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Chair

Mr. Garry Breitkreuz

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• (1100)

[English]

The Chair (Mr. Garry Breitkreuz (Yorkton—Melville, CPC)): I'd like to bring this meeting to order. This is the Standing Committee on Public Safety and National Security. This is meeting number 47, and today we are continuing our study of the witness protection program.

We would like to welcome individuals via teleconference. We welcome the senior associate director, Office of Enforcement Operations, Criminal Division, the United States Department of Justice, Mr. Gerald Shur. Welcome, sir.

We would also like to welcome via videoconference, from the University of Dundee, Mr. Nick Fyfe, the director of the Scottish Institute for Policing and Research and professor of human geography.

Can you hear us, sir?

Professor Nick Fyfe (Director, Scottish Institute for Policing and Research and Professor of Human Geography, University of Dundee): Yes, I can.

The Chair: It is indeed a pleasure to have you with us as well.

Mr. Shur, you have the opportunity to make an opening statement, but I understand you may not have one.

Mr. Gerald Shur (Senior Associate Director (retired), Office of Enforcement Operations, Criminal Division, United States Department of Justice, As an Individual): I simply want to thank the committee for inviting me to come up and share with you my experiences in the United States and to try to be as helpful as possible to you. I appreciate the invitation.

The Chair: Thank you very much for consenting to come forward with what you have to tell us. I'm sure it'll be very interesting and helpful in our study.

Now, if we could go to the University of Dundee, Mr. Fyfe, are you ready to make an opening statement?

Prof. Nick Fyfe: I am indeed, yes.

The Chair: Welcome. Go ahead any time you are ready.

Prof. Nick Fyfe: Thank you very much for the invitation to speak to your committee.

In my statement I really want to make three general points: first, about my own background and involvement in witness protection issues; second, I was going to say a little bit about the U.K. experience and how it compares to witness protection in other parts

of Europe; and third, to raise a couple of general issues about the effectiveness of witness protection and issues of legitimacy.

To take the first point in terms of my own background, my first involvement with witness protection issues was through a piece of research done for the Scottish government. This was an in-depth evaluation of the Strathclyde Police Witness Protection Programme, which operates in Scotland and involved entities with police officers, with protected witnesses, and with members of the judiciary.

Then a second project I undertook for the U.K. Home Office was really looking at ways of facilitating witness cooperation in organized crime cases, and part of that investigation meant comparing how witness protection in the U.K. operated with respect to witness protection in other parts of Europe, the U.S., Canada, and Australia. That's my background.

I would say a little bit about the U.K. experience. Witness protection in the U.K. really began in the 1970s, pioneered by the Metropolitan Police Service in London and by the Royal Ulster Constabulary. Most of the people they were dealing with were involved in organized crime and terrorist cases.

Throughout the 1980s and 1990s, an increasing number of police forces in the U.K. established their own witness protection programs, largely in response to organized crime, particularly drug-related cases that involved the murder or attempted murder of witnesses. Basically, a very ad hoc arrangement emerged across the U.K., with individual police forces running their own witness protection programs.

I guess the next most significant development from the U.K. perspective was in 2005 when the government passed the Serious Organised Crime and Police Act, which included a section on the protection of witnesses and other persons. That defined the eligibility for protection, the powers of the police to make arrangements with other police forces for protecting witnesses, and the duties of other agencies to assist the police in relocating witnesses.

The arrangements in the U.K. are very much modelled on the United States Federal Witness Security Program, which I'm sure you're familiar with, or Mr. Shur will speak about in more detail.

I want to make four points about the comparison between witness protection in the U.K. and what happens elsewhere in the world.

The first point relates to the eligibility criteria, who is allowed into witness protection programs. What we found when we looked at witness protection from an international perspective was that all jurisdictions share a common emphasis on the risk to the witness, the nature of the proceedings in which the witness is giving evidence, the importance of their testimony, and their ability to adjust to being on a witness protection program.

There are significant differences between jurisdictions in relation to the role that the police, the judiciary, and the government play in decisions about inclusion in protection programs. The U.K. is similar to Canada and Australia in allowing such decisions to be taken by chief police officers, but if you look at a country like Belgium, decisions about who is included are taken by a witness protection board comprising public prosecutors, the police, and members of the justice and interior ministries. If you look at Italy, there's a central commission chaired by the undersecretary of state, comprising judges and experts on organized crime.

So there are quite significant differences in who takes those decisions about who is included.

• (1105)

There are also significant differences between countries in terms of the specification in law of the types of protection and support available to witnesses. If you look at the U.K. case, in none of the legislation does it specify what protection is available. By contrast—obviously it is your experience in Canada and elsewhere in places like Australia—there's much more detail about what kind of support and protection is available.

One final point is that there are very significant differences between jurisdictions in terms of the kind of institutional architecture of witness protection programs. In the U.K., witness protection is very much a local matter for individual chief police officers, whereas other countries operate national or federal protection programs. If you look at France and Italy, you find that witness protection is organized on a regional level. But there are some attempts within Europe, through the European police organization Europol, to kind of coordinate good practice between the different European states.

My final couple of points relate to two wider issues relating to witness protection. One concerns how we evaluate its effectiveness and the other concerns issues of perceived legitimacy. In terms of measures of effectiveness, certainly the work that I have carried out demonstrates that witness protection in the U.K. has been highly effective in terms of securing the physical safety of witnesses and increasing the efficiency of investigations by taking the responsibility for protecting witnesses away from an investigating team and giving those witnesses to a specialist unit.

One of the areas where I think in the U.K. witness protection has perhaps been less effective is in terms of meeting some of the welfare needs of witnesses. One of the big challenges for witness protection programs is how you deal with the social well-being of witnesses in the long term in terms of giving them support and helping them to cope with some of the psychological challenges of living in new communities.

I think one of the other issues around effectiveness that some people have commented on is whether witness protection might lead

to the displacement of the focus of those who would seek to harm witnesses onto other groups, particularly members of juries. Is there a danger that by investing all our resources in protecting witnesses that we displace the problem of witness intimidation onto other groups? I think that in essence is a matter for debate and discussion.

The final point I would make—and again there has been some speculation about this in the research—is on the perceived legitimacy of witness protection programs. Some people have raised questions about the perceived morality and fairness to the public of programs that relocate people who generally have a very long history of criminal activity and who are placed in communities where often members of those communities are unaware of these people's past and so on. I think there are some concerns about how the public would perceive witness protection arrangements, and particularly about their own safety if they're living in communities where relocated witnesses have been placed.

That concludes my opening statement.

The Chair: Thank you very much.

We have as a normal practice at this committee the opportunity to ask questions. Hopefully both of you will be able to do that. I'm not sure if the official opposition is ready to participate.

• (1110)

Hon. Sue Barnes (London West, Lib.): Mr. Chair, I unfortunately had to come from another meeting. I will pass this round and then do the second round.

The Chair: Okay.

Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): First, I would like to make sure the interpretation is working right.

[*English*]

Prof. Nick Fyfe: Yes, it is, thank you.

[*Translation*]

Mr. Serge Ménard: What I like about instantaneous interpretation is that, when I make a joke, people laugh twice.

Some hon. members: Oh, oh!

Mr. Serge Ménard: I believe it is working. Thank you.

I am a member of the Bloc québécois, which has certain affinities with the Scottish National Party. We are talking about a subject in which, beyond political considerations, we are pursuing the same objective: to secure the cooperation of important witnesses.

There are two types of witnesses that we want to protect. There are those who are innocent and who, if they testified, would run the risk of being intimidated or even killed by members of organized crime. There are also witnesses who have taken part in criminal activities and who one day decide to cooperate with police in exchange for lesser sentences. The Italians have a special name for them. They call them “turncoats”. That moreover is the expression that we tried to use in Quebec, but the press didn't always understand it.

I very much appreciated the document you sent us and the comparisons it contains. They are very enlightening about the various ways in which the witness protection system is used. I don't think Austria's would inspire us a great deal.

Apart from the experiences you've shared with us and that will no doubt be very useful, I would like to know whether your experience is the same as ours in one respect. A number of witnesses to whom we have offered this protection and a new identity, and who have been able to go and live in other parts of Canada have returned to their homes. Generally they return within approximately two years.

Have you noticed the same trend among "turncoats"?

[*English*]

Prof. Nick Fyfe: Yes, exactly the same issue has been part of the U.K. experience, that witnesses find it very difficult to deal with this process of rebuilding their lives in new communities. Generally, they come from places that are very close knit in terms of the existing communities, in terms of their friends, their relatives, and so on, having a history of all living in one particular community. They therefore aren't, if you like, as mobile as other populations, and they find it incredibly difficult to sustain a new life in a new community.

So certainly the U.K. experience is very similar to what you're describing—people returning, probably, as you say, within 18 months or two years to their home community and basically accepting that they will face increased risks by doing that. But they would rather do that than live with the kind of mental anguish and psychological challenges of trying to lead new lives in completely new communities.

The Chair: Mr. Shur, do you have a response to that as well?

Mr. Gerald Shur: Yes, our experience I think would be somewhat different. Our program began back in the late 1960s. It started about 1966-67, and it was formally adopted in 1970.

In answer to that specific question, we have relocated approximately 8,000 witnesses since that time, probably 14,000 or 15,000 family members, so you have about 22,000 to 23,000 people who have been relocated. And 95% of the witnesses have been involved with crime in some way—some in a major way, some in a peripheral way.

