THE NORTHERN TERRITORY OF AUSTRALIA

Coroners Act

FORM OF INQUISITION

An Inquisition taken at Alice Springs in the Northern Territory of Australia ~~on the~~ ~~day of~~ 19 , before me Gerard Patrick Galvin , one of the Coroners for the said Territory, as to when and by what means John Ross Jabanardi came to his death (~~as as to the cause and origin of certain fires~~ which occured on or about the 20th day of July 1980 at Ti Tree in the said Territory).

I do find that

(1) John Ross Jabanardi came to his death at Ti Tree on the 20th July 1980.

(2) Cause of death was retro-peritoneal and intra-peritoneal haemorrhage due to perforation of the left internal iliac artery due to a gunshot wound to the abdomen.

(3) The gunshot wound to the abdomen was inflicted by a weapon fired by Lawrence John Clifford.

(4) Lawrence John Clifford has appeared in the Supreme Court of the Northern Territory on a charge of Murder and has been found Not Guilty.

Given under my hand this 11th day of December One thousand nine hundred and eighty one.

G P Galvin

Coroner

NORTHERN TERRITORY OF AUSTRALIA

CORONERS COURT

In the matter of -

An Inquest into the death of

JOHNNY ROSS JABANARDI

REASONS FOR DECISION

G.P. GALVIN, C.S.M.

The primary task of this Inquest was to make a finding as to the manner and cause of the death of the deceased, and the next, to ascertain if any persons should be committed for trial for offences arising from that manner and cause of death.

Evidence was given at the Inquest by several witnesses and also much material was placed in evidence which, while admissable under the Coroners Act, is not "evidence in law". However in seeking to find whether any persons should be committed for trial I have restricted the finding of facts to only admissable evidence.

In relation to the findings, allowance should be made for the fact that Constables Warren and Clifford exercised their rights and elected not to give evidence. Although they did not give verbal evidence at the Inquest, a considerable body of admissable evidence was before the Inquest received from the examination in chief and cross-examination of those two persons as witnesses at the preliminary hearing and Supreme Court trial of certain offences alleged to have been committed by some of the Aboriginal witnesses. In fact the verbal evidence of the Aboriginal witnesses given at the Inquest, although assisting me to make findings leading up to the fracas, had little bearing on the facts as to the shooting of the deceased and the findings in relation to the shooting were made from statements made by the police officers up to the time they made their statements under orders, evidence of forensic nature, of witnesses giving observations and statements made by Messrs Warren and Clifford and the evidence given in the Committal and Supreme Court trials by Constables Warren and Clifford.

However allowance must be made for the fact that as no evidence has been given by Clifford and Warren, there is a possibility of lack of balance of the evidence on which I have made my findings.

I now publish the findings of facts as made by me which were withheld at the time of the Inquest so as not to prejudice any trial or possibly jurymen who may have read them, and contained in Annexure "A".

In my view the finding of facts and the law applicable thereto was such that I should commit Constable Clifford for trial for murder so that the question of self defence and the reasonableness of that act of self defence in the circumstances would be a question which must be put to a jury for a finding by them.

That trial has now been completed and the jury has returned a verdict of Not Guilty.

The finding of facts sufficiently set out the findings of the Inquest as I have made them. Considerable other material which is technically inadmissable but was available at the Inquest but does not materially affect the findings.

Several very important issues arose during the Inquest which may be regarded as peripheral but which in my view are most relevant when a Coroner is seeking to make a finding as to the manner and cause of death of a deceased and other very important matters of public interest on which I consider it is appropriate to comment. These are as follows:

1(i) The Police investigation of the death relating to:

a) the investigation itself and the procedures thereof; and

b) the use and co-ordination of forensic evidence.

At the time of conducting the Inquest it seemed to me most unfortunate that the Inquest took place some twelve months after the death. I was responsible for that delay in that it was my view most unlikely that evidence would be available from the Aboriginal witnesses until the trial of the charges against them had been completed. In fact considerable evidence was elicited under examination and cross-examination of the police witnesses at the Committal and Supreme Court Trial which assisted the Inquest. However, the fact remains that it was some twelve months after the event and that placed a strain on the memory of witnesses and also for the persons involved in the incident, there was a considerable added personal strain. I consider that it is important to draw attention to the fact of the delay but I am unable to offer any solutions.

