numerous other dealings between the club and this company either in its own name or using one or other of the various firm names, it would seem conveniently, to conceal the true identity of the trader.
- (h) Garson Enterprises received the contract to furnish the Sky Lounge of the club. The figures, from the relevant books, show a payment of \$35,094 to the company and expenditure in purchasing the furniture at \$17,640. The company was not in the furniture business and no other tender was obtained.

The use of Violence in SSJ—James and Gray Incidents

172. I do not propose to deal at any length with the allegations, referred to in the police reports, concerning the use of violence by Dean. In respect of financial dealings, matters were able to be uncovered by my inquiry, because of the permanent witness of documents. Violence and intimidation stands in a different category, in that proof depends entirely upon an eye witness being willing to speak and, in the case of my inquiry, to do so some years after the event. It is important, however, that the absence of eye-witness proof does not result in a dismissal of the matter with a conclusion of the positive non-existence of violence. I deal with two matters. James Day Pty Limited, by various devices, was a Dean company. Dean extracted \$20 per week, paid to James Day Pty Limited, from Peter James, a 20-year-old band leader employed by the club. Dean said the payment was for "advice" or "fatherly advice". Dean's answers persuades me this was a sham. At a later stage he and James came to blows, when James had just been given three months notice. James was intoxicated. Following upon the blows, James was over-powered and ejected and when later he returned for his musical instruments, he was not then or thereafter permitted back in the club. The incident is dealt with in para. 23 of the final police report. James signed a record of interview in almost over abject terms. The receipt of the money from this young man is an indication of the extent Dean was prepared to use his position.

There are many indications, without much hard evidence to prove it, that some physical violence has been used in association with Dean's activities. There have been quite a number of allegations of violence, and in respect of most there has been some incident where violence has been used. The alleged victims either are non-co-operative with the police or do not inculpate Dean. In the cases of Gray and James, the fact is each, who had a contract with the club, had his visits or connection with the club ended upon the incident. There is not sufficient material to make any conclusions against Dean of assault. However, negative conclusions are not justified. I am not satisfied I have the truth of the physical exchange between James and Dean. The extreme terms of James' statement, despite the prior history, not referred to in his statement and the effective negating of the three months notice period, leaves me with the strong impression that the truth of the final incident has not really been revealed.

There are a large number of quite different versions concerning the exchange between Gray and Dean. I do not find any of the three of the four persons present, who gave evidence concerning it, i.e., Dean, Gray or Abrahams, satisfactory witnesses. The fact is that the new entertainment group, Abrahams and Riley, were present, and Gray, the former agent, was excluded from the club. There was some violence between Gray and Dean and Riley lent some kind of a hand in it. Three in interest were lined up against one. That, anyhow, was the end of Gray in the club. A positive finding that Dean has used violence to achieve his ends cannot be made. As with so many matters concerning Dean it would be quite wrong positively to conclude it has not been so used. The ruthless inclination of Dean to achieve his dishonest purposes, irrespective of what appears, the material which provides suspicion that violence is used to achieve Dean's purposes and the indications that persons with knowledge of it are disinclined to reveal it, requires that those who have to consider the affairs of SSJ in relation to Dean, and those acting in concert with him, should not exclude the real possibility that violence and perhaps threats of it are used in aid of Dean's purposes.

SSJ—Relationships of Dean, Abrahams and Riley

173. Some reference should now be made to the activities of Dean and Riley, and to a lesser extent Abrahams. Each had some association with each of the others in their relations with SSJ. Abrahams through his interest in the Arcadia Group became the entertainment contractor in replacement of Gray. Riley was an executive and shareholder in this company. He was given various positions in SSJ. He was paid monies in connection with poker machine supervision. Another and separate organization was employed upon security. Riley received weekly payments from the club, allegedly so he could pay named persons, who supervised the poker machines. The monies were not paid direct to the alleged employees but to Riley. The payments per person varied according to the number listed, but the sum received by Riley weekly was the same. It seems likely this was sham work for Riley's benefit. Riley had other associations with the club, by his connection with Dean's various interests trading with the club. He came in and out of these interests in a way which suggests that they were a convenient vehicle for some kind of partnership in aid of and beneficiary in Dean's illicit dealings. Thus, in varying and changing degrees as director, wage earner or receiver of money he had connections with Aesthetic Arts Pty Ltd, Garson Enterprises Pty Limited and James Day Pty Limited. From evidence in relation to the attempt to bribe Morris, the union official, it seems in some way on behalf of Dean in respect of SSJ, he tried to buy off the union, to become a member when not entitled to be a member, and to deal with club employees in industrial matters.

Dean, Riley and Associated Mariner's Club: General practices. e.g., Motor Club

174. The association of Dean and Riley is to be seen in the Associated Mariners Club. It seems Riley, in association with Raymond Smith in the poker machine sales industry, collected substantial monies from the club, including a substantial "consulting fee". Riley held no position in the club, but was able to invite Dean to come and take a position in the club. Dean said he went there on a "consultant basis", but it is clear, he hoped to make money through Garson Enterprises on poker machine sales and other ventures. In fact, he became a director of some sorts of the club. In this type of manoeuvres there is no question of a club election. A director goes out and an arranged director comes in, presumably to fill the casual vacancy. A characteristic of Riley's activities, and one in evidence in the Motor Club (see later), is that certain employees, or at least their names on the payroll, seem to follow, in and out of clubs, certain persons who have some control in the clubs. This is a practice which apparently existed generally at the Motor Club as observed by R. J. Selby in his report to the secretary, Licenses Reduction Board, dated 20th June, 1973, part of Exhibit E, p. 7, where he notes that payments to some employees appear to cease on the resignation of directors. As he observed also, many names are listed as members although not elected.

Oliver, an ex-police officer associate of Riley, in some way had a job at the Mariner's Club procured for him by Riley. Dalby was given employment at the club on Dean's suggestion to Dalby to see Riley. Oliver later had employment in the Arcadia group and in SSJ. Dalby later had work arranged for him by Dean at the Motor Club and he also did security work at SSJ. The type of work done would be difficult to check on and was in the sensitive security field. Much of their duty was done, when other people were in bed.

Dalby, who did substantial security work for SSJ employing others, conceded he had on his books three fictitious persons, obviously representing a substantial sum over a period of time. Dalby admittedly had false books and received cash. It is fair to say the means existed to pay a cash "kick-back" to Dean or others. With Dean's pattern of exploitation and "kick-backs", it is hard to believe that, in getting into these clubs to make a profit for himself, he would have put Dalby into them for no consideration. No conclusion, however, can become to one way or the other. Dean and Riley left the Mariners Club at times not far distant from their entry into the Motor Club.

Dean, Riley and Abrahams at the Motor Club

175. At the Motor Club, first Riley and Dean were associated, and later Abrahams. At this point, apart from what appears at SSJ, it is clear Dean and Riley are engaged in process of extracting, by improper and *prima facie* criminal means, monies from such registered clubs as they are able to enter. They left the Mariners Club and entered the Motor Club at about the same time. They left that club in due course. They are in association in SSJ. Even where Riley appears to have no official position of authority, he exercises authority, as if he had. He did so at the Mariners' Club, the Motor Club and at SSJ, e.g. in union matters. Riley made the approach to Dean to go to the Motor Club. Riley had no position there. Dean went there and was employed, it was said, as night manager. Riley took some position, said to be social director.

Dean received \$150 a week, which included an expense allowance, plus an additional sum for expenses incurred in entertainment which, however, from their similarity in total to some similar payments to Riley and Abrahams and the artificial break up of the weekly claims, were sham, or certainly sham to some extent. After three weeks Dean went on "annual leave" for three weeks, for which he was paid \$375. Riley was paid \$200 a week plus expense allowances. Garson Enterprises, of which Dean was then a director, was said to have been employed as a "consultant" at a weekly rate which, over a short period, amounted to over \$6,000.

Abrahams was employed, it was said, to do a feasibility study on a weekly wage plus an expense allowance, which is subject to the foregoing comment, and later became a director. He did advance the club a large sum of money for a short period but, of course, was paid interest.

There is little doubt that Riley and Dean raided this club and took what they could. It was said they went there to help the club, because it was in financial difficulties. Their conduct shows they had no regard for those difficulties.

Riley's Activities—Ground to Classify as Organized Crime

176. Riley's position needs to be looked at, because of its relevance to organized crime. I turn to look at his activities on a wider basis than in relation to SSJ, or even in relation to Dean. Riley's activities are, at many points, connected and intertwined with those of Dean and Abrahams. Many of the activities, but particularly

those of Dean and Riley, are of an organized variety. Some can be said to be organized plundering of clubs by improper and apparently criminal means. This was the type of activity being examined by the police as alleged organized crime. However, so far as it could be proved, it is really more of the variety of crime which is organized than organized crime according to the American pattern. To find such organized crime one would look further to persons associated with the activity. If the persons involved in aid of the organized activity, use the weapons of organized crime, such as corruption or intimidation, any criminal activity with which they are associated would be easier to be classified as true organized crime.

The police approached their inquiry concerning Dean and Abrahams on a similar basis because, in the first report (paras 27-8) in connection with the allegations of criminal activity in the entertainment field, Riley's connection with the Arcadia group was examined and reference was made to his conviction for attempted bribery and it was stated as a fact that connected with the entertainment field were Dean and McPherson, the latter being characterized as a well-known criminal and stand-over man. The third report (para. 26) says, on the entertainment side, "we have little doubt" Dean is associated with Arcadia in relation to SSJ entertainment and was a known associate of "a criminal named Leonard Arthur McPherson" and referred to him as "Mr Big" and his reputation as a standover man. It also referred to Riley's connection with Arcadia and to his "known" associations with McPherson. This did not derive from the Commonwealth 18-page document. McNeill's claimed paucity of any real material to base these statements and at the same time his attempt to justify his somewhat different approach later, is most unconvincing, particularly in view of McNeill's close knowledge of McPherson and Dean and his knowledge and means of knowledge concerning Riley. However, if what he now says to justify his later statement is true, then at the very least, par. 26 was misleading as he must have known when he wrote it.

Riley's Associations with Raymond Smith and McPherson

177. Riley was a detective in the N.S.W. Police Force and, following his being put into uniform, resigned in the fifties. He was departmentally charged with taking a communication to a person in gaol, the charge being proved. While a detective he was in the area in which McPherson lived and drank and, at least in the course of his duty, came into communication with McPherson. McPherson was an associate of one Raymond Smith, a man with a substantial police dossier on criminal activity. In the fifties Smith, because of some differences with criminals, had threats made to him and his car was bombed. Riley was assigned to offer Smith protection. He acted as his bodyguard and lived in his house for a period. When Riley resigned from the Force he formed some kind of business association with Smith. Smith, through Club Distributing, dealt in poker machines.

Riley's New Zealand Conviction for Bribery

178. After he left the police force, Riley was convicted in New Zealand for attempted bribery of a police inspector and sentenced to 12 months imprisonment on 1st July, 1966, and on 1st March, 1967, was deported. McNeill, in his final report, obviously set out to minimize the criminality of Riley and to emphasize the good aspects of Riley's career, which should be mentioned, namely, the numerous medals he won at the Empire Games and the medal he won at the Olympic Games and his police award for bravery. McNeill referred to one part of Riley's police record, but not the other, and he did not inquire into the nature of his conduct in New Zealand, for its possible relevance to the nature of his activities and links with Dean and McPherson. My inquiry obtained from New Zealand material from the relevant court records. They are significant, because the background of this crime is suggestive of Riley's connection with American-style organized crime. With other local material, to which I will refer, there is much to suggest that crimes, with which Riley is connected, qualify for classification as organized crime. It is a reasonable inference that Riley's New Zealand crime had the following aspects: He went to New Zealand at the behest of some Australian criminal, specifically to bribe a N.Z. Police officer. He offered a bribe of \$1,000 to an inspector of police to arrange for the release on bail, on strict reporting terms, of Australians, then in custody, on charges in connection with dishonesty regarding pyramid selling, and offered to obtain later a much larger sum as a further bribe to arrange for release on more liberal terms. It can be inferred the ultimate plan was, by corruption, to procure the escape or perhaps avoidance of the charges by the persons charged. It was urged on Riley's behalf that he was led into the crime by unnamed corrupt persons in New South Wales. His good record was pressed and one letter of good character, referred to in the N.Z. transcript but not seen by me, appears to have been from Raymond Smith, because the writer commended Riley's protection of him when he had specially asked for Riley's assistance as a police officer when he was threatened by criminals and his car bombed. The court was unimpressed by Riley's good record and first offence and dealt with him as indicated. This crime has the elements of serious American-style organized crime.

The Case Against Riley, of offer of Bribe to Union Secretary (Morris). Organized Crime Aspects.

179. The other crime, into which my inquiry and the police inquiry looked, and in respect of which, on the facts, I think there is strong *prima facie* evidence against Riley, provides further indication of Riley's involvement in organized crime. These are the attempts to offer secret commissions (or bribes) to Morris and to Sheargold. The former is the more sinister. For my part, despite some criticism, proper to be made for the failure of Morris initially to go to the police, and from the terms of his television interview, Morris impressed me as a truthful witness, so that there was strong credibility in his story as to Riley's offer to him and concerning Riley's other attempts to interfere in union affairs. On this version, on the eve of a stop-work meeting concerning SSJ, Riley offered \$1,000 to Morris, to give to his "favourite charity", to stop industrial trouble during Dean's absence in Las Vegas (in the language of U.S. organized crime, a union "sweetheart" agreement). When not entitled to become a member, he tried twice to enter the union by submitting the union fee and an application. Morris, at the time of the offer, was the newly elected secretary of the Federated Liquor & Allied Industries Employees' Union, N.S.W. Branch. Again, if one accepts the version of Morris, there is the U.S. pattern of the attempt to control the union by a "sweetheart" agreement, leaving room for a next possible step of control of the secretary and, to a degree, through him, the union by threat of exposure of the past bribe. There is, of course, no evidence that the last mentioned sequel would have taken place. Having regard to the "sugar coating" of the offer, as to the charity and the newly arrived secretary after a strongly contested election, it is at least possible the attempted crime could have had this sequel. It is of the U.S. organized crime pattern.

Case Against Riley regarding Damien—Allegation threat to Collect Debt

180. Another incident investigated by the police was an allegation that Riley had been sent by Geoffrey W. Gardiner to collect a debt of \$3,000 from one Ivan Damien, and that Riley had "stood over" him. The police dismissed this (final report para. 167) without interview of Damien. Gardiner and Riley admitted this visit to the police, but said Riley only went to tell Damien legal action would be taken, if the debt was not paid. It is a little hard to understand why a personal visit would be made for this purpose. The police inquiry was quite futile without seeing Damien. I am unaware of the truth as Damien was out of my jurisdiction and Riley was missing (see later). Para. 105 seems to say this allegation was completely disproved, a statement which is unjustified. If the allegation is true, it fits the pattern of U.S. organized crime used to collect debts. It was the method used by U.S. gangsters to collect debts incurred in gambling in the London clubs.

Riley's apparent exploitation on organized crime pattern

181. The pattern of activity of Riley within the three clubs has at least one important aspect in common with the U.S. gangster pattern in the Las Vegas and London clubs. In the first two clubs Riley, a person outside any club authority or office, arranged directorships and employments, and in SSJ, without office, usurped the position of industrial relations officer and acted in the club's affairs.

In all three clubs, he participated in and acted in organizing the skimming, by illicit means and shams, of monies from the clubs. Particularly in the early years of Las Vegas, the gangsters, without office, gave directions concerning club officials and operations and skimmed profits from clubs. Likewise, in England when, after 1960, gambling was legalized or liberalized and when clubs were loosely controlled, the U.S. gangsters, some from outside England altogether and without official positions, directed the operation of some clubs and skimmed monies from them.

Riley's Associations

182. The general experience, in America and in the Las Vegas and English clubs in the sixties, with such organized crime, was that links between criminals and the operations were not often directly apparent, but could at times be deduced or suspected from associations. Indications and suspicions arise from some links of Riley with criminals. Riley has been in a close business relationship with Raymond Smith, dating back to the fifties. He was apparently engaged with Riley in doubtful or criminal conduct in the financing of poker machines. Smith has a long standing association with McPherson, a man with a bad criminal record and to whom I will later refer. Riley is closely linked in the ways already indicated, including dishonest ways, with Dean. Dean undoubtedly has links with McPherson over many years (and see 3rd report para. 26 and P. 176-7).

Riley's Special Account and Cash Transactions when in Police Force

183. Suspicion arises concerning Riley's period in the Police Force and hence his relations with McPherson. From documents produced under subpoena by Riley's accountant, it appears that while Riley was in the Police Force he had a special bank account into and from which cash payments were made. Riley was investigated by the tax authorities and concerning this account Riley's accountant wrote, "The account had been used by Mr Riley to bank certain money received by him on behalf of other people and himself". Practically all the deposits and withdrawals had been made in cash. The account shows a number of payments in and payments out shortly after, usually of just less than half the payment in. In the absence of questions to Riley, the matter can be carried no further.

Dean's receipt of monies from 33 Club. Only inference sinister purpose. Possible relevance to associations with persons earlier referred to

184. To take the matter further, Dean recently received money from the 33 Club, which is obviously engaged in illegal gambling. The detail of this occurrence is relevant to the organized crime quality of the actions of Dean and perhaps Riley and others. The 33 Club is not a registered club and is outside my inquiry, but it is referred to, because of the relevance just adverted to. Dean made admissions because of the discovery of certain cheques and entries showing payments from Moylan (since deceased) of the 33 Club to W. J. Dean & Sons Pty Limited, and James Day Pty Limited. Dean conceded he personally called at the 33 Club and received the cheques. His explanation was that he just went along to Moylan, whom he had known for a few years, said his company has not doing too well, and said he would like to do some "public relations" work. Moylan, obligingly, simply asked him "How much". Dean nominated \$150 a week, and this was agreed to. Dean was at a loss to tell of any other material conversation or what he really did, other than tell people the club was a good place, if they asked. He could or would not explain how it came about that, after some payments, the payments increased to \$500 or \$600, other than to say Mr Moylan was generous. He could give no details of how his wife-to-be won \$5,000, although he was in the club at the time. In December, 1972, the payments totalled \$1,300.

It is clear that the monies paid over were not for the reasons Dean gave and that he continually and blatantly lied in his evidence concerning these monies. It is obvious that behind these payments lay some criminal conduct which Dean covered with his lies. It could be "protection money"; it could be participation in illegal profits from illegal gambling; it could have been a collection for somebody else, in whole or in part. Whatever it was, it is sinister and marks Dean as a man, deserving of the closest and constant attention by the law enforcement authorities. McPherson used to frequent the 33 Club, but had been banned from it by McNeill in 1971, obviously because of the possibility of his standing over the owner. Riley was a visitor to the 33 Club. The records of payments to Dean ceased in March, 1973, as suddenly as they had started in August, 1972. Nobody could well believe Dean's story that he discontinued because he did not want to be out so much at night.

Riley goes into hiding during my inquiry. Not found after special searches

185. Riley was not available as a witness despite the special efforts of Detective Sergeant Lascelles over many months to track him down. I accept that the sergeant efficiently used every reasonable effort to find him. It is clear Riley hid himself to avoid being called as a witness. He sent a cable to his accountant to give the appearance that he was in New Zealand, when it seems he was here.

Any provable crimes of Riley or his associates probably classifiable as organized crime

186. Using the standards of satisfaction, earlier referred to, on the matter of classifying organized crime (P. 118), I think that any provable crimes of Riley or of persons associated with him should probably be classified as acts of organized crime, particularly where there is planned skimming of club monies. On this basis, as Riley is so connected with Dean's activities, I think any crime provable against Dean would be organized crime. Further, there are grounds for suspicion that any crime of Riley and Dean are of the organized crime variety, for the additional reason that there are real grounds for suspicion (short of positive inference) that there are organizational connections between McPherson and Riley and McPherson and Dean, and between McPherson and Testa and the other group of local criminals who entertained Testa here. This group includes George David Freeman and Milan Petrocevic (known as Iron Bar Miller). Associations between most of these persons are established but, as is usual, there is little evidence of the purpose of their association. In view of their notoriety as criminals, it is a better speculation that criminal purposes are involved in their associations than that these associations are for innocent social purposes. What is clear is that the reasonable chance of connection of these persons with crime and potential further crime, in relation to the registered clubs, cannot be excluded. It would be dangerous so to conclude. It should not be overlooked that the police inquiry had

public notoriety in April, 1972, and thereafter, until now, there has been either that inquiry or mine in progress or debate in Parliament about the matter. It is not unusual for truly organized crime to be sensitive to such occurrences and for a while thereafter.

The place of Abrahams in Dean-Riley group

187. The place Abrahams occupies in the Riley-Dean group is hard to define with certainty. He is apparently wealthy and is in command of a vast group of interlocking businesses and companies. It is clear that no basis has been disclosed for some allegations originally made concerning him, e.g. some connection with drugs at Pete's Bar. However, I do not think he was an innocent and unsuspecting businessman in his dealings with Riley and Dean. He was closely associated with them at the Motor Club and SSJ. He is an outstandingly alert and capable businessman. Quite apart from the fact he became a director of the Motor Club, he could not have been unaware of what was going on there. His own expense account offers some confirmation. His dealings with Riley and Dean, through Garson Enterprises, including the Gold Coast Motel project and his taking Riley in as a partner in the Arcadia business, shows he was in close business relations with them. Some of the financial dealings involving Abrahams and Riley, some via Garson Enterprises, unclear and concealing as are the documents, support the existence of a close and friendly and knowing business relationship. Apart from the employment of the Arcadia Group by SSJ, there were dealings within the Arcadia Group which demonstrated a close association with Dean. Thus Abrahams in reality had Riley as his partner in Arcadia, when at the same time Riley was really a partner of Dean in numerous dealings in relation to SSJ. Further, there was the employment of Carol Dunne (later Dean's wife), Palmer, Oliver, and the various dealings with Aesthetic Arts.

Abrahams is not entitled to the clearance on credit he claims, nor the glowing terms used in the final police report. Whether there can properly be grades of dishonesty in tax evasion, it is clear his admitted tax evasion reveals him, a wealthy man, as prepared, over a period of time, from week to week to falsify books and write false cheques in order to deceive. He had four fictitious employees, with all the accompanying record falsity, and all the consequential false tax declarations, documents and returns. Deceptive cheques were drawn each pay day and, according to Abrahams, the proceeds were shared by Riley and himself and nobody else (T. 806-7). However, G. W. Gardiner said that when he was a director of Arcadia Top Artists Pty Limited, there were seven fictitious employees, and their wages were divided between Abrahams, Riley and himself (T. 1015). These events reveal Abrahams as a calculating cheat, prepared to go to any degree of falsification to procure dishonest ends. It cannot be dismissed, as was sought, as irrelevant "tax evasion". Why should his word be accepted that nobody else received this convenient cash for some purpose? (*and see* PP. 188-9 as they touch Abrahams).

Was Riley really bought out of Arcadia

188. Why should Abrahams be believed because he goes through the process, with cheques, etc, of buying Riley out of their venture, when Riley's presence was an obstacle in the way of his organization obtaining a licence in connection with the entertainment agency? Abrahams concedes he had Riley transfer his shares to him to remove this obstacle. The shares were transferred and there was a cheque to Riley for \$15,000. I do not think that these documents, or Abraham's word, is sufficient to establish that, as claimed, Riley really gave up his interest, particularly in view of some suspicious pointers to the contrary. I would not be satisfied that Riley really gave up his interest in the company and that it was not still continuing in July, 1973.

I will refer to two only of such pointers. One was that in early 1973, when Riley was supposed to have severed his connection with Arcadia Top Artists Pty Limited, he went overseas at its expense and, there can be little doubt, in connection with its business. Dean, Abrahams, Lawler (secretary SSJ) and Riley were present in Las Vegas. An attempt, which grew up in the course of evidence, to suggest he went as some kind of companion was transparently false. (T. 527-8; 630-1; 802-3). Then Riley went on a round-the-world ticket to London in July, 1973, invoiced to the company (T. 804).

The other pointer is suspicion surrounding the payment of the \$15,000 to Riley. In fact, there was an exchange of cheques, Riley paying \$10,500, said to be in repayment of loans. There are so many alterations in documents in respect of payments to Riley, shortly before, apparently, made by Abrahams, e.g. changing "loan" to "dividend", made so as completely to obliterate the earlier writing that no credit can really be attached to the documents, as such (T. 812) particularly when, in respect of the fictitious employees, there must have been cash dealings between Riley and Abrahams. Then, some months after the alleged severance of Riley from the company, the company paid Riley \$5,000 claimed to be a loan but still outstanding in 1974. I repeat, I am quite unsatisfied Riley was removed from Arcadia. The probability is that the formality to remove him, unaccompanied by the fact, occurred in order to enable the entertainment licence to be obtained.

What is the truth of Gray's dismissal and the employment of Abrahams by SSJ

189. It is difficult to form any clear conclusions concerning the removal of Gray and the substitution of Abrahams (Arcadia) as the entertainment agent of SSJ, except to say there is great suspicion concerning its propriety. Large sums went to these "agents", in the order of something just under a million dollars annually. With Dean's history of extracting moneys from others, and what he could out of the club's business and with the relations that existed between Dean, Riley and Abrahams, and the cash dealings of each, it is almost impossible to think Dean would go unrewarded in respect of these vast payments.

It is not possible to determine Dean's precise relationship with Gray or Abrahams or what led to the termination of Gray's services and the commencement of those of Abrahams. I am not satisfied the police or I have before us the truth of these matters. It seems that Gray in any event was unsatisfactory in some respects, and that Abrahams, although inexperienced in the field, has probably proved an efficient agent. Abrahams, of course, is not really an agent. He contracts with the club and makes his own contract with the artists. The club, therefore, does not know what profit he makes or the fees received by the artists. A great responsibility, therefore, rests upon the club executives to negotiate with ability and at arm's length. It is greater where there is no competitive method of tender. Dean certainly never acted at arm's length. The past history is set out in the transcript and I will say little of it. While Gray was still the agent and booking acts, Dean was taken on overseas trips by Abrahams who, as earlier indicated, was then in close and doubtful association with Riley and Dean. The true picture is quite different to that presented in the final police report. For those, including the club and the relevant Government department, concerned for the future with this relationship and this agency the closest scrutiny of these relationships as described in the transcript and commented upon by me seems will be warranted.

Inadequacies of Knight's Inquiries into SSJ. Failure to Refer to Vital Reference in Minutes to Auditors' Questions or to Interview Auditors

190. I return now to the police inquiry and reports concerning SSJ. The final report toned down the little that was revealed and substantially gave negative type answers to the many allegations investigated concerning SSJ, Dean, Abrahams and Riley. Knight's inquiries give the impression of superficiality, disinterest and lack of skill. The report emphasized the efficiency and success of the club. Although Dean asserted willingness to answer questions and help the police, I think his attitude would probably have become unco-operative in the face of determined inquiry, which never occurred. At this point it must be remembered, with the use of the subpoena and the right to compel answers to questions, that my inquiry was in a much superior position to Sgt Knight. Making full allowance for this, however, Knight's inquiry should have revealed much more than it did. There is at least suspicion he did not want to find out. I will only refer to several matters by way of example.

The fourth report para. 9 refers to the efficient accounting and to the reputable auditors of SSJ, Messrs Peat, Marwick, Mitchell & Co. The allegation, being inquired into, that Dean was financing his private enterprises from club funds, was dismissed in para. 19 virtually by only a disclaimer of Dean and the comment "having seen the manner in which the Club's accountant maintains his records and the auditors check them we are satisfied this allegation is without foundation." There appears in the minutes of the meetings of the directors of the club, questions raised by the auditors concerning Dean's association with a number of firm suppliers to the club. These included Aesthetic Arts Pty Limited, Tracy Burns Pty Limited, Walter J. Dean & Sons Pty Ltd, Australian Colour Productions, Garsons Enterprises Pty Ltd, and Prestige Trading. There were references to non-disclosure by Dean of interests. Later, to rectify the matter, a resolution is recorded in the minutes, as unanimously passed "that advice had been received from the Chairman," (i.e. Dean), "prior to the dealings, of his interests in businesses or companies dealing with the club".

Pausing here it can be interpolated that it is clear this was a false resolution and, hence, reflects upon the integrity of the board or those who were directors at relevant earlier periods. The resolution appears to compound Dean's breaches of duty. It is clear, from Dean's own evidence, that these matters were not revealed at the time to the board. Firm names, it seems, were restored to for concealment purposes.

It was claimed by Knight that although he, Day and Moroney went through the minutes and he, Knight, recorded some material from them in his book, these minutes were not seen. Were they? If they were not, why not? Even on a most cursory glance it would be impossible to miss them. They appeared at various points, were in some detail, lengthy and recent in time. They could not be missed on any real examination of the minutes. Further, there was correspondence from the auditors on two separate occasions. Any inquiry, having seen them, must have led to an examination of Dean's activities, at least to some extent, upon the lines of my inquiry. Even apart from the minutes, the seventeen allegations covered such a field of inquiry into

this club and reliance was so placed on the work of the auditors, in para. 19 above referred to, that it is surprising no inquiry was made from the auditors. No request was made for inspection of the records of any of Dean's businesses and no well directed questions upon this subject were asked at all. Making due allowance for the proper nature of police questioning, the record of interview of Dean demonstrates a completely superficial and unpurposeful approach to Knight's inquiries concerning Dean and this club.

SSJ Minutes Suggest Knight Acquitted SSJ before Interview of Dean

191. The following appears in the minutes of SSJ of 28th September, 1972:

"The chairman gave the board a comprehensive report of the visit to the club by four senior C.I.B. detectives. The secretary and president answered many questions during their visit which information was completely satisfactory to the investigating officers. Sergeant Doug. Knight informed the chairman that in his opinion the allegations that had been made against the club had no foundation whatsoever and the club was the most efficient and well-managed club he had ever visited."

This was after Knight's first visit to the club, but before his investigation or the record of interview of Dean, taken by Knight in late October, 1972. Dean hedged about this minute, obviously defensive of Knight, but in the face of his signature to the minute, said Knight said something like that. Knight flatly denied the matter and on his version nothing like this could have been said. Dean's word on its own is of no weight but with the contemporary note is of some significance. The matter set out in the minute is consistent with what appears to have been Knight's approach to this inquiry.

Probable truth concerning Knight's interview of Morris

192. Knight investigated the Morris allegation concerning the Riley offer of \$1,000 earlier referred to in PP. 58, 163, 179. In varying degrees there is a sharp conflict between Morris, John Gardiner (the then Assistant Secretary of the Federated Liquor and Allied Trades Union) and John Ducker (at the time the assistant secretary of the Labor Council of New South Wales), on the one hand, and Knight, McNeill and Bradley on the other. In this conflict the police records are deficient and inaccurate to demonstration. As already referred to (P. 163), the longhand entries in the short-hand notebook of Knight are quite irregular and unsatisfactory in form and content. The running sheet in some respects incorrectly sets forth the facts as now asserted by the police and as appear in the notebook. The notebook makes it clear there was only one interview and on 24th July. Morris could not have said that the man (Riley) called at his office. The running sheet of the Ducker interview supports the view that Riley's name was mentioned to Knight by Morris as it says, "Another incident mentioned by him (Ducker) related to Mr Morris had been approached by Murray Riley who had offered him \$1,000 to give to any charity he wished to avoid any industrial disputes taking place at the SSJ RLC . . . all the information supplied by Mr Ducker . . . has been previously supplied to us . . .". It is significant that it was Knight who was responsible for the Ducker running sheet and that it was typed 11 days before the Morris running sheet.

I was impressed with Morris and Ducker as honest witnesses. Apart from this circumstance I think objective considerations support the substance of their version of events as against that of the police version. Morris and Gardiner say the interview was of some length, and there is little reason to doubt they mentioned the Vincent incident (mentioned in the radio interview) and the Mandarin Club incident. Nothing of this is reflected in the notebook which, in contrast, on other matters gives the detail. There is an unexplained repetition of basically the same information in the notebook entries of 24th July and 1st August.

I do not accept that Morris declined to nominate Riley. I accept that he did name Riley and was co-operative, but was met by a disinclination of Knight to receive or show interest in material implicating Riley. This disinclination may have only been express to a point. It is clear, however, that Morris and Gardiner were left with the firm impression, as it was put, that Knight was at least implying that they should not "tangle" with Riley. This attitude is in keeping with the benign approach to Riley demonstrated in the framing of the final police report. The only lack of co-operation of Morris was that which arose from the demonstrated disinclination of the police referred to. The version of Morris was that the police told him to go away and make a statement, that he said that he would in effect consider it, and that he did not make a statement and did not return. I accept his evidence that the police did not further communicate with him. I think Knight was disinterested and dilatory, it would seem, because an ex-police officer of some sporting fame was involved, and that he failed in his duty in failing properly to receive and record what he was told and in failing to follow-up the matter. I think such a statement from Morris would have

been available but for Knight's attitude. Although not admissible upon another charge, the past conviction of Riley and the indications of a similar class of offence by Riley in relation to Sheargold, from a police investigation and action point of view, placed an onus on the police to have followed up the serious allegation of Morris. The fact remains that Morris did not supply the statement, although invited so to do, and that the matter complained of was well in the past and not previously reported. Bradley's is less involved than Knight, who was in charge and who composed the misleading and incomplete entries. However, because of the degree of satisfaction required for a finding that there was a deliberate or corrupt attempt to cover-up the existence of organized crime (as earlier explained) I do not think such a finding should be made against Knight upon this matter standing alone.

Favoured treatment of Riley

192A. The material available to be discovered and the material before the police concerning Riley has been discussed in PP. 168-192, but particularly 176-80, 190-2. It is clear the police, both in their inquiries and their failure to investigate and follow-up matters, treated Riley with undue favour. There was sufficient knowledge of Raymond Smith and indications of associations with Riley to have investigated their activities in relation to poker machines and generally. It is significant both disappeared during the currency of my inquiry and obviously did so to avoid being questioned. It is obvious that their activities, including past activities, which have missed proper inquiry, warrant attention. The door was closed with the unjustified statement in para. 105 of the final report as follows:

"The majority of the allegations levelled against him have been dealt with in their appropriate places throughout this report so far and in every case none has been substantiated and generally speaking they have been completely disproved."

Para. 35, after referring to Riley's conviction, gives in detail Riley's sporting medals and bravery and said he "could not even be reputed to be a criminal". The door, which was closed, should be re-opened! The unwarranted conclusion in para. 105 must be put in the scales for the purpose of Term 2B. Riley, an ex-police officer, may well have to be classified as one connected with organized crime (*see* P. 186), has had negative and favoured treatment generally and upon a matter of substance seriously reported by a union official.

SSJ Inquiry Inadequate. Knight's Part Incompetent

193. I have only touched example-wise upon the inadequacies of the inquiries concerning SSJ. That examination shows that it was inadequate and that Knight's part in it was incompetent. In accordance with what I have earlier said, I have to look elsewhere, however, to see whether the inadequacies are such that, with other material, a finding of attempted "cover-up" can be supported. There is no direct evidence of any corrupt arrangement between Knight and Dean or Riley and any other person associated with SSJ.