Very few of our relocated witnesses have returned home. I would say less than 100, and I'm inclined to say less than 50 have returned home. We did have an instance where one witness returned to his home after being advised not to. He went to his home, he turned a doorknob, and it blew up. But that is a rare event.

•(1115)

The Chair: Thank you.

Go ahead, Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard: That will no doubt discourage others from imitating him.

One of our major concerns with regard to these turncoats, that is to say those who have previously belonged to criminal organizations and who return to them, is that these are people who show a

particular inclination toward crime. Do you take any measures to ensure that these people do not resume their criminal activities?

Your programs, like ours, make it so that, if they commit an indictable offence, they will be warned and prosecuted. It is one thing to warn them that they will not escape convictions for other crimes, but it is another thing to monitor them and meet them to ensure they are not in a process that leads them to commit other offences.

[*English*]

The Chair: Mr. Fyfe, would you like to reply?

[*Translation*]

Mr. Serge Ménard: I'd like to know whether you are taking measures to monitor these people so that they are not tempted to commit other indictable offences.

[*English*]

The Chair: Mr. Fyfe, would you like to respond first?

Prof. Nick Fyfe: Speaking in relation to the U.K. experience, as far as I'm aware there are no specific measures to achieve that. People are not set up with new businesses or, as far as I'm aware, even given support in terms of seeking new employment and making job applications and so on. I think there is some support in one area that has caused some difficulties in the past: when people have been moved to new communities, getting references from old employers in order to get employment has been very difficult, and I think several police forces in the U.K. have begun to find ways of helping witnesses from that point of view. They are getting references from people, but in ways that wouldn't compromise the security of witnesses.

It is very difficult, and I think certainly the U.K. evidence is that a high proportion of relocated witnesses who have had a history of being involved in criminal activity return to criminal activity within a relatively short period of time of being relocated. In a sense, they can't give up the world that they are most familiar with, and a lot of them do return to crime relatively quickly.

The Chair: That's an interesting comment.

Mr. Shur, do you have any reply to that?

Mr. Gerald Shur: Yes.

First, of the 8,000 witnesses who have been relocated—and these are federal witnesses, as opposed to state and city witnesses—there was a recidivism rate of less than 18%. I can't be more precise, because each person I called to check on the recidivism rate told me a different number. The highest was 18%. The lowest number—from the happiest person I talked to—was 11%. So there's recidivism of somewhere between 11% and 18% among the 8,000 people.

That may come about in part because of the procedure we follow in entering the witnesses into the program. First, we have a separate office in the United States Department of Justice called the Office of Enforcement Operations, which has a witness security unit that determines who shall or shall not enter into the federal witness protection program.

The judgment is based upon a significant amount of information they receive from a variety of people, one of whom is a psychologist, who examines each potential witness recommended by the federal investigative agency, and every member of the family over the age of 18, to determine whether or not the witness is likely to commit a violent act, how well they would fit within the program, whether they'd be able to follow the rules given to them, what sort of employment they would need, and what their skills are and such. So a thorough psychological examination is given.

There is some difficulty as to whether or not you can truly predict violence in an individual through psychological testing. On occasion, I felt that my own gut reaction was as good as the test.

Also, we receive the previous arrest record of the individual. We also receive a report from the United States attorney. The United States has 93 United States attorneys, who are the chief federal law enforcement officers in their districts. So we get a report from them about the case and the witness and his or her background.

Then we have the United States Marshals Service do the actual relocating of the witness. Because of their role, they have the opportunity to interview the witness and his family beforehand, in what we call a preliminary interview, and they give us their opinion as to whether or not this witness will function properly after relocation. So we also have the benefit of that.

We have the benefit of resident experience, the people in the Office of Enforcement Operations who have worked so often in this that they have reactions to it and such.

Of those factors, I think the screening factor is a very important factor in determining what happens afterwards.

Finally, we notify the Federal Bureau of Investigation of every witness we relocate, so there is a record. And if any local law enforcement agency were to make an inquiry about a person under a new name, they would immediately know from the FBI that the person is someone else. I think that is a deterrent for the witness.

• (1120)

The Chair: Thank you very much.

As the committee can see, our normal routine has been disrupted here and we're not following the normal time constraints.

Mr. Comartin, you are next. Just give a brief introduction of who you are and then go ahead with your question.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you both for being here.

I'm Joe Comartin. I'm a member of Parliament for Windsor—Tecumseh, a member of the New Democratic Party, and I'm the justice critic as well as the public safety critic for my party.

I want to go back, Mr. Shur, to a point you made about the screening. Can you give us any numbers or percentages of how many people are considered for the program but then denied access to it?

Mr. Gerald Shur: I can tell you that about 150 to 165 witnesses enter the program each year. Of those, the largest percentage by far are entering the program by going into prison. We have protective custody units, which are prisons within prisons, buildings within

prisons, where we have only witnesses—approximately 70 co-operating prisoner witnesses in each unit—so they're not circulating out in our society.

As far as the rejection number goes, that's a difficult one to give because there are two ways of rejecting. One is informal, which is the most popular way, where the investigator or the U.S. attorney calls on the phone and says, "I have a case I'd like to present to you formally, but before I do that, would you accept this type of case?" and you say "No". That's not counted anywhere, so we don't have that. Then we have the formal applications. I would say the formal applications probably run at about 10% rejection.

Again, the total number each year is 150 to 165, with a substantial percentage of them going to prison and their families being relocated. So when I say 150 or 160 people are going to prison, that doesn't mean there's no other job. The marshalls relocate them.

• (1125)

Mr. Joe Comartin: I'm sorry, is it Professor Fyfe?

Prof. Nick Fyfe: That's right, yes.

Mr. Joe Comartin: Professor, do you have any sense of what the rejection rate is in the United Kingdom?

Prof. Nick Fyfe: No, unfortunately. I certainly don't have access to that kind of data. Since part of the difficulty in the U.K. is that witness protection remains a local responsibility, all that kind of information is held by individual police forces that run witness protection programs. There's no one central source of information about witnesses who have been taken into these programs.

So no, I certainly don't have access to that kind of data.

Mr. Joe Comartin: Mr. Shur, you've been quoted in some news articles here.

Mr. Gerald Shur: I regret that.

Mr. Joe Comartin: Well, I'm going to ask you about it anyway.

As I think you both know, the inquiry we're conducting right now was prompted by two individuals who were in the program, one most recently having subsequently committed murder while in our witness protection program. In one case, the family very much wants to know about the individual who perpetrated the murder on their family member.

Mr. Shur, you indicated again in the news articles that in the U.S., in a situation like that there would be more information shared with the family, or perhaps with the public generally.

Can you explain how that process works in the United States?

Mr. Gerald Shur: First, I have to make a correction from the introduction, because I conferred with someone yesterday who is doing the work I used to do. I'm retired. I don't want him getting angry thinking I'm reclaiming his job.

I talked to him about that issue, as a matter of fact, to see that the procedures were still the same, and they are. We have a great deal of flexibility in our program resident in the Office of Enforcement Operations to make determinations such as whether we should disclose or not disclose, when it is appropriate, what the rules would be, and so on.

When a person commits a crime in the United States who's been in the program—the person has a new name and commits a crime—it generally becomes public because they're going to trial. Our trials are very public. He is prosecuted under his new name. Frequently his old name might be mentioned in the course of the indictment. It might be Joe New Name and Joe Old Name, so that the prosecutor feels he has it absolutely right.

Mr. Joe Comartin: Can I interrupt you here?

Mr. Gerald Shur: Sure.

Mr. Joe Comartin: If the old name is disclosed in the indictment, that is not a breach of the legislation?

Mr. Gerald Shur: That would not be a breach of the legislation.

Also, we might notify local law enforcement of the person's old name when we relocate them, so that they know who they have in their area.

In the specific case, I'm not entirely familiar with the case, but with the assumption that the person commits a crime and the relatives of the victim wish to know who that person was, under our statute we have a victims compensation requirement—that is, we must offer to the family of any victim who is killed up to \$25,000, I think, to cover medical expenses or funeral expenses, and so on. They certainly would have a right to know who that person really was who had killed their relative.

The one complicated area is that if disclosing that information would compromise an ongoing investigation, we might delay it for a bit. But that would happen so rarely. I can't recall it happening, as a matter of fact; it's just a potential.

By disclosing the name to the family, you give them some peace. The cost to the United States government to do that simply means relocating again the family of the witness who had committed the murder, so that the family of the victim has the peace of closure and the family of the witness has the safety of being relocated again, and the loss comes in a money sense to the United States government.

Mr. Joe Comartin: Professor Fyfe, do you understand the legislation in the U.K. to permit that kind of disclosure in those circumstances?

• (1130)

Prof. Nick Fyfe: I'm fairly confident that there is no specific legislation that deals with that issue.

Mr. Joe Comartin: Mr. Shur, you said that in the United States the recidivism rate, at the high end, was about 18%. Are there official statistics kept on this? Is there an analysis done on an ongoing basis?

Mr. Gerald Shur: Yes, there have been analyses done, some by sampling and some by agencies other than our own that have examined the records. I think the 18% figure is an outside figure and a safe figure.

Mr. Joe Comartin: Right.

Do you know, within that 18%, whether there have been any murders committed?

Mr. Gerald Shur: Yes, there have been.

Mr. Joe Comartin: Do you have any sense of what proportion or how many of, say, the 150 or 160 who go in each year?