Considerable time was utilised at the Inquest to examine the police investigation of the death. Attention was drawn to many items which were considered inadequacies in the investigation and claims were made that the investigation was in fact, a cover up for police involved in the incident and that the investigation was not bona fide. Counsel for the Commissioner sought to elucidate reasons for some enquiries not being carried out, and in others, made frank admissions that further actions should have been done. On the whole of the evidence, I do not find that the investigation was prejudiced to the extent that it was made with a lack of bona fides however, I do find that there were a considerable number of deficiencies in the investigation and I consider it is proper to set out an exhaustive list of those inadequacies. These items all vary as to importance and relevance to the overall investigation but I consider the proper manner to objectively test the investigation is to set out all the inadequacies and any possible reasons for them.

I. (a) POLICE INVESTIGATION

Mark Pepperill in his record of interview makes what amounts to two allegations of assault on him by the police officers. Despite these two quite clear and unsolicited complaints, there was no follow up questions in the record of interview seeking to elucidate the allegations.

These allegations were made very early in the investigation and prior to the time that the police officers were aware that Constable Clifford was in possession of the baton stick. In my view this lack of immediate follow up both by the interviewing officer and also the co-ordinating officer in charge, was a cause of much later confusion. If these allegations had been promptly followed up, additional more accurate information may have enabled the investigators to proceed with a clearer picture of what happened at the incident. Unfortunately the lack of follow up appears to indicate that the investigating officers had accepted Constable Warren's statement and had also assumed that a 'nulla nulla' had caused the injury to Constable Clifford and gave no credence to Mark Pepperill's statement. Counsel for the Commissioner drew attention to the fact that there was a follow up in the re-enactment conducted later and I accept that but in my view the early time when these allegations were made, was the appropriate time for them to be followed up and the fact that they were not followed up, particularly in the circumstances of this case, was a most serious error and adversely affected the investigation. The interviewing officer, Detective Sergeant Simms, was not available at the Inquest but I was referred to the Supreme Court transcript where he could give no reason for the lack of follow up by the investigating co-ordinator, Inspector McDowall, at the Inquest. No satisfactory explanation was given for this very serious matter.

To a much lesser extent there was also lack of follow up in the record of interview with Geoffrey Presley where at Questions 173 and 174 Presley indicated that the policeman "had a special thing" and in reply, the next question described it as a "little white one, like baton thing".

Again there was no follow up in relation to the baton thing at a period early in the investigation where full enquiries may have elicited a clearer picture.

(ii) No statement was taken from Constable Warren's wife who was present at the clinic on the return of the police and was present when the statements were made to Sisters Auld and Hatch. The conversations at this time were in fact very important in that they were early statements by the police officers while events were fresh in memory and it may well have been that Mrs Warren's statement would either have supported or contradicted the statements of Sisters Auld and Hatch. In my view this evidence, having regard to the fact that it is very close to the incident, should have been elicited.

(iii) Question of consumption of alcohol by police.
In discussing this question I wish to make it clear that there has been no evidence of escessive consumption of alcohol by the police officers in this matter but the query has been raised as to the actual amount of consumption of alcohol by them and the method or methods which should have been used to confirm that amount. The evidence was available from enquiries made by Inspector Gilroy from the proprietor of the roadhouse, Mr Fog, that it was his recollection that policemen had been at the roadhouse and consumed one can. This statement caused Mr Grant to question Constable Warren regarding the consumption of alcohol on the day and a statement was made as to the consumption of some three cans of beer. Even though there was this discrepancy no attempt was made to follow up any possible further evidence for clarification of this point. In fact evidence was available from Mr Fields, Senior, but it was not until some twelve months later that Counsel assisting the Coroner took up the question of seeking to obtain clarification as to the consumption of alcohol. Criticism was made of the investigation in that this item was not followed up and yet considerable time and effort was made on behalf of the police in relation to the consumption of alcohol by the Aboriginals on that day and in comparison to the inquiries made in relation to the police, there is certainly a large degree of difference. Counsel for the Commissioner sought and did show that there was no evidence of any allegation of excessive consumption and that therefore the follow up was not required.
In my view, even accepting what Counsel for the Commissioner says, when there has been a discrepancy in the consumption of alcohol and there is an important issue namely the question of police duties and discharge of firearms, and when there has been a discrepancy as to the possible consumption, then effort should have been made

to clarify this issue at the time.

