> being introduced, is the time to design and introduce a uniform system. (para 21.22)

Clearly there is much to be done to combat delay. The reports of the Victorian Civil Justice Committee and the Australian Institute of Judicial Administration will be invaluable contributions to debate on solutions to the problem.

Subway vigilante

> There is no grievance that is a fit object of redress by mob law.
>
> Abraham Lincoln, 1838

taking the law into his own hands? The shooting of four young men in a New York subway by a man they had asked for money has focused world-wide attention on the question of vigilante justice. Particularly interesting was the public support given to Mr Bernhard Goetz when he confessed to the shootings. A number of editorials have suggested that this manifests a strengthening belief that lack of security requires people to take the law into their own hands. William Raspberry wrote in the *Washington Post* that:

> when people come to believe that the law no longer is capable of protecting them but only protects those who hold the law in contempt ... support for the law disappears. People conclude that if they are going to live in a jungle they had better adopt the jungle's rules. Admonishing them not to take the law into their own hands makes sense only if the law is in hands that are capable of producing security and justice. Let the law become ineffectual, and the vigilante is elevated to the status of hero.

While there may be some truth in this, it is interesting that support for Mr Goetz tended to diminish as details of the shooting filtered out. Perhaps a useful distinction can be drawn between vigilantism and community involvement in policing.

the other side. Contrary to the popular impression, crime is decreasing in the New York subway. The subway is considerably safer than the streets. Moreover, New York City ranks only tenth nationally in violent crime. But even accepting that crime levels are still unacceptably high it seems clear that Mr Goetz does not provide an answer. Of course a New York jury will ultimately have to decide what precisely happened in that subway car on the No1 line. Bearing in mind this Commission's current Reference on Contempt of Court, it would not do to refer to anything that could prejudice a fair trial. But a strong concern for freedom of speech in the United States permits newspapers to report on such matters much more openly than in this country. More important, it is unlikely that anything written here will endanger Mr Goetz. Newspaper reports on the shooting, and other media reports communicated to us by one of the Commission's legal staff who was in New York at the time, explain why support for him lessened in New York itself. According to those reports, the four youths did not brandish weapons, although they allegedly had screwdrivers in their pockets. Again according to those reports, two of the youths were shot in the back. Mr Goetz is himself reported to have told police that he shot one of them a second time because he did not seem badly injured.

gun control. The real issue seems to be one of guns in private hands. Although an article in the *Wall Street Journal* claimed that 'citizens are right to believe that handguns have essentially the same defensive value for them as for the police', there are a number of important differences. There is a greater danger that innocent bystanders will be hurt when untrained people use guns. Most people do not know what the legal position is with regard to the use of weapons in self defence. The police are probably better able to handle stressful situations and to avoid overreaction. Guns in private hands is no solution to the crime problem. In 1985 more than 10000 Americans will be killed with handguns and the figure is likely to rise without strict state and federal regulation. The problem is not purely an American one. New South Wales Police Minister Peter Anderson told State Parliament earlier this year that there are an estimated two million guns in private hands in NSW and that this was growing at a rate be-

tween three and four per cent a year. On average, he said, more than two hundred people are killed by firearms every year. He introduced amendments to firearms legislation, requiring all firearms to be registered, all firearm owners to obtain a shooter's licence and imposing heavily increased penalties. Particularly significant was the provision of a maximum 10 years in gaol for shortening a firearm. Federal regulation may also be needed, as in the United States. Goetz bought his gun in Florida after being denied a permit in New York, which has strict local laws. Washington DC has among the most stringent handgun restrictions in the United States, but that did not prevent John Hinckley from going to Texas to buy the gun that shot President Reagan.

community policing. Of course, while condemning vigilantism and seeking to outlaw its tools, one cannot ignore the apparently growing public perception of a lack of security in the cities. It is important, however, to verify whether the fears of a significant increase in violent crime are justified by the facts. But should the public also be encouraged to play a role in community policing? Neighbourhood watch groups are sprouting up in urban areas of both Australia and the United States. Some police forces are encouraging retired people, for example, to perform a purely patrolling function. Closer to the line are private groups like the 'Guardian Angels', who patrol the New York subway without weapons. But the less police supervision, the greater the danger of vigilantism. How can the community be involved in the maintenance of law and order and public accountability be maintained? It is also relevant to ask whether community policing – or more precisely which forms of it – are effective in reducing crime.

privilege against self-incrimination. Another aspect of the Goetz affair which is worth comment concerns the application of the Fifth Amendment privilege against self-incrimination. When the New York prosecutor first took the case before a grand jury, hoping to obtain an indictment on a charge of attempted murder, he faced a dilemma. Under New York law, a witness who testifies before a grand jury is automatically immunised from prosecution in respect of matters about which he testifies (unless he or she waives immunity). This contrasts with United States federal (and most American States) law in two ways.