Mr. Gerald Shur: Well, it's not of them; it's 18% of the 8,000 witnesses.

Mr. Joe Comartin: Okay.

Mr. Gerald Shur: That would be of the total number. I couldn't tell you how many of the 160 or 165, but of the total number, you have 18%.

As far as murders go, there have been some murders. I would think there are more narcotics violations and other types. We're in transition now, as I think much of the world is, in types of witnesses that are coming into the program. They started out as traditional organized crime and moved on to narcotics gangs, hate gangs, and so on.

Mr. Chairman, if my answers run too long, just tell me, because I tend to talk too much.

The Chair: The information is very important, sir, so we don't have the same time constraints as normal.

Could you please pose your final question, Mr. Comartin?

Mr. Joe Comartin: Thank you, Mr. Chair.

My final question, at least for this round, I'm asking to both of you.

If there is a serious violent crime committed, is it automatic that there will be something done in terms of terminating that person's involvement in the program, or are there any other consequences to the individual in the program if they commit a serious violent crime?

Prof. Nick Fyfe: My understanding, in the U.K., is that if somebody committed a serious crime, they would immediately be terminated from the program. The part of the memorandum of understanding that is set up between witnesses and the police force that is protecting them would make it quite clear that any form of criminal activity would result in a person ceasing to have protection from that police force. That would be the case in the U.K.

Mr. Joe Comartin: Who makes that decision to terminate?

Prof. Nick Fyfe: It would be made by the chief officer of the police force that was offering the protection.

Mr. Joe Comartin: What's the situation in the United States?

Mr. Gerald Shur: They would be immediately terminated from their program, certainly upon their conviction and likely before.

In terms of making the decision, I can show you the speed with which that can be done. I received a phone call from a warden one day about a prisoner in a witness protection unit who had been making obscene phone calls to young girls. I asked the warden, "Are you certain it is him?" Of course, they listen on tape to the prisoners calling out. He said, "Yes, I am absolutely certain it is him." Then I said, "Well, then, he is out of the witness protection program." He was removed from the unit, put into solitary someplace, and then—gone, into another prison.

Mr. Joe Comartin: In terms of who made the decision...?

Mr. Gerald Shur: I did.

Mr. Joe Comartin: Is that always...?

Mr. Gerald Shur: That would always be the case.

Mr. Joe Comartin: Thank you, Mr. Shur.

The Chair: Thank you.

We'll now go over to Ms. Barnes. Please give us a brief introduction of yourself.

Hon. Sue Barnes: Thank you very much.

My name is Sue Barnes. I am MP for London, Ontario—London West, specifically—and I am the public safety critic for the official opposition, which is currently the Liberal Party of Canada.

Thank you very much. Again, I apologize for being late. Thank you for providing these charts and the material. We certainly appreciate it.

I'm going to follow up on some of the appeal questions. Do either of your jurisdictions or, to your knowledge, do other jurisdictions have an appeal from a decision that puts somebody out of the program? I'm not necessarily talking about another criminal act while in the program, but some other condition that may have been part of the agreement with the person placed into the program. Are either of you aware of having appeals from the decision? If so, what is the length of the time period and the process? Again, is it the same party who receives the appeal?

• (1135)

The Chair: Mr. Shur, would you like to go first?

Mr. Gerald Shur: We do have an appeal process.

First of all, I want to thank you for providing my wife and me and my children with one of the most delightful experiences. Was it called Fanshawe provincial park? It was an experience that happened many years ago, and it's still here, and we loved it.

Hon. Sue Barnes: Thank you. You're welcome again.

Mr. Gerald Shur: Thank you.

We do have an appeal process. The program is operated by the United States Marshals Service, as opposed to my group in the criminal division, who are all lawyers and prosecutors and intelligence analysts.

When the appeal is made, it's made from an action committed by either an employee of the U.S. Marshals Service or a prosecutor who works for a United States attorney. We are, in effect, the ombudsman as well as the people who decide who shall come into the program; we decide the equities in disputes between witnesses and whomever they're dealing with. Their appeal process from that is to a federal district court.

The Chair: Mr. Fyfe, do you have a response to that?

Prof. Nick Fyfe: Yes. Our experience in the U.K. is very different, and I think it partly reflects the way in which witness protection has evolved in a very ad hoc way, without any kind of legislative framework until relatively recently and with individual police forces really coming to their own arrangements. Certainly in the work I did in Scotland with the Strathclyde Police Witness Protection Programme, there was no formal appeals process, and witnesses felt acutely vulnerable. If things started going wrong, the only people they had immediate contact with were the officers looking after them. They had no direct line of communication to a senior

investigating officer or anybody else, and they felt acutely vulnerable as a result. They had to make that relationship with their protecting officers work; otherwise, they would feel incredibly isolated.

Certainly when I was studying this particular protection program, there was no formal appeals process if people were threatened or were actually told to leave the program.

Hon. Sue Barnes: In the Canadian 2005-06 annual report, we have the indication that the RCMP accepted witnesses into the program from other countries. We have no further information—for security reasons, I'm sure—but I would like to know whether you feel that international cooperation is highly developed or, to the other extreme, not significantly developed, or if you're aware of problems with international relocations.

The Chair: Mr. Shur, would you like to reply first?

Mr. Gerald Shur: Yes.

The Chair: Go ahead.

Mr. Gerald Shur: I was hoping it would be Mr. Fyfe so I could think, but I have an answer for you.

The Chair: We can ask Mr. Fyfe if he's prepared.

Mr. Gerald Shur: I was trying to figure out how to give you an answer and not give you an answer at the same time.

One-third of all witnesses who have entered our program over the last five years have been foreign nationals. I don't want to leave the impression that they are foreign nationals who we have brought in from other countries, and I can't comment much further than that.

The Chair: Thank you.

Professor Fyfe, do you have a comment on that?

Prof. Nick Fyfe: Certainly from what I'm aware of, there is far more movement of witnesses between countries, particularly within Europe, than there has been in the past. There is a specific network of witness protection liaison officers that meet regularly across Europe to discuss good practice.

Europol has acted as a forum for promoting the more efficient and effective movement of witnesses between European states. I definitely get the sense that it's a more common practice. The procedures and practices are being developed to make that process as efficient and effective as possible.

• (1140)

The Chair: Ms. Barnes.

Hon. Sue Barnes: I don't think many countries have had the experience yet, but I am wondering whether we should not have some movement to protect youth. I'm especially thinking of the case of a youth in a community who sees an event, especially involving gangs and violence.

Here we have always talked about our witness protection as being an adult thing, but at the same time, we're getting silence in some communities on coming forward, and the thought is for youth protection. It's not a highly developed area.

I'd like to hear your thoughts and whether you have knowledge of any jurisdiction that has delved into this area. That's for either witness.

The Chair: Professor Fyfe, do you want to go first?

Prof. Nick Fyfe: Gosh, I could do with time to think about that one as well. It seems an important issue, and I'm not aware of any work in the U.K. that has addressed that point. Clearly, it does raise very important issues.

There has always been an issue, when you're relocating families, of moving young people between schools and of trying to ensure that that process is done with as little disruption as possible. All I can say is I think that would be an important area to explore further.

The Chair: Mr. Shur, do you have any comments?

Mr. Gerald Shur: I had occasion to do that. I had a 17-year-old who had been living on her own and occasionally living with her father. She had relevant information about crime that was necessary for us to have in court. She was afraid of her father, and her father was not objecting to her leaving home. In fact, she had left home. So I arranged for her to appear before the appropriate court jurisdiction to have her majority given to her. She was then an adult after that proceeding. We then were able to relocate her and find employment for her. That was in that case.

In one other case, we had the witness, the father, in prison. The children were subjected to violence. There was no mother. We arranged for the children to go into foster care for the time the father was in prison.

Hon. Sue Barnes: Is that my time?

The Chair: You can have just a brief question.

Hon. Sue Barnes: I have a very brief one, and it's more curiosity. The general public has marital breakdown. What happens to people in a marital breakdown situation where the whole family has gone into witness protection? Does one just walk, or what happens?

Mr. Gerald Shur: You get some strange events. We had one witness who asked us to relocate him and his mistress, but not his wife, who was in danger.

Hon. Sue Barnes: I shouldn't have asked this question.

Mr. Gerald Shur: Unfortunately, when you go back through 8,000 witnesses, everything has happened.

For one witness, we relocated his wife and his mistress, and his mistress went to live with his mother in the same community where we relocated the mother. We will relocate anyone who may be in danger as a result of the witness's testimony, so it might well be grandparents, or whatever. I think the largest number of people we relocated was somewhere between 20 and 25 people in one family.

As far as the marriage goes, where we have the great dispute is over child visitation, and that is a major problem. How do you arrange for visitation when it is properly court ordered, the remaining spouse is a law-abiding citizen, and the spouse who left has remarried and has custody of the children by a local court order?

What we do is arrange for visitation. The children would be accompanied by the United States marshals, and we call them neutral site visitations. The children are taken to Disneyland, and the mother who wants to visit with them goes to Disneyland. She does not know where the ex-husband lives, and she gets to visit with her children.

We follow the court-ordered process. Whatever the Domestic Relations Court orders, we do.

•(1145)

The Chair: Professor Fyfe, do you have any comments before we go to the next questioner?