The question was further complicated in that the initial enquiry twelve months later produced a denial that the police officers were in the roadhouse drinking. Later Mr Fields claimed he had told a 'white lie' to protect the Constables, and then gave what was claimed to be the true picture. This supported Constable Warren's evidence.

(iv) Criticism was made of the investigation that Constables Clifford and Warren were not separated on the arrival of investigating police and asked to give their independent version or accounts of the incident. In addition the journal entries being made by Constable Warren were made when there was an opportunity to consult with Constable Clifford.

In fact these persons were not separated the main reason being given by Assistant Commissioner Grant was that they had been together for some time and it was of no particular use to separate them at that late stage to obtain separate statements. There was some discussion at the Inquest with Inspector Gilroy as to whether it is normal procedure or not for police to separate witnesses before discussing a matter. Counsel for the Commissioner at the Inquest sought to draw attention to the fact that it would be improper to take formal separate statements by these persons at this time because of the injuries suffered by Constable Clifford and the shock that may have been occasioned to Constable Warren.

On the evidence the investigators considered it proper to obtain statements at this time. Having made that decision, then they normal procedure of interviewing witnesses separately should have been followed. The separate verbal statements would then be available for assessment by the investigators.

This was not done and the situation arose that Constable Warren was instructed to make a report in the Day Journal and did so while he had an opportunity of consulting with Constable Clifford. In fact the Day Journal entry contained many completely false facts regarding the movements, work and activities of the police during the afternoon. One is left to speculate on the reasons for these inaccurate statements.

I consider this failure to obtain independent statements was a fault in the investigation.

(v) Presence of Senior Officers.

It was suggested that the presence of Assistant Commissioner Grant and Chief Inspector Gilroy at the scene either impeded or made it uncertain who was in control of the investigation.

Counsel for the Commissioner submitted that there was no evidence for this comment and I must agree. It is clear to me on the evidence that it was considered a very important matter and that was the reason for the presence of these two senior police and I find that to be a proper motive. If this lead to any difficulties I am unable to specify what they were.

The position is that if high ranking police had not attended that of itself would be a cause of concern.

(vi) It was submitted at the Inquest that the police investigation generally proceeded on the non-acceptance of Aboriginal versions and evidence.

Much time at the Inquest was devoted to hearing the Aboriginal witnesses and discussion was made regarding the records of interview that they gave. It is clear that the evidence given by the Aboriginal witnesses to the police at the time of the records of interview varied considerably and contained many inaccuracies. There were however despite that, certain consistencies through the evidence.

I am unable to find that the police did not accept the Aboriginal witnesses' evidence to a degree that they can be said to be prejudiced but it is my view that the original failure to follow up the allegations of assault by Mark Pepperill and to an extent, those of Geoffrey Presley, which failed to disclose that the weapon with which Constable Clifford was hit was in fact his own weapon and not a weapon brought by the Aboriginal people, combined with the clash of evidence, and the possible acceptance of Warren's statement that a nulla nulla caused Clifford's wound was such that a proper objective view of the whole of the evidence was not able to be drawn.

(vii) It was argued at the Inquest that the fact that Messrs Warren and Clifford were personally known to the investigating police may have affected the objective investigation of the incident.

The police witnesses at the Inquest were frank in their admissions but they knew Constables Warren and Clifford and I consider that it is inevitable in a police force the size of the Northern Territory Police that this would be so. It is also clear that on the approach to Ti Tree after the first word of the incident, it was clear that the senior police officers were concerned for the welfare of the police and their families at Ti Tree. However on the evidence available to me, I am unable to say that this knowledge and concern adversely affected the investigation in any specific manner or item.