My sample inquiry concerning other clubs

193A. Some sample inquiries made by me related to several other clubs. There was some, but far from a full, inquiry concerning clubs such as South Sydney Seniors and Blacktown Workers' Club. Some disturbing features appeared both in my inquiry and the police inquiry concerning persons such as Denis Reginald Donaghue, Charles Henry Gibson and Geoffrey William Gardiner, in relation to the former, and Colin Sloane and William George Lambert in relation to the latter. On the material, which the police had, the final police report was inclined to report too favourably, but not to the same extent as with regard to SSJ. As I have said earlier, my testing of the police inquiry is by selected samples and that outside those samples I express no conclusion (PP. 44, 157). If they are to be judged by the SSJ sample the negative findings may need reconsideration. Two things can be said, however. First, it seems that the smaller clubs, or those with more direct member interest in the objects or affairs of the club, are unlikely to have attracted and, therefore, have the problems of the larger clubs or those clubs where there is little interest by the body of members in the club objects or affairs. Second, although the police would have been open to criticism if club books had not been looked at, some of their efforts appear to have been misguided by concentration upon club minutes and records to the exclusion of other avenues of inquiry. Although possible, the most unlikely place to find evidence or indication of a commission, which was secret, would be in the open records of the club.

Leonard Arthur McPherson

194. The allegations investigated by the police and their reports made substantial reference to McPherson. He has a bad criminal record but mainly in the fairly distant past, and a current reputation in some quarters, which would place him in the "organized crime" class. He is the class of criminal about whom persons, including the press, are prone over easily and, possibly wrongly, to connect with any unsolved apparently organized criminal activity. There is little material to form any reliable particular conclusion one way or the other concerning him in recent times.

For my purposes it is necessary to consider the police attitude to the material concerning him. McNeill, who, as head of the Consorting Squad, ought to have and in fact had considerable knowledge concerning McPherson, has been inconsistent in his reports and statements concerning him. The earlier reports have him a more sinister figure with connections with persons in the "club scene" and the last report has tended in the opposite direction. In the first report McPherson is connected with Dean and the entertainment field and is described as "a well-known Sydney criminal and standover man". (Para. 28). Para. 33 refers to activities of Riley using McPherson to offer implied threats in the entertainment field. In the third report (para. 26) McNeill refers to the known associations of Dean and of Riley with McPherson, uses the term "Mr Big" and refers to McPherson's reputation as a standover man. The fourth report (para. 2) minimizes the association of Dean and McPherson to a point of no significance. Para. 106 does likewise, in respect of the association of Riley and McPherson, by merely setting out, without contrary reference, the statements of Riley and McPherson themselves. Then McPherson's statement, without any repetition of earlier finding concerning his criminal status, is quoted for his opinion, as though reliable, as to Testa's motives in visiting Australia.

In evidence before me some of the senior police were inclined to accept McPherson's claims of departure from the criminal scene (e.g. Charlton T. 1183-7; McNeill T. 1187-90). However, he must have a substantial source of income to provide his living, both as to his home and the frequent extended overseas trips usually to the Phillipines of himself and his family. The explanation he gave as to the source of this income is not credible. Then, there are some suspicious money dealings of McPherson in relation to women coming from the Phillipines. Despite some material in the police files relating to an earlier visit to Hong Kong, no police check seems to have been made in relation to his Phillipines visit.

Questions arise from Commonwealth and State informer material of meetings of various well-known criminals, including McPherson, and others, at Double Bay, not investigated by the police and will be referred to later. Although the evidence is not very definite, it is suggestive of a lack of police effort to check on McPherson.

I accept Ducker and not McNeill as to McNeill's strong statements concerning the dangerous criminality of McPherson. I am reluctant, however, to draw any very definite conclusion concerning police attitudes towards McPherson. Considerable police expertise, no doubt, is involved in dealing with a man like McPherson and police may well, legitimately, take the view that little will be achieved by direct inquiries. As views concerning him are likely to be speculative, police on one occasion might well express not very official views one way and, yet, when pressed, on an official occasion be reluctant to assert matters not firmly based or speculative. In dismissing questions concerning McPherson, as providing no material relevant to Term 2b, it should be said it would be wrong to conclude that McPherson is not on the scene of organized type crime or connected with persons seeking to make money illicitly from the registered clubs. No conclusion either way can be come to on the available material.

Police handling of alleged Double Bay meetings

195. Reference should now be made to the police handling of what might be called the Double Bay meetings. Evidence concerning this matter arose from a request to the Commonwealth Police to produce various documents relating to communications with the State Police. This circumstance and the initial reticence of the Commonwealth Police, prior to production of the documents, tends to negative any animus of the Commonwealth against the State Police. The contemporary record is a running sheet with copy to their Commissioner by the Commonwealth Police officers, referred to as "B" and "C" to avoid disclosures of their identity, of their conversation with Ballard on 3rd August, 1972. It is as follows:

"3.8.72.

0830 hrs.

INFORMATION FROM

Advised by Sgt "E" that the following information was obtained from . . . :
During the last two weeks three meetings have been held at the premises situate 44 William Street, Double Bay, which premises are rented by a

Karl SOLOMON (m.b.i./Karl Frederick BONNETTE, born 8.3.35, Melbourne). Telephone service 328 7145 has been connected to these premises in the name of Karl SOLOMON. The meetings are alleged to be called to discuss the current activities re organized crime. . . . advised the following persons are attending the meetings:

Stanley John SMITH, born 3.1.37.

David George FREEMAN, born 23.1.34.

Leonard Arthur McPHERSON, born 19.5.21.

Frederick Charles ANDERSON, alias Paddles, born 7.2.15.

Karl Frederick BONNETTE, born 8.3.35.

Milan PETRICEVIC, born 28.9.38.

Albert Ross SLOSS, born 10.2.11 (believed to be Labor M.L.A. for King, N.S.W.)

3.8.72.

1500 hrs.

After conferring with Sgt "E" and Supt WILLIAMS the above information was passed to Det Sgt BALLARD. After making a telephone call Sgt BALLARD informed us that according to his source the meetings had been held by the abovenamed persons and included two further persons—Arthur William DELANEY, alias The Duke, born 11.9.29 or 11.9.27, N.S.W., and a person known only as "The Fibber" (to be identified). Apparently the men first meet in a bar which is located downstairs in a building close to William Street (to be identified).

They usually have drinks until 11 p.m. when they move to the William Street address.

A male person in an old Holden car is alleged to act as cockatoo during these meetings."

The oral testimony of the two Commonwealth Police confirms this record and that Ballard rang his informant in their presence and then confirmed to them the presence of the persons named. Ballard in evidence confirmed substantially the conversation with one exception. He says he informed "B" and "C" that Sloss was not present. The Commonwealth Police officers received their information from Sgt "E", who had received information from an unnamed informer. Some reference was made in the transcript, which has remained confidential, as to the Commonwealth classifications of reliability and as to other disclosures of the same informer. It is sufficient to say that the classification given attributed him with a substantial degree of reliability, that on inquiry the State Police would have been so informed, but would not have been told the identity of this or any informer. I was not told.

The information was given by Sgt "E" to the Commonwealth Police officers to pass on to the State Police, because it was thought it might relate to their inquiry. It should be remembered that the Commonwealth Police had a photograph of Testa with a number of local criminals taken at a Sydney restaurant and that some of them were in the list, handed over to Ballard, of those said to be present at the Double Bay meetings. The information concerning Testa and the persons in the photograph had been passed to the State Police in the 18-page document. Ballard gave evidence that he received the list of names, above set out, upon a piece of paper, with a written note that they were there to organize crime, and that he was asked could he confirm, whether or not these persons were gathering at this address. He made a telephone call to an informer often used by him and, according to Ballard, was informed he had "seen" all of these persons going to the premises with the exception of Sloss, but also "heard" that Arthur Delaney and "The Fibber" (Leo Callaghan) was also going to the premises, that they were going, ostensibly to play cards and, on the occasions they were there, an old man would be outside in a parked Holden to keep watch and that they would first drink at a nearby bar until 11 p.m. Ballard was definite there were a number of meetings and that his informer's reply was that he had not "seen" Sloss there. Ballard agreed his information was that there were a number of meetings and referred to persons "seen" to go there and did not go as far as excluding the possibility of Sloss having gone there. It was an observer informer and not a participant.

Ballard regarded his informer as fairly reliable. Lendrum said Ballard's informer was a "valuable informer". Ballard did not doubt his informer had seen what he asserted. The doubt Ballard asserted was that, because of the different criminal activities of those present, they would not be meeting together to organize crime. However, he conceded it would be unlikely that they met for social purposes. Ballard claimed he told the Commonwealth Police that those listed, other than Sloss, were meeting and that in addition two others had been meeting.

Ballard said he reported the matter to McNeill and the matter was handed over to Det. Sgt Charlton, a member of the Consorting Squad, not upon the police inquiry. There is some difference in the evidence as to the order of events and the part played by McNeill, but the probability is the matter was referred to McNeill, and, on his direction, was passed to Charlton. The following morning at 8 a.m. Charlton and other police went to the premises, saw the tenant Bonnette, arrested him on a charge of receiving a television set and inquired whether the criminals, whom Charlton named, were meeting there. He was indignantly told they were not. No surveillance of the premises was undertaken and, of course, would have been futile after Charlton's visit. According to Charlton, he was not given the name of Sloss and did not mention it to Bonnette.

I should say at once that the informer material, whatever its reliability, does not constitute evidence in any legal sense that any of the persons, and in particular Sloss, were meeting, a matter stated as soon as this evidence became public. Sloss was called and denied being present. The relevance of the material put before me was that it threw light upon the quality of the police inquiry and the motives of the relevant police, for the purposes of Term 2B.

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Ballard and McNeill claimed that the material received by Ballard from the Commonwealth Police and Ballard's informer was not relevant to their inquiry or, at least, that they so believed at the time, and that they acted regularly and properly in passing it on for decision and action by Charlton. The persons, said to be present, corresponded to a substantial degree with those who met together in association with Testa. Whatever the ultimate view of Testa, the information, then in the possession of the N.S.W. Police, was that he was connected with U.S. syndicated crime in Chicago, that he was a link between organized U.S. crime and New South Wales, that he had visited New South Wales and had associated here with some of the worst criminals of this State. The N.S.W. Police had possession of a photograph taken at the restaurant, showing together Testa and a group of persons. The following persons were common to the photograph and the alleged Double Bay meetings, namely McPherson, Freeman, Petrocevic (known as Iron Bar Miller) and Delaney. There was also at that time an allegation that Testa, a Chicago resident, provided a link with Bally America, a Chicago Corporation.

* The decision to discard this material from the police inquiry without further inquiry is almost beyond belief. Here was a group which included some of the worst local criminals, whose place and hours of apparently regular and continuing meetings were known, as were some procedures and the description of the "cockatoo", McPherson was said to be there, and McPherson was a man who in the current police reports was said to be a known associate of persons being investigated for crime in relation to the clubs. He was reported to be being used for intimidation in relation to clubs. He was known to have had a number of associations with Testa. Testa was the subject of intelligence reports linking him with organized crime in Chicago. Others who had met Testa here were supposed to be at the Double Bay meetings. It would be some coincidence if Testa gravitated to these criminals by accident for social purposes. It would be some coincidence if the criminals, whom Ballard believed really were meeting, were holding regular meetings, guarded by a cockatoo, and all for no criminal purpose. The police inquiry was having some difficulty finding people who could confirm what was happening. Here, at least, was a chance, by surveillance procedures, to check one of the suspected avenues for infiltration of organized crime. This chance could not by any plan have been more effectively terminated than it was by a police officer, with no connection with the special inquiry, going to the door at 8 o'clock in the morning, when the people were not there and giving the names provided by the informers. What happened appears to have been in reckless disregard of the possible safety of the informer or informers. The Commonwealth informer was not known. Assuming the meetings were taking place (as Ballard accepts but McNeill seeks to reject), the N.S.W. Police had no means of knowing whether disclosure of the names of the persons meeting might enable the Commonwealth informer to be identified.

The information and action should have been recorded in an appropriate diary and entered in the running sheets and some carefully planned surveillance undertaken by the squad specially equipped for this purpose. That should have been the position, even if the name of a member of Parliament had not been mentioned by either informer (i.e. assuming the informers were not the one person—on Ballard's version there must have been two informers). The inclusion of Sloss' name, by either informer or both, called for the matter to be dealt with from the point of view of the inquiry and from the public point of view. It was vital that the presence of a member of Parliament, if possible, be positively proved or positively disproved. Even on Ballard's version, the same approach was called for. As Ballard conceded, his informer was an observer; there were a number of meetings; the informer only reported that he had not seen Sloss; he did not purport to positively assert Sloss was not there; he did not assert that the other informer was wrong.

In the conflict of evidence between Ballard and the Commonwealth Police officers "B" and "C" I prefer that of the latter. They impressed me as honest witnesses. They had not the slightest reason or motive to falsify the contemporary note passed to their Commissioner. It is acknowledged that at the time Sloss was identified as a member of Parliament. If Ballard, as he claims, had told them Sloss was not present then, short of falsification, the record could not be as it is. In my view there was no intimation that Sloss was not there. A possible view is that Ballard's informer, being an observer, and there being a series of meetings, he may well not have either confirmed or rebutted the presence of Sloss, and so Ballard accepted the fact of the meetings taking place and made no denial concerning the presence of Sloss. This is a view possibly open upon the evidence of "B" and "C", but the view most favourable to Ballard, which is open.

On this view it would not be open to say definitely Sloss was not there. I do not think Ballard ever so believed and did not so inform McNeill. I think the truth of the matter was that it was known Sloss was said to be there and the others were there, but for reasons I will later indicate the information was discarded. In the face of the contemporary note and the above conclusions, there would have been no reason not to pass on Sloss' name with the other names to Charlton, unless for some reason it was suppressed.

It is clear that the reference to Sloss, on either version, called for the most detailed recording of the matter, for planned surveillance, for reporting it to the head of the C.I.B. and thence on to the Commissioner of Police. In substance Lendrum confirms this approach. The only entry on that day by the State Police is Ballard's entry in his diary as follows: "8.30 a.m. Office re special inquiry and running sheet to 1 p.m. Meal to 2 p.m. Office re same inquiry to 5.30 p.m." According to the Commonwealth record, the information from the two informers was received by Ballard at 3 p.m.

McNeill dealt with the matter. He does not suggest he made any record, although he knew that a member of Parliament was mentioned as present. In any event, his diary is not now produced. Failure to make any record at all of this matter, except the arrest of Bonnette, is a serious breach of police instruction 43 and what ought to have been done, even if there had been no such express instruction. How does McNeill explain these events and the decisions made or lack of them? Substantially he says he did not believe Sloss would meet with criminals and that he would not believe these particular criminals would meet together, because they fell into different classes, which would not combine. While no doubt in the work of the Consorting Squad, there is much unreliable informer material, and judgments are properly formed at times on the reliability of what the police are told by police views as to unlikely associations of different classes of criminals, there is absolutely no validity in McNeill's assertion in this instance. Ballard accepted that these men went to the premises. He spoke to an eye observer, whom he accepted. His only doubt was whether this group would meet for the purpose of organizing crime, because several did not fit into the picture. However, the central figures were the central figures in the Testa proven associations and that at least the leaders were known to be associates. Moreover, there were a number of meetings. There was one way to find out, namely, to observe. McNeill says he understood there had been only one meeting and that Ballard told him Sloss was definitely not there. This is against the evidence and probabilities. I do not accept it. It is typical of the pattern appearing constantly in McNeill's evidence, where apparently minor, but really significant, variations, quite against what really occurred, are given in McNeill's evidence in aid of providing an excuse for some event. The absence of any record regrettably allows this room for variation and regrettably deprives me of the certainty, which I should have from a proper contemporary note.

There is another unsatisfactory aspect of this unfortunate incident. Charlton was called as a witness. A matter of concern, which arose in my inquiry was whether Sloss had been excluded by the N.S.W. informer. There was no ground for McNeill to alert Charlton to the matter at issue or to talk about the incident when Charlton was called to give evidence. However, before he gave evidence and on the eve of his so doing, McNeill admitted he spoke to Charlton, when he knew Charlton was about to be called as a witness and conceded he discussed the matter of Sloss. He said he did this to ask Charlton's recollection as to whether the name of Sloss was mentioned to him. The proposal had been to call Charlton and ask for his unassisted recollection. McNeill sought to justify this inquiry because he thought he, McNeill, might be asked the date Charlton arrested Bonnette. These facts speak for themselves. He is an inspector of police, who should not have done this on a then highly contentious point.

What then is the inference to be drawn from this sorry episode? Does it show there was some corrupt attempt not to uncover, what was happening concerning organized crime? Again a conclusion cannot be come to, except upon an overall view of all the material relative to Term 2b. It does, however, appear to be quite unconnected, on any view, with Bally, and to stand on its own. In this circumstance, but having the whole inquiry in mind, I say at this stage of my report that the explanation

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conclusion.

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I think lies in McNeill's unjustified contempt at that time for material originating from the Commonwealth Police, coupled with his conceit that he was able to judge matters without investigating them, in this instance because he, McNeill, believed Sloss would not be there and because, without bothering to inquire as to the detail of the informer material or the reliability of the informer, he did not believe the information. I think it is likely it was his decision rather than that of Ballard which discarded the matter by sending it to Charlton.

Recapitulation of Prima Facie Inferences of an Attempted Cover-up. Inferences of attempted Cover-up regarding Bally Summarized

196. Before coming to the arguments and considerations against a positive finding against McNeill and Knight under Term 2B, I shall recapitulate, in order to put together, in a general way, matters already dealt with. First, and importantly, there is no direct evidence of any agreement or determination to suppress matter discovered or to suppress inquiry concerning Bally, or concerning Dean, Riley and Abrahams or others. There is suspicion concerning the Rooklyn meetings, but this does not provide the evidence. Of course, on any view it would be unlikely that direct evidence would be available. The case must therefore be considered on inferences. The inference being a serious one, it should not be drawn if there is a reasonable alternative explanation. Counsel for the police asserts there is. It will have to be examined later. Second, and importantly, in fact there was, in the result, a cover-up of the true position in relation to organized crime, by reason of the terms of the final report and failing to make inquiry where obviously inquiry should have been made, in some instances where it was known there was important available material, e.g., English transcript. The cover-up was principally of the Dean-Riley activities, classified as organized crime, and the affiliations of Bally with organized crime offering a risk of infiltration of organized crime within areas associated with the expansion of Bally operations in New South Wales. The report had the vice not only of covering-up what ought to then to have been revealed, but of covering-up the need for continuing vigilance and inquiry upon the subject matter of organized crime in relation to clubs, particularly in relation to Dean and Riley and criminals known to be associated with them, and in relation to the operations of Bally. McNeill and Knight were responsible for these shortcomings in various degrees.

It may seem that, having regard to the conclusion in the last paragraph, it is idle to inquire whether the police attempted to cover-up, when there was in fact a cover-up of some description. However, Term 2 (and with it Term 2B) raises, as earlier indicated, the question of whether there was deliberate or corrupt conduct. I will not summarize the matters. There is a list of *prima facie* matters in P. 123, many of which are referred to in the body of the report. However, by way of illustration, I make some reference to how Bally was dealt with. McNeill made some positive findings in his first report in respect of the New South Wales activities in relation to Bally, including an attempt illegally to get a share of poker machine profits in the vulnerable Motor Club and in offering secret commissions to expand their New South Wales operations. His attempt to explain these away as irrelevant or non-existent is not convincing. He is found generally to be an unreliable and untruthful witness (see P. 212). He produces no diary and no notes. He claims he has lost his diaries. Further, in his early reports, Bally's criminal affiliations are treated as established, but in the last report are suppressed and by implication, the original information is discarded as worthless. All sources of material, which would contradict the message of the last report and what Knight and McNeill were thereafter saying in clubs, that Bally was "clean", are pushed to one side, namely, the available English transcript with its known detriment to Bally, the Commonwealth information and the taped conversation, it being known that there was intelligence confirmation from America and from the English transcript of Bally's criminal associations. In so far as Bally is criminally orientated and desirous of maintaining a "whitened" image, it is not unlikely that corrupt methods would be used to correct earlier adverse publicity. Then McNeill, Knight and Rooklyn are found in some negotiations in respect of which each, in my finding, has given false evidence, so the truth of what occurred has been suppressed. It will be seen that a strong inference is open that there were earlier discoveries and that these and the former findings were deliberately reversed for no bona fide reason, and matter, known or suspected to be adverse to Bally, was deliberately not sought. If deliberate these acts could only have been for some improper purpose. The broader picture appears in more detail in the body of the report. A similar type analysis is open concerning Knight in respect of South Sydney Juniors, Dean and Riley. Earlier reference has been made to it.

The case concerning McNeill and matters to be considered

197. It is convenient to deal with the position of McNeill separately, because he is central to the police inquiry and plays an individual part. Three important considerations arise. First, there is no direct evidence of any corrupt or deliberate attempt by McNeill, to effect a cover-up of the kind referred to in Term 2B. Second,

as indicated, as inference has to be resorted to and because of the serious nature of an adverse finding under Term 2B against a senior police officer with a record of service and integrity, I would need to match my approach in seriousness with the finding. A difficulty, however, is that in view of events and the terms of documents disclosed to my inquiry, the explanation of them, alternative to an adverse finding under Term 2B, of necessity involves serious criticism of McNeill's handling of the inquiry and his giving evidence before me to the extent of untruthfulness. I am conscious that the same standards of satisfaction should also be looked for in these conclusions. The difficulty is, however, there is really no explanation of events reasonably open which is innocuous to McNeill. As inference has to be relied upon I must examine the evidence for other explanations of the events which occurred. To date I have reserved the detailing of alternative explanations or evidence concerning them.

Other material indicating McNeill's attitudes

198. There is contemporary material indicating that, in the early stage of the police inquiry, McNeill was greatly concerned with the inquiry. The terms of the first two reports, whether accurate, or overstated, demonstrate a concern of the author that a serious problem confronted the police and registered clubs. This attitude persisted at least until the second report dated 16th August, 1972. His prior discussions with Lendrum and his request for additional men show that he had bona fide concern for the important inquiry which confronted him. Whatever delay occurred in investigation of allegations prior to 28th June, 1972, the records concerning his briefing for the raids show a genuine and purposeful concern and plan to track down what he regarded as a very grave matter. The approach to the Tomlinson interview, to let Tomlinson do the talking, is not open to criticism and reveals a responsible approach to a matter requiring skill.

McNeill's request to send men overseas—1st August, 1972

199. McNeill, by letter dated 1st August, 1972, made application to his superiors to send two police officers overseas to investigate matters concerning Bally and overseas relations of the Arcadia group. By letter of 3rd August, 1972, the request was rejected. It indicated it did not appear then appropriate to do so for a variety of reasons. In the present context, however, McNeill's letter is important as it reveals his then attitude. He referred to the information he had concerning Bally "which we believe to be true" and he referred to the first report in its reference to Bally. It is important to note that, at that early stage, he said he had no "legal proof" of these matters and his information was "purely hearsay". This does not justify writing the final report in the way he did or his utter neglect concerning the English transcript, which he must have known would have admission evidence by the head of Bally. However, it does point to his attitudes to intelligence information not being some later invention in order to favour Bally. The other matters which this letter shows are pointers of the contemptuous attitudes to the Commonwealth Police, which were later manifested. He referred to the difficulty of getting anything from Dixon and obviously was trying to avoid a suggestion for his men to go with the Commonwealth Police who would "outrank" his men, but were "considerably" less "experienced". He was, it seems, trying to have his men go alone, but with a temporarily elevated rank. It is clear that on 1st August, 1972, McNeill was genuinely concerned to uncover what could be found concerning Bally and Arcadia, but that he did not want to rely on the Commonwealth and has little respect for any help they might give.

McNeill's attitudes as shown by Commonwealth Letter, 9th October, 1972

200. Of significance is the letter of Sergeant "B" dated 9th October, 1972, to his Commissioner (Exhibit Y). It is of course very close to the final report, but it does indicate the attitude of McNeill and Ballard some weeks before the final report. It was written as a report as a result of a letter dated 21st August, 1972 (Exhibit GJ) from such Commissioner. The Commissioner's letter contained the following passage "Any change in the attitude and direction of N.S.W. Police on any aspect of this inquiry should be traced, where possible to its source." This probably arose from the copy running sheet passed to the Commissioner of the conversation on 17th August, 1972, concerning the Saffron-Rooklyn report, and that the N.S.W. Commissioner's office was cooling towards the inquiry (Exhibit Y (15), P. 134). The report of 9th October refers to a possible change in police attitude and that "the information supplied by Inspector Dixon initially, concerning the American background was, according to McNeill outdated and not applicable to the present set of circumstances." It was added that both Ballard and McNeill are:

"... now of the opinion the initial information . . . concerning Bally Mafia influence was outdated at the time it was furnished to them and entirely hearsay with no proof forthcoming, allowing of course for any fresh information which may have been obtained by Inspector Dixon during his recent trip. They claim they have been unable to find any proof of Mafia influence in the course of their inquiries in . . . (N.S.W.)."

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It was added that they claimed that the case against Bally rested on Catena and Green being shareholders and that Catena was bought out in 1965, and Green in 1970. It went on to report that approximately 80 clubs had been investigated by State Police, and that to date no evidence had been obtained indicating malpractice of either Bally or Arcadia, that there was no evidence to substantiate prosecutions, and that any breaches discovered was minor breaches of the Companies Act.

McNeill's unjustifiable conclusions on Testa. Commonwealth Police Reaction

201. Reference was also made in the 9th October letter to Testa and said in effect that McNeill had spoken to a named person who had now told him "the right story about Testa" which shortly was, that for a series of innocent reasons he was in Hong Kong, came to New South Wales for a holiday, and, as it were, quite accidentally met McPherson and the other persons with criminal records. The report says this explains how McPherson quite innocently met Testa and became friends and that as a result of the conversation McNeill "is now of the opinion Testa is a normal sort of a fellow who in all probability visited Australia on a holiday with no ulterior motive" and that McNeill claimed this was true as his informer would not lie, and that he rejected the Tomlinson information from Chicago sources that Testa was "a psychopathic killer". McNeill's informer referred to has been disclosed to me and is connected with the group of criminals whom Testa met. Having in mind the members of this group and the Commonwealth information on Testa from intelligence sources (perhaps aided a little by that supplied by Tomlinson), one can only share the obvious dismay of the Commonwealth Police at the ground McNeill found sufficient to reverse the former view concerning Testa. It is typical of McNeill's arbitrary rejection of significant material upon some ill-based conclusion, so often apparent in the course of the police inquiry. It bears some similarity to the basis on which McNeill rejected the information concerning the Double Bay meetings in the way discussed at the end of P. 195. It is a type of arbitrary decision, which is so frequently found, where the source or even a source of the information is the Commonwealth Police. This is borne out by McNeill's conceit of his own superiority and his denigration of the Commonwealth Police, as appears in his evidence later to be referred to (P. 205). McNeill's attitudes concerning Testa and Double Bay appear to be similar to that which, without fresh material of substance, just reversed the earlier conclusions based upon the Commonwealth material concerning the Bally affiliations and just discarded the knowledge that in the English defamation action there were proven Mafia affiliations of two directors of Bally and that the president of Bally had made damaging admissions.

McNeill's views on 9th October, 1972

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202. Three things emerge from the Commonwealth letter of 9th October, 1972. The first is that by 9th October McNeill probably had and was making no secret he had the kind of views, which became the foundation of the last report. The criticism earlier made concerning this reversal of views remains, but this letter rather supports a conclusion that McNeill probably in fact held them. The second is that the existence of these views, before many of the records of interview, rather confirms that, as indicated elsewhere, such interviews in the last few weeks were not really earnest inquiries but the attendance to a formality upon a conclusion already come to. It also supports the view, expressed elsewhere, that McNeill was quite disinterested in receiving any further information from Commonwealth sources on the lines of the earlier material supplied, whether it was of the intelligence type or provided from the defamation action.

Commonwealth Police Reaction to McNeill

203. The third matter is that the Commonwealth Police had reacted to McNeill's change of attitude. It seems they were and had been suspicious of the bona fides of the change, no doubt due to the earlier events recorded in their running sheets, including the Rooklyn-Saffron report and the accompanying reference to a change of police attitude. The extraordinary reversals of attitude by McNeill on so many matters would encourage this view. The adverse reaction is apparent by the well deserved Commonwealth terms of reference to McNeill's attitude on the Testa matter. The Commonwealth Commissioner would have received this letter at about the same time as Dixon had his call to Ballard, which Ballard secretly taped on McNeill's instructions. After this conversation there was probably some change of attitude of the Commonwealth Police, perhaps at the Commissioner level. It can be inferred that in view of McNeill's attitude concerning past material from the Commonwealth, Dixon did not follow up his telephone call but composed the detailed report to the Attorney-General and the short letter of 8th December, summarizing the matter relating to Bally. The summary was accurate, but the detail was omitted. It is not unlikely that the course of events caused the Commonwealth Commissioner to be disinclined to show the same trust of McNeill as he had with the earlier 18 (or 19) page document.

This approach would also be dictated to a degree by the sensitivity of the overseas sources of information. The pattern in America is that in some of the State police forces there has been such corruption that Federal sources will not trust them with intelligence material. American Federal information sources would be inclined to be reluctant to pass some information to Commonwealth sources, if passing on to State sources were in contemplation, particularly if lack of security appeared on other occasions.

For this reason it was unfortunate indeed that photographic copies of a copy of the confidential Commonwealth document (the 18-page document) sent to N.S.W. Police, containing confidential intelligence material, found their way into press files. ✓ *Wnc?* It is clear the copies were of a copy received by the N.S.W. Police. It is outside my terms of reference to determine how this happened, even if it were possible to determine. However, these serious security breaches must have ill-effects upon Commonwealth and State intelligence relations and Commonwealth and overseas relations.

Despite some pretence that there was no difficulty in Commonwealth-State intelligence relations, it is apparent that at least in the field of McNeill's inquiry by early October they had substantially broken down. I think this was due to McNeill's attitudes and inconsistencies fairly reported in the letter of 9th October, 1972.

What contemporary material shows on McNeill's attitudes

204. The contemporary material establishes that McNeill was originally genuinely concerned and enthusiastically pursued the inquiry. It also shows that by some time before early October he was openly expressing a change of attitude. The contemporary material points to this being his attitude in fact. There is some indication of this change commencing in August, perhaps after the second report. If he did so change then, for the reasons which have earlier been stated, he may be criticized for the change and for the term of his reports, but if he had in fact so changed, then, whatever he did, was not done in the course of some corrupt or deliberate attempt to cover-up that which he believed established the existence of or related to organized crime. ?

The explanation of events; McNeill's attitude

205. The question still remains if matters are to be explained by a change of view and not a corrupt cover-up, how, consistently, are the many contradictions to be explained and how is the extraordinary change of view to be explained. There is an explanation in my finding which does no credit to McNeill but negates an attempted cover-up. Matters can only be explained by McNeill's inability to handle this inquiry and certain of his personal characteristics.

McNeill exercised strict and dictatorial authority over the men under him. Things were not done until he said so, and then within whatever limits he directed. He was somewhat of a law unto himself. If what police instructions provided on documentation was inconvenient, he could wave it aside. It was his judgment alone that counted. It was not to be questioned, but unfortunately it was often unsoundly based on whim rather than logic. His conceit, it seems, led him to the view that he could determine many matters by some shrewd intuition, born of superior police field experience. It led him badly astray, when he had to deal with American style organized crime in relation to legitimate business, the operation of which he was substantially ignorant and of which he was not prepared to inform himself. He was a little contemptuous of deductive reasoning in police work. He considered he could determine some matters without investigating them, by relying on his judgment as to how people would act instead of investigating how they were acting. He was contemptuous of the use of intelligence material and of the systems which record and sift it. Being conceited as to his own superior abilities and being dictatorial, he felt free to just reverse prior views for no logical reason without any new solid facts. All these characteristics are apparent time and again upon an examination of what occurred and in the course of his own evidence. If there was no corrupt attempt to cover-up, the decisions and inactions of McNeill and his changes in attitudes and reports can only be accounted for by such characteristics.

McNeill's attitude to himself and the Commonwealth Police was evident at many points in his evidence. Thus after he had been asked some questions which led him in a condescending and belittling way to refer to the Commonwealth Police and their function, he gave these answers to counsel for the Commonwealth Police:

"Mr MARTIN: Of course, these particular policemen you have just been asked about are officers of an intelligence gathering section of the Commonwealth Police?—That is what they refer to themselves as.

Q. It is not just they, it is their department?—That is said to be the function of their department.

Q. You have some doubts about it?—I doubt very much its worth.

Q. What you called yourself yesterday was a field detective. Is that it?—Yes. Your Honour, if I may just explain this.

Q. Yes, certainly?—I am due for promotion to detective inspector any day and when I am promoted at 51 I will be the youngest inspector in the New South Wales Police Force. I chose to stay in the type of work I am in rather than to switch over to administrative work so that it can be fairly said that I would be the most experienced field detective in New South Wales and in the Commonwealth."

McNeill's attitude to intelligence material

206. He belittled intelligence material and showed that, despite the fact that he was investigating the infiltration of U.S. style crime into N.S.W., he had made no real attempt to inform himself from U.S. and other material concerning its mode of operation. He had no idea of the worth of recording and collating material, if it did not constitute strict legal proof. He had no idea of the considerations, to which I have earlier referred, in relation to organized crime and its association with or infiltration into legitimate business and the dangers of asserting positively its absence, if there is not legal proof of actual crime committed by actual persons. Although he was in charge of this large group of men, who investigated over many months, and although the Government and Parliament itself wanted to know what there was to be known concerning infiltration of organized crime into the clubs, he did not know or would not accept that investigating the question posed by the headings of his reports and reporting upon it to a Government (PP. 114-6), called for a study of the likely methods of operation and infiltration of organized crime, and all available intelligence information concerning it. He did not know or would not accept it required the use of their brains and not their guns. McNeill armed himself with a gun and was contemptuous of intelligence material or intellectual study of the problem. He claimed there were no facilities in the N.S.W. force to record intelligence type information. While this was true to a degree, in this he exaggerated. When he received the Commonwealth material as to overseas intelligence information and, on local matters, when he received allegations from them similar to allegations from his own sources, I think he was impressed with the intelligence material, as it was presented as a whole, and that initially he accepted it, as a relevant step in his inquiry, as establishing the character of any wrong done here on the part of the Bally organization and as pointing to the probability of U.S. criminals coming here within the business of Bally.

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McNeill's dilemma as to first report

207. McNeill is now in the dilemma that either the final report covered-up what was discovered and reported as established in the first report, or the first report erroneously said he had investigated and had established matters. McNeill in evidence asserted no investigation had been commenced and nothing established. There are difficulties in this assertion, particularly the positive assertions concerning the Motor Club and the Bally secret commissions. However, I am not prepared to reject this assertion as an explanation of what occurred. It has some serious consequences for McNeill. It means that in 6 months he had done no actual investigation, but only collected allegations and falsely said in the report he had been "engaged for some time . . . on inquiries into allegations", and falsely wrote a report as to actual findings or conclusions which misled the Premier (P. 68).