Prof. Nick Fyfe: I would simply underline the last point Mr. Shur made. One of the greatest challenges in our experience in the U.K. is maintaining access to children when the parents have separated. As Mr. Shur explained, there are lots of logistical issues around that, in order to make sure the process doesn't compromise the security of the people involved.

The Chair: Mr. Shur, do you have a comment?

Mr. Gerald Shur: Yes, please. May I add an important one, which I forgot, and that concerns child support?

If the parent removed has been ordered to pay child support, the United States Marshals Service provides subsistence to the relocated witness. If child support is also ordered back home, or to wherever the wife and children live, then the marshals service will provide the child support.

In other words, this will not be deducted from the subsistence. The child support will be provided, in addition to that to the family, so the family does not suffer as a result of the relocation.

The Chair: Thank you.

We will now move over to the other side of the table.

For the government, Mr. MacKenzie, please give just a brief introduction before you begin your question.

Mr. Dave MacKenzie (Oxford, CPC): Thank you, Mr. Chair.

Thank you, Professor Fyfe and Mr. Shur, for being here.

My name is Dave MacKenzie. I'm a member of Parliament from the riding of Oxford in Ontario, just down the road from Ms. Barnes. Her city is one of our suburbs.

Voices: Oh, oh!

Mr. Dave MacKenzie: I'm the Parliamentary Secretary to the Minister of Public Safety.

Professor Fyfe, my understanding from your initial comments is that Great Britain does not have a national policy.

Prof. Nick Fyfe: That's right. Witness protection is still very much a local issue for individual police forces. They set up their own arrangements, rather than there being a national witness protection program.

Mr. Dave MacKenzie: Do those local agencies or communities with relocation plans pay for it themselves? Is it funded by those local authorities?

Prof. Nick Fyfe: Yes, it comes from the local police budget, so those local police forces have to find the resources to maintain those programs.

Again, one of the very real difficulties in the U.K. is the fact that this leads to a lot of duplication of effort. You see witnesses being moved from one part of the country to another, and rather than being handed over from one force to another, it's the force that is moving the witness that will establish them in the new community.

There's been a lot of discussion about whether the process could be made more efficient, through either a national program or regional programs within the U.K., rather than just relying on these local ad hoc arrangements.

Mr. Dave MacKenzie: So when they're moved to the new community, is the new community made aware that they have somebody relocated and their past history?

Prof. Nick Fyfe: The police in the area where the person is being moved to would be informed that there was a protected witness and their family being moved into their community, yes.

Mr. Dave MacKenzie: Mr. Shur, if I understood you correctly, in the United States there's the national program in which you were involved, but then there are some state programs and there are some more local programs in addition to that—

Mr. Gerald Shur: That's true.

Mr. Dave MacKenzie: —that might function similarly but totally differently at the same time.

Mr. Gerald Shur: Generally on a more limited basis, but similar.

Mr. Dave MacKenzie: I'm assuming from your previous comments that the national program of which you spoke and that you were involved with is funded by the federal government.

Mr. Gerald Shur: That's correct.

Mr. Dave MacKenzie: So when you talked about some of these expenses.... If I understood you correctly also, a good number of the people who are in the witness protection programs are also in prison.

Mr. Gerald Shur: Yes, that's correct.

Mr. Dave MacKenzie: I guess we would call that protective custody here, but we wouldn't necessarily consider them in a witness protection program. But you do from your perspective.

Mr. Gerald Shur: Yes.

Mr. Dave MacKenzie: As the federal government agency, when you relocate families, what kind of expense do you assume in that relocation?

Mr. Gerald Shur: It costs us about \$40,000 to relocate an individual and \$80,000 to \$100,000, maybe \$110,000, for a family. The program costs yearly between—I'm going to give you a wide number, because it has varied year to year—\$25 million to \$50 million for the federal program. We look at the costs; we look at the case in light of cost as a factor. In respect of states, by the way, and local law enforcement, we also offer to assist local law enforcement and the states in relocating their witnesses, if they would like to make use of the federal system. We might do it on a reimbursable basis of some parts of the costs.

• (1150)

Mr. Dave MacKenzie: When the witness is relocated, or a family is relocated, do you continue to support the family on an economic basis for some length of time, or is there sort of a cutoff when you're expected to get back on your feet?

Mr. Gerald Shur: There is a cutoff expected. What happened many years ago...back in the late 1960s or so, I met with a representative of the United States Chamber of Commerce, who was very interested in our program, and he agreed to introduce me to Fortune 500 corporate executives around the country. We met in groups of four or five, and I asked them for help in employing our witnesses. I told them I would not tell them their real names, I would not tell them where they were really from, but I would tell them the real criminal record and I would tell them what skills they claimed to have, but I couldn't vouch for them. Then I pleaded for their help. We have almost 200 companies that agreed to help.

So that was one way of getting them employment. The object is to get them off subsistence as quickly as possible. We tell them we want them off in six months. That's really not practical, because they still have to testify and leave town and such. But generally, I'd say for a year to 16 months they would be on subsistence.

Mr. Dave MacKenzie: As part of their relocation, do they continue to assume the debts, for instance, that they had in the community they left, the financial obligations?

Mr. Gerald Shur: There is a provision in our statute to handle debts. We expect them to pay their debts. If we find money they have before we relocate them, we suggest they pay those debts right away. If a creditor wishes to sue them after they have been relocated, our statute provides for the appointment of an intermediary. It would be a non-federal attorney, who would represent the creditor, and the non-federal attorney, who has had a background check, will be told where this person really lives and what his new name is, and he can then search for assets, file suit, do whatever would normally be done. You have kept the witness safe from the home area, anybody knowing who he is, and you've proceeded against his assets.

Mr. Dave MacKenzie: Just as one final question, in both situations—Professor Fyfe, in Great Britain, and in the United States, Mr. Shur—there's no criminal immunity to people who are relocated under the witness protection system, is there?

Mr. Gerald Shur: After relocation there's no immunity, just because you're in the witness protection program—not at all. In fact, they can't even work as informants without permission from the Office of Enforcement Operations.

Mr. Dave MacKenzie: And is it the same in the U.K.?

Prof. Nick Fyfe: It's the same situation in the U.K. as well; there would be no immunity.

Just quickly going back to the previous point, again, in relation to the U.K. system, which as I've described is a fairly ad hoc system or witness protection program, in my interviews with police officers who are running the program in Strathclyde the thing they were probably most concerned about was making sure witnesses didn't materially benefit as a result of relocation, because they were very concerned that their evidence would then be seen to have been tainted or bought by the police and prosecution authorities.

In terms of setting people up in new communities and giving them support, it was an absolute rule that they were never given any financial payments to assist them, that there was no giving of cash payments to witnesses, because they were concerned that these could be used by the defence in any criminal trial to suggest that their evidence had been bought.

● (1155)

The Chair: Mr. Shur.

Mr. Gerald Shur: We've encountered that problem and we believe we've found a solution. It's been working for about 30 years now. That is, when a witness is about to testify, we notify the court, the judge, and the defence counsel of exactly what moneys we have paid the witness and what the moneys were paid for, and the defence counsel is put under a burden of trying to make a point of the fact that we gave \$8,000 last year for food and paid \$11,000 for medical care and so on. The courts are advised and the defence counsel is advised of all the moneys that are given.

The Chair: Thank you.

We'll now come over to the other side. Mr. Cullen, just give a brief introduction and then you can pose your questions.

Hon. Roy Cullen (Etobicoke North, Lib.): Sure. Thank you very much, Mr. Chair.

Thank you, Professor Fyfe and Mr. Shur. My name is Roy Cullen. I'm a member of Parliament from the Toronto area, and I'm vice-chair of this committee. This will sound strange to Professor Fyfe, but Oxford, London, and Windsor are bedroom communities of Toronto. So you can see our British roots.

We've been talking about the traditional witness protection programs. Typically a criminal person is relocated, with identity changed, etc. But let me tell you a bit about my part of Toronto, where we've had a lot of gun-related crime and gangs and drugs. In fact, in my area they arrested 120-odd people in a big swoop a year or so ago, so there's been less of it, but we're still very concerned.

We've had in my area drive-by shootings, shootings in daylight, and no witnesses coming forward. The police are struggling with this constantly. You might have upright, honest citizens who have witnessed these events. They're not criminals. They probably don't want to move to Florida, notwithstanding the lovely climate there, sir, but the way the justice system works in Canada, though I'm not a lawyer myself, you cannot really do anonymous testimony, because at a discovery it becomes a public matter.

So I'm wondering whether there are other models that have been looked at, or whether you've had any experience with working on witness protection programs that are dealing with, let's say, normally honest citizens who have witnessed crimes but are absolutely petrified to come forward because of possible retribution.

Are there ways to deal with that, or are we stuck with the kind of model you've described and that is the traditional witness protection program?

The Chair: Who would like to reply first? Mr. Shur.

Mr. Gerald Shur: Unfortunately, we've had that experience too, and we are going through it right now, as a matter of fact. There's a rise in shootings.

We have two other types of programs. One is called the short-term relocation program, and this is one that started in Washington, D.C., where we had drive-by shootings and shootings where people who live on one block shoot somebody on the second block. They're not farther away than that. We remove them for a short term so that the witnesses who come forward know they can be kept safe for a short term, and in our judgment they would be safe going home again.

So that was one program. They would be gone typically 90 days, 120 days, perhaps till after the trial was over, and when that defendant went to jail, the threat was gone.

