



FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 1st, 2nd, 3rd, 4th, 7th, 8th, 9th, 10th, 11th, 21st, 30th and 31st days of August, and 15th day of September, 2000, before Wayne Cromwell Chivell, a Coroner for the said State, concerning the death of Luke Francis Donaghey.

I, the said Coroner, do find that Luke Francis Donaghey, aged 26 years, late of 3 Inverarity Street, North Glenelg, died at Flinders Medical Centre, Bedford Park on the 24th day of July, 1999 as a result of .357 magnum gunshot wounds to the chest and abdomen. I find that the circumstances in which Mr. Donaghey died were as follows:-

1. **Introduction**

- 1.1 Luke Francis Donaghey was born on 12 September 1972. At the date of his death he was 26 years old. He died on 24 July 1999 as a result of being shot by a police officer, Constable Brenton Triplow, during the course of an attempt to detain him pursuant to Section 23 of the Mental Health Act 1993.
- 1.2 This incident has been the subject of an extensive investigation by a team led by a senior officer of South Australia Police (SAPOL), Detective Superintendent G. Eaton, at the direction of the Acting Commissioner, Mr. N.J. McKenzie. This process is known locally as a “Commissioner’s Inquiry”. The inquiry was also overseen by Mr. A.D. Wainwright, the Police Complaints Authority.
- 1.3 It is arguable whether Luke Donaghey’s death constitutes a “death in custody” within the meaning of Section 12(1)(da) of the Coroners Act, 1975. A protocol for investigation of deaths in custody has been developed between my office and the Commissioner of Police, and this treats such cases as deaths in custody. Since I decided that an inquest into the death was desirable in the public interest, the strict

definition is somewhat academic in the circumstances of this case. There is no doubt that the investigation was of the standard required in such cases in any event.

2. **Background**

- 2.1 Luke Donaghey was an intelligent young man who graduated with a degree in Town Planning from the University of Adelaide in 1994. Unfortunately he was unable to obtain full-time employment after that, and spent his time assisting his father, who is a Licensed Surveyor.
- 2.2 This inability to obtain employment made Luke despondent, and he consulted the family General Practitioner, Dr. Harold Chamberlain, in early 1996. He referred Luke to a psychiatrist, Dr. John Wurm.
- 2.3 Dr. Wurm saw Luke on 7 February 1996. He thought that Luke's problems were more deep-seated than mere despondency. He learned that Luke had been using illicit drugs (marijuana, LSD and ecstasy). Luke was thought-disordered and delusional. Dr. Wurm made a diagnosis of "brief psychotic disorder of a schizophreniform type associated with substance abuse" (Exhibit C.42a, p2).
- 2.4 Luke was admitted to the Adelaide Clinic. He was given Haloperidol, an anti-psychotic, with good effect. He was discharged on 14 February 1996 on a maintenance dose of 5mg per day of Haloperidol. It is doubtful that he took his medication conscientiously, however, as he found the side-effects unpleasant.
- 2.5 The symptoms reappeared in July 1996. Luke was suffering from auditory and perceptual hallucinations, and lacked insight into his illness. Dr. Wurm suggested readmission to hospital but Luke refused. He agreed to recommence Haloperidol, and this again resulted in significant improvement. By 25 July 1996 Luke's father told Dr. Wurm that he was "much improved" (Exhibit C.42a, p3).
- 2.6 In September 1996 Dr. Wurm noted that Luke was well (Exhibit C.42a, p3), and in October, Dr. Chamberlain described him as "emotionally very stable" (T.891).
- 2.7 By November, however, Luke's parents were very concerned about his condition. By this time, Luke had been referred to Dr. Gregory Dare, another psychiatrist, whom Luke found more acceptable because he was younger than Dr. Wurm. On 6 November 1996, Mrs. Donaghey wrote to Dr. Dare:-

“Dr Dare, 189 Daws Road, St Marys, S.A.

Dear Dr Dare

We have a few comments we wanted to say to you before you see Luke. He has been unable to get employment as a town planner. He can work part-time doing similar work with his father but is hard to motivate. Until this week Luke had turned his sleep pattern completely around, going to bed at 6 a.m. and rising between 5 p.m. and 8 p.m. each evening. This has gradually been getting worse over the past six weeks. Presently this week he has improved but it is always there in some form. Our main worry is the smoking of marijuana which makes him sleep all through the day and also we believe it originally partly caused his first breakdown when he spent a week in the Adelaide Clinic, making a full recovery after medication. Leading up to his admission to the clinic his behaviour included people on the television talking to him, his lecturer and the people on the bus sending him thoughts and the neighbours talking about him.