Some discussion occurred at the Inquest as to possible alternatives to a system of where police must investigate other police officers who are known to them. No satisfactory solution was offered to this matter at the Inquest and I propose to draw attention to this general problem in the later part of this decision.

(viii) Comment was made that Constable Clifford was not requested to do a re-enactment of the incident.

It is clear from the evidence that by the time Constable Warren conducted his re-enactment, Constable Clifford was in Alice Springs and was not asked to return. There is no evidence as to why he was not asked to do a re-enactment and Counsel for the Commissioner submitted that it would not have assisted.

It is clear that by this stage Constable Clifford had elected only to make statements under orders and that this may have been part of the reason for no re-enactment.

However I am unable to find whether this would or would not have assisted the Inquest. I can only say that the re-enactment was not requested, nor any reason given.

(ix) Considerable discussion was made as to the knowledge by the investigating officers of various discrepancies in

a) the telex which was prepared by police at Alice Springs as a result of information received from Ti Tree with a view to forwarding the same for the information of the Commissioner for Police.

b) the taped version of the conversation from Ti Tree by Constable Warren with Sgt Lincoln.

c) the reason why these differing statements were never satisfactorily put to Constable Clifford and Warren for explanation.

These were most important investigatory matters because there is considerable variation on:

d) the number of warning shots which were alleged to have been given and it is even more relevant when the variations varied from two warning shots having been given to one, to eventually when it was stated that none were given.

e) variation was shown in relation to the certainty of places where people were considered to have been wounded.

f) Constable Warren who at one stage stated apparently that two warning shots were given, stated at other times that he did not know who fired shots and that it may even have been the assailants.

During the hearing of the evidence many questions were directed to Messrs Grant and McDowall as to the reasons for not questioning these changes and also why they were not put to Constables Warren and Clifford during the various interviews conducted by Grant and McDowall.

It is clear that some of these discrepancies were put to the Constables for comment but they were not all put. Further it seems there were opportunities for an evaluation of the evidence by investigating officers with a later opportunity to ask further questions but these opportunities were not utilised.

In my view, the failure to properly put these discrepancies to the witnesses for comments amount to a serious failure in the investigation techniques. These were indeed most important questions and basic to the investigation and they are questions which were not satisfactorily resolved before the Inquest and have considerable bearing on the outcome of the Inquest and the various trials which have resulted from this incident.

(x) On all views of the evidence it is clear that the nulla nulla found by Constable Cox in the police vehicle at the scene was not returned to Ti Tree Police Station until at least the early afternoon by which time another nulla nulla had been put to at least two persons in records of interview for the purpose of identification.

No explanation was given as to:

(a) where that nulla nulla came from or why it was considered to be relevant,

(b) why it was put to the witnesses without ascertaining in any way if it had any part in the incident.

In my view this illustrated a most careless approach to a most important part of the investigation. This approach of the investigators is further complicated when it appears that after the nulla nulla alleged to have been at the scene is located, was not put to further witnesses for identification.

It appears a total paradox that a nulla nulla not established to be at the scene is put to witnesses for possible identification and the nulla nulla alleged to have been at the scene is not put for possible identification.

1(b). QUESTION OF USE AND FAILURE OF FORENSIC PROCEDURES

On the question of forensic evidence much time was devoted at the Inquest to the question of why certain forensic matters were or were not carried out. It is clear on the evidence that some forensic matters were carried out at the time of the incident, that at the time of the trial of the Aboriginal defendants, some further forensic matters were carried out, and again during the Inquest it was considered necessary by Counsel Assisting for further matters to be carried out. I intend to list the various complaints regarding the forensic evidence as I have considered it is important that they be made known. Again Counsel for the Commissioner made certain submissions in relation to why some of these items should or should not have been done. I find on the evidence before me notwithstanding some of the explanations given, that there were serious gaps in the forensic investigation of this incident. Some evidence was elicited before me on the use of forensic investigation in conjunction with the investigatory arm of the police and this varied from the view that there should be more liaison to the fact that forensic matters should be independent and be seen to be independent of the investigating arm. I personally am concerned with the lack of co-ordination in the forensic area in this matter and I propose to refer to the matter later in this decision but for the moment I will merely list the discrepancies as I see them on the evidence.