Then there is a third program in which the United States attorney can determine that his or her witness simply needs up to \$4,000 to move to a hotel someplace three blocks away or 30 blocks away, and I'll supply some money to get that person out of town for a short period of time. In other words, the person doesn't need a new identity, doesn't need job help, doesn't need help with doctors, that sort of thing, and that would be the third way.

The witness program that we're talking about is meant for organizations that have the capability of chasing after witnesses and finding them, and in drive-by shootings, those typically are not the types of people who have that strength.

● (1200)

The Chair: Professor Fyfe, did you want to speak?

Prof. Nick Fyfe: Yes. I think that last point made by Mr. Shur is a very important one, and it means that a lot of emphasis needs to be put on the risk assessment that is made of witnesses. Do the criminals actually have the capacity to pursue these people, and therefore is some sort of short-term relocation going to be sufficient in order to ensure their safety?

I suppose the other thing we've been developing in the U.K.—this has been enshrined in legislation—is all sorts of special measures that are being introduced into the courtroom in order to protect the identity of witnesses. That ranges from live television links, video recorded pre-trial cross- and re-examination, giving evidence from outside the courtroom via some live television link, using screens within the courtroom, and so on. So a lot of policy emphasis over recent years has focused on trying to make the courtroom a more secure environment within which witnesses can give evidence and their identities can remain hidden from the accused and their associates.

The Chair: Do you have a follow-up question?

Hon. Roy Cullen: Yes, I'd be interested in more information about that.

We have in Canada these Crime Stoppers, anonymous tip lines, but they're rarely used, often not used as well, which sometimes baffles me. People must feel so intimidated or be so mistrusting that they wouldn't phone even an anonymous tip line. Do you have any thoughts on that? Have you ever looked at the psychology of that or how it works?

Secondly, Mr. Shur, your point about those programs...as Professor Fyfe indicated, they'd have to be very targeted and focused because people leaving the community, in small communities.... There are a couple of areas in my riding where there is a lot of criminal activity, and I think they know pretty much when someone is out of town for four months that there's something fishy. Could you comment on that, because my time is just about up?

Mr. Gerald Shur: When someone is going to be out of town for four months and come back and be in danger, then this is not the program for them. Then they need the long-term program. That would be a key factor.

It is a difficult program. It's difficult to get witnesses to come forward in these smaller communities. There is a great sense of fear that you cannot overcome. It's very different from organized crime. The communities they come from are ordinary communities, so you're overcoming that.

Crime Stoppers is wonderful as long as it can remain anonymous, and anonymous doesn't give you a witness, but it gives you a tip, a place to go to make an arrest.

We have not found any better way yet than the three different ways I have mentioned, but we share the problem.

The Chair: Professor Fyfe, do you have a comment?

Prof. Nick Fyfe: I'd simply echo what Mr. Shur has said. This year, Crime Stoppers and other initiatives.... You probably have similar programs, but we have *Crimewatch* in the U.K., where people can phone in after they've seen reconstructions of events and so on.

Again, I'm not aware of any work that's been done on how many people respond to those kinds of initiatives, but it would be an interesting area to look at.

The Chair: Thank you very much.

We're now going to go back to Monsieur Ménard, who was the first questioner.

Go ahead, sir.

[*Translation*]

Mr. Serge Ménard: Thank you. I see that I did not introduce myself otherwise than by pointing out to you that I was a member of a sister party of the Scottish National Party. I am a member of the Bloc québécois in the House of Commons. Before entering politics, I spent my entire career practising criminal law. When I started out in politics, I was minister of the Quebec government for nine years, mainly in public security and as Attorney General. I saw these programs come into the world. They did not exist in 1966, when I started practising law. These programs were created to meet needs, and now there is an act that provides a framework for these programs.

Is the physical protection of witnesses effective? Have witnesses been attacked or killed while they were under protection? I also wanted to ask Professor Fyfe whether he was able to compare the quite different systems that exist in Europe. What, in his view, is the best system, the one we should base ours on?

I said that the lives of innocent witnesses, that is to say people who have witnessed a serious crime or a murder committed by organized crime, might be in danger if they testified. Receiving this kind of protection is definitely a considerable weight for witnesses who have not carried on criminal activities. What is the percentage of innocent witnesses?

Lastly, I would like to know whether, in your jurisdictions, jury members know all the benefits that have been given to the people who come and testify before them?

• (1205)

[*English*]

The Chair: We can take turns as we go through the questions or you can deal with all four, depending on how you want to handle it.

Mr. Shur, would you like to go first?

Mr. Gerald Shur: Sure.

How about we just go through all four?

The Chair: Sure. Go ahead.

Mr. Gerald Shur: Do jury members know all about the witnesses? Yes.

What they don't know is the person's new name, and they do not know where he lives. But they will know everything about his criminal background, whatever may exist in his background.

[*Translation*]

Mr. Serge Ménard: What about the benefits?

[*English*]

The Chair: Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard: What about the benefits that he has received?

[*English*]

Are there any advantages?

Mr. Gerald Shur: I wish I had paid more attention to my high school French. Yes, all the benefits are explained to him.

As to physical protection and whether it is effective, our belief is that protection is best done through what we call "protection by anonymity". That is, witnesses are relocated to a new area. Nobody knows where they're going, where they will live, and they do not need physical protection around them. The only time they would need physical protection is when they're brought back to the danger area, which is where they're going to testify. And that has been totally effective.

I should point out that since this program began in the late 1960s, not a single witness who has followed our rules has been killed. We've been very fortunate in that respect.

Let's see...protecting innocent witnesses. The number of witnesses who have entered this program who I would say are totally innocent—standing on a street corner, seeing the crime—would not be 5%. So it's not a major issue in the sense of the total program, but it is a major problem with those 3% or 4%—a major problem whereby they have to give up their entire careers and their lives.

The Chair: Thank you.

Professor Fyfe.

Prof. Nick Fyfe: Yes, let me deal with those questions as well.

As Mr. Shur said, certainly jury members would know about the protection arrangements that witnesses have been put under.

In terms of innocent witnesses, my experience from looking at these programs in the U.K. is that they form a relatively small proportion of the total number of witnesses who go into the programs. But clearly they create particular challenges for witness protection programs, particularly if these are people in various forms of employment who, if they're going to be relocated, may have to find new employment in areas to which they're moving.

In terms of physical protection, my experience is very similar to what Mr. Shur has said: that witnesses who have followed the instructions and regulations of the protection programs they're on have remained safe.

One issue around this is that, certainly from my experience of interviewing witnesses on protection programs, it's not just their physical security that is important; it is their sense of social well-being, their sense of identity, their mental state, which is in some cases almost as important.

I think one of the ironies of witness protection is that in some cases where witnesses have been harmed, it's because they're harming themselves; they've committed suicide. Certainly, the evidence I've seen is that the suicide rate among protected witnesses is higher than it is more generally among the population. This is a reflection of the mental and psychological challenges these people face in trying to develop new lives in new communities.

I suppose in a way that links to the last point you raised, about what might be the best system. I don't think one could point to any one country and say it had the ideal system, but if you were to look at different protection programs, you could ask what the elements of good practice are that we could learn from and perhaps build on to form a good protection program.

That's partly connected with the issues of welfare and support for witnesses, both in the short term and long term. It goes back, again, to points Mr. Shur made earlier on in his evidence about screening witnesses effectively at the outset to make sure they are people who can cope with some of the pressures they will be subject to.

It's also about having a very robust legal framework within which witness protection takes place. One of the difficulties in the U.K. is that we have very little information about witness protection, because it doesn't occur within a clearly defined statutory framework. And this should cover things such as the appeals process that we discussed earlier.

I suppose the one other area where I think there is different practice is in who takes those decisions about who is included and who is excluded from programs. The tradition, in Canada, as in the U.K., is that it is a chief police officer who makes that decision. But there's clearly a very different practice in other parts of Europe, where those decisions are taken away from the police and are given

to another body, which might involve representatives of the judiciary, experts on organized crime, and other individuals.

It may be that having that kind of group taking those decisions, one that is slightly removed from the police, may offer a more independent and perhaps more dispassionate view of whom it is appropriate to protect and who would be included and who should be excluded from those programs.

• (1210)

The Chair: Thank you.

Mr. Shur, do you have a further comment?

Mr. Gerald Shur: May I?

As to the suicide rate, I think it's a very interesting point.

In the seventies, we did a study. I was concerned about suicides happening. The study reflected a different result than the one Mr. Fyfe found. Probably, we are doomed to do another study. Our results showed no increase in the witness population over the regular population. But I think now, with a much larger database, we should do that study again.

When witnesses are relocated, to help relieve the stress they undergo, whether they're innocent witnesses or not, or family members of prisoners who are witnesses themselves, we arrange for all of them, if they wish, to go to psychologists and psychiatrists. It's just part of the routine that they do that.

The Chair: Okay. Thank you both.

We'll now go back over to the government side.

Mr. Norlock, just give a brief introduction before you pose your questions.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you.

My name is Rick Norlock. I'm the member of Parliament for Northumberland—Quinte West. In a previous life I was a police officer for 30 years, with the equivalent of the state police.

I'd just like to carry on a little bit further and make a comment with regard to Crime Stoppers, which actually is used very often by police forces, specifically in Ontario. It is highly successful. Just to let you know, it was founded or conceived by a Canadian who was resident in Albuquerque, New Mexico.