During this time he lost most of his friends. Another breakdown occurred five months after the first and we looked after him at home and was again on medication from Dr Wurm. Once again he made a full recovery. Dr Wurm has told Luke marijuana isn't a problem. We tend to disagree and it worries us as heavy use happened prior to his first breakdown when we were absent from home for four weeks. We hope you understand our concerns in this matter and hope this maybe of help to you in ascertaining Luke's problem. He was taking Ducene and haloperidol and temazepam, and maybe others but nothing for the past four months.

Yours faithfully.” (T.144).

The letter was endorsed at the bottom:-

“Please do not let Luke know we have had contact with you”.

Surprisingly, both Dr. Chamberlain, who saw Luke on 6 November 1996 and described him as “coping quite well” (T.914), and Dr. Dare, who saw him on 7 November 1996 and said that his “life situation had improved” (Exhibit C.43a, p3), did not see reason for concern in Mrs. Donaghey’s letter.

- 2.8 It is to be noted from Mrs. Donaghey’s letter that Luke’s deterioration was again associated with drug use, and that he was refusing therapeutic medication. Dr. Dare saw Luke on 7 November 1996, and again in February 1997, but no active treatment was undertaken. Dr. Dare said that he did not note any psychosis at those interviews (Exhibit C.43a, p2-3). 25 February 1997 was the last time Dr. Dare saw Luke.
- 2.9 It is apparent that Luke’s condition did not improve much in 1997. His mother was particularly worried about him. She contacted Dr. Dare in May, and Dr. Dare wrote to Dr. Chamberlain advising that she had expressed concern about suicide. Dr. Dare

advised that he thought the risk was low, and Dr. Chamberlain did not consider him a risk to himself or others (T.919).

2.10 First Crisis Intervention

On 7 June 1997, Luke's behaviour had become so erratic and troubled that the Western Acute Crisis Intervention Service (ACIS) was called. Mr. E. Sorgini, a Senior Social Worker, called that day, and returned the next. A colleague, Mr. J. Banister, called again on 9 June 1997. Both found him psychotic. He was extremely thought-disordered. He was refusing to attend hospital for treatment.

2.11 Although Mr. Banister did not consider that Luke was at immediate risk, the extent of his illness rendered the situation unpredictable. The police were called, and exercising their powers under Section 23 of the Mental Health Act, they detained Luke. After what Mr. Donaghey described as a "short tussle" (T.30), Luke was conveyed to the Queen Elizabeth Hospital, then to Glenside Hospital and then to the Adelaide Clinic, where he remained under detention until 21 June 1997.

2.12 This comparatively benign incident did affect Luke's attitude to the police, and may have played a part in his death. It does not take very much for paranoid people to become preoccupied with such issues. Mr. Donaghey said:-

"Yes, he was sort of frightened of the police really ... I'll give an example of that. The year before last we were at Margaret River for New Years Eve or somewhere around there and Luke rang us up from home, his cottage and he'd just had a terrible, terrible nightmare and the nightmare was that the police had broken into his place and were chasing him around the place and he woke up and he was a fairly distressed situation, as a result of that nightmare. That's why I know he didn't want to have anything to do with the police. I presume it comes from the fact that the two young police from ACIS took him to a place that he didn't want to go anyway. He certainly didn't want to be involved there". (T.169-170).

2.13 At the Adelaide Clinic, Dr. Wurm prescribed Olanzapine, a relatively new anti-psychotic medication, to good effect. Luke discharged himself after the detention expired, and promised to continue taking Olanzapine and avoid marijuana. It seems that he did neither. At a follow-up appointment, Dr. Wurm noted that he was "maintaining good health" (C.42a, p4). This was the last time Luke saw a psychiatrist.

- 2.14 Luke continued to see Dr. Chamberlain from time to time. Dr. Chamberlain said that, although Luke continued to display symptoms of anxiety and thought disorder, he did not accept further treatment. He refused to take Olanzapine or any other medication. He continued to abuse drugs. Dr. Chamberlain said that he was careful not to “push him too far” (T.892). He said that he was intelligent, and threatened to get legal advice if he was unhappy with treatment (T.894). Dr. Chamberlain said that, even if a Treatment Order pursuant to the Mental Health Act was made, he would have been able to get out of it “fairly rapidly” (T.897).
- 2.15 Dr. Chamberlain clearly thought that he was unable to take any further steps to treat Luke while he maintained that attitude. He was anxious to maintain a “good therapeutic relationship” (Exhibit C.60, p4). One can easily sympathise with this approach. However, the relationship must be both “good” and “therapeutic”. I am not sure that the second of these factors was given sufficient prominence, particularly in relation to psychiatric issues.