- Immunity is automatic – the witness does not have to expressly invoke his fifth amendment privilege to obtain immunity.
- The immunity is very broad – while a witness before a federal grand jury is immunised against subsequent use of his testimony or use of any evidence derived indirectly from that testimony ('use and derivative use immunity'), a witness in New York is immunised against subsequent prosecution with respect to matters on which he or she testifies ('transactional immunity').

If, therefore, the prosecutor called any of the four youths shot by Goetz to testify to the grand jury about the events in the subway, that youth would be automatically immunised against subsequent prosecution on attempted robbery charges. By choosing not to take that step at the first grand jury hearing, it is not surprising that the grand jury decided, in the absence of testimony from any of the participants, to indict Goetz only on an illegal possession of firearms charge. But when the prosecutor took the case before a second jury some weeks later, he chose to call one of the youths, James Ramseur. This time the grand jury handed down an attempted murder indictment against Goetz, and Ramseur was safe from prosecution. Some of the issues raised by this case are relevant to the Australian Law Reform Commission's Reference on the Law of Evidence. In particular, it raises questions about the appropriate scope of any immunity, the circumstances in which it should be accorded, and by whom. While Australia does not have a constitutionally entrenched Fifth Amendment, the privi-

lege against self-incrimination is regarded by many as a bastion of liberty which must be carefully protected. In the ACT, legislation provides that a court may compel answers from a witness, although they are not admissible in future proceedings against him ('use immunity'). The National Crimes Authority Act 1984 confers 'use and derivative use immunity' while legislation in Tasmania and Western Australia provides 'transactional immunity' in 'respect of the matters touching which [the witness] is so examined'. The question is how best to protect witnesses from compelled self-incrimination while recognising the need to properly investigate and prosecute crime.

prejudicial pre-trial publicity

> 'Write that down' the King said to the jury, and the jury eagerly wrote down all three dates on their slates, and then added them up, and reduced the answer to shillings and pence.
>
> Lewis Carroll,
> *Alice's Adventure in Wonderland*

Early this year, the NSW Justices Act was amended to redefine the role of magistrates in committing people to trial. The amendments alter the requirement that a defendant against whom a prima facie case has been made out should be committed. The reform formalises a practice which had existed for some years until the 1985 Supreme Court decision of *Wentworth v Rogers.*

As a means of keeping the number of cases in the court system to a manageable size, magistrates adopted the practice of not committing defendants whom they believed *would* not be convicted by a reasonable jury, properly instructed. When Ms Kate Wentworth appealed to the NSW Supreme Court against a magistrate's decision not to commit Mr Gordon Rogers to trial on a charge of assault and buggery she had brought against him, the Court upheld her claim stating (per Samuels J) that:

> It is not part of a committing magistrate's function to conjecture what a jury *would* or *might* do or not do. His function is confined to determining what it *could* reasonably and properly do.

The NSW Government responded to the Supreme Court's decision with amendments to s41 of the Justices Act. Under s41(2) of the Act, magistrates are now required to discharge a defendant if they do not believe the evidence is 'capable of satisfying a jury beyond reasonable doubt that the defendant has committed an indictable offence'. But, if magistrates believe the evidence is capable of so satisfying a jury, they must invite the defendant to present a defence. If after hearing all the evidence presented, the magistrate believes 'a jury would not be likely to convict the defendant' (s41(6)), the magistrate must order that the defendant be discharged.

Prior to their enactment, the amendments were the subject of considerable public debate. They were welcomed by the President of the NSW Law Society, Mr Fred Herron, who congratulated the Attorney-General, Mr Sheahan, on bringing 'this aspect of the law into the 20th century'. However, he tempered his comments with the rider that the legislation should give more explicit guidelines to magistrates (SMH 2.3.85). The Independent NSW State Member for the South Coast, Mr John Hatton, expressed concern that the new legislation would by-pass the jury system, particularly in what he termed 'politically sensitive' cases (SMH 7.3.85). Mr Murray Gleeson QC, president of the NSW Bar Council expressed concern at the use of the 'likely to commit' test, stating his concern that 'it would be unfortunate if the effect of this was that people sent for trial had a public finding by a magistrate that they were likely to be convicted'.

An important danger which such a finding presents is potential prejudice to a defendant's trial which might result from a public statement of likelihood of conviction. Such a statement could cause a jury to misinterpret its role as little more than a rubber stamp to endorse the suppositions of the committing magistrate. The avoidance of potential prejudice to defendants which could result from the amendments to the Justices Act might be achieved by further amendments to the Act