I would like to explore best practices a little further vis-à-vis whether the decision-making program should be resident with police forces or someone other than police forces. I guess I'll put my little comment in and then leave it up to you two gentlemen to explore this further.

What we're looking for here are best practices. What we've heard from the RCMP in particular and some other police professionals and members of the bureaucracy who deal with the program is that it's relatively successful in Canada. As a matter of fact, I would have to say, based on the negative comments, it's highly successful. But we shouldn't rely on our laurels, as perhaps there's something better. That's where my question goes: is it going towards best practices?

We heard the professor indicate that in some jurisdictions the decision-making process is resident with people associated with the judiciary, or lawyers, etc. We've been discussing some of the social welfare issues surrounding this. So I guess my question would be to ask both of you gentlemen to explore further the differences you perceive, or the negatives and positives, of taking it out of the hands of the police.

I must say—not because of my prior occupation, but because of the observations I've made, both from your testimony and previous testimony from Canadian experts and those managing the system, in particular the Royal Canadian Mounted Police—that my experience is that the more links you put in, the more separations you put in, the more difficult the process becomes. But that's just my interpretation, and I leave it to you two gentlemen to respond to that.

• (1215)

The Chair: Mr. Fyfe, would you like to go first this time?

Prof. Nick Fyfe: Right. I'll make one general observation, which is that there is so little research in this area around issues of effectiveness that what we actually know is very limited. Clearly, there are practitioners who have a lot of direct experience—and Mr. Shur has demonstrated that very clearly—but I suppose what tends to be missing is any independent evaluation and research into witness protection programs. I think that's why we're working with relatively little in terms of a secure, independent evidence base. I just make that as an initial statement.

The issue about who is best placed to make those decisions about inclusion and exclusion I think is a very difficult one. There are issues partly about the speed at which these decisions need to be taken, and also about the fact that often you need to monitor the way in which the threat to witnesses may rise and fall. The risk to witnesses tends to be a dynamic phenomenon; it isn't just a one-off thing. They might be more at risk at some times than others.

Certainly from the work we did in looking across Europe, there was some surprise that in some jurisdictions it was the police who were allowed to take this decision. It was felt they were perhaps too close to the whole investigation process and that you needed some people who had some distance from that, who perhaps could take a wider view as to whether that witness was essential to the prosecution and the investigation. I think there was a feeling in some cases that perhaps the police were too ready to take witnesses into protection programs, because it would allow the investigations to proceed more quickly. But clearly that was going to involve huge disruptions in those people's lives.

Certainly the opinions we heard tended to be of the view that it was perhaps better to take that decision out of the hands of the police and to allow a more independent assessment, perhaps, of the evidence the witness could provide, within a broader context.

The Chair: Thank you.

Mr. Shur.

Mr. Gerald Shur: Mr. Fyfe is correct I think in his statements with regard to having a separate group making a determination as to who should enter the witness program, rather than the arresting officer or his particular precinct or department and such.

Of course, my experience goes to federal investigative agencies, so I was confronted with the problem of the FBI, the DEA, the Secret Service, and 26 federal investigative agencies that might have witnesses. I didn't like the idea of agents handing money to potential witnesses. I think it would look bad in court, and I thought if we had an independent group, such as the U.S. Marshals Service, that was not competitive, it would work much better.

I also could not see the DEA turning its witnesses over to the FBI for protection, or the FBI turning its witnesses over to the DEA or the Secret Service or whatever, again because of the competition. So I looked for a neutral agency that would do that. Nobody has a problem with the Marshal Service because they are not competing with them in any way, so that would be useful.

In our country, I think there are four people in the federal system who can determine who shall enter the witness protection program. It is the attorney general, the deputy attorney general, the assistant attorney general, criminal division, and one other person designated by the attorney general. I was the one other person.

It allows a standard to be established as to what types of cases you will put into the program. And you are more efficient with respect to money, you're more efficient with respect to investigations, and you're more efficient with respect to prosecutions when you have the judgment made centrally, where that group reflects the views of the highest law enforcement officer—the attorney general, in our case—as far as what cases you will go on.

So if we were to have someone from the Fish and Wildlife Service call us up and say that someone had shot three rabbits and they wanted to put the witness in the witness protection program, it might be a truly important case to that particular agent but not one that I would find deserving of a \$100,000 expenditure and the movement of 24 people. So there is a standard that can be applied by having an independent judgment made from the investigators.

Now, you don't have to have a separate office, as I did with the U. S. Marshal Service. And if I may, without knowledge, dip into your area, if you had a separate group within the RCMP and their sole function was witness protection and making judgment, and there was a precise individual or individuals responsible for exercising that judgment, you could achieve the same results that I think we achieved in our program.

One other thing that Mr. Fyfe said, which has to be said by me, is that all witness protection programs need improvement. No matter how good they think they are, we need a lot of improvement.

• (1220)

The Chair: Thank you.

Are there any loose ends there? I find interesting your comment on the three rabbits. The animal rights people obviously don't have the same influence in the U.S. as they do in Canada.

We'll now go over to the other side of the table.

Ms. Barnes, do you have further questions?

Hon. Sue Barnes: Thank you. I do.

I noted the difference in your internal analysis on the suicide, and I'm not a suicide expert, but one of the things that often occurs is isolation of individuals. My understanding, prior to your testimony, was that the isolation from relatives is a determinant over time of people returning and taking themselves out of the program.

I was really shocked, actually, when you said you had up to 25 people, because I thought our experience in Canada was that it's a very limited group of people; it would be, I think for the most part, the immediate family, so spouse, child, but certainly not grandparents.

I understood you saying, Mr. Shur, that you will take anyone in that grouping who is at risk. I only want to clarify that point so there is no misunderstanding here. The wide grouping on the family is not because you're taking all of the extended family; it's because that particular extended family had great risk to itself as a unit. Is that correct?

Mr. Gerald Shur: Yes, that's correct, but there is an exception. As with everything I say, there's an exception. But if grandparents were close to the family and the family would suffer considerable trauma, or the grandparents might suffer considerable trauma, we might then relocate them. But the case usually is that they want to stay where they are.

Hon. Sue Barnes: Professor, in most of the analysis that you've done on international programs such as they exist currently, is it like in Canada, where it's a very limited family unit that would be moved into an isolated position or another community?

•(1225)

Prof. Nick Fyfe: Yes, that's right. It would be a relatively small group of just the immediate family of the witness.

Hon. Sue Barnes: The other thing I found, something we should hear, is the difficulty it would have for social science and humanity research in this area, just because of the required secrecy. So what you have, really, is research done by the people who are immersed in the programs, internal research that's the current level of...

What I'm getting at here is that we would have peer-reviewed research. Is that a difficult thing to do in this area?

I'd like separate answers from you, and I'd also like to know, is all the research that has currently been done internal to the programs themselves?

Prof. Nick Fyfe: Shall I answer that first?

The Chair: Mr. Fyfe, go ahead.

Prof. Nick Fyfe: Going back to an earlier point, there is very little independent research in this area. The research that we did in Scotland was commissioned by the Scottish government. So they funded it and they then negotiated access for us to the police officers on the protection program, and then those officers facilitated access for us to witnesses who were protected, so that we could actually interview those witnesses in secure settings and get their story about their experiences of being on these protection programs.

Certainly, to my knowledge, I think that was the first and still the only independent piece of research that looked at both sides of the picture. It looked at the challenges and stresses the police service was under in terms of trying to protect these witnesses—and I think

it's important not to underestimate that, that the officers who are working on these programs are under huge stress and there are all sorts of issues around the training of those officers and the support for those officers—but at the same time, by interviewing relocated witnesses and their families, you get an insight into just how disruptive and how difficult it is for these people to rebuild their lives and why some of them simply cannot cope with the pressures of the program and therefore return to their home areas.

I suppose I would say this because I'm involved in research, but I think it is an area that is crying out for more independent research that can look at the whole process and all the different agencies involved.

One of the other things we looked at was the role of housing associations that were trying to find homes for these witnesses. We talked to people from benefits offices and from health authorities, because there is a whole range of other agencies that are also required to supply information and help with the relocation process. Again, it puts big pressures on those other agencies, non-law enforcement agencies, and there were concerns among people within housing authorities and health authorities about the risks they might be putting themselves at by being involved in this process.

So I really think there is a need for some kind of research that addresses that bigger context in terms of all the different individuals and agencies that are involved in the witness protection process.

The Chair: Thank you.

Mr. Shur.

Mr. Gerald Shur: I believe that research would be continuing in this type of program. We do have independent research. I think it could be better than it is. It's done by the General Accounting Office, which represents the Congress. It has done research into the program and has looked at complaints of witnesses and how efficiently the program has operated.

The Office of the Inspector General is an independent body within the Department of Justice that has also investigated the witness program on more than one occasion.

There was one other group I can't recall that has done independent research in the program.

When I say "has done it", I don't mean one time in 30 years, but at various times.

Hon. Sue Barnes: But they're all inside government?

Mr. Gerald Shur: They're all inside government, but there is—

Hon. Sue Barnes: I'm talking about outside government.

Mr. Gerald Shur: No, they're all inside government. I don't see how you could have an outside government researcher visit with a significant number of relocated witnesses.

•(1230)

Hon. Sue Barnes: In actual fact, Professor Fyfe just told us that he did.

Mr. Gerald Shur: But it's difficult. I think for us it would probably be a difficult thing to do.