(i) It is clear that after Dr Harding's original report was returned, that there was clearly a further number of samples of hair and blood required to clear up outstanding points.

Counsel for Commissioner commented that the Aboriginal witnesses may not have agreed and at least were not available for such samples but it is clear in my view that this matter was not even looked at until Counsel Assisting me at the Inquest considered the matter and arranged for further sampling to be done. In fact that additional evidence revealed that the blood on the baton stick was consistent with that of Mark Pepperill and hence supported his evidence but was not conclusive.

(ii) Constable Clifford's clothing was not collected until 10.00 a.m. on the 22 July and there is no evidence of it ever having been examined. This may well have been important as an objective support for Constable Clifford's claim that he had been dragged through the dust etc. There was never any examination made on this point.

(iii) No examination was made of the 'baton stick' or Constable Clifford's jumper to support to reject his claim that he had placed the baton stick up the rear of his jumper which necessitated him adopting a very uncomfortable crouched position.

(iv) The deceased Jabarnardi's clothing was not forensically examined until just prior to the Inquest. A delay of some nearly twelve months.

(v) Sgt Sandry and Constable Coyne on the evidence before me had a distinct misunderstanding as to the respective role of each person and there was no co-ordination between the various roles and no general overseeing of the forensic material and enquiries.

(vi) On the receipt of Dr Harding's report and its perusal by Sgt Sandry, it is clear to me that further matters were required. However on the evidence, there was no detailed perusal of the report with a view to following up any outstanding queries.

(vii) The nulla nulla found at the scene was not preserved for examination of fingerprints, blood or hairs.

It is clear on the evidence that the forensic examination despite submissions from Counsel for the Commissioner, was not fully carried out nor was there any degree of cohesion and supervision of the various testing. It was submitted by Counsel for the Commissioner that certain steps may not have been taken because they would not have had admissable evidence against persons. In my view that is not a reason for police not carrying out enquiries which may or may not provide objective assistance to certain stated claims, or even raise new areas of investigation.

I have been assured at the Inquest that since this investigation there has been certain upgrading of facilities and additions of staff to the Forensic Science Section. A statement was obtained from the Commissioner's Office in relation to the existing forensic section and its policies. I am unable to say whether these policies would obviate the difficulties that have arisen in this matter but I feel bound to say that the forensic examination in this case is not of a sufficient standard and further, there appears to me to be a complete lack of liaison between the investigating officers in the field and the forensic section which again appears to me to be a fault within the system. This is clearly a field for experts and I consider it most important that the Commissioner of Police cause an objective assessment of the Forensic investigation in this enquiry with a view to improving performance in the future.

2. REASONS FOR THE POLICE PATROL ON THE NIGHT OF THE INCIDENT

Counsel for the deceased in a very clear and detailed argument sought to show that the police patrol on the night of the incident was a punitive expedition in response to an incident of the previous week when Constable Warren had been attacked by a group of Aboriginals and there is a reference to an assault by one Riley Presley. Counsel sought to establish this view from the following evidence.

(i) A period of ten to twelve minutes or at least a period of four to five minutes elapsed from the sighting of the vehicle allegedly raising dust, until the Constables armed themselves and followed.

(ii) The Constables drove only four to five kilometres up the Ti Tree Road before turning back, and no reason has been given for turning back after a short unsuccessful pursuit.

(iii) It is claimed that the dust was sighted from the vehicles at 6.20 p.m. and that the light was fairly good whereas the evidence at the Inquest was that last light was at 6.04 p.m.

(iv) Reference is made to the previous incident on the 13 July entered in the journal entry of the Ti Tree Police Station and relates to an incident between Constable Warren and other Aboriginals including one Riley Presley.

(v) Reference was made to one Riley Presley (although incorrectly) in reference to information given to Assistant Commissioner Grant in reference to the incident on the 20 July.

From these items, I am asked to infer that this patrol was a punitive expedition.