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First report misleading: Reasons

208. It follows that, for reasons that do not appear, he had let time go by until late June without starting his real work of investigation. It may have been there was some good reason, such as other duties, or, it may be, he had no satisfactory reason. It just does not appear. However, questions of organized crime in the clubs had been a matter of assertion for a long time and the press publicity was strong from April onwards. McNeill initiated the matter and was put in charge of the inquiry from December, 1971, and had either done no investigation by 28th June, or at most had made some unrecorded investigation by himself. The matter was of intense public concern. It was a matter of Government concern and questions were being asked about it. The allegations were most serious and of the type, where inquiries should not be deferred. McNeill's explanation means that, despite the serious allegations, no investigation was done for months after the subject came under considerable press and public notice. When a first report was pressed for, being a report, which he may or may not have known would go to the Premier, it can be inferred he was not prepared to admit he had done nothing. The characteristics, earlier referred to, would not let him do that. Moreover the same characteristics led him to base his report, where he had done no inquiry, upon the Commonwealth notes, and at the same time not to acknowledge the source, except in an ambiguous obscure clause, so the reader would naturally read the report as though McNeill and his men had made real progress after real inquiry.

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The same characteristic was to lead him in the second report to report the Commonwealth material to the Commonwealth, without acknowledging its source. It had the appearance of his work. Reference in the first report to the raids on 28th June would not suffice, because more time was needed to examine the records seized. So that report was written, based on the view that the U.S. intelligence material showed the background, and falsely referred to investigation and findings not then made, but based on the expectation that some of the allegations would be established. It is probable that McNeill believed these matters would be proved.

Final report misleading: Reasons

209. The last mentioned attitude persisted for a time but, for the reasons I have earlier discussed concerning the likely difficulty of collecting evidence of organized crime if it existed, it was found that hard evidence, particularly of the violent type crime which McNeill rather expected, was not forthcoming. As stated elsewhere, he had no real appreciation of the difficulty he might encounter and the small indications he might have of infiltration of organized crime, within a legitimate business, seeking to expand its operations. He had no real appreciation that he would be unlikely to find evidence in company or club books. In the result, while the police would have been wrong, if books had not been looked at to some degree, too much time, emphasis and effort was concentrated on this inquiry with little chance of success. On the occasions when there were significant pointers they were not appreciated or followed-up. The result however, was that little or no hard evidence was found of any crime.

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Knight appears to have had some association with persons inquired into, or came into too friendly a relation with some such persons. Either because this lessened his purpose and intent or because of lack of ability in respect of this class of inquiry, or lack of interest, the inquiry was ineffective and half-hearted in respect of persons such as Dean, Riley, Raymond Smith, Abrahams and McPherson.

However, the fact was that no startling evidence arose which could lead to a spectacular arrest. When there was some evidence or relevant material, it was not quite the kind McNeill had expected. There was material, which indicated that incidents of a criminal nature were probably occurring, but legally admissible evidence could not be obtained, because of the reluctance of persons to come forward to tell what they knew. McNeill refers to such matters in earlier reports. In addition to such indications, there was located other material which fell short of admissible evidence, but which pointed to criminal or improper conduct in the club industry and which, taken with other material, pointed to links with organized crime being involved. For reasons earlier indicated, it was relevant to report it fairly and frankly, having in mind the scope of the police inquiry already discussed in PP. 121-2.

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It is apparent that a time was reached, when McNeill realized he was not getting the evidence which would enable him to charge some dangerous or even any criminal. It must be inferred that then his interest in the inquiry changed. It may have occurred between the second and third report. But then, just as he over-reacted to the first material and issued a misleading report, so again he over-reacted to the material ultimately before him and issued a misleading report in the opposite direction.

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By the time he reached the final report he went out of his way to negative everything. Although the misleading form of the first report was entirely his responsibility, there are many indications that he vindictively blamed the Commonwealth Police and his own informers for misleading him. In the final report, in unfair terms, he attacked their information and described it as worthless or biased, when most of it could not possibly be so described. It was the reaction of the man, revealed by the passage in his evidence above quoted (P. 205), who fell into error in his first report and who had had his original enthusiasm fired, not through their fault, but his own error. He ascribed to his informers a general description, which could only mean that they were biased persons, who gave him false information in aid of their trade war. Further, he made unqualified quotations of assertions as to Brady sending anonymous letters, a matter not inquired into by him and, on police scientific examination before me, not confirmed. He made unqualified quotations of assertions, not investigated by him, that Brady had employment in the poker machine industry and hence had a bias. He said all the allegations emanated from a trade war, when many of the allegations he received were unsolicited and upon the police seeking out the persons. Many of the allegations, on any view, were neither made by trade competitors nor originated from them.

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Final report misleading—effect of McNeill's attitude to Commonwealth Police and Material

210. In effect, he described the earlier Commonwealth intelligence information as worthless or unreliable, but had not so regarded it in his first report and had not so regarded it in his second report, after he had seen Tomlinson and Rooklyn in the taped interview. There was no fresh material which could justify the change. As the

Commonwealth letter of 9th October shows, he had changed his view before the record of interview was had with Rooklyn which, anyhow, was only a formality. There was no new material at all to cause a change. The explanation appears to be that, when the hard evidence was not forthcoming he became resentful of the earlier Commonwealth Police material, both American and local, and blamed them generally for his first misleading report. His final report and his evidence before me displays resentment against the Commonwealth Police and unjustified contempt for their information. This attitude seems to have progressed in the course of his inquiry, but a pre-existing prejudice is obvious.

His final report is a mixture of vindictiveness against his original informers and the Commonwealth, and a desire to complete the investigation for ever, so far as he was concerned, as a matter in respect of which there was no substance whatever. He wrote down what had been ascertained until the report was entirely negative. He either had no interest or perhaps no ability to have written a report, such as the Government should have received based on the police inquiry, inadequate as it was, indicating the lack of evidence to prove criminal charges, but warning of the real indications of a business (Bally) connected with organized crime and of persons, appearing to be engaged in crime, moving into or being likely to move into the club industry.

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Lazy and stupid. Getting impossible.

He apparently did not foresee what would happen if the reports were put together or that he would be called upon to explain what happened in an inquiry such as mine. When he was confronted with the contradictory material and other suspicious happenings, he added to what had earlier occurred, by giving untruthful evidence as referred to in P. 212. It is apparent that his attitude to the Commonwealth material, demonstrated in evidence, explains not only his final report, but his disinterest in having material from Dixon before completing his report. He ignored what Dixon had said on the tape and he did not worry about the English transcript in their possession, because he regarded matters as complete. He was really disinterested in receiving any further Commonwealth material or to ask for it. In any event, additional material would only have complicated his negative report. I think the course he took in the Double Bay matter was dictated, to a degree, by his view that Sloss would not be involved but also because it originated from the Commonwealth Police (P. 195). He was really disinterested in what they said or concerning the reliability of their informer. Before me he was unaware of their information.

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Personality and Inability of McNeill to handle Inquiry. Explanation of what occurred. Not an attempt to "cover-up".

211. The conclusion I have reached is that the personality and inability of McNeill to handle this inquiry is really the key to what happened. While some suspicion must remain in relation to McNeill and Term 2B because of the pointers in that direction and because on any view McNeill has not really explained the terms of the final report, I think that the explanations I have given are to be preferred to a positive finding under Term 2B. I think, on the whole, these explanations should be accepted, and I do accept them, as the clue to what had the appearance of being an attempt to cover-up within Term 2B. This conclusion is aided by some other considerations. So far as inconsistency of reports points to an attempt to cover-up, this is lessened by the reports, the running sheets and records of interview being a matter of record. A cover-up would be more likely to be found in not recording, or not inquiring or explaining away earlier undesirable reports.

To arrive at this negative conclusion on Term 2B in the face of appearances, deep inquiry was called for and, damaging though the explanation for what happened may be, it was important, particularly, where questions of organized crime were involved, that there be full inquiry and the exact explanation bluntly stated.

McNeill's credit

212. Although I have earlier referred to the matter of McNeill's credit, I have deferred giving my reasons and conclusions until now, because its determination depends upon a view of McNeill's evidence and reports in relation to the inquiry as a whole. In turn, his credit has some relation to some decisions as to the probable truth of what occurred. I am led to the conclusion, upon a survey of McNeill's testimony and the reports composed by him, that I cannot accept his testimony, except where it is supported by external probabilities or other acceptable evidence. His evidence is so patently unreliable at so many points, that I am forced to the conclusion that the falsity of much of his evidence is not by mistake, but, at least at some points, is knowingly. His credit suffers at the outset, by the terms of the reports he composed. These reports were, to his knowledge, of great importance and for the information of Governments. It was an occasion when accurate and truthful reports were essential, yet many parts of the first and final reports were false and misleading and were inescapably so to his knowledge. In the last report the practice was discernible, time and again, and always in the same direction, to give events a twist or complexion to

procure a desired result, without regard to the inaccuracy produced. The same pattern occurred time and again in his evidence, where events or conversations were given a twist in favour of a desired result, although obviously in the face of the objective truth or other testimony. Often lack of memory, hard to credit, was asserted in the fact of the prospect of awkward questions, for example, in the Rooklyn meetings. On occasions, where there was not room for mistake, his evidence was in direct conflict with witnesses I accepted or with inescapable inference from contemporary documents. By way of example, I considered some of his evidence as to events and his state of mind in relation to the Rooklyn meeting, the Double Bay meetings, page 19 of the Commonwealth notes, the tape of Ballard's conversation with Dixon (p. 132) was false to his knowledge. There are also many parts of his evidence, where there is a grave suspicion that it is false, such as his claimed loss of his two diaries from separate causes and his claimed lack of memory as to the source of the statement and on the matter of secret commissions concerning Bally machines in para. 21 of the first report and para. 10 of the second report.

The case concerning Knight; the deal with Rooklyn

213. The finding regarding McNeill partly solves questions concerning Knight and Term 2b. It does, to a point do so so far as the actual terms of the report are concerned. The difficulty remains concerning Knight's involvement in dealings with Rooklyn and the SSJ investigations. Except for Knight's signature on the final report, unjustifiably exculpatory of Bally, he does not appear to have played any central part in the Bally side of the inquiry.

The matter of suspicion, as to failure properly to inquire and/or report by Knight, relates particularly to SSJ, Riley, Dean, Abrahams and the entertainment side of the inquiry. The Rooklyn private dealings do not, on the evidence, touch these matters. Knight's dealings with Rooklyn, even the unsatisfactory testimony and concealment concerning them, still leave them as explicable, on the evidence, on the basis of tentative employment or business arrangement with or steps toward employment or business arrangement with Bally, because of its desire to have a police officer proclaim the police findings and do so in the most favourable way. Knight has lied about this matter and, in concert with Rooklyn, has covered up what happened. There is a strong suspicion that the negative terms of the final report in relation to Bally was not unconnected with Knight's acceptability to Bally. There was much concealment of these incidents and there has been the attempt to make the final report appear earlier than it was and there is the pushing later in time of the Rooklyn-Knight meetings. There was the luncheon with Rooklyn during his formal record of interview, conducted by Knight in negative form. There is strong suspicion that there was causal connection between Knight's agreement with Rooklyn, using a dummy, and Knight's negative interview of Rooklyn and the final negative report on Bally. There are indications that Knight implemented the agreement with Rooklyn and there are strong suspicions he received benefits from the business dealings of the firm, of at least the name of which, he was a part owner. However, as has been pointed out, the only persons, who know what happened, also have an interest to conceal and they have lied and concealed. The result is that there is suspicion, but no proof of consideration given to Knight for past favours in the form of an over-favourable interview and final report signed by Knight. It is regrettable in the circumstances that I am left with such a concealment of this transaction, which I have categorised critically elsewhere in this report, that I can only state the position, as I find it, as one of suspicion but not of proof of a finding adverse to Knight under Term 2b in relation to Bally.

The Case Concerning Knight and SSJ, Dean, Riley and Others

214. The material concerning SSJ, Riley and Dean, gives rise to very great suspicion that Knight was attempting to cover-up, what he ascertained or not to uncover what he expected to find. Suspicion arises in this regard concerning Riley, particularly on the Morris matter. Knight certainly dealt too favourably and with too little interest concerning Dean, Riley and Raymond Smith. If there was an attempt to cover-up, it would be in the field of organized crime having regard to my observations concerning Riley and Dean in P. 186. I will not even attempt to go over again the deficiencies in this part of the inquiry. If there was not an attempted cover-up for some unknown corrupt reason associated, say, with Dean or Riley, what, happened or did not happen, can only be accounted for by a view that the inquiry or lack of it, as it concerned Knight, must have been due to incompetence and lack of interest to inquire into the activities of persons with whom or with whose associates, Knight was on too friendly a relationship. There is no direct evidence of a corrupt or deliberate attempt to cover-up. The question rests on inference. Having regard to the serious nature of the findings involved and the alternative inferences of disinterest, lack of ability and undesirable over-friendliness with those whom he investigated, which I do find, I do not make a positive finding as an explanation for these events and omissions that Knight attempted to cover-up the existence of organized crime.

The case concerning Ballard

214. The position of Ballard has been referred to in P. 108, where the negative answer to Term 2B is indicated. Several further comments only are necessary. As already indicated serious criticism is open in respect to the handling of the Double Bay meetings by the N.S.W. Police. Ballard cannot escape some criticism. I think it really was McNeill's decision to discard the matter from the special inquiry. Ballard did report the matter to his senior. It was the province of McNeill to decide or confirm action to be taken. It was McNeill's province to pass it on to his seniors. The principal criticism of Ballard is that his evidence, concerning these events, is not acceptable in some respects. The same criticism is open concerning his evidence in some respects in relation to the Rooklyn-Saffron discussion with the Commonwealth Police and concerning events following his recording of his conversation with Dixon. However, I have been left with the impression that the unreliability of Ballard's evidence has arisen perhaps from an unconscious or probably from a conscious desire to support his superior officer and, as it were, not "let the side down", an attitude in a police officer which is open to criticism but which is perhaps understandable. On any view, whatever was said by Ballard concerning the Rooklyn-Saffron conversation, it demonstrates he was concerned at some lessening, or what he believed was a lessening, in interest of his seniors to the extent of talking openly about it to persons with whom he was liaising. Whatever was said concerning Saffron and Rooklyn he was disclosing it for mutual purposes not suppressing it.

Answer to Term 2B

215. I answer Term 2B "No" and, hence, Term 2 as a whole "No".

Part VII.—Term 3

Term 3: Whether matters disclosed in the course of the inquiry into Terms (1) and (2) provide sufficient reason to determine that the Bally Corporation of America or its subsidiary Bally Australia Pty Limited, by its continued or future operations in New South Wales, offers a risk of infiltration of organized crime into or in relation to Clubs referred to in Term (1).

Cross References

216. A complete understanding of what is now said will depend upon it being read with matters discussed in the Introduction (Part III), under Term 2A (Part V) and under Term 2B (Part VI). As to the Introduction, particular reference is made to PP. 7, 12-17, 19, 22 and 30 regarding how questions arose concerning Bally in N.S.W. and were in general terms dealt with in police reports and to PP. 46-50 in relation to events leading to the introduction of Term 3. As to Term 2B (police inquiry), particular reference is to be made to PP. 113, 116-122, regarding considerations concerning organized crime and matters of proof, to PP. 124-34 regarding police investigations of Bally, and to PP. 135-52 regarding the dealings or private meetings of Rooklyn with McNeill and Knight, and P. 152 regarding Rooklyn's credit.

The "Matters" to be considered under Term 3

217. The "matters" required to be considered, in order to determine the question asked, are those "disclosed in the course of the inquiry into Terms 1 and 2". This means that I should look to all the material, oral or documentary, which in fact came before me in the course of that inquiry. The words quoted envisage a decision being made upon that material and not the setting up of a further or world wide inquiry into Bally, unrelated to the kind of inquiry the police conducted or ought to have conducted concerning Bally. The reason is that the concern of this State is not to have such an investigation of Bally or such an investigation or trial of persons connected with it, as would be more appropriate in the places where the particular operations occurred. The concern of this State is to judge from the material here or which comes or can be brought here, whether there is a risk of the kind referred to in the term.

The situation is akin to the inquiry an immigration authority might wish to make, before admitting some persons to a country. It would be the function of the country of origin of the person and not the immigration authority to try him if he has been alleged to have committed a crime. The authority would look to the information locally available and might supplement it with material, possibly voluminous, sent from overseas. It might question the man but, whatever it inquired into, would be to determine whether there was a risk in permitting the person to enter the country.

By the time this term was added, I had before me almost the entire material concerning Bally, relating to Terms 1 and 2. A considerable volume was from overseas sources, particularly that which related to the affiliations, history and operations of Bally outside New South Wales. This included intelligence information passed by overseas law enforcement agencies to the Commonwealth Police, the transcript of evidence of witnesses in the English defamation action, which included admissions made by O'Donnell, the president of Bally America, some documents produced by Bally upon request and the testimony before me of O'Donnell and Tomlinson, who had come voluntarily from America and were questioned by counsel assisting me.

For the purposes of Term 3, the use of this material is not confined by any rule or limitation, except that imposed by the processes of logical deduction, inherent in deciding whether there was "sufficient reason", to determine that the risk in question existed. For example, if the rule of strict admissibility of evidence in a formal trial were applied, the extensive material in the English defamation action would have to be put to one side, except to the extent any witness appeared before me and adopted his prior evidence. To do so would be illogical, particularly for the purpose merely of determining whether a "risk" existed. The two wealthy parties to that action extensively investigated the issues prior to the trial, then, with the aid of leading and skilled counsel, exhaustively examined and cross-examined the witnesses.

The prima facie case of a "risk" notified to Bally

219. Despite the limitation in Term 3 of the examinable material to that disclosed in relation to Terms 1 or 2 (see P. 217), I permitted Bally to call such evidence, as they wished, to meet material pointing to any positive answer to Term 3. I considered it necessary to do this, not only as a matter of fairness, but because I did not think I could properly say, if appropriate, that the material already before me provided "sufficient reason" to determine a risk existed, unless I had the benefit of the party affected, having an opportunity to meet it. Accordingly, the procedure I adopted, at the time the new term was announced, was to formulate and pronounce the matters which appeared material to the risk, so that this pronouncement could form a basis for any reply. This pronouncement, together with some comments, is at T. 932-4 (and see PP. 46-9 as to the difficulties and reasons which led to the addition of Term 3.) As it conveniently summarizes the *prima facie* material, most of which, on final analysis, I have found of materiality in supporting my ultimate conclusion that a risk does exist, I quote the central part of the pronouncement as follows:

"The material revealed to date in the course of the inquiry to which the attention of the legal representatives of the Bally organization therefore is desired to be drawn as *prima facie* calling for consideration under Term 3 is that which, by concession or otherwise, indicates direct or indirect associations at any point of time between persons reputedly connected with organized crime and the Bally Corporation of America or any of its subsidiaries connected with the operation of any of them.

While drawing attention to the material as a whole in the foregoing context, particular reference is made to the following indications:

1. Associations of Bally Corporation of America and various of its directors or principal shareholders, but particularly, Sugerman, Green and Kaye, with gangster and Mafia head Catena, being associations either within Bally Corporation of America or the Runyon Sales Corporation or the Irvine Kaye Corporation.
2. Provision by Catena and his business partners and associates of a substantial part of the capital for the consortium which acquired the Bally Corporation of America.
3. Association of Bally Corporation of America, Green and O'Donnell with the Runyon Sales Organization of which the founder was the gangster "Doc" Stacher and of which later a director and shareholder was Catena.
4. Associations of Bally Corporation of America and O'Donnell with Green, Sugerman and Kaye, long-term business partners and associates of Catena.
5. Business associations of Bally Corporation of America, O'Donnell and Klein, with persons connected with organized crime in Las Vegas and with its distributor Bally Corporation of Nevada, the owners or managers of which were regarded as undesirable by certain American authorities.
6. Business associations of Bally Corporation of America and O'Donnell and Cellini, regarded by authorities in the Bahamas and United Kingdom as an undesirable and banned from those countries and reputed to be connected with the Meyer Lansky Mafia group.
7. Association of Bally Corporation of America with the Jacob interests subsequently found to be engaged, too, in masking in Las Vegas.

8. Business associations of Bally Corporation of America with its English distributor Associated Leisure Limited and Messrs Shack, Marks and Fine, who had such association with American gangsters as appears in the course of the English defamation action, either by their admissions or by the evidence of Itkin.

9. Associations of Klein, a director Bally Corporation of America, with Cellini and the Colony Club as appears by concession or evidence in the English libel action.

10. So far as it appears from the evidence of Itkin in the English libel action, the association of Wilms, a director and major shareholder of Bally Corporation of America, the managing director of its Continental subsidiary and business associate in his own right, with the Bally Corporation of America, with the Corsican Francisci brothers, reputedly leading continental narcotics smugglers and distillers, and with a representative of Corallo, a leading member of the Luchese Mafia family and others."

The subject matter of Inquiry is Defined by the word "risk". The scope of the inquiry concerning the risk defined and illustrated

220. The real subject matter of the inquiry is whether a "risk" of the type referred to exists. A misconception, shared by several of the counsel engaged in the inquiry and pointed out by me in its course, should be disposed of. The question is not whether there is legally admissible or other evidence that in the past acts of organized crime have been committed here or overseas. The presence or absence of such matters has some materiality, but it is not the question posed. The question is whether there is a "risk" of something happening from now on or in the future—namely the "infiltration of organized crime into or in relation to" registered clubs. To predetermine that a risk exists that a crime may be committed is quite different from making, on criminal standards of proof, a conviction in advance of future guilt or past guilt. The question raised is best defined by illustrations now to be referred to.

221. A determination of whether there exists a risk of the hijacking of aeroplanes, by a particular group of people, about to or who have entered this country as visitors, may not depend at all upon proof or lack of proof by positive or any evidence of their plan to hijack aeroplanes or of past hijacking or even of any crimes committed by any of the persons in question. If there had to be "sufficient reason" to determine there was a risk, on the other hand, it would not suffice that there was a theoretical risk that any overseas group might hijack a plane. The degree of satisfaction that there is a risk, sufficient to require some action to be taken, could be expected to depend upon the gravity of the consequences, if the event at risk occurred. If there were admissions, made by the persons in question, of relevant past associations with a group of persons, who, on other information, could be reasonably shown to be or believed to be planning or engaged in hijacking, then the view would certainly be open that the group offered a risk of hijacking. If there was apparently reliable intelligence information, without hard evidence to support it, this might on its own suffice to determine that there was a risk requiring defensive action. However, if the matter depended entirely on intelligence material, no doubt it would not be necessary for a Government to appoint a special person to inquire. The Government could accept or reject that material itself. If an inquirer did inquire and then assessed and reported the risk, it would be the responsibility of the relevant Government instrumentality in the light of the report upon the risk to determine whether to exercise and the manner of exercise of such powers as it possessed. For example, it might refuse the visas of the persons concerned. If visas had been issued, it might cancel them. Alternatively it might limit the activities of the persons concerned or might merely take better security measures, concerning air flights, airports or procedures considered vulnerable. The analogy between the example and the question under Term 3 is self evident. The question in that case (as in Term 3) could not be answered by posing the different question whether the group concerned had or could be proved in a court of law to be guilty of some crime.

222. The second illustration is of an application for some type of licence, for example, to conduct a gambling casino. If, say, the president of Bally America or the Australian head of its wholly owned subsidiary or any other person sought such a licence, it would be unlikely that the licensing authority would feel constrained to make a decision to grant or refuse a licence depend upon whether it could prove the applicant was a criminal. It might well take the view, on American experience in Las Vegas or experience in the English clubs, that persons with no criminal records may apply for and obtain licences, but the fact may be that the true owners or controllers well concealed will later be found to be gangsters. On an appreciation of such possibilities the licensing authority might regard material establishing or even pointing to past association of the applicant with gangsters, as posing a risk sufficient to refuse

the application. The authority may well regard some onus as resting upon the applicant, particularly where the authority is in possession of some adverse material, concerning past events or associations. It may regard the risk as remaining unless, in some positive way, it is demonstrated the past material can be safely discarded. The analogy between this illustration and Term 3 is self evident.

A "risk" must be material

223. The question, posed by Term 3, then is to determine whether a risk as defined exists. It must be presumed to relate to a material risk. If such a risk is found to exist, it would be relevant for me to indicate the nature and extent of the risk. These considerations make it desirable to make some appreciation of the context and apparent purpose of the question and the apparent relevance of its answer to the Government. My function is merely to determine whether there is a risk and, if it exists, to define it and to report these matters. If a risk exists, as in the illustrations in PP. 221-2, it is the function of the appropriate authority or the Government to make a decision whether it will take some action and, if so, what action designed to eliminate or minimize that risk.

The context of Bally's presence and increasing operations in N.S.W. relevant to the materiality of any risk

224. The context in which the question is asked is that an overseas corporation, with an almost worldwide monopoly in its field, except in the United Kingdom and Australia, has acquired, as its wholly owned subsidiary, an Australian business and the monopolistic business of the former Australian owner, operating in the Eastern countries to the north of Australia and is sending to N.S.W. gambling equipment, for sale here to be used for gambling purposes in a licensing situation. The present context is a dynamic one of recent acceleration of Bally's business activities in N.S.W. and possible future monopolistic extensions of operations by takeovers or displacement of its opponents. It is a situation involving considerable material pointing to affiliations of this organization or its directors or executives with persons connected with organized crime in America and elsewhere.

The context of Governmental power relevant to the materiality of any risk

225. The further context in which the question is asked is the background of relevant power of relevant organs of Government, in the event of there being found to be some relevant risk. A relevant risk is one of sufficient significance, *prima facie* to warrant some action being taken or at least considered by the Government of New South Wales. I am not concerned to examine precise existing powers, for example, concerning licensing of poker machines or concerning takeovers because the Government can be the initiator of legislation and if effective action involves Commonwealth co-operation or action it is open to the N.S.W. Government to deal with the matter in conjunction with the Commonwealth. On this very subject matter, there has already been co-operation between the Premier and the Senate and the Commonwealth and State Police Forces and the Commonwealth Police have shown interest in and co-operated with my inquiry and had senior counsel present throughout.

Further context to materiality of any risk under Term 3: the vast U.S. problems due to organized crime investment or influence in legitimate business. Questions concerning meeting the risk here of importation of crime within U.S. business are political. The need for knowledge of risk.

226. Action upon a finding of risk under Term 3 could raise questions for decision of others of far reaching importance. To appreciate this is to appreciate the context in which I examine the question of risk. I return to the illustrations of the immigration authority and the visa of the foreigner referred to in P. 221. If the foreigner said "You must accept me, unless you prove by proper evidence that I have committed a crime", he may find his statement rejected. He might receive the reply, "You have had such associations with criminals in your own country, we will not have you. The risk is too great that you are coming here to do their business." When the U.S. gangsters invaded the clubs in England, when gambling in clubs was legalized and they gained undercover control of some clubs, first they were thrown out of England, but their associates still came to supervise their interest. However, they too eventually were substantially stopped by exercise of the power given to the gambling authority. It was used to stop the entry into England of persons reported through intelligence sources to be associated of gangsters. Decisions to allow such powers capable of being used against persons on undisclosed intelligence information, are made at the political level.

What is to be the position in a somewhat parallel case of the foreign corporation coming here? Gangsters' entry into legitimate business in America is not new, but in recent years there have been changes which may be of importance to crime in Australia. Without entering into popular speculation as to the total sums of money involved, it is generally accepted in America that hundreds of businesses of many different kinds, including some large corporations, have been infiltrated, some taken over, some indirectly controlled or influenced, and that very large gangster investments are involved. In recent times there has been a concerted attempt to identify these businesses. Since the setting up of special task forces assigned to particular projects in the field of organized crime there is responsible opinion that the position of the gangster, even in legitimate business, is less comfortable in U.S.A. than previously, and that there is or will be gangster interest in investment and activity within legitimate business away from America, particularly in areas, such as Australia, with less experience in handling organized crime.

7-2 → If it is proper to restrict the personal entry or operations here of gangsters or their associates from overseas, what is to be done, in the somewhat parallel situation, where overseas corporations engaged in apparently legitimate businesses seek to come and do business here or acquire local businesses, where there is reason to believe they are or may be the subject of investment of gangster monies or be affiliated or associated with gangsters? The answer may depend upon an appreciation of the risks involved. Such an appreciation will need, at the outset, an understanding of the varied possibilities that undesirable or criminal activity may at some point of time arise from or accompany the operation here of such a business. It will need an understanding of the concealment of such activity by the devices of organized crime and the cloak of legitimacy of the business. In the case of any particular business it will need knowledge and appreciation of the strength of the interests and affiliations of criminals and the positive or less than positive indications of their presence. It will need an understanding of the particular area in which the business operates and whether it is vulnerable to and attractive to criminal activity. Thus, business associated with gambling or cash transactions would be more vulnerable than most other businesses.

It is for governments to determine their general policy upon this important matter and what should be done in particular cases. The question is probably a new one. The political philosophy may depend upon the appreciation of the gravity of the general or a particular risk.

Australia offers attraction for overseas investment. In the contexts to which I have referred, Term 3 places upon me the important responsibility of informing the Government whether any risk as defined exists in respect of Bally, and if so to define it. My dealing with the question, as it relates to Bally, may incidentally serve to draw attention to the general question. However, the particular and general questions as to what action, if any, should be taken are matters of Government responsibility outside my province under Term 3.

The nature and methods of operation of organized crime within legitimate business in America

227. It is organized crime operating within or in relation to a legitimate business which is in question. Such crime so operating has some of the elements of organized crime, operating in the illegal field. It is popularly accepted that U.S. organized crime originated in the latter field in the "boot legging" days.

In the illegal field, a monopoly by a group was sought in particular fields. Such monopolies were gained and protected by violence or intimidation. The crimes were concealed by violence against or intimidation of potential witnesses and by corruption of public officials, including police and where necessary prosecutors or judges. Monopolies were sometimes protected, by the bribed police being "tipped off" and taking action against would-be competitors. Where the field of operation enlarged, politicians were bribed to take or refrain from taking executive and even legislative action in the interests of the expansion or facilitation of criminal activities.

Some purposeful counter-action was taken by zealous and honest Americans by far reaching public inquiries and governmental and police action. Because of the co-operation between the revenue and law enforcement authorities (unrestricted by a ban on revelation of information collected by the revenue authorities), gangsters were caught between the two authorities. Their difficulty was to enjoy their illegal monies on a scale attractive to them, and yet account for their scale of living to the revenue authorities. Rather than supply incriminating information to the revenue authorities, they suffered imprisonment at the hands of such authorities, as did Al Capone, who was otherwise free of conviction for the crimes for which Americans accept he was responsible.

NE → The entry of gangsters into legitimate business, at least in part, seems to have been a counter to this dilemma of the gangster. A legitimate investment provided an explanation for their standard of living. There was room for argument as to its extent. The entry into these fields appear to have revealed to them new attractions, while still

offering the opportunity to employ the methods used in the illegal fields. The new attractions, apart from aiding the tax situation, were that they were less vulnerable to police action because of the ability to conceal such activities as were criminal behind their respectable front.

They were inclined to seek monopolies in the fields they entered, either by the use of their ready source of cash from illegal activities, which cash was used to buy or bribe their way to monopoly or by the use of violence and intimidation of their business rivals or their customers. However, this was not a necessary adjunct to their presence. They might be content to gain the monopoly by merely tough or unfair business methods or to defer or not worry about seeking a monopoly. There might be periods of little or no criminal activity, or none that was apparent. The field of business entered by organized crime was a wide one, but preference was shown for those where, directly or indirectly, cash dealings were involved. This enabled cash more easily to be skimmed, directly or indirectly, from the operation, thus evading tax and providing the cash, or some of it, in aid of bribery, corruption or other uses in connection with legal or illegal businesses. Entry is gained to legitimate business in a variety of ways, some by trickery, against the wishes of the owners, and some by straight investment of illegal monies. Money was often provided when unavailable from legitimate sources. Ownership was often concealed behind respectable fronts in apparently reputable businesses.

Some American opinions concerning organized crime in legitimate business. President Johnson's Inquiry. Robert Kennedy's views

228. The report of President Johnson's Committee under the heading "The Challenge of Crime in a Free Society" (1967), in the section dealing with organized crime, is of importance and some passages should be quoted. This is a work of great importance, resulting from wide research by a highly qualified cross-section of persons representing wide areas of opinion from Federal and State levels. It led to important advances in combating crime in America. I quote:

- "(a) Organized crime is also extensively and deeply involved in legitimate business and in labour unions (p. 1).
- (b) Because business ownership is so easily concealed, it is difficult to determine all the types of businesses that organized crime has penetrated; (and in this connection the report quotes 'using dummy fronts the real owners of a business, the men who put up the money, never have to list themselves as owners or partners or even as being involved in any way in the business') (p. 4).
- (c) Today, the kinds of production and service industries and businesses that organized crime controls or has invested in, range from accounting firms to yeast manufacturing. One criminal syndicate alone has real estate interests with an estimated value of \$300 million. In a few instances, racketeers control nationwide manufacturing and service industries with known and respected brand names.
- (d) A legitimate business enables the racket executive to acquire respectability in the community . . . To succeed in such ventures, it uses accountants, attorneys, and business consultants, who in some instances work exclusively on its affairs. Too often, because of the reciprocal benefits involved in organized crimes dealings with the business world, or because of fear, the legitimate sector of society helps the illegitimate sector (and, it quoted from the Illinois Crime Commission. 'There is a disturbing lack of interest on the part of some legitimate business concerns regarding the identity of the persons with whom they deal. The lackadissical attitude is conducive to the perpetration of frauds and the infiltration and subversion of legitimate businesses by the organized criminal') (p. 4).
- (e) The ordinary business man is hard pressed to compete with a syndicate enterprise . . . the criminal group always has a ready source of cash with which to enter business . . . Strong arm tactics are used to enforce unfair business policy and to obtain customers (p. 6)."

Robert Kennedy, as Attorney-General, giving evidence before a Senate inquiry in 1963 dealt with the operation of organized crime within legitimate business. Included in his evidence were the following:

- "(f) (After referring to 'shylocking' in loan transactions he said) What is at least as disturbing, and far more insidious, is the increasing encroachment of big business men of rackets into legitimate business.
- (g) Other racketeers have interests in a variety of legitimate businesses—the garment industry, constructing, bowling alleys, liquor wholesaling, real estate, juke boxes, vending machines, restaurants and others.

- (h) Top racketeers always deal in cash and there are innumerable ways to conceal cash from the very best investigators. Secret numbered accounts in foreign banks, legitimate 'front' businesses of the kind I have described, loan sharking—these are few of the methods. Another is the 'skimming' operation, conducted behind barred doors, in which a large percentage of the proceeds of so-called legal gambling is skimmed off and then hidden.
- (i) Law enforcement officials agree that entry into legitimate business in America is continually increasing and that it has not decreased organized crimes control over gambling, usury and other profitable low-risk criminal enterprises."

Professor Cressey, a consultant to President Johnson's "Task Force on Organized Crime", in that inquiry warned of the dangers. After referring to methods accepted as legitimate by which one legitimate business forces its smaller competitors out of business and establishes a monopoly, he said:

"By analogy, rulers of crime syndicates are beginning to drive legitimate businessmen, labour leaders, and other supporters of ideology of free competition to the wall. They have established by force, intimidation and even more "legal" methods, monopolies in several relatively small fields such as distribution of vending machines."

In the third interim report of the Special (Senate) Committee to investigate organized crime in interstate commerce (The Kefauver Inquiry) (1951) in the section dealing with infiltration into legitimate business it was stated that the Committee had before it evidence of hoodlum infiltration in approximately 50 areas of business enterprise. These were listed and included amusement industry, juke box and coin-machine distribution, manufacturing gambling equipment, Nevada gambling houses, racing and race tracks, restaurants and night clubs, theatres.