What has been done is that witnesses have been interviewed by some of the agencies I mentioned are inside government. Then sampling has been done, where letters have been sent to relocated witnesses, asking about problems and such. Then information on complaints we've received from either investigative agents or U.S. attorneys, or from the witnesses, is turned over—again internally—to governmental agencies, but outside of those who handle the witness protection program.

The Chair: Would you wrap it up with just one more question?

Hon. Sue Barnes: Okay.

I was quite surprised at your six-month cut-off of funds. That's relatively fast, I would think.

If people are trained in one area and they go to another location and try to obtain the same type of employment, I would think they're more likely to be found than somebody who was retrained in another area.

I was wondering, both of you, if you're aware of retraining for people inside the witness protection program, and how often it's done or not done in different communities.

Mr. Gerald Shur: Let me correct that six-month figure. There is a memorandum of understanding that witnesses sign, which simply sets out what will happen for and to them, and so forth, if they're relocated. In there it says that employment would be expected within six months.

That is not realistic; they do not find jobs in six months. I thought I had made that clear earlier, but obviously I did not. It says six months, but it takes over a year. I think I said 16 months is how long it's actually been taking. It may have been my mistake, I'm not sure, but they are receiving assistance until they are employed. They're not just terminated and dropped.

If they refuse to go to work, we might try to seek a welfare benefit for them. We've had one witness who refused to work and said, "I'm too proud for welfare." It's one of the dilemmas you're confronted with.

The Chair: Professor Fyfe, do you have a comment?

Prof. Nick Fyfe: Yes, briefly.

I'm not aware of retraining being provided to witnesses—certainly from the work we've done in the U.K.

I think one of the other things we came across when we were doing the research within Scotland was that the vast majority of relocated witnesses were not in employment before they went into the program. They were living on welfare support, and therefore when they were relocated they were simply kept on welfare programs after that. So the issue of employment, certainly in the short term, didn't arise for them.

The Chair: Thank you very much.

I'm sorry, but did you have another comment?

Mr. Gerald Shur: I keep doing this to you. You'll never invite me back, I'm sure.

Retraining is very important. We do retraining. We will take people who do not have a skill and we've sent them to truck driving

school and those sorts of thing. What we try not to do is take a hijacker and get him a job as a truck driver or send him to truck driving school. You don't take a counterfeiter and put him in a printing plant. You don't do that.

But we do retraining, and we have even sent people to college.

The Chair: Thank you.

We're now going to go to the government side again. Mr. MacKenzie.

I would like to notify the committee that I'm turning the chairmanship over to Mr. Cullen, as I have to leave.

I would like to thank the witnesses very much. I'm sorry I can't stay until the end, but I will be reading the transcript. Your testimony has been very, very helpful. Thank you very much.

Mr. MacKenzie.

Mr. Dave MacKenzie: Thank you, Mr. Chairman.

Just for the witnesses, I also come from a background in policing, most of which was in criminal investigations and then as chief of police.

In some of what you've said, particularly Mr. Shur, you talked about a gut feeling, and I think sometimes police officers refer to that as policing intuition.

But what we're talking about here is not necessarily what people would think of as the family down the street. The people being relocated—and I think somebody indicated they are in the area of less than 5%—are not whom you would call witnesses that were not involved. We're talking about people from inside the crime family, in the biggest sense.

I think, Professor Fyfe, you indicated that very few of these people were already working.

In our view, we need to look at 100%, but the vast majority of these people come from backgrounds where they're not professionals; they're not people from a steady employment background, and, equally, they're not coming from what a lot of us would think of as a normal family background.

Am I fair in that assessment?

• (1235)

Mr. Gerald Shur: That's correct.

Mr. Dave MacKenzie: So to relocate these people...when we talk about them being relocated from their families, many of them have been estranged from families for some time up to that point anyway.

Mr. Gerald Shur: In the United States, I would say that most of the people we relocate who were married, are married, so their immediate families are being relocated with them.

Mr. Dave MacKenzie: But the extended family they've been estranged from?

Mr. Gerald Shur: If they've been estranged from their extended families, certainly the extended family does not want to be relocated with them or anywhere near them, unless they are in danger. And we have done this; we have relocated extended families in danger to different cities.

Mr. Dave MacKenzie: My point is that when we're concerned about the personal hardship in relocating some of these individuals from their extended families, they've already been estranged from their extended family long before this happened.

Mr. Gerald Shur: Correct.

Mr. Dave MacKenzie: So it's not the same hardship.

The other gut reaction I have, and you can comment on it, is that having been involved in that field for some time, my sense is there's a fairly high level of suicide in that body compared to—if we could compare it—the normal population.

Mr. Gerald Shur: Yes. As we were discussing earlier, we did not find that in the studies I did in the seventies. Mr. Fyfe found a different result.

Mr. Dave MacKenzie: Have you looked at the other part of that, Mr. Fyfe, with the criminal body?

Prof. Nick Fyfe: No, and that's a very good point, and it would be interesting to know whether the suicide rate was significantly higher among the relocated witnesses compared to the broader criminal body. That's a very good point.

Mr. Dave MacKenzie: I agree with you. I just think those are very interesting parts of a study that may be difficult to do, but I think they do bear interest at least from this perspective.

Those are all my questions, Mr. Chair, and like my predecessor, I thank you very much for being here.

The Vice-Chair (Hon. Roy Cullen): Thank you very much, Mr. MacKenzie.

Ms. Barnes, do you have another question?

Hon. Sue Barnes: For the record, I'm going on the assumption that maybe the majority could be characterized as have just been characterized, but I also understood that we only have one witness protection program and there is the possibility of innocent civilians who have witnessed crime, or maybe are bookkeepers to a situation, who are there, and I don't think we should characterize this as saying we have no concern.

I'm sorry, but I really do want to state that from our perspective as the official opposition.

The Vice-Chair (Hon. Roy Cullen): Does anyone have a comment?

We go now to the Conservatives.

Mr. Comartin, did you want to comment?

Mr. Joe Comartin: Thank you, Mr. Chair.

I'd ask both of you, in the situation where someone has been terminated from the program for criminal activity on their own part, have you had any experiences where that individual then did suffer consequences, either death or serious injury, from the group that we originally were attempting to protect them from? Are you aware of any?

Prof. Nick Fyfe: I'm not aware of any cases of that kind, no.

Mr. Joe Comartin: Okay.

This one is going to be a somewhat difficult question, because it's one I've been struggling with, and I know it's a bit nebulous. But the question is, does the program—and again I'm thinking back to the particular case that triggered this investigation here in Canada—by relocating an individual who has had a long criminal history out of their community, where they may be known by the local police forces, where they may be under some ongoing surveillance by them, either direct or indirect, into another community provide them with some shelter to commit crimes more easily than they would if they had been left in their own community?

Professor Fyfe, maybe I'll start with you, because with the research you've done you may be able to comment on that, but I'd like your comments, Mr. Shur as well.

• (1240)

Prof. Nick Fyfe: We didn't specifically look at that, and I suppose one would hope not, in the sense that clearly the police in the community to which these people are being moved have been informed about their presence and would maintain some level of surveillance on their activities. So yes, one would hope not.

Can I make just one other point? It's a slightly different point, but one of the things we came across when we were discussing the relocation of witnesses was the way communities felt. The people who have agreed to give evidence are, in this country, talked about as “grasses”, people who have broken a kind of local code of having no contact with the police, and by giving evidence and becoming witnesses they have broken that local code. A couple of people said to us, by relocating those witnesses, in a way, the intimidators have won. They have led to these people being excluded from that community.

To put it in slightly more graphic terms, in a sense they've purified those communities of these people who they view as grasses, as people who are prepared to give evidence against other people within the community. That was something that we thought was quite interesting. To some groups, it might be seen that relocating witnesses was actually a victory of sorts for certain groups within the original community.

Mr. Gerald Shur: To the last point, that the intimidators have won, our experience is that the intimidators wind up in prison. We have an 89% conviction rate in cases in which relocated witnesses testify.

In a study that was done some years ago, I think it was in the 1990s, we found that in federal cases where relocated witnesses had testified, the sentences were longer for the defendants than in like cases against like defendants. That was a byproduct, certainly not an intent of ours. It just happened.

As far as relocating people from their community to another community is concerned, and giving them the opportunity to commit crime again, we do several things. You can look at it, in one way, that we have provided them with what I think social workers would recommend. We've removed them from an area of people they've committed crimes with, and they are now with people who are not committing crimes. We've given them a new opportunity. We're supplying them with psychologists. We have a WITSEC inspector where they are, helping them get a job, taking them to the grocery store, getting into doctors and such, and getting their children enrolled in school. They are getting to see a lifetime of non-criminal behaviour.

Some of them have to make real adjustments, in that they're not used to going to work at 8:30 in the morning, and home at 5. They're used to going to work at 8:30 at night and home at 5 in the morning. It's quite different. They're used to not telling their wife where they've been, but now they're in a community where things have changed.

Having been removed from these other influences is a plus, I think, in addition to that psychological assistance. Again, I have to restate that you have up to 18% recidivism, so we're not going to be perfect at it.

The Vice-Chair (Hon. Roy Cullen): Thank you, Mr. Comartin.

Mr. Ménard, do you have a question?

[Translation]

Mr. Serge Ménard: First, I would like to say how much I appreciated your cooperation and the documents you sent us. They will be very useful to us.