The evidence does not enable me to so find but I do find that the explanations given by the Constables for the patrol at this time do not stand, on examination. A further item in support of Counsel's argument was the manner of apprehension and stopping of the vehicle being driven by the Aboriginal witnesses. It is clear on the evidence from statements and at the Committal and Supreme Court Trial that the police vehicle after allegedly sighting the green station wagon and being of the opinion that the driver was not competent then took the most unusual course of driving onto the incorrect side of the road and with his headlights and blue flashing lights on, drove into the projected course of the Holden vehicle. In fact this vehicle does manage to stop, and both vehicles halt facing each other with a very short distance between.

Counsel for Messrs Clifford and Warren submitted that these men were doing no more than their duty and that this is a normal method of apprehension.

I am unable to agree with that proposition. The method of apprehension appears quite extraordinary and puts both the police officers and the driver and passengers in the other vehicle at considerable personal risk, particularly if as suspected the driver was adversely affected by alcohol, together with the additional risk of being dazzled by oncoming lights. In my view there was no urgency about this situation which would have prevented the police officers making a far more orthodox method of apprehension. At no time has any satisfactory explanation ever been given for the course adopted.

Counsel also drew attention to the considerable inaccuracies and complete untruths in the entry in the Day Journal completed at Ti Tree by Constable Warren. It is clear that this Day Journal contains many inaccuracies and no where during the investigation or the subsequent hearing has any satisfactory explanation ever been given for these incorrect entries.

On the whole of the evidence I am unable to find that this was a punitive expedition but also consider unsatisfactory the course of conduct by the police officers upon this night but the question must remain an open one.

3. USE OF NON ISSUE WEAPONS

(a) 'Baton Stick' used by Constable Clifford in this Incident.

It became clear during the police investigation that the weapon with which Constable Clifford was eventually struck was a piece of stick some 20 inches long apparently a cut down from a shovel handle, which he had found in a vehicle previous at Ti Tree and which he placed in his own police vehicle.

Evidence was given by Chief Inspector Gilroy that it is quite a common occurence for these 'billies' as he called them, to be on police premises and apparently available by use by police officers. Assistant Commissioner Grant in his evidence did not have any knowledge of these weapons.

I was somewhat concerned with Chief Inspector Gilroy's evidence of the availability and the rather common place of these weapons. Evidence was lead that police uniform trousers have a pocket for the holding of a regulation issue baton and evidence was given in relation to entries in Standing Orders requiring the concealing of batons and setting out the specific circumstances in which batons should be produced and used.

It seems completely contradictory to the spirit of Standing Orders to have regulations regarding batons when an item such as this cut down shovel handle which is longer and more visible and it could be said on the evidence at this incident, a matter of fear when produced, are not controlled at all by Standing Orders. It is my view that if it is considered necessary as part of police duties that such an enlarged type of baton is necessary then they should be properly issued by the Police Department and that provision should be made for their use in Standing Orders. It follows in my view, that there should not be unofficial weapons available to the police with the knowledge of superior officers for which proper provision has not been made.

It is my view that the availability of these weapons is contrary to Standing Orders and that the Commissioner of Police should investigate the need for their use. When the investigation has been completed then Standing Orders should be amended to provide for their use or prohibit their use.

(b) Use of a Private Pistol.

When the Inquest commenced it appeared that the question of use of non-official weapons may arise as the weapon used in the incident was the personal weapon of Constable Clifford.

On the evidence before me at the Inquest it is clear that Constable Clifford's private weapon was of a smaller calibre than an official police issue and would also have less muzzle velocity and force on impact.

Accordingly in my view no criticism can be made of the use of this smaller lighter weapon as the use of an official weapon would have created larger and perhaps more dangerous wounds in these circumstances.

The larger issue of use of private weapons as such was not examined.

4. QUESTION OF THE DECEASED'S INVOLVEMENT IN THE FIGHTING

The evidence before me on this question was as follows:

(i) The deceased had, at the time of his death, a blood alcohol reading of .245 and on the medical evidence it is clear that the deceased's motor ability would be severely affected but would be capable of fighting.