Under the heading "Juke boxes, cigarette vending machines and slot machines" the following appear:

"There seems to be a natural affinity of underworld characters for the distribution of these machines. The Committee has found that juke boxes and cigarette vending distribution is usually the front employed by hoodlums for illegal distribution of pin ball and slot machines. Distribution methods, moreover, are often based on the use of muscle."

and

"Most of the nation's leading hoodlums, including Frank Costello, Jake Lansky, Joseph Stacher . . . have been engaged in the distribution of juke boxes and slot machines." (p. 179)

There can also be quoted (p. 170-1):

"A gangster or racketeer in a legitimate business does not suddenly become respectable. The methods which he used to achieve success in racketeering and gambling enterprises are not easily sloughed off. Thus, evidence was produced before the committee concerning the use of unscrupulous and discriminatory business practices, extortion, bombing, and other forms of violence to eliminate competitors and to compel customers to take articles sold by the mobsters. Monopoly is the key to big money in criminal activity. It is also sought by mobsters when they enter legitimate business. A racketeer who has contempt for the law and who enters legitimate business has no hesitation in engaging in black-market practices. This gives him a considerable advantage over a more timid competitor and is one of the means whereby the racketeer can push such a competitor to the wall."

and

"There can be little doubt that the public suffers from gangster penetration into legitimate business. It suffers because higher prices must be paid for articles and services which it must buy. This is the result of the monopoly which is often secured and because of unfair trade practices frequently applied."

and

"Finally, the public suffers because the vast economic resources that gangsters and racketeers control enables them to consolidate their economic and political positions. Money, and particularly ready cash, is power in any community and over and over again this committee has found instances where racketeers' money has been used to exercise influence with Federal, State, and local officials and agencies of government. An official who is beholden to the mob for his election or appointment thinks first of his boss and only secondarily of the people of the community that he must serve. The money used by hoodlums

to buy economic and political control is also used to induce public apathy. The committee found that hoodlums, behind the front of their respectable enterprises, contribute enormous sums to hundreds of worthy causes. While the committee in no way wishes to reflect on the worthiness of such causes, it has found that hoodlum contributions do tend to fool uninformed people and thus contribute to the relaxation of public vigilance."

Organized Crime in Illegal Business Insulates and conceals the organizer. Parallel with organized crime in legitimate business

229. A feature of organized crime is, first, that, in addition to using its devices to protect from the operation of the law those who perform the illegal and criminal acts for the group, it provides special protection to those at the top who organize. This protection is achieved by insulating them from the crime, committed at the perimeter, by avoiding direct or identifiable links between the centre and the perimeter and by procuring non-disclosure, by the imposition of a strict and violent discipline.

These same elements occur, where necessary, when those connected with organized crime, invest in or in some way infiltrate legitimate business. The identity of the gangster or his part in the legitimate business may be concealed by legitimate fronts and dummies, it would seem particularly if the revelation of his presence would prejudice the business and hence his returns from it. With the use of well paid experts and cash transactions, investigation of books, cheques or other documents will not reveal the presence or influence of the gangster. His apparent absence or apparent departure from the business may not coincide with the fact. It is logical, but so far as my reading goes, not much written of in America, that legitimate businesses with criminal investments or influences, wishing to preserve the appearance of respectability of their corporation, will do as the gangsters themselves do and insulate the corporation from the acts at the perimeter, by which it derives benefit. It is logical and in accordance with the methods of operation of organized crime that such a successful corporation, wishing to preserve its appearance of respectability will have its "dirty work" done by its distributors or other groups apparently independent of it, so that if the distributor or other group at the perimeter is exposed, because of some criminal or improper conduct or association, the corporation at the centre will protest its separation from and lack of responsibility for the conduct of its distributor. It may be, with the aid of experts, its accounts and documents will demonstrate this separation, whether it really exists or not.

In the field of illegal business, the man at the centre can disown the man in the street, who does the "dirty work" if the latter is caught. The man at the centre takes the benefit of the work of the man in the street in various ways. By analogy it is logical that a business, criminally controlled or influenced, should put itself in a position to disown its distributor and yet take the benefit of any doubtful or criminal conduct of the distributor. If it is found afterwards that, despite the disowning, benefits are still flowing between the distributor and the main business, or those connected with them, it may indicate that the separation and disowning is not real. I make this last comment because of its relevance to Bally's relations to its many distributors.

Increasing efficiency in concealment of organized crime in legitimate business

230. There is a body of opinion in America, apparently soundly based, that the action of organized crime is becoming more difficult to discern, because of the more efficient use of legitimate fronts operated by apparently respectable persons using impeccable accounting and recording systems. Some of these new skills have been attributed to the undoubted abilities of Meyer Lansky.

Logical bases for conclusions concerning organized crime

231. The matters, to which I have referred in the foregoing paragraphs, pose a great problem in the detection of the presence and the operation of organized crime within or operating in association with or on the perimeter of a legitimate business. On the one hand, it is a great fallacy to assert that its presence can be found to exist or be absent, according to whether or not a crime can be proved by legally admissible evidence to have been committed, or to have been committed on the responsibility of the corporation itself and to be classifiable as organized crime. On the other hand, it would be an equally great fallacy to argue that where there are only slight suggestions of organized crime connected with a business, this proves that there is organized crime of the most efficient type.

There must be a middle course and, if a Government is to be informed, so it can arm itself with protective measures, it is legitimate to accept material which would not be admissible upon a criminal trial provided, as a matter of logic, it indicates a sufficient degree of probability of the aspect of organized crime investigated.

Questions concerning associations between gangsters and those who run the business pose problems. Lawyers are disinclined to draw deductions from associations, for reasons which are obvious. There has been condemnation of the process of reasoning,

now referred to as "Macarthyism", so far as it deduces that a person who has associated with a Communist could be inferred to be a Communist (or "fellow traveller"). Association with a known or reputed criminal, particularly a leader of organized crime, is an association of a different type. Persons of different political persuasions frequently associate socially and in business. However, it is somewhat unusual for a respectable businessman to be associated socially or in business with a man known to him to be a hardened criminal. In an appropriate case an inference of some criminal affiliation may properly arise, or at least an inference that there is a reasonable chance that there is such an affiliation (cf. Consorting Act).

Matters and Material Relevant to Term 3

232. For the purpose of Term 3, it is relevant to examine the history of Bally operations overseas, in order to determine the likelihood that gangster money has been invested in it or that it has or has had affiliations or associations directly or indirectly with persons connected with organized crime. It is relevant to examine the operations here of Bally, and its distributors. The material to be considered falls under the following heads:

- (a) As to matters outside N.S.W.:
 - (i) evidence before me includes admissions of various persons connected with Bally;
 - (ii) transcripts of evidence produced to me setting out admissions made by persons sufficiently connected with Bally to make them acceptable;
 - (iii) transcript of evidence which is acceptable as logically having some weight and which deals directly with activities relevantly related to Bally;
 - (iv) documents or copies sufficiently authenticated relating to relevant acts or events concerning Bally or being Bally's documents; and
 - (v) reports, investigations and writings from authentic and apparently reliable sources for the purpose of indicating American findings concerning the methods of operation of organized crime and the accepted connection of certain persons with organized crime.
- (b) As to events occurring in N.S.W., material of all sorts, both oral evidence and documents, which came before me under Terms 1 and 2, to be judged by its weight in aid of deciding whether on the one hand there have certainly, probably or possibly been acts done in New South Wales in or in relation to registered clubs, by or in relation to Bally which logically are relevant to Term 3 or, in the alternative, whether it can be found that certainly, probably or possibly the acts in question have not occurred so as to be logically relevant to Term 3.

Nature of Bally's apparent involvement with organized crime

233. Bally's apparent involvement with organized crime arises from:

- (a) The investment of money in Bally America by the gangster leader Catena and his business associates.
- (b) The associations of directors and executives of Bally America with reputed gangsters or their associates.
- (c) The employment, in connection with the business of Bally, of reputed gangsters or companies or firms with directors, shareholders or executives who are reputed gangsters.

The details of the above are apparent from the pronouncement set out in P. 219. The above material may tend to prove that, by the nature or frequency of involvement with criminals or their money, there is likely to be some criminal element controlling or influencing Bally's operations. Alternatively, it may prove that Bally's operations are so conducted that either its own business or business operations upon which it is dependent, e.g. distributing, are such that, when it aids Bally, it knowingly takes the benefits of operations conducted in a criminal fashion that is conducted by or in association with criminals. Either conclusion would make it likely that business conducted in New South Wales by Bally or in connection with its operations would be directed by criminals or influenced by them or that in New South Wales Bally would employ criminals and take the benefit of their crimes.

Proof of past involvement with criminals

Inferences as to present

234. Where some relevant gangster investment in or in connection with Bally at some point of time is demonstrated to exist, the question arises whether it continues to exist. A present situation could not well be proved, except by evidence of the situation at some earlier time. If its prior existence is established satisfactorily, for example by an admission, the view normally will be well open that it has continued

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to exist and is still operative, unless it has been satisfactorily established that the investment or connection has been terminated. Of course, the circumstances of the prior event may be so remote as to provide no indication as to the present. Bally has asserted the investments and connections have been terminated. If they have, it is Bally who ought to be able to establish it is so. Counsel for Bally complained bitterly that it was unfair that I should regard some kind of onus as resting on his client and, as he put it, to expect them to prove their innocence, when the onus should be the other way. This misconceives the ordinary logic which corresponds with the legal logic concerning proof of present or future events. It also misconceives the nature of my inquiry as discussed in PP. 220-6. It fails to understand that substantial admissions were made in England and before me of deep past involvement with gangsters in many and various ways.

Bally has countered this material with the claims, made overseas and before me, that all connections with gangsters have been removed and that the past is now irrelevant. If they do not satisfy me as to what they assert, then any present risk, to be inferred from the past connections, remains. At least in this sense the onus rests on Bally to satisfy me about their assertion and they would need to satisfy me positively because, in an uncertain situation, a risk must remain with a corporation with this past history. A known defence of organized crime is to conceal the presence of its operations and connections. In a situation where its presence in constant and recurring ways has been demonstrated, one would need to scrutinize with care the outward signs or claims of its disappearance, in order to determine whether the disappearance was real.

The indication in the latest intelligence opinions from America is that what has been done has been in an attempt to "whiten" the company but that the criminal influences remain. In order to determine whether a risk, such as referred to, exists as a basis for possible Government action, it would be eminently proper to look to and pay regard to and act on intelligence material from overseas in the way I referred to in the illustrations in PP. 221-2. It would be proper in this report that I bring it into account. However, I propose to put it to one side and base my decision upon the other material revealed in relation to Bally. I omit it, conscious of the circumstance that it is still there to be referred to and, no doubt, available to the N.S.W. Government upon request to the Australian Government when the details can be examined and weighed, a course I do not undertake because of the confidentiality of the material shown to me. It is my task, therefore, on the other material before me, to come to my own determination upon the matter. It will be seen that the position of Bally, as I will deal with, goes far beyond mere unexaminable intelligence information. I now put that to one side.

Positive material before my inquiry concerning Bally

235. My inquiry has direct evidence or material in the form of admissions of O'Donnell in the English defamation action and then, no doubt because this starting point was available, it has the admissions made before me of O'Donnell, Tomlinson and the Bally America directors Klein, Kaye and Wilms. These are admissions which connect Bally or persons involved in its operations with various criminals. The positive material is there. The question raised is rather what inferences are to be drawn from the whole evidence and how credible are the exculpatory assertions sought to be made by the Bally directors.

History of Bally America

236. It is necessary to relate the history of Bally America (a Chicago based corporation) leading to the introduction of gangster money into its capital. The business which eventually became that conducted by Bally America, but subject to various changes in the company structure and its name, was founded prior to World War II, by one Maloney. It manufactured and sold amusement equipment of various kinds, including pin-ball machines. In 1946 O'Donnell became a salesman and from 1955 to 1963 was general sales manager with particular duties on the East Coast of America, but particularly New York and New Jersey, the then principal area of the company's sales. He dealt directly with the various Runyon Sales businesses which became the distributors for the company for the whole Eastern seaboard, doing a very great volume of business.

The founders and early directors of Runyon Sales were Sugarman, Green and Stacher. Stacher, or Doc Stacher, who had many aliases, was a well-known and leading gangster and so acknowledged for many years. He operated in New Jersey and Las Vegas. When about to be deported many years ago, he left America and has since lived in Israel. When he left Runyon Sales, his place as partner and director was taken by another notorious and leading gangster Jerry Catena, who on the death of Vito (Don) Genovese, became the boss of the Genovese family, the leading Mafia family in America. He forms so important a place in this story, that I will refer later to his criminal activities and reputation and to the awareness of the same by persons connected with Bally at various times.

O'Donnell dealt principally with Green, who became his close friend, and who O'Donnell claims remains such to this day. Going back to those early days, O'Donnell was aware of the business partnership first with Stacher and then with Catena.

Upon the death of Maloney in about 1958, the company (then known as Lion Manufacturing Corporation) was in considerable financial difficulty and, over a period of time, the executors of Maloney proposed to wind it up but O'Donnell, then a temporary director, over a period of a year or so made strenuous efforts to find a consortium to provide sufficient money to revive and take over the company. Eventually, in 1963, the consortium acquired the company for \$1,200,000. Two hundred thousand dollars was provided by those who became the shareholders and \$1 million was provided by way of loan at the instance of one member of the consortium, a wealthy man by the name of Louis Jacob, who became a shareholder by his concession company Emprise Corporation. The consortium consisted of two groups, each owning 50 per cent of the shares. On one side were O'Donnell, Sugarman, Green and Kaye who put in \$25,000 each, giving each 12½ per cent of the shares. On the other side were Emprise Corporation, Prince and Klein. These persons were introduced as follows: O'Donnell went to Sugarman and Green, the Bally distributors, and invited them to join. They brought in Kaye and Klein. Klein brought in Jacob and Jacob brought in Prince. In the following year Prince was bought out and Emprise Corporation and Klein, between them, then had 50 per cent of the shares.

In fact, the \$50,000 contributed by Sugarman and Green had been contributed by themselves and Catena, all equally, so the shares of Sugarman and Green were held for the three of them. Sugarman died in 1964 and O'Donnell claims that then, in 1965, he first became aware of the shareholding of Catena and that the interests of Catena and Sugarman were then bought out by himself, Green and Kaye. Eventually, in 1966, when some dispute arose with Jacob concerning the exercise of powers under the voting trust in connection with the loan, the loan was paid out and Jacob bought out, leaving the principal record shareholders O'Donnell, Klein, Kaye and Green. The first three were directors. Green was not, but sales manager. In 1968 steps were taken to convert the company to what is regarded and referred to in America as a public company, in the sense that there was a public offering of some shares. However, this consisted only of 20 per cent of the shares, the control of the company remaining with the principal shareholders, as it does to this day.

Bally today—shareholdings

237. Of the present 5 million odd shares the holdings are approximately Klein 850,000, O'Donnell 640,000, Kaye 500,000, Wilms 500,000. Stock exchange values have changed but have reached as high as U.S.\$70 per share. On exchange values, the values of the shares representing investments of \$25,000 have changed in ten years to a figure plus or minus \$25 million. In ten years the business of these men has come close to a world monopoly of its field of gambling machines and they have all become multi-millionaires.

It is claimed that in 1971 all of Green's interests in Bally America were bought out. It was said this was done to remove any possible detriment to the company's reputation, having regard to Green's past association with Catena. The relative proportion of shares held by the principal shareholders have varied by various transactions. There have been some substantial takeovers and expansions and the parent company now has various subsidiary companies in many parts of the world. Substantial takeovers in Europe several years ago have resulted in one Wilms, a Belgian, being a principal shareholder and director of Bally America, as well as managing director of Bally Continental. Rooklyn, the former part owner of the Australian business which, with some structural and company name changes, became Bally Australia and the former owner of the businesses later to be referred to in Indonesia, Thailand, Singapore, Hong Kong, Macao and the Philippines, upon disposal of all of the same to Bally for shares and money in the order of \$6 million, became a reasonably substantial shareholder in Bally America, but not a director. He remains manager of their Australian and Eastern interests.

Rooklyn's
role

Bally today: Its areas of monopoly

238. The operations of Bally involve the manufacture of poker machines, pin-ball machines and other amusement and gambling equipment in America, Ireland and Europe, and the sale of them in America, various island resorts of the world, United Kingdom, Europe, the Middle East, Africa, and Far East and Australia. It appears from documents produced by Bally, that Bally claims it has no significant competition in the areas in which it trades except in the United Kingdom and Australia. It appears from its recent annual reports, that, where it is possible, Bally is changing its business operation so as to procure a share in the profits of the operation of their machines and that their expansion into these fields is remarkably more profitable than sales.

Catena—gangster and crime leader

239. Gerado (or Jerry) Catena, has been in gaol since 1971, for refusing to testify. As with most of the crime leaders of America, much of the history concerning him must depend upon intelligence material and evidence and findings of various Senate and other inquiries in America.

At this point, I should refer to another source of background information available, which should be recognized to exist and to be of possible value, but which I set to one side in favour of better authenticated sources. This other source is not written as fiction, but purports to be based upon the investigation of available material. There is for example "The Green Felt Jungle" by Reid and Demaris (1963) which purports to tell the story of Las Vegas including the part of Segal, Lansky, Stacher and others. It relies extensively on the reports and evidence in various inquiries, including the Kefauver inquiry, and on other authentic sources, but at times, tells the story without reference to any or any authenticated source. O'Donnell in his English evidence accepted that parts of the history of Las Vegas put to him as related in this book were accepted in America as authentic (T. 1410-2). There is by way of further example the book "The Mafia is not an equal opportunity employer" (1972) written by Nicholas Gage, who is described as an investigative reporter. It tells, *inter alia*, the story of Lansky, Cellini and others, which at points where my inquiry touches the same subject matter, e.g., Cellini, George Raft and the Colony Club, the author is borne out. He also deals with Catena and some of his activities in relation to legitimate business. An example is the business of Catena employing many salesmen in the distribution of a detergent. One chain store declined to take it on the basis it was inferior and overpriced. Two stores, at an interval of a month, were destroyed or damaged by a bomb and a third demolished by fire two months later. Then two departmental managers at an interval of two weeks were shot to death in their cars and then a fire bomb demolished another store. No threat had been made. It could all be co-incidence. Catena was brought before a grand jury for questioning and the campaign ceased. No offender was found for any of the five burnt out supermarkets or the two murders. I instance these two books, because they represent apparently serious non-fiction accounts of the problems which beset America. I instance them not to say they are or are not soundly based. They are there with hosts of other similar literature. Much is obviously authentic. I acknowledge its existence, but set it to one side for the purpose of resort to the more deliberate conclusions of duly constituted inquiries or academic writings thereon.

It is convenient to refer first to the inquiry and report of the U.S. Congress, Senate Committee, upon Organized Crime and Illicit Traffic in Narcotics which commenced its sitting on 25th September, 1963, and reported on 4th March, 1965. The report and evidence (in five volumes) is in the Law Library, University of Sydney, and was before me (P. 232 (a) (v)). These dates are significant, because it was in 1963 that Catena invested in Bally America, and it was the business (Runyon Sales) in which Catena was a partner, which for years before and after 1963 was Bally's principal distributor. As will be seen his racketeering had been well known and publicized for years before then and that after 1963 he progressed to the very top position in New York in organized crime. On the opening day in Washington, D.C., Robert Kennedy, then Attorney-General, as the first witness outlined the known history of organized crime and the known leaders. It is obvious that there would be considerable publicity given to the proceedings and particularly the opening testimony of the Attorney-General. It would be hardly likely that what was said about Catena, would not come to the knowledge of those who already knew he was a racketeer and had dealings with businesses with which he was interested. Kennedy said:

"We know that while Vito Genovese is in Federal prison, Tommy Eboli is substituting for him in New York and Gerry Catena is doing the same in New Jersey. Because of the power that Genovese wielded within the organization and the fear in which he is held by the New York organization, no move has been made to take over the top spot while his appeal from a narcotics conviction is pending in the courts. If Genovese stays in prison after his case is concluded we anticipate a major underworld power struggle in New York."

Much of the testimony was given by Valachi, an imprisoned member of the Genovese family, and, at points, was corroborated by law enforcement authorities and generally accepted by them. The committee in its report accepted the identification of persons within these families including that Catena was the "underboss" and that he was active in the fields of gambling and "vending machines or juke boxes". Vito Genovese, also known as "Don Vitone" (it seems the person upon whom the novel "The Godfather" was based) was the successor to Frank Costello and Charles "Lucky" Luciano, as head of the Genovese family, the most powerful in New York. The conviction referred to was in relation to large scale smuggling of narcotics into America.

After this Senate inquiry, Eboli was murdered, and on the death in gaol of Vito Genovese, Catena succeeded to the head position, but in 1971 he too went to gaol and is still there. Being in gaol in other cases (e.g. Genovese, Plumeri) has not been inconsistent with continuing gangster authority. So far as my reading has gone, it has not appeared Catena has relinquished his head position.

Valachi, in evidence before the Senate inquiry, stated there were some 500 members of this family. Amongst those identified (and accepted in the report) was Vincent Alo ("Jimmy Blue Eyes") in the high position of caporegime. There was evidence in the English defamation action of his presence and that of other American gangsters, including Angelo Bruno, leader of a Philadelphia crime group, indicating some involvement by them in the Colony Club in London, in which club the directors of Bally's English distributors and one Cellini were involved. There is little doubt that there was gangster involvement in this club and that Cellini was an operative in the Meyer Lansky group. It appears that a function of Vincent Alo was to check on other criminals to ensure that Lansky's interests were properly dealt with. He is seen often associated with Lansky, e.g. in the reports of the Kefauver Senate Inquiry, 1950-1. There is a body of responsible U.S. opinion that there has been some combination of operations and interest between the Lansky and the Genovese groups over many years. In any event, the Senate inquiry puts Catena and Alo in high positions in the same group, and the former is found in associations with Bally America and the latter it seems in association in London with the Lansky group and in that way with the English directors of Bally's English distributor.

The history of Catena as given by the law enforcement authorities before the Senate inquiry (see Part 4, p. 1019; and 916, 929) included the following:

"Criminal associates: Lucky Luciano and Joe Doto of Italy, Frank Costello, Anthony Stralow, Michael Luscaro, Angelo De Carlo, Sam Accardi, Nick Delmore, Charles Tourine.

Criminal history: (F.B.I. and other reference numbers). Arrests since 1923 include robbery, hijacking, bribing a Federal juror, suspicion of murder.

Business: Has interests in People's Express Co., Advance Vending Co., Runyon Vending Sales Co., Kool-Vent Awning Co., all in Newark, N.J.

Modus Operandi: Attended Apalachian underworld meeting in 1957 with other underworld members representing the interests of the underworld-controlled rackets in Northern New Jersey. Used strong-arm methods to gain control of vending machine industry in Northern New Jersey."

Catena's history as a gangster as is seen went back for many years before 1963 and was known for his criminal activities and connections. He was referred to in the Kefauver Senate Inquiry. In the second interim report of the Special Committee to Investigate Organized Crime in Interstate Commerce of 28th February, 1951, Catena with four others including Joe Adonis and Salvatore Moretti were referred to as 'underworld characters' engaged in a gambling operation in 1945-6 which netted Catena \$51,000 (p. 13) and, in dealing with gangs infiltrating legitimate business, instances Catena and describes him as "a New Jersey mobster" (p. 34).

The final Kefauver report (August 1951) deals with the domination of organized crime in Northern New Jersey by Zwillman, whose place Catena later took. The report puts Stacher and Catena in the forefront of his associates from early days and includes as his associates Costello, Segal, Lansky, Moretti, Luciano and Adonis. Catena is referred to as "a big time gambling operator" and "suspected front for Zwillman". The following also appears:

"he (Zwillman) maintains close personal contacts with Jerry Catena. Catena is a hoodlum whose convictions include one for bribing a juror when Nicky Delmore was tried for murder of a prohibition agent. In the year 1946 Catena and Joe Adonis as partners received \$120,000 from one gambling establishment alone"

Reference was then made to large scale dealing of Catena within a legitimate business (People's Express Co.) involving union teamsters manipulation (Final report p. 65-73).

It is highly likely that the substance and perhaps the detail of this public information would find its way into mercantile reports which included references to Stacher and Catena in relation to a business operating in New Jersey.

Contribution of gangster money to Bally capital. Bally's claim he was removed

240. As indicated in P. 236 Catena contributed some of the original capital for O'Donnell's consortium, but his shares were held by Sugarman and Green. Bally asserts, in effect, that the matter is quite simple, in that Catena was there without their knowing, that when O'Donnell found out he was there, he took steps to get rid of Catena, because he was horrified to find that a gangster was a partner in his consortium.

If this were all of the Bally story, one might regard the matter as an unfortunate incident, which could happen to any reputable American company and is now of no significance.

However, that is far from the whole or true story. There are many other connections over long periods of time between Catena and persons in positions of control in Bally. There are many contradictory stories and some falsehoods have been told by those connected with Bally concerning those connections and concerning alleged disconnections from Catena and his associates. In the result, there is little credit to be given to much of what has been said seeking to exculpate Bally and its connections from Catena and his associates. If the horror at finding this gangster in their midst was as asserted, it might be expected that prompt steps would have been taken by Bally to rid itself of all business connections with Catena and with Green who foisted this gangster, his own business partner, onto the consortium by the deceit of a secret interest. It might also be expected that Bally would have severed connections with other business partners of Catena and would have been vigilant not to have allowed other criminals into the perimeters of its business operations. An examination must be made of these matters in order to see the whole and real picture. It shows a picture very adverse to Bally.

Runyon Sales: Catena's continued association at least from 1950 to 1971 as its distributor. O'Donnell's knowledge. His presumed expectation as to how products would be sold

241. Catena's first connection with the business of Bally was in the early Maloney days when Catena was a partner in Runyon Sales. He replaced Doc Stacher, one of America's richest and most powerful gangsters. In America there have been, and still are, from State to State, many and varied restrictions on gambling and devices that can be or are used for gambling. At times equipment capable of being used for either fun or gambling is supplied and used for gambling in breach of the law. At times straight out gambling equipment is used in breach of the gambling law. This former type of operation was the subject of a recent indictment found by a Grand Jury against Bally American, O'Donnell as its president, leading Louisiana gangsters the Marcello brothers, Bosberg, the main Bally distributor in Louisiana, and others, for conspiracy to ship gaming equipment across the Louisiana border in furtherance of illegal gambling. The Marcello brothers were discharged at an early stage and Bally and O'Donnell were acquitted. The Bally agent Bosberg, pleaded guilty. It was conceded before me the machines had in fact been shipped by Bally, but it was said that the conduct of the Bally distributor did not reflect on Bally as he was an independent distributor.

Returning to the distributor Runyon Sales, it seems highly likely that the presence of Stacher and then Catena in the Runyon Sales business was more than as quiescent investors. Catena entered legitimate business in this and the vending machine field in the New Jersey, New York area. The field of operation of Runyon Sales would be one where, in the placing of machines, the overcoming of opposition and the illegal use of machines, the methods of organized crime within an apparently legitimate business would be ideal. With a notorious gangster such as Catena or Stacher as a partner it would be leaving behind one's knowledge of the operation of organized crime and one's sense to think it would not occur. As will later be stated, I am convinced O'Donnell had, right back to the fifties, a fairly accurate knowledge of Catena's criminality, but even upon his ultimate admissions of his knowledge in the fifties of Catena's racketeering connection and upon his later knowledge of the 1963-5 Congress Inquiry evidence and findings concerning Catena, it is inconceivable that O'Donnell would not be well aware that gangster methods would be used to promote Bally's products.

In the fifties Bally was in Chicago, but its lucrative outlet was New Jersey, New York. This was one of the worst areas of organized crime in U.S.A. Bally's sole distributor was a firm with a gangster director and a shareholder. In these years it transacted sales in the order of \$2 million annually, which, on then money values and the then extent of the Bally business, was a major part of the Bally outlet. Even after O'Donnell and others in Bally admittedly knew Catena was a Mafia head, his company (Runyon Sales) still was the Bally distributor, although admittedly Catena remained in it at least until he went to gaol in 1971. A manufacturing business such as Bally succeeds only if it can sell its products. If it is to use unfair or criminal methods it can be expected they will have to occur at the distributor level. If it knowingly uses a gangster or his partnership to sell and promote their products it is likely it intends to have them sold and promoted by criminal methods. The parallel would be if Bally made McPherson its N.S.W. distributor. It would be no different if the N.S.W. distributor had a firm name with partners X and McPherson and Bally did not see McPherson, when they went to the office but knew he was a partner or director. This is exactly what happened to Bally products on the East Coast of America from 1950 until Catena, the Mafia head, went to gaol in 1971.

If Bally is "Mafia" infiltrated, influenced or controlled, then, as with any organized crime, the criminal activity will manifest itself at the perimeter which, in the Bally case, would be principally at the distributor level. One way of judging the quality of that which is at the centre is to see what happens at the perimeter. As with organized crime of any description the defence of disconnection can be expected to be resorted to namely, disowning what occurs at the perimeter, in this case at the distributor level (see P. 229). The difficulty is that quite a legitimate business may have an independent distributor, who adopts criminal methods without their expectation or knowledge. However, lack of innocence and, on the contrary, involvement may be pointed to by prior knowledge of the criminal conduct or connections of the distributor or by there being found to be a multiplicity of distributors who have criminal connections or upon discovery of the crime or criminal, by the failure of the manufacturer promptly to discontinue the distributorship. There is substantial material against Bally on each of these matters. It is with the first that I am dealing, because by admission and inference it is abundantly clear that relations and connections with gangsters Catena and others have been made or continued, when O'Donnell and other Bally directors and executives were well aware of the criminal status of the persons involved.

O'Donnell's Acceptance of Catena to do Bally's Business, despite his knowledge of Catena's Criminality

242. The case against O'Donnell goes beyond inference from his knowledge of Catena's reputation. He conceded that in the 'fifties Runyon Sales had the exclusive East coast distributorship for Bally and that it was very important to its success that he had intimate contact with it in his capacity as sales manager and became a close friend of Green. From questions put to him by Mr Justice Lawton in England, it appears that he was aware in those past years that by reason of the presence of persons such as Stacher, stand-over tactics and protection rackets were used in respect of gambling machines, then illegal in New Jersey. O'Donnell's answer, "Abe Green has got an associate who is a reputed Mafia head. That isn't my fault", is no excuse. He could use the same excuse if, in the earlier illustration, he knowingly dealt with an X-McPherson partnership but only saw X. O'Donnell conceded that, as sales manager, he discovered the presence of Stacher and Catena and having some knowledge of their connections, he went to Maloney in mid-fifties but Maloney told him he did not care who the partners were and not to "stick your nose where it doesn't belong."

O'Donnell's inconsistent reaction to information that Catena a "secret" shareholder in Bally America.

243. The case made by Bally was that O'Donnell was unaware until 1965 that Sugarman and Green held their shares partly in trust for Catena. O'Donnell's version of what happened then is revealing. It was that on discovery of the secret shareholding, Green explained to O'Donnell that he, Sugarman and Catena had an agreement that in any outside business each would have a one-third interest. On any view, at about this time, O'Donnell knew that Catena was a Mafia leader. He says the Catena interest in Bally was purchased. However, what of Bally's U.S. East coast, exclusive distributor? On O'Donnell's story his "friend" Green had deceived him and then revealed that in everything he was in partnership with one of America's most notorious gangsters, then known to be near-head, later head of the leading Mafia family. Despite these matters Bally continued to have as their distributor the Green-Catena partnership.

Catena still with Bally's distributor until 1971. Was he really removed then? No documents produced.

244. It was said Catena was bought out of Runyon Sales by Green in January, 1971. No documents were produced and there was no real evidence of it. I am left unaware of the truth of whether Catena left and, if he did, whether this was so because he went to gaol or was replaced by some other member of the Genovese family. Green very belatedly was apparently considered undesirable as a shareholder and executive of Bally, because of his business partnership with Catena. It is said he was bought out of Bally America in 1971. There is considerable reference in the accounts to matters pointing to such a transaction, and it may well be the transactions accord with the reality, but whether he has really ceased to have any interest at all depends rather upon the general credibility of Bally and its witnesses. I do not find it necessary to determine this matter. On one view the price paid was an undervalue. However, for present purposes I propose to assume he was bought out of Bally.

Inconsistency Green removed as shareholder but retained as distributor. Was Runyon Sales Distributorship terminated to expire 1974? No Documents.

244A. Despite the removal of Green from Bally itself, Bally continued to have Runyon Sales as its distributor. Even if Catena has gone from it, the question arises, why the distinction regarding Green. If Green is an undesirable at the centre, why is he not an undesirable, or even more so an undesirable, at the perimeter. Last year, when my then Commission was to expire on 20th December, 1973, Green's continuance was queried before me. It was claimed, without documentary support that Green had been given 9 months' notice of termination expiring at the beginning of 1974. Tomlinson explained the delay on the basis that the contract was one that could not be terminated except by its term, and by 1974 the term would expire. O'Donnell, however, gave evidence that Green did not have a contract giving him a right to continue until January, 1974, or requiring notice of termination, and that Bally could have terminated it immediately, but that after discussions in which he tried to persuade the New York Stock Exchange not to press him to terminate it, he gave Green notice until 1974 because "Mr Green is no hoodlum; Mr Green has never been arrested, Mr Green is my friend".

Conclusion that O'Donnell Aware of Catena's Undisclosed Shareholding in Bally.

245. See later (PP. 255-61) as to the lack of credibility of O'Donnell. The objective material leads me to the view that O'Donnell was aware of the secret interest of Catena in Bally from the outset, and that Catena was not made a record shareholder for some reason, other than to deceive him, most probably because of the \$1 million loan eventually to be negotiated from an institution. O'Donnell had discovered the presence in Runyon Sales and the repute of Catena in the fifties from a mercantile agency report. It can be expected from such a report, on such a man, he would be well aware of both Catena's then known criminal connections and the inconvenience commercially of Catena being a shareholder. Concealment would be more than ever necessary in 1963, because of the awareness that O'Donnell probably then had of the notoriety given or likely to be given to Catena's leading position in organized crime as it was by Attorney-General Robert Kennedy on 25th September, 1963, quoted in P. 239. O'Donnell conceded that, if he had known originally that Catena wanted to come in as a shareholder he believed he would not have objected. The relationship of Green and O'Donnell before and after 1963, and O'Donnell's reactions to Green when he allegedly discovered Catena's interest, concealed by Green, supports by conclusion.