Professor Fyfe, I'm going to cite one of the criticisms contained in the brief you sent us:

Creating an environment in which providing 'substantial assistance' is the main way informant witnesses get reduced sentences also risks the so-called 'co-operation paradox' whereby "kingpins" receive lower sentences than their underlings because the "singlepins" have more information to exchange for a 'substantial assistance' recommendation.

The fact that you wrote that means you have thought about the matter. What do you think about it now?

● (1245)

[English]

Prof. Nick Fyfe: I suppose the point we were making about bigger bosses on occasion getting lower sentences was related to the issue of these people having more valuable information for the police and the prosecuting authorities to plea bargain with. They could therefore use their status and the fact that they had this information to get lesser sentences, whereas people lower down in these criminal organizations might be more vulnerable. It's the context in which we made that particular point.

[Translation]

Mr. Serge Ménard: Professor Fyfe is obviously not satisfied with the legal framework in which he must operate, whereas Mr. Shur does seem satisfied with it, although there is still room for improvement.

Another legal framework concerns me: that of criminal procedure obligations. Do you see any legal barriers to the system's utility? One of the obstacles is the absolute obligation, in common law, whether it be in the United States, England or Canada, for the jury to know all the benefits that have been given to witnesses, whereas that is not the case in other European jurisdictions.

Personally, are you satisfied with this second legal framework, not the framework of the protection system, but rather the one you rely on in order to get convictions?

[English]

Prof. Nick Fyfe: I'm sorry. Could you restate the question? I missed part of it during the translation.

[Translation]

Mr. Serge Ménard: I'll restate an example that you will understand. In the Canadian and American systems of law, jury members must absolutely know all the benefits that have been given to protected witnesses. Some other systems do not have that obligation. Do you think these legal obligations should be changed, or are you satisfied with the heavy burden that the Crown must bear when it uses these witnesses?

[English]

Prof. Nick Fyfe: It's an interesting question. I would probably say it is important to be as transparent as possible in this process. The court should therefore know as much as possible about the protection that witnesses are being given, in ways that don't obviously compromise the security of the witness.

It's a difficult one for me. I don't really feel qualified to answer that one.

[Translation]

Mr. Serge Ménard: I've seen the system start from scratch and develop up to the current rules. I've seen the Crown allow certain protected witnesses to lie about the benefits they have received. I believe that, under the Italian system that you describe, they are not compelled to disclose the benefits they have received. From what I understand, we can grant those benefits following the testimony, whereas, under the Canadian and American systems, we have to give witnesses all benefits before they appear.

● (1250)

[English]

The Vice-Chair (Hon. Roy Cullen): Thank you.

Is there a short answer?

Prof. Nick Fyfe: It seems to be a sensible approach.

The Vice-Chair (Hon. Roy Cullen): Thank you.

We're getting close to the end here. We have Ms. Barnes, and then Mr. Comartin, and that will probably be it.

Hon. Sue Barnes: Perhaps I'll just ask one question and give my colleague time.

I'd like to hear from you, Professor Fyfe. In the interviews you did with people in protection, what were some of the recurring themes that they mentioned, either positively or negatively, about their program? Was there any constant, or was every case different?

Prof. Nick Fyfe: There were some constants. Most people said they wouldn't be there, they wouldn't be alive, if they hadn't been put under protection, and they wouldn't have been able to give the evidence they gave unless they'd been under protection. They recognized how important the protection process had been.

The other constant was a continuing sense of anxiety and of the difficulties of rebuilding their lives. One of the things that was really striking about these people is that in their day-to-day lives, if the telephone rang or a car pulled up outside their house or a letter came through their letterbox, they suffered chronic anxiety. If they walked down a street, they always felt somebody might be watching them. They found it very difficult to live what we would think of as normal lives.

One of the other real difficulties a lot of them spoke about was that it is incredibly difficult to form new social relationships when you cannot talk about your past biography. Developing any kind of social trust or intimate social relationship involves sharing aspects of your past, and when you have to create a fictional account of your past in order to exist in this new community, it puts huge psychological challenges in front of these people.

So you have this tension between these people saying that they appreciate everything these programs have done in terms of their physical safety, but in terms of their mental state and social well-being, they live with this chronic sense of anxiety. They thought it would fade, but in most of the cases we dealt with, it didn't fade; it just continued with them.

Hon. Sue Barnes: Thank you very much, both of you. Probably that answer is as close as this committee is going to get to a real witness, and that's one of the problems when you're doing this type of study.

I'll pass back, Mr. Chair.

The Vice-Chair (Hon. Roy Cullen): Thank you, Ms. Barnes.

Go ahead, Mr. Comartin.

Mr. Joe Comartin: Thank you.

Professor Fyfe, at the end of your written brief you talked about the necessity of transparent legislative guidelines. Could you point this committee to any jurisdiction in which you feel they have accomplished that result, a jurisdiction where there are transparent legislative guidelines?

Prof. Nick Fyfe: I suppose the particular point we were making there was that in the U.K. we don't have that kind of transparency. We looked at, say, the situation in Australia, where they're publishing annual reports by the federal witness protection program. It was basically having access to that kind of information that we felt was vital in order to secure the legitimacy and credibility of these programs—that there was information in the public domain about how these programs were operating, how much was being spent, how many witnesses were involved, and what kinds of cases they were participating in.

In our study, we were unable to look in detail at what happened in other European countries, so one would have to return to their legislation to see under law what they're required to report about their protection programs. Certainly we feel that the U.K. is a long

way behind the Canadian and Australian situations, in that there is very little information in the public domain about witness protection.

Mr. Joe Comartin: Have either one of you looked at the operation manual for the RCMP here in Canada as to how the program here should function and as to whether that is adequate, if you have had a chance to look at it?

• (1255)

Mr. Gerald Shur: I have not.

Prof. Nick Fyfe: I haven't seen the operational manual either.

Mr. Joe Comartin: Can I ask both of you about the screening process? Mr. Shur, your screening process in particular is clearly much more extensive than the Canadian one. Have you looked at how we screen participants in the program?

Mr. Gerald Shur: I saw some references to it. I can't recite them, but my reaction to it was that we were more rigid and required more documentation. At the same time, I should not leave the impression that it requires days or weeks or months; it can all be done in hours, and there is protection of the witness while this review goes on.

Mr. Joe Comartin: Professor Fyfe, I get the sense that you're not at all satisfied with the screening process in England.

Prof. Nick Fyfe: That's right, yes. It's a much more ad hoc arrangement and is largely done by the police officers on the protection program. In most cases it doesn't involve the use of psychologists and other people from outside the police service.

Mr. Joe Comartin: The problem we had in the British Columbia case is that even though a psychologist was involved, his or her recommendations weren't followed by the police force.

The Vice-Chair (Hon. Roy Cullen): Mr. Comartin, you have a bit more time. Mr. Norlock wanted to put in one little question, and then we're going to have to wrap up. If you want to go for another couple of minutes, you can...

Mr. Joe Comartin: I just have one more, Mr. Chair.

Mr. Shur, do I understand correctly that there is not a commission or a committee or a council of any kind overseeing or reviewing your role and your decision-making?

Mr. Gerald Shur: It's anybody in line with the attorney general. The attorney general or the assistant attorney general would take no action, would not even be aware of a relocated witness I'd put in the program, unless there was some complaint about me.

Mr. Joe Comartin: I was thinking more along the lines of somebody who wasn't satisfied with your decision.

Mr. Gerald Shur: They could appeal to the attorney general.

Mr. Joe Comartin: Thank you, Mr. Chair.

The Vice-Chair (Hon. Roy Cullen): Thank you.

Mr. Norlock, do you have a final question?

Mr. Rick Norlock: Actually I had two, but they were very much related.

An official complaints process, Mr. Shur—is there one in place?

Mr. Gerald Shur: Yes.

Mr. Rick Norlock: There is. In any program, it would be good to have a complaints process.

Mr. Gerald Shur: I think it's essential in this particular program.

Mr. Rick Norlock: The second part goes somewhat along with the first. It's a recommendation that there be an instituted review process. Let's say that every five years the program should be reviewed and that should be in the regulations. Would that be a recommendation you'd support? Did you, or do you, have that?

Mr. Gerald Shur: We don't have that. I think it's a very good suggestion that there be reviews at specific periods of time, as long as you allow for reviews in between those times, should some crises occur that suggest we've maybe got the wrong people in the wrong place—meaning employees, not the relocated witnesses.

Mr. Rick Norlock: Thank you.

The Vice-Chair (Hon. Roy Cullen): Mr. Fyfe, did you want to comment?

Prof. Nick Fyfe: Yes, I would endorse that idea. I think some kind of regular review is important, but I also think the review should be as independent as possible. I think there is an issue here about the

extent to which people who are practitioners or are involved in the system are reviewing their system; it is important to have an independent review.

The Vice-Chair (Hon. Roy Cullen): Good.

Thank you very much. On behalf of the committee, I'd like to thank both of you for participating at a distance or coming from distance. I think we've all found it very informative and useful.

I have a particular interest as well in the courtroom procedural and policy aspects, Professor Fyfe, that we touched on very briefly. If there's a way you could direct us to some of that work through the clerk or the researchers, it would be useful.

Again, on behalf of all of us here today, thank you very much for your very insightful and informative presentations. Thank you.

Prof. Nick Fyfe: Thank you very much for inviting us.

The Vice-Chair (Hon. Roy Cullen): The meeting is adjourned.

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