(ii) The post mortem report and verbal evidence indicates no bruising or injuries consistent with being involved in a fight.

(iii) The Aboriginal witnesses in their records of interview all tend to place the deceased in the fracas but at the hearing resiled from that position. I re-state that I am not prepared to act on the evidence of these witnesses without corroboration in some material factor.

(iv) On the evidence of Constable Clifford when he saw the deceased, he was some ten metres away from the scene of the fight and to be walking towards him with what appeared to be a stick in his hand.

(v) Neither Constables Clifford or Warren were able to identify the deceased as being involved in the fight although this must be viewed in the light of the circumstances of the incident.

(vi) The clump of hair found on the side of the road is consistent with that of the deceased although further testing would be required before such evidence could be conclusive.

(vii) The hair on the baton stick again is consistent with that of the deceased but again further testing is required before a definite conclusion could be reached.

I am unable to find that the deceased was involved in the fracas but that even it he had, he had finished and left the scene before the shooting incident.

5. THE ROLE OF THE PRESS

There were placed in evidence, various newspaper articles allegedly reporting the incident and which were totally inaccurate. The degree of inaccuracy was such that on application the Supreme Court changed the venue of the Trial on the basis of the prejudicial effect the inaccuracies may have on a prospective Jury. The Reasons for Decision were most critical of the press role and considerable costs were occasioned by the transfer of the Trial.

Evidence was given before me by Assistant Commissioner Grant who produced a marked copy of a Centralian Advocate article by which he indicated that much material included that was inaccurate, had not come from the police. It was put to Grant that he instructed Constable Tuckwell to pose for a picture with a nulla nulla outside the Ti Tree Police Station, a fact Tuckwell asserted in the Supreme Court. Mr Grant denied this and considered Tuckwell was mistaken.

Evidence was also given by Mr Erwin Chalandra, the journalist responsible for the article in the Centralian Advocate. He maintained the police as his source of information and further that he rang Grant before publication and that Grant, with some minor amendments, approved the article. Grant denies this although he admits he may have had a short conversation with Chalandra before publication.

I am unable to make any finding on the evidence before me as to the competing versions.

The fact remains that there is no objective evidence of what information was given by Police to the press and material was published which on any view of the incident was totally inaccurate. This caused:

(a) the transfer of a Supreme Court Trial and considerable expense associated with that transfer; and

(b) the Police Department has been accused that inaccurate information has been given to the press to support a particular view of the incident.

It is clear that at times Police need to speak to the press and pass on information. In relation to this incident inaccurate details were published and there is no record of what information was passed on to the press.

This situation is unsatisfactory.

6. THE QUESTION OF THE EVIDENCE OF THE WITNESS JASPER HAINES

A large part of the time of the Inquest was concerned with the detailed evidence being given by the witness Jasper Haines. It is clear that this man at the original investigation, Committal, Supreme Court Trial and this Inquest gave many and varied answers to all the questions that he answered and it was with a considerable degree of difficulty that a tribunal would be able to ascertain what evidence he gave was accurate. This would be so, even allowing for the fact that it was some twelve months after the incident, that he was trying to recall a very complex matter in which he had been involved in the interrogation of other witnesses and about which there had been much discussion, and for the fact that he had been consuming alcohol the previous day.

It is clear that his first difficulties arose when he sought to cover the fact that he had in fact observed some part of the fight. However the circumstances in which he gave his original statement were far from satisfactory and I will list these as follows.

(i) It is clear on the evidence that on the day prior to the making of the statement Haines had been drinking, that all through that night he had been awake and had been affected by the trauma of a friend being wounded and the possibility of another being shot dead. He made the statement from approximately 3 a.m. to 7 a.m. in the morning.

(ii) In purported exercise of the "Anunga" rules a school teacher, totally unknown to the witness was used as a purported friend, and was of no support whatsoever. He was also subjected to considerable pressure to make a new statement.

(iii) It was suggested by the investigating officers that Haines was happy to make the statement and that the statement flowed from him. This evidence was given by Mr McDowall and maintained by him until I put a section of the statement to him which was clearly not volunteered. I am unable to find that the statement made by him was such that it flowed from him.