Doubts and lack of satisfaction that Catena was in truth bought out of different interests

246. It is unreal to attempt to isolate the Catena interest and state it as a percentage that he owned. The true view is that 25 per cent of the consortium money came from Green, Sugarman and Catena. What were they doing in partnership? As Green said to O'Donnell, they were in all business activities together. Catena was no ordinary criminal but the head of one of the most evil and sinister groups in America. Catena himself was known for his participation in legitimate business. Catena's criminal period dated back to bootlegging days and by 1963 his partnership with Sugarman and Green was of many years standing. Surely it was no innocent circumstance that he was there, particularly when it is remembered that he replaced Doc Stacher of no less criminal repute. There is no suggestion that Catena forced his way into this group or that his presence was not desired. Green remained his partner long after a time when nobody doubted Catena was a Mafia boss, a total business partnership of not less than fifteen to twenty years. How can all the monies from their partnership be regarded as other than gangster monies? Was a third gangster money and two thirds of it pure? Nobody could doubt that Catena would lie and cheat and hide behind false fronts. Why would his partner not do the same and cover-up when Catena bade him to do so? His presence anywhere would be as a member of a group of three pursuant to the agreement to be in everything together. How can any transaction involving Green and Catena, appearing to remove Catena from some business interest, be accepted really to represent the fact? Thus, how could it be accepted that Catena was really bought out of Runyon Sales, even if documentary evidence of some transaction were shown? Such a query is justified by a matter which was accidentally revealed in my inquiry. In the course of providing some evidence of the alleged buying out of Catena's interest in Kaye's business in 1971 (see later P. 254A) cheques payable to Catena were produced before me. It appears from an endorsement on the cheque which represents the principal payment (\$117,500 of a total of \$145,000) to Catena (then in gaol) that it went to Green's bank account.

Bally director Kaye's Associations with Catena

247. Kaye, a Bally director and an original member of the consortium, also has had lengthy business associations with Catena. In 1954 the Irving Kaye Company was formed. Its principal business was the manufacture of pool tables, based in New York. Kaye said the original equal record shareholders included Green and Sugarman

who together held 42.5 per cent of the shares. As Kaye acknowledges, Catena was from the outset a shareholder, the Green-Sugarman shares being held for the three of them. He claims he did not know this until the death of Sugarman. It is clear, however, that from at least 1964 or 1965 Catena and his wife were record shareholders in the Kaye company and remained such until at least 1971. The inference which is irresistible, and, which I draw, is that from the beginning he accepted Catena as a partner and that for some reason, other than concealment from him, Catena's interest was not revealed. This conclusion is supported first by the evidence given in England upon this matter by O'Donnell, to which reference will be made in PP. 258-9; second, his close friendly and business associations over many years with Green and Sugarman; third, the Catena interests after Sugarman's death, with Kaye's co-operation, being made and for years retained as record shares and shares being issued to Mrs Catena; fourth, the continuance of the Catena interests for so long a period and beyond the occasion when monies became available on the public share issue, which followed Bally becoming a public company in 1969.

However real was the 1971 transaction purporting to buy out the interests of Green and Catena in the Kaye Company, there is little doubt that any move to be rid of Green or Catena, was not out of distaste for their presence or influence, but in order to enhance the public appearance of Kaye and, through him, Bally. I am satisfied that Kaye voluntarily over the years had Catena as his business partner in that he knowingly had the Green-Sugarman-Catena partnership as almost half owners of his business, well knowing Catena's reputation. Before the Kaye Company was formed, Kaye sold his products using Runyon Sales and, as he concedes, he met Catena there some twenty times and he knew that he had some interest in that business. The reason Green and Sugarman (and Catena) were invited into the new company was because of the distribution capacities of Runyon Sales. Other business partnerships between Green, Sugarman and Kaye were formed. Catena, of course, was in all of these Green-Sugarman ventures. It appears that just prior to the alleged buying out of Catena in 1971, Green was a partner in every business of Kaye including many real estate ventures and Catena or his wife were by then record shareholders in all Kaye's companies except four. Co-operatively Kaye facilitated Mrs Catena becoming a shareholder in Prospect Place Company, as he thought it would be nice for the wives to have the shares.

Bally's claims of termination of Catena and Green interests in Bally and Kaye businesses

248. The claim made by Bally was that in 1964 or 1965, upon Sugarman's death, Green, O'Donnell and Kaye bought out Catena, that in later years, about 1971, Green's interest in Bally was bought out in a transaction arranged by Bally, that in 1971 Catena's interest in Kaye's company was bought out by Kaye and that, in 1972, Catena's interest in Runyon Sales was bought out by Green, and that in 1973, terminating in January, 1974, the distributorship of Runyon Sales was terminated by Bally.

My request for proper documentary proof of removal of admitted associations. Attempt to avoid request by reference to other inquiries

249. When admissions, rather than mere intelligence information, established the connections of Catena and his long standing partners, I indicated on a number of occasions that, having regard to the wording of Term 3, I would expect to have satisfactory proof of transactions claimed to remove the admitted associations, if I were to negative a "risk" arising from the admitted past association. I manifested interest in seeing the actual documentation, than having mere verbal assertions of what had been done by documents. Despite this, a reluctance to do so in many critical instances was apparent. The approach was that somebody else had investigated the matter and Bally witnesses asserted that as that other person or authority had been satisfied that should suffice. First the S.E.C. then Tomlinson, and at the very end a secret private investigation by Itkin was sought as a substitute for my inquiry and my expressed desire to be satisfied directly myself.

S.E.C. Inquiry misrepresented before me. My requests ignored

250. It was said that at the time Bally proposed to become a public company, the S.E.C. investigated the affairs of Bally for a year, and in particular the removal of Catena, and satisfied itself there was no criminal influence in Bally. On investigation these claims proved to be exaggerated and misleading. The function of the S.E.C. is to ensure the accuracy of the prospectus issued when there is a public offering of shares. The documents issued by the S.E.C. showed inquiry was so directed and not to the subject of whether undesirables were associated with Bally. The company was allowed to become public, despite the large shareholding and top executive position of Green, a twenty-year continuing partner of one of America's leading gangsters, and despite the presence of Kaye in Bally.

O'Donnell misrepresented the inquiry of the S.E.C. when he made the misleading statement that they investigated Bally for a solid year and "Didn't change a penny of the financial statements" (T. 711). As appears by his later concessions (T. 1288) and as shown by the terms of the S.E.C. stop order (T. 1440), it was found that Bally's statement "included untrue statements of material facts and omitted to state material facts necessary to make the statements not misleading". The content of that document shows that, in a serious and sustained way, Bally was prepared at the highest level dishonestly to mislead the public and cover-up past conduct of its principals which, at the very least, was not proper. There is no hint in the document that there was some inquiry into criminal connections of Bally.

Bally produced an affidavit of M. V. Freeman, an expert lawyer, who was consulted by Aranoff, who was Bally's counsel appearing before the S.E.C. Freeman sought to draw inferences that the S.E.C. investigated matters concerning Catena, by resort to hearsay statements of Aranoff, as to casual comments made by S.E.C. officials to Aranoff as to what they were concerned with. I rejected this and indicated Aranoff would need to be called. I was told he would be coming to Sydney and the matter would be considered. He was not called. If, as O'Donnell said, he and the other directors were asked questions concerning Catena and concerning their cheques to buy him out, why was it necessary to rely on these inferences? When Itkin had his private investigation of Bally (see later) he had produced to him "Testimony of the principals of Bally" before the S.E.C. Before Itkin came to Australia I asked Bally for this document (and others shown to Itkin). Itkin did not bring the documents and he said he received no request to do so. Bally itself just ignored my request. There is no acceptable evidence that the S.E.C. investigated whether Bally had criminal affiliations and whether in fact Catena had been removed from the company. It may well have looked at a transaction said to have removed him, but in so far as it did, its interest seems to have been whether the money came from O'Donnell and the other directors or from the corporation. I think the claims, as to the S.E.C. investigation, have been shown to have been quite misleading in some respects and I do not find, on the material before me, any ground to infer that, because they investigated within their sphere, it should be inferred Catena or any other criminal connections have been removed from Bally.

Tomlinson's alleged inquiry. On examination not a true inquiry. Claim misleading

251. Next, it was asserted that Bally was free of criminal affiliations because Tomlinson, then Chief of the Organized Crime and Racketeering Section, of the U.S. Justice Department for the States of Ohio and Kentucky, made "his own investigation of the company" before he would take the position as their employed general counsel and that he satisfied himself as to their integrity (T. 703) or, as Tomlinson put it, that the "company had no associations or connections which reflected on the honesty and legitimacy of its business" (T. 670). It has appeared, however, that Tomlinson really made no worthwhile investigation at all. Although not revealed in the statements, the impressive appointment relied on, had been held by him for only five months when he was approached by Bally, and he was in an area where he had no contact with matters concerning Bally. Upon examination, his earlier experiences concerning organized crime were limited and did not touch Bally.

Upon examination his inquiry in substance was quite casual, first, from accountants who gave assurances concerning the financial stability and history of Bally and, second, from various friends and various authorities, but the inquiry seems to have been perfectly general as to whether they had unfavourable information about Bally and whether it would be unethical or improper for him to take the job. He said he took it because nobody told him not to. It does not appear he made any personal investigation in the true sense at all. It is obvious on some aspects of Bally, e.g. concerning Kaye's position in relation to Catena, he was quite ignorant of most material matters. He knew nothing about Wilms.

The original assertions made to me in the forefront of Bally's statements and heavily relied upon, suggestive of some prior investigation of the officers of Bally, was misleading. At best Tomlinson was giving, by hearsay, the general opinions of selected persons approached as to their knowledge and opinion of Bally. Tomlinson had a good war record in Vietnam and, for a short time, a position in the Justice Department. On various occasions and in various documents, which have come to my notice, and, before me, Bally highlights his war record and the position he held. Tomlinson appears a sincere man who has endeavoured at various points to persuade Bally to get rid of disreputable affiliations. Whether what Bally has done, usually very belatedly, is genuine or to "whiten" the appearance of Bally is in question and is dealt with elsewhere. However, it does appear that one reason for acquiring Tomlinson was to acquire the advantages of his war record and Justice Department connections to add respectability to the appearance of Bally. The use of Tomlinson by Bally before me to assert this private investigation, I did not find convincing.

Itkins Private Inquiry

252. The final inquiry which was sought to be substituted for mine was the private inquiry by Itkin. On 6th December, 1973, having outlined the *prima facie* matters on the subject of criminal affiliations of Bally (T. 932-3, P. 217), I indicated that in order that they might be properly considered by counsel assisting me, statements of witnesses in chief and a copy of documents sought to be tendered should be lodged with the Secretary to the Commission by 21st January, 1974 (some 6 weeks). (T. 933). There were delays by Bally in complying, and reasons were stated and times were extended and further extended. Some material was produced, but neither Itkin's inquiry, then in progress, nor the evidence of Itkin was foreshadowed or referred to in any way, until 18th February, the day before the evidence of Bally started and four days before Itkin was called before me. It then appeared that his investigations had commenced on 17th January, 1974, and culminated in his report dated 13th February, 1974. Although Itkin's report dealt with other matters, a central matter was whether Bally has rid itself of criminal affiliations and in particular the Catena influence. Itkin had placed before him many documents, referred to in general terms, which Bally has neglected or refused to produce to me despite my requests. He apparently interviewed unnamed directors and others of Bally. Apparently a transcript was made. He said he reviewed the Australian police reports relative to Bally (unidentified which of the many), the transcript of the testimony before me and some observations made by me. He spent 21½ man hours, and unnamed associates making contributions were said to have spent thirty-three man days. He said he reviewed "domestic distributorships" but this investigation was incomplete. It is not said whether Runyon Sales fell within this description. He quoted some critical passages of O'Donnell's evidence in England and before me and acted as the judge to construe them.

253. I admitted the formal transcript in some parts of the report, but declined to include many parts which usurped my function. I took the view, which I stated, that I did not propose to investigate the investigator. This would have been an impossible task. It would be impossible, in any event, to assess the weight of views expressed, because of the absence of any worthwhile indication of the material Itkin had before him. For example, did he accept everything O'Donnell said? Did he regard his testimony as untrustworthy, as I do (see PP. 255-61)? I indicated to counsel that I excluded the parts in question from the official transcript, so there could be no doubt that it was I who should be satisfied, and that it was to me the documents should be produced, and so there should be no room for the view that I was accepting the report as a substitution for that. I indicated, however, that I would have the report marked for identification 229, and included in the available records of my inquiry, and that I would read it and give any parts such weight as was proper for such a report, the basis of which could not in any practical sense be assessed. I should add, lest it be thought a wholly favourable report has been excluded, that on some points it favours Bally, on others it is neutral, on some it is adverse to Bally. It is available in the documents sent with this report.

Neglect to produce documents considered by me vital despite repeated requests

254. The significant matter which emerges from these three attempts to substitute some other inquiry for mine, is that there has been exhibited a persistent attempt not to produce objective material in support of what has been alleged. Rarely have documents been produced on Bally's initiative. The Bally directors, O'Donnell, Kaye, Klein, and Wilms, have come to give evidence. They speak of what has been done and what relationship has been determined, but hardly at all have produced documents which must have effected the transactions being volunteered. A few are the alleged termination of the relationships—Cellini, Runyon Sales distributorship, and Catena's dismissal from Runyon Sales. I have had to ask and ask again for documents (See T. 396-7; 407, 417 (and cf. 351); 933, 974, 977, 1102, 1142, 1143, 1155, 1216, 1253, 1257, 1259, 1298) but many including vital documents have not been produced. I was left with the impression that I was given a selection of documents with selected exclusions.

The alleged buying out of Catena's secret interest in Bally in 1965

254A. On the important matter of the buying out of Catena from his admitted interest as secret shareholder in Bally, the evidence is entirely unsatisfactory. He was never a record shareholder, so the question of the disposal of his interest in Bally is not easy to decide. Of course, it can be said with some force that as a matter of record Sugarman's and Green's shares are no longer so held, therefore, the shares they held for Catena can no longer be so held. Such an argument loses some of its force, when a gangster of the status of Catena is the one holding the interest. He was admittedly there originally in some secret form, with the assent of others in Bally, including, in my view, O'Donnell. How can one really conclude in the face of this

deceit of Bally's directors, in the face of O'Donnell's lies (see PP. 255-61) and in the face of this consortium, having as members partners of or fellow travellers with this gangster, that he really went in 1965.

In the period just before Catena was supposed to have gone, Bally, it seems likely with Catena's influence in relation to Wischinsky, had just acquired or was in the process of acquiring 90 per cent of the Las Vegas poker machine trade (see PP. 268). Why would Catena want to go? The pattern is usually otherwise. Gangsters often come in by tricks and then they cannot be removed, and even if they seem to be removed, they continue to demand their share.

I doubt whether an examination of the documents constituting the 1965 transaction with Green, when Catena's interests were supposed to be sold, would necessarily solve the question, even if they were produced. However, they have not been and there is considerable conflict of testimony before me as to how and when the transaction was carried out. Kaye rather puts it that after Sugarman's death Sugarman's widow sold his interest to Green and Catena, so each then owned 12½ per cent of Bally's stock and that then O'Donnell, Green and Kaye purchased Catena's share. O'Donnell put it that he, Green and Kaye purchased the shares of Sugarman and Catena; the only document produced to me was a copy of an agreement between O'Donnell and Green for Green to transfer shares to O'Donnell. It may be that O'Donnell then transferred these shares to himself, Green and Kaye in three parcels. This may be the agreement referred to in the S.E.C. stop order (T. 1440) when it is said on 2nd July, 1965, three principal shareholders purchased another (singular) shareholder's stock with funds borrowed from Bally. This document and the cheques were not produced to me and their absence, despite my request, not explained. It is worthy of note that the documents, purporting to acquire in 1971 Catena's interest in the Kaye company, were produced together with the cheques made payable to Catena. The agreement was signed, not by Catena but by his wife and there is no evidence or record of her authority so to do. While the minor cheques, payable to Catena, bear an endorsement purporting to be his, the major payment (\$117,500 of a total of \$145,000) is by a cheque which shows Catena as the payee yet, by the endorsement of Green's signature and the bank's notation, it seems either to have been regarded as his cheque, or received by him.

In the face of the circumstances concerning the formation of the consortium, O'Donnell's attitudes and the unreliable nature of his testimony, of the relevant evidence and of my attempts to inquire and be satisfied, I am quite unsatisfied that the interests of Catena or his criminal associates have really been terminated. The long continuance of Catena in partnership with Green and Kaye, the continuance of Runyon Sales as Bally's distributor and the continuance of Kaye as shareholder and director of Bally, offer strong confirmation of this view. The resort to persons engaged in organized crime or associated with them at so many points at the perimeter of Bally's operation also confirms it. These matters must be looked at with the background of knowledge of the arts of concealment practiced by those engaged in organized crime, being the very practice admittedly engaged in by two original directors and shareholders of Bally in relation to Catena and, in my view, assented to by the president of Bally and by a present director and leading shareholder of Bally, namely, Kaye himself, a voluntary partner of Catena.

Credit of O'Donnell: Catena relation to Bally and Kaye

255. It is necessary to pause and deal with the credit of O'Donnell. Because of the conceded associations in relation to criminals and Bally's claim as to their removal, the credit of the president of Bally, as a witness and generally, is of considerable importance. It needs to be dealt with at some length but, in so doing, other important matters will be touched upon. Relevant relationships of gangsters or their partners have been admitted. O'Donnell, who was with Bally since 1946, is the one who is better informed than anyone else upon these matters. He has been the principal spokesman for Bally in England and here. He says, in effect, "We admit these relationships but we have rid ourselves of them in ways I tell you." Then he further, in effect says, "I can also show you that these past relationships existed without our knowledge and in circumstances where Bally, its directors and executives, are entirely innocent, so you should not draw adverse inferences concerning our character from our past relationships with gangsters or their partners."

Because of its relevance to Term 3, I should state my clear view is that O'Donnell not only has proved unreliable in much of his testimony but, in important parts of it, has been shown to have deliberately given evidence which to his knowledge was false, and that he has done this in order to mislead my inquiry into a more favourable view of Bally than warranted. Because of the nature and significance of such a finding concerning the head of a substantial foreign corporation, I set out hereunder in some detail several of the more important matters, which have led me to this conclusion.

As will be seen, to a degree the false evidence of O'Donnell has been revealed by his being confronted, before me, with extensive evidence given by him in England in 1971. The evidence, before me, of other American witnesses who did not give evidence in England, namely, Tomlinson, Klein and Kaye, is tied in with O'Donnell's evidence before me and shows overall considerable collaboration in an attempt to "whiten" the appearance of Bally as compared with the English admissions. This evidence at important points stands in conflict with what was said by O'Donnell in England, and at most of these points of conflict their evidence before me lacks credit. The credit of these witnesses has suffered with the discredit of O'Donnell's testimony.

256. Soon after my inquiry started, and when some matters adverse to Bally appeared and were publicized, O'Donnell and Tomlinson came to N.S.W. and immediately engaged in press interviews, obviously using the press rather than my inquiry, to assert the position of Bally. In the press they then demanded to give evidence and threatened to further ventilate matters in the news media, if refused. O'Donnell is reported as saying that it was a "load of bull" that Bally had any criminal affiliations. All this preceded any request that their evidence be taken. They then asked to be allowed to give evidence forthwith. Their evidence was received, but had to be delayed until my inquiry had a more informed basis upon which to question them. Statements of their proposed evidence were produced, they returned to America, and on a later arranged day their evidence was taken and they were extensively questioned. Much later, in 1974, after Term 3 had been added, they returned and, with Kaye, Klein and Wilms, all gave further evidence.

By the time they returned and first gave evidence, a copy of the transcript of the English defamation action was available to my inquiry. In the recorded police interview of Tomlinson and Rooklyn, the former said he had a copy of the summing-up, but in his rush inadvertently left it in America and promised to send it, never did and was not asked for it. At the same time, in effect, he asserted that the evidence and proceedings were of no relevance to Bally America. It is quite likely it was believed by the Bally representatives that this assertion had been accepted. However, it was completely untrue, in view of O'Donnell's extensive concessions. Considerable research in America and preparation for the action appears to have been done on behalf of the English newspaper, which was the defendant. When O'Donnell came to give evidence to assert that neither Bally nor its directors and executives had had any connections with the Mafia, as the newspaper had stated, he was confronted with specific facts and some documents. He made many concessions, some beyond the documents actually shown to him. There is no reason to believe those concessions were false in any matter of substance. It seems likely that when O'Donnell's statement for my inquiry was prepared during his first visit, he anticipated he would not be confronted with his earlier evidence.

257. Some parts of O'Donnell's original statement lodged with my Secretary, and of his evidence before me just cannot stand with his earlier testimony. The assertion of O'Donnell in England and here was that in 1963 Catena had become a secret shareholder in Bally America, without O'Donnell's knowledge, by Green and Sugarman secretly holding their shares for their partnership consisting of themselves and Catena. However, O'Donnell conceded in England that to his knowledge Catena had been a business partner for many years with Green and Sugarman and was a director of Runyon Sales, the principal director for Bally in America. O'Donnell also conceded that before 1963, he knew that Catena at least was a racketeer. As he knew he was, questions were then asked why did he go to this gangster's partners for money, and why did he rely on them to bring in others including another business partner (i.e. Kaye) of the same gangster. If he did know Catena was a gangster prior to his going to Catena's partners for money, was he really concerned whether these partners with whom he traded brought in their gangster partner? Did he not really know he came in too? Having made some initial admissions as to his knowledge of Catena, first as a partner of Green, Sugarman and Kaye, then as a gangster, O'Donnell faced the implication as just indicated. After having to confront these implications put to him in England, if obviously would be a most inconvenient admission to make before me, as O'Donnell had done in England, that he was aware Catena was a hoodlum and that in 1963 when he went to Sugarman, Green and Kaye to form the consortium that he knew they were in partnership with Catena and that he was a hoodlum or a reputed member of the Mafia. From the course of the English trial he must have known the enormous detriment which flowed from the concession he had there made of knowledge of Catena's criminality prior to 1963, irrespective of any apparent later buying out of Catena.

258. In his statement before me (which he verified on oath) O'Donnell said:

"In 1963 I was aware that some association then existed between Green and Sugarman on one hand and a man named Gerado Catena on the other hand, but was then unaware that Catena was associated with the criminal element. Green, Sugarman and Klein were principals of a company named Runyon Sales corporation which for some years had been the distributor of 'Bally' . . ."

This evidence as to O'Donnell's lack of knowledge in 1963 concerning Catena was demonstrated to be false, and O'Donnell so admitted. In addition, it was clearly demonstrated it was false to O'Donnell's knowledge. O'Donnell must have known it was upon a vital matter, and upon this vital matter he deliberately tried to mislead my inquiry. It was worse in that he well knew that the truth was that, when in 1963 he was hard pressed for money to form the consortium to buy the Bally company, he was prepared to take as partners the partners of a member of the Mafia, which, as will be seen, he had expressly admitted in England. Before me it became apparent the English transcript was here, and O'Donnell conceded that back in the fifties he was aware Catena had "racketeering" connections and was supposedly a hoodlum. He claimed before me he did not know until 1968 he was reputedly the head of the Genovese family.

The English transcript, however, establishes O'Donnell's knowledge was more complete, particularly by 1963. As already indicated, in England O'Donnell had said that in the 'fifties he had seen mercantile agency reports and discovered the criminal reputations of Stacher and Catena (*see* P. 242). He conceded he had been aware of the Congressional hearings. He accepted Stacher and Catena had notorious reputations, the latter as a leader of "New York Mafia and a successor to Longy Zwillman". He said he had read that, when Zwillman died, Catena inherited his place. Following those admissions and, after he said he only met Catena twice, once in 1957 and once in 1964, he was asked whether he knew his reputation "at that time" and he said yes. On this ambiguity, he knew it at least by 1964. His later answers show he really knew of Catena's Mafia connection when he formed the consortium in 1963. The claim he was making in England was that he did not know of Catena's secret share in Bally America, but counsel in cross-examination was criticizing him for bringing into the consortium partners of this man, then known to have Mafia connections. This is shown at a number of points. Some answers can be quoted:

"Mr WATERHOUSE:

Q. The position so far as subparagraph (c) is concerned is that it is alleged that associates of the Mafia who control Bally are Abe Green, Irving Kaye; now it is quite right is it not that Abe Green is an associate of the Mafia. He is a business associate of a member of the Mafia?—That is not correct.

Q. He is a close business associate of a man who is reputed and named as a member of the Mafia?—Yes.

Q. Then Irving Kay falls in the same category, does he not?—Yes.

and then:

Q. And in the Barnett/Sugarman period, of course, he came into the same category as Abe Green and Irving Kay in terms of business association?—Yes.

and later:

Mr WATERHOUSE: Just to make sure that there is no misunderstanding, you did of course know of the Mafia association of your consortium, those members of your consortium *when* you invited them to join. You agreed with that yesterday.—Yes, I knew of their association with people who were reputed.

Q. So that all that you did not know was that Gerrard Catina was not merely an associate but actually the holder by nominee of an actual share.—Yes."

The emphasis of "when" is mine.

The following evidence was also given by O'Donnell:

"Mr WATERHOUSE: Looking back now, in the light of your experience over the years since 1963, don't you think that it was a grave and serious error on your part to ask to associate with you in the consortium close business associates of notorious Mafia gangsters?—No, I do not.

Q. And I went on to say how do you justify that statement that you do not regard it as a grave error?—Well, look at the history of the company and the success of the company.

Q. Is that enough?—Pardon?

Q. Is that enough to justify your decision, Mr O'Donnell, that you've made a lot of money and the company——Well, just a moment. The F.B.I., the S.E.C., the F.T.C. and every Government agency you can imagine has gone over our company with a microscope and they found nothing. Abe Green has got an associate who is a reputed Mafia head. That isn't my fault. I met this man twice in my life and he's never had one thing to say to me about business."

259. O'Donnell made concessions in England which are quite clear but, before me, by evidence which was false, he sought to extricate Bally from what he had said. In England O'Donnell said that Kaye had been associated in Kaye's own business, Irving Kaye Corporation, with Catena for 18 years (i.e. back to 1953) and that he believed they formed the company together, that Kaye was a close business associate of Catena, a man reputed and named as a member of the Mafia. There was not the slightest suggestion that Catena had been in Kaye's business unknown to Kaye. What he said was quite inconsistent with that. He conceded that Green and Sugarman were business associates of Catena and that when he, O'Donnell, went to them they took him to Kaye, another business associate of Catena. Then in the passage above quoted he conceded that when he invited them to join (i.e. 1963) he knew of the Mafia association of Green, Sugarman and Kaye. He was saying quite clearly that when he brought in Green, Sugarman and Kaye, he knew they were business partners of a Mafia gangster and that the only matter of which he was ignorant was that two of them held a secret share in Bally for the gangster. It can only mean that in 1963 O'Donnell knew of Catena's Mafia connection and also knew that Catena was in Kaye's business.

For the first time before me, an attempt was made to make the Kaye-Catena connection look more respectable, by saying that Kaye did not know he had a gangster in his company and that Kaye only found out after Sugarman died in 1965 and that Catena was an unwanted partner even when he, Catena, and Catena's wife, became record shareholders after Sugarman's death (i.e. 1965 until 1971). This assertion put forward by O'Donnell and Kaye, apart from the improbable features concerning it, earlier referred to (P. 247), is in complete conflict with what O'Donnell earlier said and in my view is quite false.

260. Many other parts of O'Donnell's evidence before me was quite unacceptable and indicated, by reason of his earlier testimony or admitted circumstances, that it constituted an unreliable attempt to improve the image of those connected with Bally. Rather than satisfying me about matters, an attempt was made by O'Donnell and others to make assertions concerning the investigations carried out by the S.E.C. and also by Tomlinson. As indicated in PP. 250-1 these assertions were misleading and go to the discredit of those, particularly O'Donnell, who asserted them. O'Donnell's assertions as to other findings of the S.E.C. as against their recorded findings have a similar effect (P. 250).

261. The particular matters to which I have referred are but a few examples, together with a view of O'Donnell's testimony as a whole, which lead me to the conclusion earlier indicated as to his unreliability and, at points, lack of truthfulness. In these circumstances, how can I place reliance on what he says on important matters, unless supported by reliable testimony from other sources? How can I do other than approach with doubt assertions made by him as to transactions of Bally, said to discontinue relations with Catena and others with criminal associations, particularly when the documents, although requested, are not produced to me? How can I do other than approach with some doubt the question whether some documents really effect what they purport to do? How can I place reliance upon the testimony of others in Bally who did not give evidence in England, but have supported O'Donnell in aspects of the evidence which O'Donnell's earlier evidence establishes is not true?

Summary of unsatisfactory aspects of material presented by Bally

262. In the face of the unsatisfactory attempts to prove matters by other asserted relevant inquiries or opinions, in the face of a selective production of material documents and a neglect to provide some critical ones, and in the face of the lack of credibility of the president of Bally, reflecting, in the way indicated, on the credibility of the testimony of other Bally directors, what are the inferences to be drawn from the material before me?

The story and inferences concerning Runyon Sales, Stacher and Catena

263. In the early days, Runyon Sales was a legitimate business founded by Stacher and his friends and later entered by Catena. These two were no minor criminals but two of the very worst America has known. It is highly unlikely that it was a casual investment, in which they did not bring their influence and methods to operate. Of relevance is that Stacher was a founder and that Catena had an interest in the same area in vending machines, where it seems that some kind of monopoly was gained by standover tactics, (see P. 239). Runyon Sales in New York and New Jersey seems to have been successful as Bally's distributors in its early growing years.

When Kaye formed his company to manufacture pool tables, at the very outset he brought in the Runyon Sales partners, Green, Sugarman and Catena in order that they could do his distribution. Some of Bally amusement equipment could be used for illegal gambling. Success of Bally as a manufacturer depended upon placement and sale of its goods. It is difficult to think that Catena acted differently in vending machines and in gaming machines and that the success as distributors of Runyon Sales did not in some way depend on Catena and some high pressure standover tactics. Concessions by O'Donnell in England make it likely that some such activity took place (P. 242). It is likely that Bally's growth of business on the East coast depended on the success of Runyon Sales, that those in charge of Bally well knew that they were employing a gangster organization to promote and sell their products, and that they made it their sole distributor for their principal area of operation, because they were happy to take whatever benefits a business having the services of a leading gangster could confer. When he told his boss about the presence of the gangsters, young O'Donnell was told not to stick his nose into things (P. 242). At many points later he seems to have adopted the advice and cheerfully to have accepted association with gangsters, using financial success of Bally as though it were the justification.

It appears that when he dealt with Runyon Sales, O'Donnell well knew that Stacher and Catena were gangsters. When Maloney died O'Donnell had difficulty in finding persons to join in buying the company. As often happens, the gangsters and those engaged in criminal activity or in skimming are the ones who have the money to invest. O'Donnell knew of the success of Runyon Sales and would be aware of their methods. If they could provide the capital, they would be also of first importance in pushing Bally sales. This was what had happened with Kaye. He got the money from Green, Sugarman and Catena (Runyon Sales) and he got them as distributors. The last benefit may well have been as important as the first.

What were the standards of Green, Sugarman and Kaye (three founders of Bally) when they were long-term partners of a gangster? What were the standards of O'Donnell when he accepted them as his partners knowing this?

264. It is reasonable to conclude that O'Donnell had a good idea of the quality and connections of those with whom he joined. His express admission in England, earlier quoted (P. 258), shows that he knew when they came in that Green, Sugarman and Kaye were partners with a member of the Mafia. What kind of persons were these men who had for years been business partners with a man accepted as one of the most ruthless and powerful criminals with a great interest in legitimate business and the use of strong arm tactics? They represented three eighths of the capital. O'Donnell, knowing they were long time partners of a racketeer who had proved to be a leading member of the Mafia, was prepared to be their partner. That was O'Donnell's standard then. I have seen no reason to think his standards are any different today.

The partners of the other half. Jacob (Emprise Corp.) and Klein

265. Who then were on the other side? I set to one side Prince, who left soon after he came. There was Klein. He was introduced by Green. Klein was in the vending machine business with Louis Jacob of Emprise Corporation. He was aware of the structure of Runyon Sales and of Catena's connection with it and, it seems, from some concessions he made, that he was aware that Catena was coming into Bally with Green and Sugarman. He knew or had some kind of friendship with Catena.

Emprise Corporation

266. Then there was Jacob, whose business was the vast Emprise Corporation which controls many of the race tracks and concessions concerning them throughout America. It sold out its interest in Bally in mid-1966. In his English evidence, O'Donnell was not frank as to the quality of this corporation or its exit from Bally. In his evidence in 1971, he said Jacob and his company were respected and respectable, and continued so to be, and that they left Bally a "little bit" because Jacob wanted to go and O'Donnell wanted him to go. However, a very different picture was presented in the police interview of Tomlinson. In effect, it was said that O'Donnell showed how he could be tough with the "Mafia", because he "cast" Emprise Corp. out of Bally. In April 1972, the Emprise Corp. was convicted of conspiring to use interstate transportation in aid of racketeering; this conviction relating to the part of Emprise Corp. in 1966 and 1967 in an undisclosed interest in the Frontier Hotel and gambling casino in Las Vegas. In a report dated June 1973, a Congress Select

Committee on Organized Criminal Influence in Horse Racing, dealt extensively with the Emprise Corp. It found the committee had no evidence that the corporation itself had been a part of organized crime, apart from the above conviction. It added:

"We find that Emprise Corporation, in the instances enumerated elsewhere in this report, has done business with individuals designated by public authority or authorities as organized crime figures and that Emprise Corporation knew or should have known at the time . . ." that they had been so designated (p. 63).

The report shows numerous dealings in many States of America in aid of such crime figures. One example is Hazell Park Racing Association Inc., Michigan. Despite earlier warnings of the Kefauver Committee of organized crime involvement in Hazell Park, Louis Jacob, in 1957 and afterwards, by vast loans and guarantees aided Mafia control of Hazell Park in what the Detroit Police Commissioner in 1963 described as "a classic example of Mafia infiltration of legitimate enterprise". The Commissioner indicated that much of the profit from the track was available to further Mafia power in the Detroit area (see p. 35-41; 55-6). It appeared in the inquiry that since the conviction of Emprise Corpn, it has sought to overcome the consequences to its various liquor permits by attempting, by use of corporate re-organisations, to sever direct connection of Emprise Corp. with its concessionaires. This appears to be an instance, in reverse, of devices earlier referred to, of severing the perimeter from the centre where one or the other is caught in a criminal act (P. 229). Of course, it can be said, as Bally said, we cannot be blamed for Emprise Corp.'s conduct and, anyhow, their conviction was in 1972. That may be true. It cannot be proved what O'Donnell knew of the activities or associations of Emprise in 1963, and there is no acceptable evidence that he had no knowledge. When he gave evidence in 1971 he misrepresented their continuing apparent respectability.

The criminal connections of almost all of the persons who acquired and became owners of Bally in 1963. The inferences as to the quality of monies which acquired Bally.

267. The significant matter is that so many of the persons, to whom O'Donnell went to become his partners in Bally were business partners with a Mafia head (Green, Sugarman and Kaye); that Jacob and Klein were together in the vending machine business, as was Catena; that Klein knew Catena and the Runyon Sales group and believed Catena was coming into Bally with Green and Sugarman and, finally, that Jacob, through his Emprise Corporation, was aiding from 1957 in a large way persons who were Mafia leaders, whom he should have known were such, and in other ways has done business with persons he knew or ought to have known were criminals, and by 1966-7 it now appears, his corporation was itself engaged in organized crime. This was the corporation which in 1963 advanced \$1 million to Bally to finance the purchase of the business and provided other capital, which made it a leading shareholder. The inference is strong indeed that a substantial part of Bally's original capital was either gangster money or gangster controlled money or money of fellow travellers of gangsters trading with and benefiting from gangster activities. To describe the 1963 events, as has been sought to be done before me, as no more than eight per cent of the shares being held by one gangster on an unknown trust, is to give to the founding of the Bally consortium a totally wrong description.

Catena's possible interest in Las Vegas. Bally gets 90% of trade in first year (1964).

268. There are indications that Catena's influences went further than through Runyon Sales. It is likely that he had interests and influences in Las Vegas. Stacher, who grew up in the same area as Catena and with Catena was a close associate of "Longy" Zwillman and was in Runyon Sales, was deeply involved in crime and business in Las Vegas. There is much to suggest that the Genovese family and Meyer Lansky were closely associated. For example, Lansky was an associate of Genovese, Zwillman, Adonis and Moretti, and so was Catena. Lansky was a leading figure on the Las Vegas scene and closely associated with Bugsy Segal, the leading crime figure in early Las Vegas.

Bally did not enter the field of manufacturing poker machines until 1964. The only State in America where such machines are legalized is Nevada. O'Donnell conceded that in 1964 Bally captured 90 per cent of the trade (i.e. new business) and it seems the Freemont Hotel put out all of its old machines (750) and took those of Bally. O'Donnell claimed this remarkable success was because of the superiority of the Bally machine. The Bally distributor was an "independent" company allowed to use the name Bally Nevada Co. It was operated by Michael Wischinsky, whose nephew was married to Catena's daughter. This remarkable success followed closely upon Catena being a shareholder in Bally. As with Runyon Sales, so in Las Vegas it is likely that gangster or gangster influenced distribution or gangster influence at the perimeter was a significant factor in sales expansion or monopoly of sales. It can be added that, in England, O'Donnell admitted he knew and dealt in Las Vegas with gangsters Mo Dalex, Sam

Tucker, Maurice Kleinman and Aaron Weisberg, men, it would seem, who must have had the say in the casinos behind the scenes. He claimed this was proper because it was in the course of business. He said Klein knew them too, but before me, Klein denied this and said O'Donnell did not know what he was saying.

Inferences from long delays before steps taken to remove Catena Associations and Associates.

269. It is not only the association of various persons with Catena which is important. I leave aside, for present purposes, the question of whether or not Catena or some Mafia successor or substitute continues to have some interest or control in Bally. There remains the finding that Catena and his partners were knowingly accepted as members of Bally and were dealt with as distributors to advance Bally because it suited Bally and O'Donnell. There remains the finding that Kaye, a willing partner for many years of this leading Mafia head in his various businesses, is still a director and major shareholder in Bally.

However, even if I am wrong in my earlier conclusions and it is true that Catena came in accidentally, still the admitted inaction for years to remove him or his associates from the many important connections with Bally or its directors or executives, supports the view that steps to remove him or any undesirable partner were taken, not because there was any real objection to their presence, but because the notoriety of their presence was bad for the operations of Bally. The delays, coupled with some admissions which have been made by O'Donnell, strongly suggest that steps, apparently to remove these people, were dictated by a desire to make Bally look whiter than it was.

If there were true objection in 1971 to having Green as a business partner and top executive in Bally, because he had been and was a willing business partner with the Mafia leader for some twenty years, why was he not objectionable from 1963 or 1965 to 1971; why did he get some of Catena's hidden shares when he revealed he secretly held them formerly for the gangster; why was he trusted to hold part of Catena's shares still in his name not thereafter for his continuing gangster partner, and why was it only when Tomlinson or somebody in the S.E.C., but not O'Donnell, raised the matter that he was removed?

The evidence as to the motive for his removal lacks credit because of the conflict of evidence as to whose idea it was. The first story was used before me in an endeavour to demonstrate Tomlinson's good advices and influences, when he came to Bally. According to the statements of O'Donnell and Tomlinson before me, it was Tomlinson's idea to get rid of Green. However, this fell to the ground, to the discredit of the statements, when it appeared matters were in train before Tomlinson came on the scene.

At every point there are such delays as are against the bona fides of the steps said to have been taken. Thus, no move to remove Catena from Runyon Sales was taken until 1971. Again, no move to remove Catena from Kaye's company was taken until 1971. Again, if Green was undesirable in 1971 as an executive and shareholder in Bally, how was he acceptable as Bally's East coast distributor. No move was made until 1973, and then to expire in 1974. I have referred to the above on the basis of Bally's claims as to getting rid of Catena. Elsewhere, I have discussed the credit of O'Donnell and others and the doubts concerning these claims.

If Catena's presence was an accident, why so many other criminal associations? The inference is adverse to Bally

270. However, if Catena penetrated Bally and the businesses of Bally directors by stealth, if such an association was against Bally's interest and its desire was to be a good clean company without criminal associations, one would expect that extra care would have been taken not to form other associations or have distributors connected with organized crime, or if such did appear, to be rid of them forthwith. It will be seen that time and again such associations appear and that business profits are gained from such associations and any apparent attempt to remove them is deferred for long periods, until the need to whiten Bally dictates some action, and then in many cases the suspicion exists the association has not really been terminated. I will make references to these associations. I turn first to Cellini.

The Associations with Cellini, a Lansky man

271. Cellini had connections with Bally, first as its distributor in the Bahamas, then with the directors of Bally's English distributors in their venture in the Colony Club and then as a distributor for Bally in casinos in various places in Europe, the Middle East and Africa in the course of business operations of Bally Continental run by Wilms.

Cellini's History

272. Meyer Lansky is perhaps the most powerful Jewish mobster of America and has been on the crime scene for the last fifty years with only 3 months in gaol. He is reputed to be the brains behind the more sophisticated developments in organized crime in legitimate fields of business, by making it more and more difficult for investigators to detect the presence and operation of criminals because of a more intelligent use of legitimate fronts and persons unknown to investigators. In the days of Batista, whom it is said he aided, he had virtual control of Cuban casinos. His associate, Bugsy Segal, was the virtual founder of the criminal operation in Las Vegas, which grew to vast proportions with killings, standovers and corruption, equal to the worst in America.

Cellini in Cuba and Bahamas

273. A right-hand man of Lansky in Cuba was Cellini, an able croupier. When Castro took over Cuba, he threw out the gamblers, including the poker machines. Lansky and others, including Cellini, left. There appears little doubt that Cellini has remained a Lansky man. Recently both were jointly indicted in Miami with tax evasion, but Cellini apparently thereupon fled to Rome, where he could not be extradited on such charges. After leaving Cuba, Cellini went to the Bahamas and took up casino operations there. He became a distributor for Bally and he came in contact with the directors of Bally's English distributor. There was a Royal Commission in the Bahamas and Cellini was declared to be an undesirable and left just ahead of a deportation order.

Cellini thrown out of Cuba and Bahamas, goes to England—the Colony Club

274. He went to England where he became a croupier and shareholder in the Colony Club when the English directors of Bally bought into and controlled that club. George Raft, the actor, appeared on the scene. On his own public admissions, Raft had had deep associations in Las Vegas with members of organized crime. The club came to be known as the George Raft Colony Club. The American gangsters visited it and almost certainly had an interest in its operations. These included Angelo Bruno, a Mafia family head from Philadelphia, Alo ("Jimmy Blue Eyes"), and Charles ("Blade") Turine. "Junkets" were arranged for Americans with free flights and accommodation. The Americans were fleeced and the debts collected, if necessary, in America by stand-over methods. Eventually, Cellini and Raft were thrown out of England, but it seems the "junkets" were still arranged from outside England by Cellini.

In the English defamation action it was alleged Klein of Bally had some interest in the Colony Club. Klein has denied this and there is no real evidence he had such an interest, although some of his visits and a few accounts are consistent with his having some interest. Carl Glickman, a friend of Klein, took a substantial shareholding in the Colony Club and his relationship with Klein was such that he obtained shares in Bally from Klein at a discount. After Cellini was expelled from England he did have a meeting in Paris at which Marks, the English director, and Klein were present, and apparently the press in some way discovered it. It is not possible to determine its purpose. Klein says he did not expect Cellini to be present, the meeting was in relation to a different club (Victoria Club, London) in which he really was not interested, and he left as soon as Cellini appeared as he did not want to be at a meeting with him. Marks' evidence in England has some conflict with the Klein version, but no conclusion can be reached as to this meeting (P. 277).

However, the "junkets" apparently continued for a while, but the exposures in the English defamation action and the jury finding of the truth of the allegations concerning the directors of the English distributors and Bally and the subsequent barring of others from England believed connected with U.S. gangsters, seems to have led to the end of these operations in the Colony Club.

Cellini thrown out of England, works for Bally on Continent

275. After Cellini left England and it seems after these operations from outside England ceased, he turned up in other operations connected with Bally. This association is most significant, because O'Donnell, having given evidence in England, was well aware of the history and reputation of Cellini. He was asked in evidence about Klein's Paris meeting with Cellini. The Continental operations of Cellini in connection with Bally's business extended from Europe to the Middle East and Africa. They commenced well before the English defamation action in 1971 and have continued, but it is claimed the relationship has very recently been discontinued. No documents have been produced in this connection.

The issue in the English defamation action

276. Bally's distributor in the United Kingdom for some years before 1971 was Associated Leisure. Its directors were Marks, Shack and Fine. Newspaper articles in about 1969 made assertions that the directors of that company were dealing with American gangsters, in particular in the Colony Club, and that the company and its directors were "trading with the Mafia", which included trading with Bally America. It was asserted that to the knowledge of the English plaintiffs, Bally America was a Mafia controlled company. The newspaper raised and litigated as its principal defence that what it asserted was true. The jury found a verdict for the newspaper. There was evidence of considerable substance that each of the assertions were true and it seems the jury so found.

The Criminal Associations of the Directors of Bally's English Distributor. The Colony Club and U.S. Gangsters.

277. The significance of the evidence concerning the activities and associations of the English directors, as distinct from the evidence which directly touched Bally America (already referred to), is that it establishes that yet another of the many distributors of Bally had associations with organized crime. It is sufficient, in the context of Term 3, to determine the likely situation rather than try the ultimate questions which would require that the actual witnesses be seen. Much of the case against the English directors was proved from objective facts, such as the presence and admitted status in the Colony Club of Cellini, Raft and the English directors, in business together in the Colony Club. Much was proved from the extensive cross-examination of these directors on the records and correspondence produced in the investigation and discovery process.

It was supplemented by the evidence of Itkin, later to be referred to. There were complete denials of some of Itkin's evidence, but much of it objectively was most persuasive and appears to have impressed both the Judge and the jury. At some points it was corroborated by matters, first appearing at the trial, of which Itkin could not have had foreknowledge. I will discuss the weight of Itkin's evidence later, when I come to deal with a special incident concerning Wilms.

What follows is probably an accurate version of events. In about 1960 there was liberalization of the gambling laws in the United Kingdom. The English directors were in touch with persons including undesirables, in Las Vegas, in relation to bringing poker machines to England. In this period Shack, who went to Las Vegas, was in touch with O'Donnell and others, such as Wischinsky, with whom O'Donnell later traded. He met Cellini who was then in the Bahamas and had some business relations with O'Donnell. Upon the evidence of Itkin, there must have been dealings by the English directors with Corallo of the Luchese Mafia family. Attempts were being made by Itkin, on behalf of Corallo, to collect from them monies said to be due to Corallo. It was at Shack's suggestion that O'Donnell went into the manufacture of poker machines at the end of 1963. The English group then introduced the Bally machines into England. There was much to suggest the relationship was more than that of manufacturer and mere distributor. One English director became a shareholder in Bally Ireland and the accounts between the American and English company were unusual in some respects, such as that credits given to the latter rose at times to two million pounds sterling.

Eventually the U.K. group by some kind of take-over transaction became shareholders in and gained control of the Colony Club. Cellini and Raft were introduced. It was known by the English directors that Cellini had been thrown out of the Bahamas as an undesirable and it seems it was generally known Raft had connections with organized crime and made no secret of it. Cellini became a shareholder. Klein was invited to become a shareholder, but says he declined (see P. 274). At some stage Wilms (now a Bally director) became a shareholder. As already discussed "junkets" were arranged from America. In a short time enormous profits were made. Then Cellini and Raft were excluded from England. Cellini arranged the "junkets" from America. The English directors must have known Cellini was a Lansky man and they knew he had been excluded from the Bahamas. Although they knew later he was excluded from England, they still used him to set up the "junkets" to fleece the Americans who participated. Then there was the meeting in the George Hotel in Paris after Cellini had been excluded from England. It seems Marks, the Colony Club manager, and Klein, although then in England, went to Paris for the meeting and Cellini was there. The explanation of Marks that the meeting was unrelated to the Colony Club and that Cellini's presence was accidental is not very convincing. However, the truth of the matter must remain uncertain.

Itkin gave evidence that he came to the Colony Club as an undercover informer for the F.B.I., but acted as Corollo's representative when Corollo was excluded from England. His evidence was that he was introduced by Corollo to one of the English directors in America as a member of the Mafia "one of us" and, thereafter, followed up this introduction leading to a proposal to set up a casino in Spain (to be referred

to in PP. 280-2). On the face of it, this proposal involved the Mafia, the English directors and the director of Bally (Wilms). In his evidence Itkin identified the U.S. gangsters Bruno, Alo and Turine, who met one or more of the English directors in the Colony Club, and Bruno who met one of them in the St Moritz Hotel, New York.

Conclusion: Associations U.K. distributors and gangsters. Close relations some Bally directors, U.K. directors Cellini and others

278. Leaving aside for the moment the Spanish casino affair, it appears there is strong ground to believe that, in the Colony Club venture and otherwise, the English directors were involved in business with leading American gangsters and that, throughout the period that this occurred, there was a close and massive business operation with Bally and considerable meetings and associations between various Bally and English directors and between directors for both companies and others, such as Cellini and Wischinsky.

General: Spanish Casino Proposal. Question of Wilms' involvement. Importance but difficulty of question

279. I turn now to the evidence which relates to the Spanish casino and, in particular, the possible involvement of Wilms. This is a most difficult part of my inquiry, but insofar as it implicates Wilms, or insofar as there is a chance that it does, which can be said to be relevant to Term 3, it must, on its own, be of enormous importance. To deal properly with this matter it will be necessary first to relate the story as told by Itkin in the English trial, then examine Itkin's place in the story, his history and his credibility and then examine Wilms' reply and his position in the Bally organization.

Itkin's amazing story. The Spanish casino. Wilms

280. Itkin's story is as now set out. It is one of the most amazing, I would surmise, ever to have come before a Royal Commission. I will reserve to later the question of its reliability. In an undercover capacity for the F.B.I. Itkin was, for many years, a member or fellow traveller of the New York Luchese Mafia family. He moved to England in 1965 for a variety of reasons, one being to find out what he could for the C.I.A. concerning American gangster infiltration into gambling in England. Pursuant to an arrangement with Plumeri and Corallo, two "capos" in the Mafia family, he sought to acquire an interest in illegal money associated with gambling, in the language used, "a piece of the action" in England or it seems in Europe. Corallo was joined in the venture, subject to some conditions imposed by Plumeri, who was then in gaol. A member of this Mafia family introduced Itkin in America to two English persons, one being Shack (a director of Bally's English distributor). He then met in England in the Colony Club variously Shack, Fine or Marks, in association with various gangsters already referred to. There were discussions with one or other of the English directors on the matter of Itkin getting the gambling interest. Fine, by his conversation, demonstrated fore-knowledge of the connection between Itkin and Corallo, Corallo having been refused entry to England.

Itkin's story continued—the meeting in Dorchester Hotel, London

281. The gambling proposition eventually emerged as a proposed interest in a gambling casino in Spain. It would be the first casino in Spain. In one discussion between Fine, Cellini, Davies and Itkin, Fine said there was a good chance of getting a gambling casino, but he understood an Englishman named Fleming had the "inside track" and that if Itkin could, by his connections with Spanish officials, knock out Fleming, they would have a good chance. In the result, Itkin returned to America and through U.N.O., by the act of a high U.S. official, Marcus (who largely on Itkin's testimony was later convicted of a "kick-back" crime), it was found the Fleming story was not correct and some kind of a go-ahead from General Franco was given, provided a large hotel was built just out of Madrid.

On his return to England in November, 1966, Itkin had communications with various people and, eventually, a formal meeting was arranged in a private room of the Dorchester Hotel, London. Present were Itkin, Davies, Marks and Wilms. Itkin had not met Wilms before, but Wilms explained he represented Bally on the Continent. Itkin told the group that he had spoken to Corallo and he would represent him. Davies, who was connected with gambling, said he would represent another Englishman, Dymes. Marks said he would represent Shack and Fine. Wilms said he would represent the "Francissi brothers". It appears this meant that each present, with the others he represented, were potentially interested to go in as a group together. Itkin explained the result of his inquiries and the conditions placed on their getting the casino. The parties left to further consider the matter, which, it seems, never went ahead because of the condition imposed.

The significance of Dorchester Hotel meeting—Francissi brothers said to be leading European narcotics smugglers

282. The importance of the meeting, for present purposes, is the identity of the persons who met and the identity of the groups they said they represented, and the apparent purpose of the project to use the casino as a base for earning illicit moneys typified by the term "a piece of the action" as defined by Itkin. According to Itkin's evidence in England, the Francissi brothers, who are Corsicans, have legitimate fronts as restaurateurs in Paris and London but "are actually the largest narcotics smugglers for narcotics through France—from Turkey to France—where they manufacture it and tranship it." The narcotics operation from the Middle East via Lebanon to France, its refinement there and transshipment by indirect means to other countries and the involvement of Corsican crime groups, is well described in the report of the Senate Committee on Organized Crime and Illicit Traffic in Narcotics of 1965 (p. 57-9). Marcel Francissi is there named as a narcotic smuggler (p. 956). He is referred to as having two brothers and the Fouquet restaurant is shown as the place he frequents. That listing was made in 1964.

Itkin, in his evidence in England in 1971, referred to him as being a restaurateur. In the later (i.e. 1971 or 1972) Time magazine defamation action in France, he referred to his meeting with Marcel Francissi as being at the Fouquet. Before me, he said the United States Government was interested in the Francissi brothers at the time (1966-7) because Marcel Francissi was thought to be one of the largest traffickers in heroin in the world. He said Marcel Francissi owned casinos in England, France and Lebanon, and owned the famous Fouquet restaurant (T. 1350). The 1964 report appears to refer to the same person and family. In view of Itkin's direct meeting with Marcel Francissi (P. 283) the certainty of these persons as being the same is not critical for my purposes.

Itkin's evidence in France—agreement with Francissi to smuggle narcotics to Dominican Republic

283. Itkin gave evidence in France, when Marcel Francissi sued Time magazine for defamation, as to his dealings with Marcel Francissi which, if true, establishes the deep involvement of Francissi in narcotic smuggling. The evidence (which Francissi denied) discloses a series of meetings where an agreement was made to smuggle narcotics in cement bags and tractors to the Dominican Republic, apparently on route to U.S.A. In these meetings the French transcript shows Itkin as including "Wilmes" and Davies as present with himself and Francissi. Before me Itkin says "Wilmes" is a transcription error for "Dymes". If the transcript is correct, of course, it directly involves Wilms in narcotics smuggling. However, if the correction be accepted, and it seems it should, the Dorchester meeting was of four groups: First, members of the Mafia Luchese family of New York, second, the directors of the London Bally distributors who were also then running the Colony Club in some association with American gangsters, third the Davies-Dymes group who, as well as some gambling interest, were connected with narcotics smuggling as shown by Itkin's evidence as to the Fouquet meeting and, fourth, Wilms, the Bally representative on the Continent, in some kind of association with the leading narcotics smugglers in Europe.

Wilms and Marks deny Itkin story of Dorchester meeting

284. Marks and Wilms have flatly denied any such meeting, a matter to which I will return. However, if this meeting took place, as Itkin alleged in England, it is just not possible to write down its implications or look upon any person present as other than in collaboration with the worst type of criminals operating in our society. Itkin, before me, rightly pointed out that at the meeting at the Dorchester no mention was made of the narcotics operations of the Francissi brothers and he, Itkin, had no information which enabled him to say that Wilms knew of the narcotics trafficking of Marcel Francissi, who had a very respectable public image. However, as the deal in fact involved the Francissi brothers putting up the illegal money (T. 1338) and as Itkin announced he was representing Corallo (who had been barred from England) it is difficult to think that anyone present could be innocent of or not be aware that he was in a group deeply connected with crime intent on entering a venture together with some criminal or skimming objective to be achieved from the casino. The relation of so many present to Cellini, the Lansky man, later to be discussed, aids this conclusion. With the exception of the straight out Luchese Mafia interest, all the others had some business, legitimate or otherwise, connected with gambling or gambling machines. The story, as told by Itkin in England, is that there are two sides of an operation, the legitimate side and the "piece of the action" or illegitimate side. What the "piece of the action" was to have been does not appear with any certainty (T. 1338), but with several interests firmly entrenched in narcotics operations, the American Mafia directly represented for itself and the owners of an English gambling club run in association with American gangsters, including perhaps the infamous Lansky through his representatives Cellini and Alo, it is pretty clear that some criminal action possibly on a larger scale than mere skimming might be involved.

Sinister implications if Itkin story true

285. If what Itkin said is true, it makes more sinister the fact that Bally has taken this man Wilms into its company as a principal shareholder and director and left him in control for them of a vast operation extending through Europe, the Middle East, and Africa. It would make more questionable a number of somewhat unusual agreements between Wilms and Bally later to be referred to. If what Itkin said is true, a party to the very same meeting at the Dorchester was Marks, representing Shack and Fine. Thus, the representatives of Bally in the United Kingdom, Europe, the Middle East and Africa were contemplating some dealing of an illegal nature, with a legitimate front, with the American Mafia and leading narcotics smugglers as parties.

I have earlier referred to the usual lack of hard evidence of the operation of organized crime. Sometimes, all that can be seen is an association with a known criminal, coupled with slight indications that movements towards monopoly are being achieved by methods of organized crime. The present case is an exception. If Itkin is to be accepted, he penetrated the Mafia over a period of years, and for years reported to the C.I.A. and F.B.I. He is in the totally exceptional position of a spy who gives first-hand evidence of what occurred. If Wilms is a person, such as his presence at the meeting would demonstrate, and yet he wears the cloak of respectability as a director of Bally America and shareholder to the tune of shares in that company worth many millions of dollars Bally itself is directly involved. Because his position in the vast organization shows Wilms is vital to Bally's enormous operation, which he controls for it in Europe, the Middle East and Africa, the operations of Bally anywhere in the world must offer a very grave risk that, when appropriate, there will be a "piece of the action", i.e., there will be organized crime operating under the cloak of Bally's legitimate business. If Itkin is not a fraud, this is no flight of fancy, fanciful though it may seem. Behind the facade of the swanky Colony Club in Berkley Square, London, and in the fashionable Fouquet Restaurant of Francissi in Paris were American gangsters and narcotic smugglers. Whether skimmed cash moneys in operations connected with gambling aids narcotics smuggling operations, or money from such smuggling operations provide the finance for the gambling operations, or whether the two are not connected is not clear, but there is some evidence, as in this case, that criminals in one field are in association with those in the other field. Thus, Catena, head of the Genovese family, had a notorious interest in activities connected with gambling while Vito Genovese (whom Catena replaced) was deeply involved in narcotics smuggling.

Bally challenges Itkin's status and credibility.

286. Bally attacked the Itkin story of Wilm's involvement in the Spanish casino in several ways. Initially an attempt was made to dismiss Itkin, by derogatory remarks made concerning him by O'Donnell and Tomlinson. The former described him as a "pathological liar". The latter who appeared to speak with the authority of a member of the Department of Justice, said Itkin only "sang for his supper" and that he was recruited by the F.B.I. *after they caught him*". This has proved quite incorrect.

My letters to F.B.I. and C.I.A. and their replies.

287. Because of the importance of Itkin's evidence in England, I wrote to the heads of the F.B.I. and C.I.A. and received replies (T. 763-7). Their replies made no reference one way or the other as to whether Itkin was engaged or recruited by either, as Itkin claimed. This appears probably due to a well-known policy. It may be dictated by some problems relating to admissibility of evidence in America, where there is an element of official entrapment. However, the F.B.I. indicated that from March 1963, to February 1968 (when Itkin broke cover, when Marcus was tried), Itkin "regularly furnished data on a confidential basis to agents" of the F.B.I. in relation to the organized criminal element and other criminal activities of interest to the Government. The C.I.A. stated Itkin furnished the C.I.A. with information "over a period of many years". For my purposes I accept these statements as accurate. Thus the alleged Dorchester meeting (1966) and his original setting up of the deal with Corallo which led to his going to England, was in a period during which Itkin was regularly informing the F.B.I. In his English evidence he said he was regularly informing the F.B.I. of what was occurring. After Itkin broke cover it was his evidence, it seems, which led to the conviction of Corallo.

Other grounds to discredit Itkin—his admitted criminal acts.

287A. Other grounds were advanced as to why Itkin should be treated as an unreliable witness. Itkin admitted he committed many crimes himself and it was said it was unsafe to rely on the testimony of a self-confessed criminal. Itkin presents a riddle which is not easy to solve. For reasons which will alter appear, I think for the purpose of Term 3, it is not necessary to solve absolutely this riddle, even if it were possible so to do.

Itkin called by Bally as a witness before me.

287b. In the end Bally took an unusual course, which resulted in Itkin being called by Bally before me. This was for two purposes; one was to give further evidence concerning Wilms, and the other was to give evidence of a very recent private investigation (earlier referred to P. 252). Bally, who had called him a "pathological liar" called him to support them upon this unusual investigation. Bally's counsel did not ask any questions on his credit. Counsel assisting me, therefore, in aid of my investigation, raised again questions of the type raised in England concerning Itkin's credit. The question of the credit of Itkin poses a difficulty, because he has an answer which could be true to almost every question that can be asked.

Itkin's career. His claim to be a spy in peace time to penetrate the Mafia by committing crimes with them.

288. His story, as he tells it, is an extraordinary one of a spy in peace time in the war against organized crime. His story, as told by him, is now briefly set out. In 1954, the year he was admitted to the New York Bar, he entered the service of his country by being recruited to the C.I.A. and then, in 1963, he was seconded to the F.B.I., and, for them, he penetrated the Mafia in the Luchese family. His contact was as a lawyer, but he joined them in the field of crime, particularly in the field of "kick-backs" in the union field. He freely admitted that, while under cover, he committed innumerable crimes including perjury. He admitted that, when some problems arose with "kick-backs", he misappropriated moneys of his clients. He did not commit the crimes with these criminals on the specific direction of the F.B.I., because he claimed to have done so would have had the effect of constituting the Mafia crimes entrapments on behalf of the F.B.I., so that his evidence would be inadmissible. He said for this reason, in the service of his country, he became a criminal in fact and that, if he had not gone the whole distance, and "gone on and on", he could not have infiltrated the higher level of the Mafia. He said the authorities knew what he was doing, when he reported for years (as he did), and they avoided action which could lead to his arrest while his work continued. He said he was brought up before the Bar Association, and, as appears to be true, the charges were not proceeded with. He said that eventually all his clients have been repaid.

Itkin concedes his crimes but claims they were pursuant to his duty

289. He admitted that he was engaged in not less than eighty corrupt deals, which netted him money "going to millions". He explained his use of moneys, derived from such sources, on the basis that, to be accepted as "one of them", he had to act like them. He explained his perjury on the basis that to have done otherwise, would have exposed him, but claimed he only lied for his country, but not after he broke cover in 1968.

Itkin admits lies in personal affairs when undercover. His explanation possible but suspect

289a. He conceded he lied, or his wife at his instigation lied, in his personal affairs in connection with English custody proceedings, while still undercover, by saying that she took the children out of the U.S. court jurisdiction at the direction of the U.S. Government. At this point his credit is in real jeopardy. His explanation was that his second wife took an official oath of secrecy, when she married him and he gave her assurances her custody of her children of her first marriage would be secure. When her first husband sought to get the children, Itkin claimed his wife threatened to break the cover if she lost her children and that the C.I.A., having succumbed, could not now support him and a spy must sometimes be left on his own. While possible these explanations are very suspect.

Allegations against Itkin in "A percentage of the take". Itkin's explanation

290. A thoughtful book "a Percentage of the Take", written mainly concerning him and his involvement with Marcus and Plumeri, shows him as an evil criminal in his own right with a second role as treacherous informer. It likened him to Iago. It quotes no identified source for the conclusion that he was a criminal first and an informer second. Itkin said the assertions in the book are false, but he did not bring defamation proceedings, because the authorities asked him not to.

Itkin: The question is is he a criminal with secondary role of treacherous informer or is he a patriotic spy who became a criminal so he could inform

291. The question is was Itkin a criminal who played the secondary role of treacherous informer or was he a patriotic spy first, then a spy for the F.B.I., who became a criminal so he could inform and give evidence to convict the criminals he exposed. Having seen him in the witness box, it was not possible to determine such

a question upon his demeanour, which was that of a man with great intellect, but shrewd and hard. To judge him on merely seeing him for a short time in the witness box, would be much like trying on appearance to say whether a man was a spy or a counter spy. I was left with the impression that, while not prepared to depart far from his earlier evidence, he showed an inclination to put affairs in a slightly more favourable light to Bally, who had employed him for a substantial sum, just as his evidence in England may have been slightly emphasized to the newspapers point of view.

Itkin: Fact is he was informing for years. Nine Trials, persons convicted on his evidence. F.B.I. does not contradict Itkin

292. The fact remains, however, that he was informing the F.B.I. for years, before and during the period relevant to my inquiry concerning organized crime. After he broke cover in 1968, and has lived in protective custody, he gave evidence in proceedings against some nine persons leading to many convictions of members of the Mafia. He has asserted his story along the lines told in England and before me and the authorities prosecuting and the F.B.I. have stood by and not sought to give the lie of what he was repeatedly saying and which, if were a lie, they would know. The fact is he has an explanation for almost all that is said against him. In this incredible story his explanation could be true. It has not been proved false in any positive way.

F.B.I. Letters and Judgment U.S. District Court Decision on Itkin's Status. Supports Itkin's Story

293. To this should be added that in replying to my letter the F.B.I. significantly attached a copy of a judgment of the United States District Court (a Federal court) in July, 1970, as it might be "of assistance . . . in evaluating the status of Mr Itkin during the years 1964 to 1968". This judgment (T. 764-5) refers to various affidavits put before the court, including one from the C.I.A. which shows Itkin supplied classified information in the interests of the defence of the United States and that he had been instructed not to disclose it and that although the C.I.A. and F.B.I. were fully aware of Itkin's assertions neither had advised the court that to its knowledge there was any reason to doubt the information he had given to the court. Itkin had claimed he was an under-cover informer and that the three crimes, for which he then stood indicted by the State authority, were inextricably intertwined with the full performance of his duties of penetrating organized crime. The court examined in camera F.B.I. reports prepared during the period Itkin was informing undercover. The court held it only had to deal with the *prima facie* situation and, on this basis, that the criminal acts charged were performed, under colour of his office, for an agency of the United States, namely, that they were performed "in furtherance of and undercover of the role of informer" (T. 764-6). This is the claim Itkin makes, namely, that in furtherance of his duty to inform it was necessary for him to involve himself in crime, without which he could not perform the duty he had undertaken of infiltration and informing. In the result the proceedings were taken out of the State court and transferred to the Federal court where the authorities discontinued against Itkin.

Conclusion: Itkin's evidence on Spanish casino probably true. Accepted for purpose of determining "risk" under Term 3

294. The role which Itkin asserts he undertook could not well be performed except alone. Firsthand corroboration would not be possible. His evidence seems to have been accepted by many criminal juries in America, and by the jury in England. He lives under military protection and it seems there are still proceedings outstanding. He came to Australia for my inquiry under a false name and with a bodyguard. I do not need to determine what decision I would come to, if in a criminal trial I had to be satisfied to accept what Itkin said without corroboration. In my judgment, upon an overall objective view of the considerable material before me, there is a high degree of probability that the version given by Itkin in England concerning the Spanish casino is true. It is certainly more probable than not that it is true. For the purpose of determining whether a risk referred to in Term 3 exists, I accept it.

Further reply by Bally. Mistaken identity of Wilms at the Dorchester meeting

295. Two further replies, however, are made, by Bally, even if it is true that a meeting took place in the Dorchester. First, it is said that Itkin did not know Wilms and has not identified him and, further, that Wilms denies he was present and has produced some accounts and documents which show he was not in England at the relevant time. I should say at once if this were a criminal trial it would be unsafe to make any finding against Wilms on the evidence of identification. At best, conclusions can only be come to as to the chance that Wilms was the person there. There is not the direct positive evidence of identification, which would be required

in order to establish the matter beyond reasonable doubt. However, in determining whether a "risk" exists concerning Bally for the purpose of Term 3 (*see* PP. 220-2) it is not necessary to determine beyond a reasonable doubt each of the facts out of which the risk arises. There is material which does provide a logical basis for inferences as to the probabilities that Wilms was the man who was there.

Questions of direct identification of Wilms and inferred presence of Wilms at Dorchester meeting

296. When Wilms, or whoever it was, was introduced to Itkin in 1966, Itkin had not previously met him. He accepted he was Wilms. He did not see Wilms until 1974, when Itkin was in the witness box before me and Wilms was in a group of people in the back of No. 3 court. In 1973 (some seven years after the Dorchester meeting) Itkin was shown photographs of five persons. He did not identify Wilms, but then or afterwards had Wilms identified to him by a photograph. I have not seen any of these photographs and cannot judge their quality. Before me, Itkin picked out Wilms in the back of the court and said he was unable to say whether he identified him from the Dorchester Hotel or the photograph. It should be remembered Itkin is a lawyer, who could be expected to use the care of those aware of the danger of identification, where some intervening photograph has been seen. He did not say Wilms was not the man in the Dorchester. It follows that at best the identification, if any, of the man at the Dorchester as Wilms must depend on inference.

As Itkin himself has pointed out, there is an important relevant circumstance. There is no apparent reason why Marks would have somebody else pose as Wilms, just to deceive Itkin. As Itkin says, having regard to the relations of Marks with Corallo, whom Itkin represented, it would have been foolish for Marks to try to deceive Corallo. I should add there is no apparent reason why he should want to.

Marks and Wilms knew each other and often met in London. They were in the same class of business. Wilms was a shareholder in the Colony Club and the Colony Club group, consisting of Marks, Fine and Shack, were joining in. Wilms had vast connections relating to gambling and he himself (for Bally) employed Cellini in some capacity and then doggedly held onto him after alleged suggestions from O'Donnell that he should go. Surely Wilms knew Cellini as a Lansky man after he was thrown out of first the Bahamas and then England. I found Wilms evasive. His asserted ignorance concerning Cellini I do not accept. (T. 1316-20). He was using him as some kind of contact man in the casinos of Europe and other places. He was using him at a time when Klein, his co-director in Bally, says he walked out of a meeting in Paris rather than associate with such a man as Cellini. Wilms continued to use Cellini. His excuse, given before me, for continuing to use Cellini in connection with business with various casinos for several years after advice to be rid of him, was really only that he was commercially profitable. Then, it was simply said by Wilms that the relationship has been recently terminated. This, however, was in time not far removed from Cellini confining himself to Rome to escape American indictment against him and Lansky. It should be noted that Cellini was a man connected with casinos; that Wilms' use of him in relation to Bally was because of his connection with casinos; Cellini, Marks, Fine and Shack were all associated in the Colony Club casino, in which Wilms had an interest; and Cellini, according to Itkin's evidence, was present at an earlier preliminary meeting concerning the Spanish casino (T. 1363).