(iv) It is clear that the use of a dead persons name throughout the second statement and the considerable effort made by the witness to delete that name at this Inquest showed that the witness was under a considerable degree of tension at the time of making the statement.

(v) A further difficulty was created by the use of the witness Haines to read back the record of interview of Geoffrey Presley wherein further incorrect statements had been made. In my view that may have lead to the situation where Haines' evidence was tainted or affected by the statement of Presley.

It is clear that the foregoing items added to the difficulty of the witness Haines but even allowing for that it is quite clear that the statements made at the Committal, the Supreme Court Trial and at this Inquest, were contradicted time and again in whole or in part, and a Tribunal would have to be most cautious in acting on his evidence.

I would add that the practice of having a witness to an incident used to read back a record of interview made by a suspected offender is a course which may well lead to complications both as to memory of observations or leaving an opportunity for a witness to seek to protect a friend and to change his evidence.

7. QUESTION OF PERJURY IN THIS INQUEST

It is quite clear to all who took part in this Inquest that considerable time was taken up with seeking to clarify the evidence of witnesses given in statements and evidence. Much of the evidence is confused and wrong and there have been allegations of certain people telling lies.

Counsel for Clifford and Warren made the only request at the Inquest on the basis of perjury when he said at page 1862, "I think Your Worship should turn your mind to the possibility of indicting some of these Aboriginals for perjury charges".

When asked by me to direct me to specific items, some points were made regarding Geoffrey Presley, namely,

(i) Concerning his signature of Record of Interview, and

(ii) allegation that there were four policemen in caravan, all with pistols threatening him.

Nothing further was brought up again until nearly at conclusion of the Inquest but nowhere was there a detailed account of the specific allegations in full against Presley or other witnesses nor was any argument put as to the basis in law of the charge. In fact the detailed ground work required for me to consider the matter was not done.

I am confident that the Attorney General will have the papers of this proceeding before him and that if the question of perjury arises it will receive attention. Counsel Assisting drew my attention to authorities in other States for this procedure and I consider it proper in this matter.

CONCLUSION

During the Inquest quite serious allegations were made against the competency and objectivity of the police investigators.

I have sought to set out the particular causes of complaint particularly in both investigation and forensic areas to show what inadequacies existed. The fact that a person was killed in the incident and that a police officer was involved, places the incident as one in which the community is vitally interested and it goes to the whole basis of the objectivity of the Criminal Justice System. It is possible the matter will be an emotive issue that fact combined with the serious nature of the incident demands a thorough efficient and competent investigation of the incident.

I am satisfied that there can be no finding that the police investigation was biased, incompetent or proceeded on the basis of seeking to protect the police officers. It is clear that the investigation was difficult in that there had been a fracas, that there were some ten witnesses, some of whom were adversely affected by alcohol, some severely so. The investigation was done partly at night in a remote area and all these added to the difficulty of the investigation. Further additional evidence was elicited at the Committal and Supreme Court under cross-examination of the police officers. It is also a fact the investigation of the evidence at this Inquest took some five weeks.

However, even allowing for these mitigating factors, the faults in the investigations, combined with forensic deficiencies are such, that it is my view that the investigation was not of sufficient standard required by the situation. I can only adopt the Counsel for Commissioner's statement, "certainly there are matters about it that were inadequate, certainly there are things that now in hindsight of a year later it is easy to see should have been done and were not done". I would take issue that it took a year to see some of these deficiencies - they should have been seen earlier, in an efficient investigation, and at a time something could have been done about it.

This type of incident involves two areas of examination:

(i) death caused by the use of a firearm by a law enforcement officer, and
(ii) an inquiry into that use carried out by members of that same law enforcement body.

These areas of examination are most difficult in any event but in the Northern Territory there are added difficulties caused by the small size of the Police and remoteness. This Inquest did not have the capacity to thoroughly examine the question and attempt solutions but the question is still very real and requires attention. I would request the Attorney General as Minister responsible for the Police and Law to direct attention to the problem and seek to formulate a plan of action should the need arise in the future.