It is not surprising to find Wilms at the meeting. It would be surprising if Marks introduced somebody pretending to be Wilms. Apart from his direct interest in Bally and its subsidiary, Bally Continental, Wilms has extensive contracts with Bally from time to time, known as go-forward contracts (later to be referred to) which, although sought by me, were not produced. They appear to cover some operations of Wilms which appear to return millions of dollars but the content of these operations remains a mystery to my inquiry.

Wilms' alibi

297. There remains the positive evidence of Wilms that he was not there. He gave evidence before me that he was not there or then in England and produced some hotel bills, cables and other documents which, on their face, go close to establishing an alibi if the dates given by Itkin are accurate. There are a number of considerations which need to be set against them. Despite my requirement announced in the prior year and later repeated that documents and statements were required to be produced some time in advance, so prior consideration could be given to them, the alibi and documents were produced only shortly before Wilms gave evidence, so there was no time at all to check them (T. 1257). Their only verification was their external appearance and Wilms' word. If Wilms was a participant in so sinister a meeting, there would be little difficulty in producing some such documents.

However, it is surprising that this alibi was not raised in England in 1971. Advance particulars of a complete nature had been given by the newspaper of places and dates of meetings and the persons present. There was a direct issue of the truth of allegations of Bally's Mafia associations. Bally took a part in the proceedings through O'Donnell. He was well aware of the case being made, he was aware of Itkin's evidence, but despite the extended hearing of the trial, Wilms, who was nearby in Belgium, did not give evidence or assert the alibi. Critical to the whole case was Itkin's credibility. In this long trial, no alibi had been produced to show he lied. With the mutual interest of Bally and the plaintiffs and the relationship existing between Marks and Wilms and O'Donnell, it is incredible that the Wilms alibi was not availed of, if it was true. More significant, however, is the fact that while Wilms before me denied he was in the Dorchester after 1964, Marks, in England, said that it was very possible he met Wilms on the date of the alleged meeting at the Dorchester in December, 1966, because Wilms used to stay at the Dorchester at the time of an Exhibition in London. On the supposition that Itkin is accepted and that there was a meeting and that the question at issue is whether it was Wilms who was there, Marks, whom Itkin knew well, was there. He was conceding that at the time of the alleged meeting (which he denied), in effect Wilms could have been seen in the Dorchester. As a plaintiff's witness he, of course, gave evidence before Itkin was called and before he knew what other persons might be called by the newspaper defendant.

The final matter is that a time alibi, however good, is not conclusive because Itkin in this period was backwards and forwards from England to America on many occasions and in his testimony in England he asserted he could be mistaken on dates of meetings.

Conclusions on Wilms, Probabilities in favour of his presence at Dorchester meeting

298. My conclusions are as follows: As indicated, I accept Itkin's version of the Spanish casino meeting at the Dorchester as probably true (P. 294). I think it improbable that Marks produced somebody to impersonate Wilms to deceive Itkin. While the evidence on the matter of identification does not itself establish Wilms was there, it can stand in a neutral kind of way with the inferences pointing to Wilms being the person present. All these circumstances, together with the other matters referred to, such as Wilms' associations with Cellini on the one hand and Wilms' evidence and alibi which, however, has the weakness referred to, lead to uncertainty as to whether Wilms was present at this meeting. Despite the doubt which exists, my conclusion is that there is a strong chance he was there. I ask the rhetorical question—if there is, say, one chance in five that Wilms was there as a representative of persons who were leading European narcotics smugglers, meeting with a representative of the Mafia to make some deal with some criminal objectives concerning gambling, then, knowing that Wilms is a director of Bally, controls 600,000 Bally stock to the value of twenty to thirty million dollars and directs their operations in Europe, the Middle East and Africa, does not the presence in New South Wales of Bally's operations of any description, but particularly any touching gambling, offer a real risk that a "piece of the action" or organized criminal activity may be set up here in association with its operations? I use a figure of chance selected arbitrarily to illustrate the "risk" question. As best as I can judge this difficult matter, the chance is greater than my example and, in my view the probabilities are in favour of Wilms being present as asserted. Comfort for this view is to be found from other Bally affiliations, particularly the associations of Lansky's man Cellini with O'Donnell, Wilms and Bally's U.K. distributors.

O'Donnell's and Bally's attitudes that success in business is justification for dealing with gangsters

299. A matter which has been demonstrated already at earlier points of this report is O'Donnell's attitude to affiliations with organized crime. Time and again his actions, and on occasions his admissions, show he has taken the view that it is in order to deal with criminals or employ them or their businesses and that the standard he applies is whether there is a profit for Bally. When he went to the partners of gangsters and took money, which was gangster money or akin to it, he took this course because he needed money to float his consortium. He had tried unsuccessfully for a long time to get the money, which would save Bally from being wound up. He somewhat frankly admitted that, if he knew Catena's money was included with that of Green and Sugarman, he would have accepted Catena.

Following his admissions in England that he had accepted into his consortium persons, whom he then knew were associates of a notorious Mafia gangster, he was asked whether, looking back, he now thought it was an error. His reply was, "well, look at the history of the company and its success." He also said, "Abe Green has got an associate who is a reputed Mafia head. That isn't my fault."

Are these acceptable attitudes of the president of the parent company, which controls the operations of the Australian company? Would O'Donnell's attitude, or those who direct the Australian business, be any different to employment in N.S.W.

of a leading criminal and standover man or a firm which had some such affiliation? To be consistent he could well say to any criticisms of N.S.W. actions, "well, look at the success of Bally in N.S.W." The same profit motive is manifest in Wilms' reasons for continuing to employ and take the fruits of Cellini's activities (P. 296), and presumably O'Donnell's dealings with the gangsters of Las Vegas (P. 268).

Bally's monopoly in many areas

300. The question of Bally being a monopoly or its movement towards a monopoly and changes in its trading methods and objectives are of importance in quantifying any "risk" under Term 3 found to exist. Organized crime, whether outside or within legitimate business, is prone to seek monopolies (*see* P. 227). Of course, this does not mean that a monopolistic tendency is evidence of organized crime, but, where there are indications of infiltration of organized crime into a legitimate business, it is important to examine the methods and aims of the business and any monopolistic tendencies, in order to assess any risk arising from the infiltration of organized crime. It is in this context, that I look to such trends of Bally overseas and then in Australia.

Bally's position is best shown by its own statement in its prospectus dated 3rd November, 1971 (m.f.i. 210):

"Several manufactures of slot machines in England are significant competitors of Bally in the United Kingdom and two manufacturers in Australia are significant competitors in that market. Although no industry statistics are available, Bally does not believe that it has significant competition in the sale of slot machines in the United States or (other than that just mentioned) in any other country where it markets slot machines."

The 1971 annual report said Bally had expanded its operations in Europe and "moved into Australia and the Far East". The 1972 annual report (published in April, 1973) said that Bally's 1972 acquisition programme "spanned the globe", referred to a massive take-over in Germany, a take-over in America and the acquisition of the remaining fifty per cent interest in Bally Australia and the acquisition of the Far East interests.

Bally's expansion into operation and leasing of machines

301. The 1972 annual report also referred to a change in Bally's trading, which change had been referred to in a lesser way in its 1971 report. The 1972 report stated:

"As part of our long-range profit objectives, we have moved increasingly into the operation and rental of equipment, both in the United States and abroad."

and that market changes indicate:

". . . the Company could also derive substantial revenues from operating and renting equipment. After a careful study of both market and income potential, the Company began to develop this new field of activity in the United States and overseas. The market soundness of this decision has been confirmed by the substantial growth in Company revenues from operation and rentals during the past year, a 121 per cent increase over 1971. Prospects for 1973 look favourable and the Company plans to continue to expand its activities in this area as part of its programme for long term growth."

The recent growth of Bally

302. The 1972 report refers to the international growth of Bally. The annual revenue from U.S. between 1971 and 1972 went from 24 to 33 million dollars and from overseas from 24 to 51 million dollars. Reference is made to expansion of the Dublin assembly plant to meet increased demand in U.K. and Australia. "Notes" to the accounts show a consideration of \$460,000 was paid to acquire the half interest in Bally Australia and \$6,643,000 for Rooklyn's S. E. Asia interests, described as "certain rental equipment and inventory, a twenty-year equipment rental agreement and a five-year distribution agreement." Bally's 1972 revenues overall were 84 million dollars as against 48 million dollars for 1971, an increase of 75 per cent.

Bally's interests in Queensland and Victoria. Its political assessments

303. There are indications in the evidence that Bally has made its assessment of political attitudes in Victoria and Queensland and has concluded poker machines will be legalized in those States and aims to monopolize the poker machine trade in the Eastern States of Australia. In a methodical fashion it has examined poker machine returns in many of the N.S.W. clubs.

Bally take-over of Rooklyn interests in S.E. Asia. What was sold?

304. I attempted to make some examination of the Bally take-over from Rooklyn of the latter's interests in Indonesia, Thailand, Hong Kong, Singapore, Macao and the Philippines as it was almost contemporaneous with Bally's expansion in N.S.W. Rooklyn remains the Bally manager of its affairs in Australia and S. E. Asia and his single managerial agreement covers the entire operation. Apart from some matters of convenience in administration and handling of merchandise, so far as appears, they are separate operations.

The importance of the S.E. Asia operation, however, appears as a possible example of the legal structure which it is possible for a corporation like Bally to set up so it could, if it chose, operate doubtfully or illegally at the perimeter and keep the centre, Bally, free of criticism for operation at the perimeter for its benefit. Reference is made in P. 229 to the practice of organized crime to insulate itself from crime at the perimeter and the likely equivalent situation when organized crime penetrates legitimate business. Reference is also made to the constant claim of Bally, in relation to the criminality of its distributors or their associates, that they are independent.

It is asserted that the vast consideration paid to Rooklyn was to buy back Bally's own poker machines. Rooklyn had the distributionship of Bally in S.E. Asia, but it was terminable at will. He had some kind of operation involving a large number of poker machines, which his companies owned and in respect of which he received money in connection with their operation. The take-over agreements upon examination do not really disclose all that attracted the consideration. Rooklyn's modest taxation returns offer no clue as to what he had to sell of that value. If one knew what went before the take-over, there might be some indication. That depends upon the testimony of Rooklyn, which I found quite unreliable (*see* P. 150). An untested intelligence report suggested there was some combined operation of casinos and brothels between Rooklyn and Saffron. Each deny this, but admit they discussed some combined gambling establishment and restaurant for Djakarta. Townsend, a witness called in another connection, but who had done work in Indonesia for Rooklyn in the past, supplied some information. Licences were issued to local people in Indonesia and then the machines were operated under the control of the Rooklyn company. The shop keeper would get 15 per cent, the licensee 35 per cent and Rooklyn 50 per cent. When Townsend was there all the machines were on percentages. There was evidence of McNeill of a social conversation with Rooklyn, when the latter talked of the bribery in the East, except Singapore. When pressed McNeill could recall no details and Rooklyn could not recall such discussion at all.

My attempts to examine the records of operations which Rooklyn conducted and were taken over resulted in the production of nothing. An account produced to me as at the purchase date was constructed on behalf of Bally from something. It dealt with past profits, i.e. in the Rooklyn period. The preliminary take-over agreements contemplated accounts being inspected to fix the consideration. Otherwise the consideration was to depend on future operations. However, the consideration was later fixed. My request for the documents, which might show the operation being sold and the replies are set out in the transcript reference given in P. 254. On one occasion I was told that there were no such documents or that they had been destroyed, but bluntly that none would be produced. Further requests made, led to it being stated by letter that the documents had been impounded by tax authorities in Djakarta and could not be produced.

Questions arising from structure of take-over agreements S.E. Asia

305. The numerous take-over documents, or copies, were produced. The ultimate scheme of the agreements is curious. The preliminary agreements (January 1972) provided that a new company be set up to be a subsidiary of a Rooklyn company initially and by closing date was to be made a subsidiary of Bally by transfer of shares. All the machines operated and leased in Indonesia and Thailand by the Rooklyn group were to be transferred to this company. This company was eventually split into two companies, B.F.E.O. and B.F.E.T. There were numerous other changes before closing date, but the transfer to Bally of whatever was transferred was by the transfer of shares in the subsidiary to Bally. Whatever was sold was really the assets and interests vested in the subsidiary company. The completion of the agreement for the consideration finally fixed, which exceeds that earlier provided, would depend on what the company owned in fact. It was not revealed in the agreements. Certainly the assets included poker machines in Thailand and Indonesia. Whether there was anything else in Thailand or the other countries listed in Bally's accounts, cannot be determined from any document produced. The next step was that there was a master lease from the new Bally subsidiary of the machines in their former site (but now the property of Bally) back to another Rooklyn company. The annual rent was U.S.\$1500 per machine. On one view there were some 980 machines. Therefore, in order to meet the annual rental, there would need to be a return of U.S.\$1,500,000 plus sufficient to meet tax and expenses. On the accounts (made up as at about closing date) of returns over the prior period, this appears to be vastly in excess of

any returns likely to come from the operation of the machines. The lease from the Bally Company to the operating company (not owned by Bally) provides a rent which on the figures the latter cannot meet. I have not observed any personal guarantee by Rooklyn of the lessee company's obligation to pay the rent.

In substance the agreement structure would be effective to channel to Bally the full operating returns of the machines, even if greatly beyond the yields shown in the constructed accounts on which the agreement was closed. If, as Townsend says, Rooklyn was taking a direct percentage of the licence yield, this was being converted to a rental paid to Bally. Why? If there was any illegality or corruption to produce the percentage, Bally would be insulated from it, but could still take the entire proceeds. There was some very slight but not satisfactory evidence that the Rooklyn method of dealing was legal, but the legality was said to depend on what the local official allowed. However, it seemed the requirement was that a local person only hold the licence. Bally appears to have a possible means of having Rooklyn operate as they expect. A large part of his consideration was shares in Bally issued on a basis where they are exempted from certain S.E.C. regulations and cannot be sold publicly except with its approval and there is express provision in the take-over agreements that Bally is under no obligation to assist Rooklyn to obtain such approval. To these comments must be added that it is difficult to think on the documents more machines were sold than 980. On the available figures this would give a figure per machine far above their apparent value.

If such evidence, as has appeared concerning the S.E. Asian transactions and the operations there conducted stood alone, little of substance could be inferred. However, if one first takes all of the matters earlier referred to, concerning Bally's numerous criminal affiliations, then the framework of these agreements, which seem to have little application except in Indonesia and Thailand, the vast sum paid to Rooklyn, the blunt determination apparently not to let me see too much, leads to a doubt whether, in pursuance of its policy to enter the lucrative field of profit operation of poker machines, Bally has really been setting up devices to circumvent the law as to who may operate the machines and at the same time insulating itself in responsibility from the perimeter which provides it with the gain. In this operation there is no proof one way or the other. At best a question mark arises over the Far Eastern operation. The question mark becomes somewhat more significant when considered with the affiliations of Bally with organized crime.

Go forward agreements of Bally with Wilms. Similarity with S.E. Asian agreements. Questions which arise

306. I return to the position of Wilms, because there is some similarity in the structure of agreements with him and the S.E. Asian agreements. Bally and Wilms from time to time entered into various "go forward" agreements, which seemed to have returned him some millions of dollars. These appear to be outside the operation of Bally Continental and with Wilms himself. It seems some Bally directors also directly participated. The 1972 accounts show large earnings of Bally (nine million dollars) from "related businesses" being "those in which certain of the Company's directors or principal shareholders have equity interests including certain entities operating slot machines and pinball machines principally in Belgium". It also states later that "in connection with an employment agreement with an executive officer of a foreign subsidiary who is also a director of the company (i.e. Wilms), 100,000 shares of the Company's common stock were sold to this officer at \$.50 per share" and added that in the event of termination of employment within a stipulated period they were to be resold to the company for that purchase price. The shares varied on the stock exchange from \$70 downwards. It seems the penalty for breach of the employment agreement could have been between three and seven million dollars. I asked to see these agreements. Wilms came to give evidence but these particular documents referred to in the 1972 accounts were not produced. This is the period when Wilms was holding on to Cellini. Cellini and his leaving Cuba, the Bahamas and England and his connections with Lansky, the charge against him and Lansky in 1972 and his continued association with Wilms until at least 1973 have already been referred to. There is no more than Wilms' word that Cellini has now gone. Cellini was the *entrée* for Wilms' business. It was said selling poker machines, into the casinos in 12 countries in Europe, Africa and the Middle East and one country in the Eastern bloc. I have already discussed the relation of all these matters to the Itkin evidence concerning the Spanish casino (P. 296).

As with the S.E. Asian agreements, these matters, despite their equivocal nature, should be referred to. The framework of these agreements and the uncertain nature of the businesses which appear legally to be independent, but produce for Bally, in recent years, millions of dollars, coupled with announcements of enormous percentage rises in profits from the new "long range profit objective" which in substance is a move from sales of equipment to direct profit from gambling are relevant to be looked at and recorded as part of a report upon the many criminal affiliations and associations of Bally.

Klein's gift of shares (\$100,000) to a trustee of Teamster Union Pension Fund (Presser) 1972. Loan to Bally \$12 million at 6½ per cent unsecured from that fund, 1974

307. Reference should be made to a matter which was raised in the evidence before me of Itkin and became the subject of questions put to Klein and O'Donnell. Reference should also be made to that part of Itkin's report relating to shares held by certain persons and those the subject of gift (T. 1353-4). I make particular reference to 3,750 shares (then valued if on the open market at about \$100,000) the subject of a gift by Klein to the Presser family in February, 1972. Presser was a trustee of Teamsters Union Pension Fund which in January, 1974, granted Bally a loan of \$12 million unsecured at 6½ per cent. Klein defended these transactions on the claim Presser was his friend, as seems to be the fact, and that at the same time he made gifts to other friends (as he did) and that in the whole circumstances of the loan the interest rate was proper. It is difficult to accept the latter. As to the former, it is sufficient to refer to what has been said concerning Presser's improper activities in association with Hoffa the president of the fund, in Robert Kennedy's "The Enemy Within" (1960), written as a factual report based upon the official inquiry in which he participated into the Teamsters Union. It has appeared, since Klein gave evidence before me, that some time ago Presser was convicted for a crime of extortion. I do not think any positive conclusion can be reached about this dubious matter.

Significance of Bally's overseas criminal associations, etc., to existence of N.S.W. risk apart from any proven N.S.W. wrong doing

308. How do all these strong indications or the probability of criminal penetrations of Bally, the use of criminals or their associates in its operations and the attitudes of those who control Bally affect the operations of Bally in N.S.W. in relation to registered clubs? Term 3 poses the questions as to the risk involved in their continued and future operation here. The risk in question is "of infiltration of organized crime into or in relation" to registered clubs. If an overseas corporation has been infiltrated by persons connected with organized crime and the corporation operates, when it suits it, by employing, or accepting the fruits of the efforts of, persons connected with organized crime, and that corporation comes here and sets up part of its operation here by means of a subsidiary company, then an apparently legitimate business infiltrated by organized crime is already here. It may conduct the business here in a legitimate way, and no doubt it will, to the extent prudence dictates, or to the extent, say, it can achieve its business objectives in that way. It will be in a position by enormous financial resources, if necessary cash, to out-buy or otherwise overcome its opponents. But, if American experience is any guide (P. 228), it will, when appropriate, use the methods of organized crime to accelerate its operations or to gain a monopoly and to expand into allied fields, particularly where cash operations are concerned and skimming is possible.

If American experience is any guide, although it be known that the infiltration or affiliation exists, the methods of organized crime will be resorted to in a planned way, where there will be little chance of detection, and perhaps none of legal proof. At this point reference is made back to PP. 118-20, 227-31. It may be there will be indications, short of proof, of high pressure methods or the use of large financial resources to capture or buy the market, or of doubtful methods and associations with law enforcement authorities or politicians.

Having regard to the findings I have made concerning Bally overseas, based in the end on the sheer accumulation of the great number of criminal affiliations, and having regard to the pattern of operation of organized crime within legitimate business and its concealment practices, I am of the view that, even if to date there were no indications adverse to Bally in its trading here, its operation here does constitute a very real risk of the type referred to in Term 3. There is the risk of the kind referred to earlier in this paragraph.

309. While there is no evidence in the legal sense before me of any act of organized crime committed within the Bally organization in N.S.W., there is much material which supports the conclusion indicated in P. 308. Before detailing these matters it is relevant to refer to the vulnerability of some clubs to exploitation by criminals.

The vulnerability of some (but not most) N.S.W. registered clubs

310. Some registered clubs are extremely vulnerable to being taken over wholly or partly by outsiders. Activities of local persons particularly Riley and Dean demonstrate this. This is so in the case of some city clubs, where membership dues are nominal and membership often itinerant. Members do not join some clubs in the traditional sense of combining or "clubbing" with other persons in pursuit of some common interest. They go as they would to some public place. It has not been part

of my inquiry to examine club structures, therefore, what I say is limited to the field of my inquiry. However, what happened in clubs such as the Motor Club, the Mariner's Club and SSJ gives a clear indication of what can happen. Directors come and go to fill casual vacancies. Persons outside the club decide who shall be directors and what shall be done. They arrange employments of some persons. Vital persons, such as security employees, have been so selected. It would seem it is open for such persons, in effect, to be "owners" of the club, just as there were concealed gangster owners of many of the licensed casinos of Las Vegas and just as American gangsters owned or at least had an interest in some English clubs, where membership was itinerant and, for a nominal sum, was procurable at the front door. Membership seems to have been so procurable, e.g. in the case of the Motor Club. I have made no inquiry whether this is widespread. It could well be. The Emprise Corporation, a foundation interest and original financier of Bally America, did just this in Las Vegas, at a time when it was claimed the Nevada Gambling Board had been so efficient as to stamp out the earlier abuses. There is little to prevent a board of directors being elected in a N.S.W. registered club and acting upon the direction of the "owner".

There is little to prevent a board, once there, remaining in office by rigged elections by rigged proxies or even by miscounting the votes. Who, in a club like the Motor Club, would argue about the result. If somebody did might he not be met by strong-arm tactics, of which there was some indication in SSJ.

To take the matter further, what is to happen to cash and profits from poker machines in these vulnerable clubs. They offer an ideal target for skimming, which could be facilitated by a controlled board and selected security employees. Those who "skim" would have the motive and the money, organized crime-wise, to protect and possibly enlarge their "piece of the action". Poker machine control could be the key. I need not further enlarge on what I have referred to as the hazard for some clubs.

Obviously the position is otherwise in the great majority of clubs, which have a genuine community of interest, which are well and securely run and provide an important part of community life. Some clubs are vulnerable, where there is financial weakness. This is particularly so in the difficult stage of the formation of clubs. There is potential poker machine profit, but it is in the future, and machines are expensive and clubs expensive to set up and run in opposition to established well set up clubs. At this stage, persons who seek to start clubs are vulnerable to improper arrangements which give some control to outsiders. Some of the dangers in the financing stage are illustrated by the little investigated activities of Riley and Raymond Smith. Clubs at this stage could be vulnerable to arrangements on the financing and sale of expensive poker machines designed to pass some profit to persons outside clubs.

Thus, the clubs are a lucrative skimming target, particularly the poker machines, where the total annual turnover and profits in this State run into many millions of dollars. Casinos and gambling, legal and illegal, throughout the world have attracted the operations of organized crime. Organized crime operates beneath the surface and, once there, is hard to detect and on American experience almost impossible to remove. On English experience the criminal influence in clubs was only diminished by the expulsion or refusal of entry, upon F.B.I. intelligence reports, of persons suspected of being associates of American gangsters. Organized crime had a "piece of the action", while the licensee and the board ran the operation.

Some registered clubs in my view are vulnerable to what happened in London, namely, that organized crime shares in their gambling profits. In the N.S.W. clubs this would be principally the poker machine profits. As earlier shown, organized crime within a legitimate business often attracts the criminal element at the perimeter. This element serves the legitimate business, but gets something itself. Where a legitimate business, which deals here with clubs, has habitually taken the benefit of the business of criminals or their associates overseas, as has Bally, it is highly likely the same will happen here, when it is feasible and profitable. If it is feasible this could involve a percentage of the profit or return from machines or in association with somebody at the perimeter a share of cash or a skim. Upon the American pattern, if this occurred, these cash monies could in part be used in aid of illegitimate expansion of the legitimate business, in aid of corruption to conceal what is occurring or in aid of expansion into other fields. It would be entirely a matter of speculation as to what these fields might be.

Lack of evidence of act of organized crime in N.S.W. Considerations why of no great significance. Move to expand followed by inquiries and press publicity.

311. The lack of evidence of any act of organized crime by Bally here (P. 309), is a powerful factor in favour of a finding favourable to Bally on Term 3, but for the reasons indicated in P. 308 this does not determine the matter. Some negative things should first be said as to why the absence of such evidence is not of great significance for the purpose of Term 3, in the light of the conclusions in P. 308.

Insofar as the methods of organized crime might be adopted to facilitate the "move into Australia", it is unlikely they would be used once the police investigation was known to be underway in early 1972 or while the matter was being ventilated so extensively in the press with direct allegations concerning Bally from early 1972 until after my inquiry started, or while the matter was being debated in Parliament in 1972 and 1973 with reference to Commonwealth reports from America, or during the period in 1972 when Tomlinson saw fit to come to N.S.W., or during the period of my inquiry which commenced in August 1973. In other words, on any view activity beyond legitimate business would be highly unlikely after 1971 or very early 1972, being only just about the time the N.S.W. expansion really commenced. However, if there were activities in the period prior to April, 1972, not capable of revelation by reference to documents, it would be highly unlikely that my inquiry, so remote in time, would uncover them. The chance of so doing would need to be more contemporaneous and on the spot.

Police inquiry unsatisfactory. Consequences to Term 3. Some positive police statements originally. Suspicion but not proof on some matters.

312. The police inquiry was more on the spot for a period (until April 1972) before the matter had notoriety, but nothing was done by way of investigation until the raids in June 1972 on the books which, not surprisingly, were without results. The police inquiry, for reasons indicated under Term 2B, was unsatisfactory in many respects. It certainly does not lead me to any conclusion that there was no improper or criminal conduct within Bally's operation. In fact, as discussed under Term 2B, there were many statements in earlier reports which point to some discoveries (see P. 129).

There was the firsthand report to McNeill of the offer of an executive of the company which became Bally Australia to instal poker machines in the Motor Club in return for a share in the profits of the machines. It will not repeat the detail of this matter which is referred to in P. 129. This strangely falls within the declared policy of Bally to move into the lucrative profits of operation, which it did in the S.E. Asian deal. The suggestion to McNeil was not that the offer was not made, but that it was not seriously made. This incident and the way it was laughed off, and dropped when it came to police attention has significance in the present context. It would seem from para. 203 of the final police report that, when seen the second time, the informer said when he first spoke to McNeill he was not aware an inquiry on Bally was in progress. In the meantime he had seen the Bally representative who made the offer. It happened in the vulnerable Motor Club which Riley and Dean were able to penetrate to their apparently illicit profit.

Then questions arise as to the basis on which the first and second police reports said it could be definitely stated commissions were being offered to some club officials to instal Bally machines (fully dealt with in P. 129) and that Bally employed a local criminal to visit clubs as a public relations officer. It is true a local criminal was employed by Bally. While none of what the police wrote in the early reports is any evidence in the legal sense concerning Bally, its existence and some inferences available concerning it are quite against it being said Bally in N.S.W. has not engaged in any improper or criminal conduct in this period up to June 1972.

As to the negative results of the raids of June, 1972, these favour Bally, but it must be said that if there has been any attempt to corrupt club officials, say by secret commissions, it is extremely unlikely that any trace of such will appear from any records. If my view of the background of Bally is correct, such dealings almost certainly would be in cash. Here there is no proof or disproof. There are suspicions in some cases mentioned by the police. For example, there is a case of an official of a club where large numbers of Bally machines were installed and the official had received large amounts of cash, but explained them by a most miraculous succession of race wins in a row and backed this explanation by contemporary record. He had a prior default assessment by the tax authorities. His record, however, is not conclusive but there is no evidence of any payment by Bally. He said Rooklyn offered him a free trip to as Las Vegas, but he declined because he considered it not proper.

To give another example, great suspicion rests upon the introduction of Bally poker machines into the Blacktown Workers Club and the employment of Sloan, its president, by Bally's distributor. The president of the club became a Bally representative for reward. This was one of the few cases where books referred to a "commission". There was a claim it was a Christmas bonus, but this is unlikely. This entry, which was seen by the police inquiry, seems to have been lost along the way and reported in a more innocuous way than it deserved. The dealings of Lambert and the employment by him of and the payments to Sloan point strongly to this being a device to place the large number of Bally machines in the club.

A somewhat neutral position exists concerning some of the other activities of Lambert, a large and successful Bally distributor, and his employee Jones, referred to in various police reports. Some elements of the allegation seem to be established. Jones did demonstrate to clubs the opportunities of cheating, it seems with opposition machines, and he did go to Las Vegas for some kind of training.

Indications in relation to high pressure methods. Expansion and dealings with Police. Significance.

313. There are indications that Bally's expansion here, in the short time before inquiries were under way was accompanied by what at least were high pressure business methods and accompanied by impropriety and a strong suspicion that criminality may have been involved. This relates to extension of operations and dealings or attempted dealings with police.

The endeavours to have Anthony, a well-established opposition agent, to come over to Bally in the present context have some significance. Anthony to the police and to me asserted no personal threats were used by McKay on behalf of Bally. He said that, when he declined to change over, McKay said, "I don't want to threaten", that he jumped to his feet and McKay said, "Wait a minute, I don't mean to threaten you personally, what I mean is to threaten to sell in your clubs." Despite this later consistency, it is doubtful whether Anthony's account is reliable. He went to R. J. Kelly, M.L.A., and was pale, agitated and worried, and said the "boys are playing for keeps" and he would not say who the persons were, because he was worried for the safety of his family. Earlier, Rooklyn had sought to have him change over, but he had refused. He then receive a telephone call from a person with an American accent. It does not seem to have been O'Donnell, as he was not then here, but the terms of the conversation, in the context of the then events, make it likely some American, then in Sydney in the Bally organization, did in fact ring him. The versions he has given slightly vary. Before me it was "You should seriously consider handling Bally as we have \$2 million to spend for part of the action. We figure to take over the whole Eastern seaboard." An earlier version added after "part of the action" the words "part of it can be yours. You would be crazy not to be in it". McNeill received information which led him to write in his first report, "Rooklyn has stated he believes poker machines will be legalized in Queensland and Victoria within the next 2 years and he wants to take over the lot". Some documents, produced by Bally showing their political assessments in regard to other States, confirm such an interest.

314. Then there are the Rooklyn dealings with Knight, while still a police officer. The head of the Bally organization here entered into some kind of a business partnership, evidenced by the document which bears his signature and that of Knight's solicitor. The whole detail of this unsavoury affair is dealt with at great length under Term 2B, which should be read as incorporated here (PP. 135-152). Rooklyn lied about this matter and concealed what occurred by a pretence of lack of memory. When these events, Rooklyn's part in them and evidence concerning them come to be looked at in order to determine whether a "risk" of the relevant type exists, it should be realized they have a different significance to that in an inquiry into the question whether a positive inference of corruption can be drawn against a police officer. There is grave suspicion against Knight and, on any view, his involvement lays him open to criticism as a police officer (P. 148).

But what is the position of Bally? The matter cannot be disposed of by isolating it and asking whether a charge of corruption by Rooklyn of police on criminal standards can be proved. The question is how is Bally's conduct to be looked at in answering the question as to risk raised by Term 3. A start must be made with my earlier conclusions that Bally's operations in most parts of the world have at some time been conducted by or in association with criminals. The criminal associates are persons likely to use techniques, which include softening and corrupting public authorities, including the police. The early police reports were adverse to Bally. In the way referred to under Term 2B, information on which these conclusions were based, for no valid reason, was then set to one side. There was a disinclination to look at any further material adverse to Bally from the Commonwealth or from the defamation transcript. The final report is negative concerning Bally, in the way discussed under Term 2B.

The moving party to the private meetings and dealings was Bally. Rooklyn made the personal approaches to the police. Here on a matter of such public and political importance, he took the step of making personal approaches, not just to any police on the inquiry, but to the two senior men and those who signed the report. As indicated under Term 2B, there is much to put the first meeting and certainly Rooklyn's first approach closely into co-incidence with the completion of the final report. It is clear there was some other discussion before the police and Rooklyn went to the solicitor's office. It is clear there were other discussions and dealings between Rooklyn and Knight after Rooklyn received from his solicitor the document, bearing his name and that of a dummy for Knight. It is clear this device was to conceal that he, Rooklyn, was dealing with a police officer. As his diary entries show, Knight was still doing duty on the inquiry, a principal concern of which was Bally. After Knight signed the document it was promptly registered, most probably by Rooklyn who already knew the name was available (P. 142). In a very short time the business was operating, but by persons arranged by Rooklyn and

connected with him. Knight, still a police officer, was participating in some way. Dealings were in cash. There is little doubt Knight, while a police officer, was participating in some operation or business on behalf of Rooklyn or Bally (P. 146).

Only fragments of what occurred were revealed. The matter was stumbled upon by accident. Beyond the fragments there was silence, particularly of Rooklyn and Knight. It was a dishonest silence. It is clear that Rooklyn initiated the whole affair. He was personally dealing with the top police and knew of the (unjustified) conclusions concerning Bally that it was "clean" long before the Premier or Parliament. Why the secrecy as to the identity of his partner in a business said in the document already to have commenced, when the document was registered? Why the need for the document and its registration, if Knight was only considering an offer? Why was the document registered by some mystery person and no solicitor has any piece of paper in connection with any part of the transactions? What was Bally seeking to achieve by these transactions with Knight? What were the operations of Metropolitan Club Services in December, 1972, and January, 1973? Why was Knight in effect doing a public relations interview of O'Donnell and pretending to do it as a police officer? Did Knight get money? Was Bally trying to get a hold over him by the documents signed by his solicitor and mysteriously registered? Was Bally seeking an employee who could impart intelligence material, perhaps American intelligence, concerning Bally? The whole transaction had been so cloaked that these questions cannot be answered. It is clear, however, Rooklyn set these matters in train at about the time the report was finalized or at least very soon afterwards, but even possibly before. It is clear he knows in substance all about these events and personally participated in them. It is clear he has lied concerning his asserted lack of knowledge. The matter cannot be dismissed, as Bally seeks to do, by saying that crime on criminal standards cannot be proved. I infer that Rooklyn lied to cover up an improper transaction, for some improper motive.

The pattern of this occurrence is not untypical of American experience, i.e. a dummy front (for a police officer) in a business found soon after to be operating with cash transactions, then lying assertions of lack of knowledge by those who know and resort to lack of proof on criminal standards.

These dealings are of considerable significance. Long before the Premier knew of the results of an inquiry, which had attracted so much attention in Parliament and in the press, the head of Bally in Australia went right to the top of the police force engaged in this inquiry to deal with them in the ways already outlined above and in Term 2B. He knew long before the Premier or Parliament of the unjustified reversal of findings concerning Bally and the unjustified conclusions that Bally was "clean". It is likely that O'Donnell was aware of what was happening. He had a private interview with Knight at about the time. In any event, I do not think these dealings would be inconsistent with his attitudes as referred to in P. 299.

These events concerning the police and the overseas background of Bally indicate in my view that there is a very real risk that, when it suits the purposes of Bally in this State, corruption of officials will be resorted to, but will be so dealt by use of cash and/or devices such as the use of dummies, trips or collateral benefits that legal proof will be difficult.

There should be added that Bally's operation is run here by a man who serves both N.S.W. and Bally's Eastern business, which is subject to the concealment and doubt elsewhere referred to. He is a man who has had some business relations with Saffron and while the intelligence material constitutes no evidence, it is clear, on concessions in evidence, that he at least negotiated for some combined operation with Saffron in Djakarta.

Finally, it should be bluntly said that in respect of the Australian operation it is directed by a man (Rooklyn) who has lied before me and that the parent company, which gives him his ultimate directions, is presided over by a man (O'Donnell) who has lied before me.

Conclusion on Term 3. Cross reference to P. 308

315. I return to my conclusion in P. 308, and having in mind the N.S.W. material relating to Bally discussed under Term 2B and referred to at some points in PP. 309-14, this material does not detract from but supports the view expressed in P. 308. Accordingly, I answer Term 3 "Yes".

Quantification of the "risk" concerning Bally Operations

316. I have earlier indicated that my function is to determine whether there is a "risk" falling within Term 3 and in the process of so deciding, to define the risk, and that it is the Government's function to decide what action, if any, it proposes to take to meet that risk (See PP. 223, 255-6). That risk can only be appreciated by those who have to consider what should be done concerning this risk by a close

study of my report, particularly upon Term 3. Any summary of the risk cannot be a substitute for any appreciation based on that study. Having made that observation, let me say that the situation is a deceptive one, as anyone, who studies the infiltration of organized crime or the affiliation of organized crime with legitimate business, will realize. It is a situation where external appearances, aided by highly paid experts and supported by wealthy and apparently respectable businessmen, will be prone to be disarming, as it is in most of the parallel cases in America and as no doubt, for example, it was in the Colony Club London.

I have come to the conclusion there is a real and very material risk that the Bally operation, if continued here, will in time be a vehicle, in which and, alongside which, organized crime will infiltrate or further infiltrate club operations in N.S.W. in some way. I use the words "in time", because this very report is likely for a time to produce its own results. If the risk becomes the fact, there will probably be little legally admissible evidence of its operation. It is highly likely that after a period, if not prevented by some positive action, Bally, by legitimate means, but backed by its enormous wealth, will attempt to monopolize the poker machine industry. It is possible it may buy out its opponents. It is possible it will capture the market by other means. If this occurs, because takeovers are refused or prevented, there is a substantial risk that high pressure and organized crime methods will be resorted to. It should be recalled its Australian opponents are also opponents to a degree overseas.

It is quite possible pressures will be attempted to be applied in various quarters to extend the legalization of poker machines elsewhere in Australia and on a wider basis in N.S.W. There is a risk that, by lawful, indirect or unlawful means, it will press its avowed policy of entering the more lucrative field of operation or leasing of machines. It is close now to a world monopoly except for Australian and U.K. manufacturers and perhaps Sega of Japan, all of which are small, as compared with the giant size of Bally. If it gained a monopoly or near monopoly in Australia and had such or near such on a world basis in the galloping way, its quoted accounts show, then it can be well imagined that pressures could be exerted on clubs and governments, dependent upon poker machine profits and taxes, to lease or share in the operation of machines. Compulsive leasing by some overseas organizations, with desired patented equipment, is already a known business pattern. Upon a leasing scheme, as in S.E. Asia, the rent could be adjusted in effect to take a selected share of the profit of operation.

The Bally progress, it seems, probably backed and aided by organized crime, has been fantastic (P. 302). In summary from their accounts it appears or can be inferred that in ten years \$1 invested has become \$1,000. In ten years the men who put in \$25,000 and others are millionaires twenty to fifty times over. In one year overseas profit has jumped from twenty-five to fifty-one million. I think the analysis I have made of the multiple connections of Bally with criminals or their associates in their operations all around the world, makes it likely that crime and high pressure methods, unwanted in this country, have aided this march to financial domination of the industry. Their ambitions to induce legalization of poker machine gambling in more and more areas, their anticipation of this and of their move into the lucrative fields of operation, is apparent from reading their own documents, which are exhibits or retained as marked for identification with the inquiry records.

The view, I have formed as to the risk, can best be expressed by saying that, as a result of my careful consideration of all the material before me, it appears that some clubs are so vulnerable and the history of Bally has been such, and the removal of organized crime from casinos (Las Vegas) and clubs (England) once there, has been so near to impossible, that any takeover by and any expansion of Bally would constitute a risk of the type referred to, which cannot afford to be taken and, further, without embarking upon practicalities and other possible problems that, as a mere statement of the risk, it is too great to have the Bally organization trading here at all.

Part VIII.—Recommendations

General

317. The terms of reference call upon me to make factual decisions. They do not provide for the making of recommendations. In order to make detailed recommendations, for example upon club supervision, organization or management, a separate and different inquiry would be required, directed to the specific subject matters and aided by submissions of interested parties. However, in the course of my inquiry some matters have appeared and have been dealt with by me, in giving reasons for my decisions upon the Terms of Reference. Some such matters have been the subject of some criticisms. It would be too narrow a view of my function not to deal with these

matters completely by making recommendations germane to them. I am conscious that this inquiry has involved considerable public expense and that the facts are so intertwined that I am in a superior position to observe in a general way where future remedy appears desirable.

My recommendations are based upon what appeared in the course of an examination of a single but substantial police operation, a close examination of the operation of several clubs of a particular class, and a close examination of one overseas corporation with criminal affiliations. In these circumstances, care is required in generalizing. However, the investigation was detailed and close in these areas, the areas were sensitive areas, and what has appeared in these areas and the lessons to be learned from them, appear to have some general application. For the reasons I have indicated, my recommendations will be general in nature. If they are implemented, it would be appropriate that ways and means and details be decided by others after a consideration of all relevant matters.

The recommendations set out hereunder, arise directly from the matters already discussed in my report. The considerations which support these recommendations are to be found or to be inferred from the body of my report.

Recommendations concerning Police.

318. On matters concerning the N.S.W. Police I recommend for consideration, subject to the qualifications expressed in P. 317, the following:

- (1) That there be a frank and drastic review of the methods of investigation of organized crime of overseas and local origin, and that particular procedures be established appropriate to this as a special class of crime. The procedures should be based on the premises that they are
 - (a) in aid of police action against offenders,
 - (b) in any event, to discover the general and particular operation of such crime and the identity of persons involved,
 - (c) to report where appropriate in aid of executive or legislative action (e.g., overseas infiltration or overseas business), and
 - (d) to stop organized crime if possible before it becomes entrenched.
- (2) Without limiting (1) the following be considered:
 - (a) a special squad of police, be established so it or some members are available, as and when required for general or particular inquiries in this field, that they receive particular training, including from time to time refresher training and briefing in the methods of and intelligence information concerning organized crime, training in the collection and handling of intelligence information concerning organized crime locally and, where relevant, overseas. Intellectual capacity should be a prominent factor in selection of personnel. Special security of information under the control of this squad should be considered in aid of the receipt of intelligence material from Australian and overseas sources. Special consideration would need to be given to minimize the chance of corruption of members of this squad or its standing being lessened by practices leaving members open to suspicion of corruption. It should be appreciated they are likely to be the target for corrupt approaches.
 - (b) when occasion arises to inquire into questions of organized crime in particular fields or concerning particular persons or organisations, that consideration be given to adopting the task force method directed to a particular "target" (on the general lines adopted following the President Johnson inquiry). The occasion to select a particular target would depend upon there being an effective intelligence system concerning organized crime. Attention should be directed to the target as a continuing operation as distinct from investigation of single crimes after they have happened and been reported. Depending upon the "target", the operation could involve a co-operation of the squad with experts outside the police force or members of police forces in other States or the Commonwealth. A local "target" to which a small permanent group, as required, could be assigned could be the registered clubs or particular clubs or a particular group of persons in relation to clubs. Examples can easily be discerned from the body of this report. The task force scheme, if adopted, would operate within a squad such as referred to in (a) above.

- (3) Both in relation to organized crime and generally, that there be set up a system (or a better system) of recording and classifying police intelligence information of local, interstate and overseas origin. As I have not made a particular inquiry into this subject and realize there are many problems of confidentiality, fairness to individuals, and otherwise, I do not intend at all to be taken as recommending how such an improvement should be effected. All I indicate is that substantial remedy is needed to a system, such as referred to in evidence, which leaves individual police officers to carry around in their heads information, which ought to be an integer in a general intelligence picture, and, which leaves such information to be discarded and lost at the discretion of a police officer. Such a system not only renders police action against organized crime inefficient, and other crime more difficult of detection, but it leaves room for police corruption and allegations of police corruption.
- (4) That attempts be made in relation to organized crime and generally to set up on a State-Commonwealth basis and/or on a States basis either a Central Intelligence Service or a co-operative Intelligence Service. I appreciate there are many difficulties on matters of security, trust and reliability in this matter, as American experience has shown. Distrust by some Federal American intelligence agencies of American State agencies, because of corruption or fancied corruption in some State agencies, tends, by parallel reasoning, to discourage such Federal American agencies from passing on some classes of intelligence material, if it is to be available for any wide dissemination. Insofar as this exists, N.S.W. may have to seek some direct collection of relevant overseas intelligence information and, in any event, improve its own internal security (*see* P. 203). My recommendation can, in the circumstances, go no further than that some vigorous and co-operative attempts should be made to improve the present arrangements.
- (5) Irrespective of action taken otherwise, steps be taken at the Government and senior police level to improve the present relations between Commonwealth and N.S.W. Police which, within the confines of the police inquiry, were far from satisfactory. As this appears to a substantial degree, but not entirely, to have arisen from Inspector McNeill's attitudes, the problem is probably a limited one.
- (6) That, for the protection of persons investigated or charged and for the protection of police officers, police instructions concerning note-taking and concerning return and security of note books and diaries be required to be observed and that any other form of "unofficial" recording be not regarded as relaxing the requirement and that such other recordings be not privately retained but be held as other official police records.

Recommendations concerning clubs

319. On matters concerning registered clubs, the many revelations in the course of evidence and the discussion of them in my report (under Term 2b) makes it obvious that some clubs, particularly some city clubs, with large casual membership, lacking interest in the objects of the club, have undesirable features which expose them to exploitation in the many ways that appear in this report. As I have not conducted an inquiry into the structure or administration of clubs generally, it would be misleading for me positively to recommend ways and means of effecting what I recommend generally. I recommend:

- (1) That (subject to preservation of the independence of the great majority of properly run clubs, whose very independence is important in enabling them to fill their free role in a free society) procedures be made available, if necessary by legislation, to prevent the exploitation of some clubs by club officials and club employees and by persons exercising control and influence from outside clubs, such clubs being particularly those where the members are ineffective to do so themselves, either because of the size of the membership or the lack of interest or community of interest of members, or because of ballot rigging, the use of proxies, or corrupt or standover methods.
- (2) That to meet the exceptional type of problem in the exceptional type of club, referred to in (1), that consideration be given to providing procedures, such as an appropriate inspectorial system, the appointment of a temporary administrator, and the supervision of elections, to be available in designated circumstances, preferably under some judicial control, but capable of initiation in the first instance either by a designated group of members or an appropriate public authority; that there be a disqualification of office system.

- (3) That in the framing of any procedures, consideration be given to:
- (a) Cases where a mere declaration of an interest by a director of the board of a club provides no protection against abuse of position of or even crime by a director or his associates.
 - (b) Cases where the appointment of directors to casual vacancies is abused by outsider control or insider control by a corrupt board.
 - (c) Cases where, by reason of a co-operative or controlled board or for some other reason, abuses or crimes of some directors, their friends or employees are not revealed or discoverable by members by present procedures.
 - (d) Cases where directors, executives or persons outside the club, with or without control of security officers, have an opportunity of "skimming" poker machine returns.
In these cases (c) is also likely to apply.
 - (e) Cases where security particularly of poker machine cash is weakened abused or vulnerable because of abuses in selection and employment of persons or firms charged with security.
 - (f) Cases where directors who have been shown by appropriate procedures or conviction to have "exploited" a club are eligible to remain in office or be re-elected to office.
 - (g) Cases where a board which is corrupt, or where some members are corrupt and can control the other members by some means, can remain in office by abuses of elections or use of proxy votes.

Recommendations concerning the Bally organization

320. I have indicated in the course of dealing with Term 3, that my province is to indicate whether there is a risk falling within Term 3, and in the course of decision on that matter to define that risk if it existed, and that it was a matter for Government decision what steps, if any, should be taken in relation to that risk. The recommendations I make are implicit in what I said in P. 316, which should be deemed to be incorporated here.

Recommendation this report be passed to Australian Government

321. In view of the interest and co-operation of the Commonwealth Police and authorities in the course of the police inquiry and throughout my inquiry, in view of the involvement of Commonwealth Police officers in both inquiries, and in view of potential interest in my findings under Term 3, I recommend that a copy of my report, in due course be transmitted, through the appropriate channels to the Australian Government.

Recommendation for continuing police investigation upon matter of crime in relation to registered clubs

322. As appears in the body of this report under Term 2B, in areas where I have made my own investigation in the process of testing the police inquiry for the purpose of Term 2B, many matters *prima facie* criminal or pointing to criminal or improper practices have been revealed. At many points the police inquiry has appeared to be inadequate and ineffective. It appears that these are areas which require now to be followed up by police inquiry. Past matters appear to merit attention. However, because of the lapse of time, special emphasis should be on whether there is continuing activity of the same kind in the same clubs or other clubs by the same persons or other persons. The report on Term 2B speaks for itself. The sensitive areas are apparent.

My recommendation is that the N.S.W. Police should look afresh at the question of crime in relation to the clubs upon a thorough consideration of my report on Term 2B and upon a deep consideration of the evidence before me, much of which is not referred to or dealt with in my report. The transcripts and relevant documents or copies are preserved and are available.

Part IX—Formal Findings

323. I answer the questions asked as follows:

TERM 1	—	"NO"
TERM 2	—	"NO"
TERM 3	—	"YES"

Part X.—Transcripts, Documents and Miscellaneous

Preservation of inquiry records—purposes

324. This inquiry revealed many matters which may be the subject of future concern, action, interest or research. Despite my lengthy report, very many important matters either have not been referred to in it or have been touched upon only slightly. Some matters appear to warrant further action or investigation in the way referred to in P. 159. Furthermore, there is no appeal from an inquiry such as mine and, therefore, the material upon which my report is based should be as fully available as possible, so those who wish to criticize my report shall have the facility to do so in an informed way. Set out in schedule B is a reference to the volume numbers of folders or envelopes containing transcripts, exhibits, documents MFI and indices. These are numbered from 1 to 71.

"Open" Transcript

325. The principal transcript is the "open" transcript. This document of 1845 printed pages is a record of all that was done publicly in open sittings. It includes the evidence of persons given in open sittings and also large sections of evidence given *in camera*, which it was later found was proper to be made public (P. 45). This was read in open sittings. I acceded to counsel's requests and there are included their written and oral submissions. The opening address of Mr Needham, Q.C., is also included. Some of the more important documents are incorporated in the transcript. In some instances this enabled parts of documents to be made public, where the whole could not. Thus, all of the final police report was not made public, but parts were in the course of Mr Needham's opening and in this way appear in the transcript. Later, some other parts were incorporated. Except in this way, the news media were not given access to exhibits and documents.

"In camera" transcript

326. As indicated in P. 45 the inquiry was open, subject to some sittings *in camera*. The sittings *in camera* were principally to preserve the identity of certain police informers, the identity of some Commonwealth Police engaged on special duties, certain police procedures and certain confidential intelligence material. Some evidence was taken in the first instance *in camera*, lest, by accident, confidential material should be published. The confidential transcript to a substantial degree is now part of the open transcript. Some parts still remain in the confidential transcript. Therefore the whole document for safety should so remain. The few counsel, necessarily aware of it, were bound by an undertaking not to disclose it. This transcript is sealed and marked "Confidential Transcript—See P. 326". The principal reason for it so remaining is that it contains names of Commonwealth Police officers, some Commonwealth procedures in relation to informers and other intelligence material which the Commonwealth disclosed on a confidential basis. Counsel for the Commonwealth, upon instructions, agreed to the transfer of that evidence which did go to the ordinary transcript, but the parts which remain confidential are so at his request. I would recommend this confidentiality be preserved upon some appropriate Ministerial responsibility. There is nothing in this transcript which is relevant to Term 2A. In essence, it was admitted for the purpose of Term 2B, and counsel for the police were present.

Transcripts of Special Confidential Sitings—Exhibits BN, BO and BP

327. There were several special confidential sittings, i.e., on 3rd October, 30th November and 5th December, 1973. The transcripts were mentioned in open sittings. The first is marked Ex. BN, BO and BP. These transcripts are in no way relevant to Term 2A and touch only Term 2B. Only counsel assisting me and counsel for the N.S.W. Police Department and police were present. These transcripts are sealed and marked "Transcripts of special confidential sittings—see P. 327". They deal with informers and police procedures concerning informers. It is imperative in the public interest that the strict confidentiality of this material be preserved (*Rodgers v. Secretary of State for the Home Department*: H.L.: (1972) 2 All.E.R.) at the appropriate level of Ministerial responsibility. If it is to have inspection other than by a Minister, I recommend that this not occur except after personal reading by the responsible Minister.

Exhibits, Confidential Exhibits, Exhibits marked "Special Security"

328. Provision has been made to preserve, so far as possible, relevant exhibits or copies thereof. Where they came from a Government Department or from the police they have been returned to that Department. In this location they should still be available to an appropriate authority wishing to inspect them. Even so, the important exhibits from these sources have been photo-copied and are included in the documents now handed over. Original exhibits otherwise, except where there has been a consent and subject to P. 330, have, it is believed, all been returned and a copy of any relevant part substituted.

Many exhibits have been marked "confidential". The purpose of this was to preserve them from general publication. In most instances, this was because publication by the press might unfairly prejudice an individual (P. 45). In a few instances the purpose was to fully restrict their disclosure, because of their true confidentiality. As, however, the exhibits were not made generally available to the press, except where they were read in open sittings, protection from press publication applied more generally.

Where there was serious concern as to confidentiality, there were special markings such as "special security" or sealing up of exhibits endorsed with special restrictions on their disclosure.

The safest course is to recommend that exhibits and copy exhibits not be made available upon request, but upon the responsibility of an appropriate departmental decision. Those marked "confidential", together with some not so marked but which should be so treated, have been placed separately from those not so marked. I would recommend that these documents be not disclosed except upon the direction of an officer nominated by the Premier or his departmental head. The class of exhibits marked with the special security markings I recommend should not be disclosed except in accordance with the procedure recommended in P. 327. These are in a sealed envelope and marked "special security exhibits—see PP. 327-328".

Documents marked for Identification in relation to Bally

329. The formal tender of some documents produced by Bally was overlooked by Bally and counsel assisting me. In an uncertainty which then existed and by arrangement with counsel for Bally all documents (or copies) produced by Bally and marked for identification are to be treated as if they were exhibits and preserved as part of the inquiry. This has been done and those documents are also available.

330. In the course of evidence there was a considerable contest between the State and Commonwealth Police witnesses as to whether the notes delivered to McNeill and Ballard included page 19. I have already made some reference to this issue on the credit of McNeill (P. 212). It also appeared that, despite its confidential marking, the copy of the Commonwealth notes (18 pages), sent to the N.S.W. Police, under cover of the letter of 30th May, 1972 (referred to in the terms of reference), were photographed and found their way into the files of two newspapers. (See PP. 98, 203.) Somehow the press was able to have them, although the terms of reference properly made their reception by me subject to approval of the "appropriate Commonwealth authority" and although the Deputy Commissioner of Police in his letter of 10th August, 1973, urged that serious consequences would arise if the Premier disclosed material originating from this document (P. 93). This alarming breach of security must have seriously harmed N.S.W.-Commonwealth Police relations and relations of Commonwealth or N.S.W. Police with overseas intelligence agencies. When I raised questions about page 19, an inquiry was made by the N.S.W. Police including inquiry as to how the copy of the 18 pages was made and released. The evidence was the police could find no trace of how this happened. As I then announced, it was not my province within my terms of reference to inquire into how these disturbing events occurred. I do not think it is good enough to let this matter rest where it is. Either the matter can be better investigated or there is something wrong with the system, which results in secret intelligence information with appropriate restricted markings being photographed and handed to the press, *prima facie* from police custody and eventually also being used for political purposes. There was a flagrant disregard of security, *prima facie* within the Police Department apparently abetted by the press. I have made recommendations which include reference to intelligence material and security (P. 318 (4) and (5)). In aid of the future, this past matter should not be allowed to rest. It should be tracked to the end and, if the result is still negative, the system, which permitted it, should be critically reviewed. It should be reviewed together with the evidence of some revelations of the results of the police reports or parts of them, before the Government, then awaiting them, were informed. I have taken the course of impounding the photographs of the confidential documents produced by the press. They and the various copies of the 18 and 19 page document (Ex. G (1), (2), KC, KD, KE, m.f.i. 105 and 199 (x)) are contained in an envelope entitled "Exhibits, etc., re Commonwealth 18-19 pages of notes—See P. 330".

Report upon Communications

331. Persons seeking to give information were referred to Mr Hennessy. At my request he has made a report covering both verbal and written communications. His report and the attached written communications are exhibit KW. I am satisfied that these communications have been properly dealt with.

Indexes of Exhibits and Documents M.F.I.

332. Indexes of exhibits and documents m.f.i. with a description of each has been prepared by the Secretary and is available.

Indexes of Transcript

333. Indexes to the transcript of evidence and addresses of counsel have been prepared by Mr Officer, counsel assisting me. They consist of a running digest page by page of subject matters and a reference to the evidence upon some particular subject matters or relating to some particular persons with page references.

Reference to U.S. Inquiries, and Writings Concerning Organized Crime

334. As indicated at T. 933-4, I made reference to various U.S. inquiries and serious writings (but excluding fiction) upon organized crime (and see T. 978). I pursued this course in order to acquire upon a broad perspective what appear to be the accepted views and experience in America concerning the operation and methods of organized crime and the persons reputedly involved in or associated with it. Set out in schedule C is a list of (A) the inquiries including in some cases the evidence and reports of inquiries; (B) books on the subject of organized crime; (C) articles on the subject of organized crime; (D) bibliographies. Some of the facts and conclusions in the books (B) particularly those listed as (3), (6) and (9) have to be read on the basis that no authentic source for some facts are indicated.

Appearances of Counsel

335. There is set out in schedule D a list of the legal representatives of various persons. Many appearances were only sought for witnesses during the course of their evidence or in connections with the production of documents.

Assistance Rendered to my Inquiry

336. I wish to record my thanks for the very great assistance rendered by all the staff who assisted me, particularly Mr J. N. Ayling, the Commission Secretary, Miss L. Krebs, my Associate and Assistant Secretary, Mr R. J. Davey and Mrs B. Morse-Evans of the Court Reporting Branch, responsible for the mechanical side of my draft report. I wish also to record a tribute to Mr G. N. Needham, Q.C., and Mr R. V. Gyles, counsel, and Mr J. E. Hennessy, for their able assistance, often rendered under high pressure because of the inquiry programme.

A. R. MOFFITT,

1st August, 1974.

SCHEDULE "A"

INTERIM REPORT—13th March, 1974

To: His Excellency the Governor,

Sir ARTHUR RODEN CUTLER, V.C., K.C.M.G., K.C.V.O., C.B.E., K.StJ.

MAY IT PLEASE YOUR EXCELLENCY:

Having been appointed to inquire into certain matters relating to allegations of organized crime in registered clubs, I have the honour to report to Your Excellency my finding upon Term 1 which is as follows:

(1) Whether the reports tabled by the Premier of New South Wales in the Legislative Assembly on the 22nd November, 1972, and the files upon which they were based and any other relevant departmental files disclose sufficient reason to take proceedings against any person in respect of alleged organized crime in or in relation to Clubs registered under the Liquor Act, 1912, as amended, or under the Gaming and Betting Act, 1912, as amended, and if so, whom?

namely "No"

and my finding upon that part of Term 2 which is as follows:

(2) Whether there has been any attempt by the Government of New South Wales to "cover up" the existence of such crime or the identity of any person responsible?

namely "No".

I humbly regret my inability to report my finding upon the other part of Term 2 or upon Term 3 or to report my reasons in relation to any of the three terms within the time referred to in the current Commission, namely on or before 20th March, 1974. I have conveyed to the Premier, by letters dated 8th March and of this date, my request for an extension of time to prepare and deliver the remainder of my report, coupled with a request that the Premier transmit this request to Your Excellency.

Dated 13th March, 1974.

A. R. MOFFITT, Sole Commissioner.

SCHEDULE "B"

**References to Identification Numbers of Folders and Envelopes containing
Transcripts, Exhibits, Documents, M.F.I. and Indexes handed over at time of
Report**

<i>Reference No.</i>	<i>Contents</i>
Vols 1 to 5	Open Transcript.
Vol. 6	Confidential Transcript (<i>see</i> P. 326).
Vol. 7	Indexes to transcripts.
Envelope 8	Transcripts of Special confidential sittings.
Vols 9 to 41	Exhibits.
Vols 42 to 45	Addresses of Counsel.
Packet 46	Exhibits and other documents concerning Commonwealth 18-19 pages of notes (<i>see</i> P. 330).
Envelope 47	Exhibits marked "CONFIDENTIAL" (<i>see</i> P. 328).
Vols 48 to 60	Documents marked for identification concerning Bally Manufacturing Corporation (including parts of Exhibit "J"—records of Corporate Affairs Commission).
Vols 61 to 63	Exhibits to be treated as if classified "CONFIDENTIAL" including Ex. A. (File laid before Legislative Assembly under Standing Order 57.)
Packet 64	"SPECIAL SECURITY" Exhibits (<i>see</i> PP. 327 and 328).
Vol. 65	Indexes of exhibits and documents marked for identification.
Envelope 66	Tape recording marked for identification No. 181.
Vols 67-71	Documents marked for identification (not tendered in evidence) but relevant to the Inquiry or referred to in transcript.

SCHEDULE "C"

List of Inquiries and Writings concerning Organized Crime (P. 334)**(A) Inquiries (reports and some evidence):**

1. McClellan, 1963-5 Senate Inquiry, i.e., Inquiry concerning Organized Crime and Illicit Traffic in Narcotics by U.S. Senate Committee. Records include:

- (a) Evidence commencing September, 1963, and exhibits in 5 volumes.
- (b) Report—4th March, 1965.

(Includes Attorney General Kennedy's views, Valachi's and law enforcement authority testimony and identification of "Mafia" personnel including Catena, the details of the Middle East, Corsican and French narcotics operations.)

2. (a) President Johnson's Inquiry, i.e., the report of the President's Commission of Law Enforcement and Administration of Justice under the title "The Challenge of Crime in a Free Society" (February, 1967) but particularly Chapter 7, "Organized Crime".

(b) Task Force Report: Organized Crime (February, 1967) being chapter 7 of the above, i.e. (a) together with annotations and consultants' papers.

3. Inquiry into Organized Crime in Interstate Commerce conducted by Special Committee of U.S. Senate under chairmanships of H. R. O'Connor and E. Kefauver (1951):

- (a) Second interim report.
- (b) Third interim report.
- (c) Final report (August, 1951).

4. Inquiry into Organized Criminal Influence in Horse Racing conducted by Select Committee of Congress (1973). (Includes references to Emprise Corporation.)

5. Inquiry into The Federal Effort Against Organized Crime conducted by a subcommittee of the Committee on Government Operations House of Representatives (U.S.) (1967-8).

- (a) Hearing commencing April, 1967, vols 1, 2, and 3.
- (b) Report (20th June, 1968).

6. Blackmar report (June, 1973) on Emprise Corporation.

7. Inquiry into Organized Crime in relation to Stolen Securities conducted before Permanent State Committee of U.S. Senate under chairmanship of Senator J. L. McClellan (1971).

(B) Books on subject of organized crime.

- 1. Crime in America by Estes Kefauver (1952).
- 2. The Enemy Within, by Robert Kennedy (1960).
- 3. The Green Felt Jungle, by Ed Reid and Ovid Demaris, 3rd Printing (1964).
- 4. Gang-Warfare, A Probe into the Changing Pattern of British Crime, by Judge Gerald Sparrow, London (1968).
- 5. The Honest Politician's Guide to Crime Control, by Norval Morris and Gordon Hawkins (1970) particularly chapter 8, "Organized Crime and God".
- 6. A Percentage of the Take, by Walter Goodman (1971).
- 7. Criminal Organization: Its Elementary Forms, by Donald R. Cressey (1972).

SCHEDULE "C"—*continued.***List of Inquiries and Writings concerning Organized Crime (P. 334)—*continued.*****(B) Books on subjects of organized crime—*continued.***

8. *A Family Business: Kinship and Social Control in Organized Crime* by Francis A. J. Ianni with Elizabeth Reuss-Ianni (1972).

9. *The Mafia is not an Equal Opportunity Employer*, by Nicholas Gage (1972).

NOTE: Some of these books required a careful approach in particularly the parts not authenticated, e.g., 3, 6 and 9. The material provided in the inquiries (A) generally provided a safer basis for opinion but for example subject to consideration of the important criticisms in 5 above.

(C) Articles on subject of organized crime.

1. *Organized Crime—Challenge of the American Legal System*, by Earl Johnson, Jr. Parts I, II and III in *The Journal of Criminal Law, Criminology and Police Science*, vol. 53 and vol. 54 (March, 1963). This is an important and comprehensive survey particularly Part I.

2. "What is the Business of Organized Crime?" by Thomas C. Schelling, *Journal of Public Law*, vol. 20, 1971.

3. "Organized Crime—Violence and Corruption" by William S. Lynch and James W. Phillips, *Journal of Public Law*, vol. 20, 1971.

4. "Organized Crime in a Democratic Society:" a paper presented to the Symposium of Law and Justice in the Australian Capital Territory on 24th and 25th August, 1973, by Inspector R. E. Dixon, Central Crime Intelligence Bureau, Commonwealth Police Force, Canberra.

5. "Sociodynamics of Organized Crime" by Gus Tyler, *Journal of Public Law*, vol. 20, 1971.

6. "Symposium: Organized Crime—Introduction" by Randolph W. Thrower, *Journal of Public Law*, vol. 20, 1971.

7. *The Chicago Crime Commission "Spotlight on Organized Crime—The Chicago Syndicate"* (1967).

8. *Third United Nations Congress on the Prevention of Crime and the Treatment of Offenders: "Social Change and Criminality—Working Paper prepared by the Secretariat"*. United Nations Publication (1965).

9. *Canadian Journal of Criminology and Corrections*, vol. 13, January, 1971: "Characteristics of Organized Criminal Groups" by Harold W. Kelton, Jr, and Charles M. Unkovic.

10. "Bet Taking, Cosa Nostra, and Negotiated Social Order" by Donald Cressey, *Journal of Public Law*, vol. 19, 1970, Emory University Law School, Atlanta Georgia.

11. *Methodological Problems in the Study of Organized Crime as a Social Problem—Donald Cressey* (*The Annals of American Academy of Political and Social Science*, vol. 374 (1967)).

12. *Why Organized Crime Thrives—Henry S. Ruth* (*The Annals of American Academy of Political and Social Science*, vol. 374 (1967)).

(D) Bibliographies:

(1) *Organized Crime—A bibliography: The Police Chief*, September, 1971 (where most of inquiries, a large selection of books and periodicals to 1971 are set out).

(2) Attached to paper of Inspector Dixon referred to in C (4) above.

SCHEDULE "D"

List of Legal Representatives of Persons or Bodies appearing before Inquiry

	Counsel	Solicitors (if known)
Assisting Royal Commissioner	G. D. Needham, Q.C. R. V. Gyles. D. F. Officer.	J. E. Hennessy, State Crown Solicitor's Office.
Government of N.S.W.	W. P. Deane, Q.C. M. W. Campbell.	T. E. Feld, State Crown Solicitor's Office.
Police Department of N.S.W.	D. B. Milne, Q.C. J. Wood.	A. Knox, State Crown Solicitor's Office.
Commonwealth Police Force	T. J. Martin, Q.C. P. G. Evatt, Q.C.	P. Hastings, Commonwealth Crown Solicitor's Office.
Police Association of N.S.W. and individual police officers: Detective Inspector J. McNeill. Inspector B. Taylor. Detective Sergeant C. J. Lucas. Detective Sergeant 3rd Class D. Knight. Detective Sergeant 3rd Class F. A. Day. Detective Sergeant B. J. Ballard. Detective Sergeant N. Chad. Detective Senior Constable R. Bradley. Detective Senior Constable N. R. Maroney. Detective Senior Constable A. Wells.	E. A. Lusher, Q. C. B. J. Herron.	F. Liddy, W. C. Taylor & Scott.
Federated Liquor and Allied Industries Employees' Union	W. Fisher, Q.C. H. W. H. Bauer.	D. P. Landa, McClelland, Wallace & Landa.
Actors and Announcers Equity Association of Australia	A. Roden.	L. D. Serisier.
Bally Manufacturing Corporation, Bally Australia Pty Ltd	A. B. Shand, Q.C. J. E. H. Brownie.	B. J. McMahon, Bartier, Perry & Purcell.
Dean, W. J. Lawler, W. J. South Sydney Juniors	D. G. McGregor, Q.C. P. J. Moss. B. J. Kelly.	J. Heaney, Heaney, Richardson & Heaney.
Brady, J. W.	R. B. Murphy.	S. G. Masscelos.
Smith, V. R. Madden, J. D.	D. A. Hunt.	Stephen, Jaques & Stephen.

SCHEDULE "D"—*continued.***List of Legal Representatives of Persons or Bodies appearing before
Inquiry—*continued.***

	Counsel	Solicitor (if known)
McPherson, L. A.	T. E. Hughes, Q.C. A. Leary.	J. R. McCrudden.
Abrahams, L. A.	Sir Jack Cassidy, Q.C. R. Hunter.	N. R. Carson, Dawson Waldron.
Freeman, G. D.	A. J. Bellanto, Q.C.	Mark Murray & Co.
Testa, J. D.	T. Falkingham, Q.C. S. Fox.	White, Murray & Carew.
Jessop, R. J.	A. Roden.	
Johnson, C. W.	A. Roden.	R. J. Mulock.
Last, M. J.	J. S. Coombs.	Stephen, Jaques & Stephens.
Phillip Gardiner Pty Ltd	J. A. Crumpton.	Matthew, McFadden, Somerfield & Co.
Gardiner, P. R.	D. F. Rofe.	Matthew, McFadden, Somerfield & Co.
Gray, R.	C. E. Gee.	
Martin, R. A.	R. W. Gee.	J. H. Peoples & Co. Ltd.
Hodgson, R. E.	D. G. Stewart.	W. H. Baker, Love & Geddes.
Smith, L. T.	T. E. Hughes, Q.C. D. A. Hunt. J. W. Smyth, Q.C.	Stephen, Jaques & Stephens.
Saffron, A.	M. J. Whalan.	Morgan, Ryan & Brock.
Gibson, C. H.	J. Birney.	Teakle, Ormsby & Schollbach.
Corporate Affairs	T. E. Hughes, Q.C. J. M. Spender.	