3. **23 July 1999 - last visit to the Doctor**

- 3.1 On 23 July 1999 Luke Donaghey consulted Dr. Chamberlain for the last time. He was agitated and delusional. He insisted that he was a genius and was telepathic. He had demanded that his parents give him the cottage they had bought for him to live in, and leave him alone (T.36).
- 3.2 Luke went to see Dr Chamberlain by himself and came out with a prescription for his asthma. In frustration, Mr Donaghey went to see Dr Chamberlain, who told him that Luke had once again refused to take medication. When asked what more as parents they could do, there ensued a conversation about withdrawal of support for Luke.
- 3.3 Dr. Chamberlain said that he told Mr. Donaghey:-

“I felt that if they withdrew that attention it would force him to stand on his own two feet and in effect put him on the open market so to speak. This may result in Luke getting into minor strife and subsequently being then forced to take some medication to help with his mental health”. (Exhibit C.60, p3).

Dr. Chamberlain was anxious to point out that he did not intend to convey that the Donaghey’s should ignore Luke, or deprive him of the support of loving parents, but rather that they should try and get him to realise that he needed help by taking him out of his comfortable lifestyle (T.896).

3.4 This advice was to have considerable influence upon later events. When the police arrived at the house the following evening, this was the reason which prompted Mr. Donaghey to ask them to detain Luke. He said:-

“... when I saw the police coming down the street it was out of a bit of a relief in a way, (because I thought) crikey there’s someone here, at least there’s some help”. (T.128)

3.5 Treatment by Dr. Chamberlain

Dr. Chamberlain was in no doubt, when he saw Luke on 23 July 1999, that Luke was psychotic. He spoke of voices tearing through his head, and Dr. Chamberlain could see that Luke was out of touch with reality.

3.6 Luke was seriously ill, had no insight, and was refusing treatment. Yet Dr. Chamberlain did not consider that it was appropriate to detain him pursuant to Section 12 of the Mental Health Act 1993. He said:-

“I don't believe he was legally detainable at that time because he, being highly intelligent and having had a lot of contact with psychiatrists and the public health system, he would've denied any of his symptoms to any outside inquisitor”. (T896).

He obviously thought that an approach to the Guardianship Board would be equally pointless. He said:-

“Q. If he could be forced to take medication in that way, wouldn't it have been more appropriate for an application to have been made to the Guardianship Board for that same sort of order.

A. It certainly would be a good thing if he could've been forced, but I believe that he would've denied all symptoms to other people, and that he would've gotten out of a treatment order fairly rapidly”. (T.897).

3.7 Dr. Chamberlain’s approach to treatment of Luke Donaghey on 23 July 1994 was less than adequate on several fronts. Firstly, his advice to Mr. Donaghey about withdrawal of support was described as “poor advice” by Dr. A.T. Davis, a consultant psychiatrist with wide clinical experience. Dr. Davis said:-

“A. I think given the statement about all the signs of schizophrenia it was poor advice, that really this young man was ill and needed intervention. Now I'm acknowledging that it may have been difficult to force intervention but I think the next step would have been to approach someone in the public sector to seek admission. That's certainly the advice, if I had been consulted I would have given that advice, that this young man should be in a hospital. I understand the other approach in terms of trying to almost precipitate a crisis, but the problem with that is it can do just that and the crisis can take on a dimension you don't want to know about.

Q. And you can't predict what that crisis might be.

A. And that's unpredictable, and in the state of a young person with a florid psychosis there are extraordinary risks, so it may have been an error of judgment, but it may be based on the lack of experience of that profile of risk". (T.938).

3.8 Further, Dr. Davis said that Luke's symptoms were so florid that he thought he would have been detained in most treatment centres in Adelaide (T.955). Indeed, with that degree of psychosis,

"I certainly would have mobilized an ACIS team". (T.975).

3.9 Dr. Davis explained that it is accepted in the psychiatric community that it is appropriate to take a "cautious" view and, if in doubt, detain the patient for assessment for a day or two. Once that assessment has occurred, a more rigorous view can be taken about whether further detention (for 21 days, pursuant to Section 12(5)) is appropriate (T.946).

3.10 Dr. Chamberlain's views about the efficacy of a Treatment Order pursuant to the Mental Health Act seem equally inapt. Such orders are not lightly revoked, as he suggested. Indeed, Dr. Davis said that, in his experience, once an order was made, it is unlikely to be reviewed for six to twelve months. He said:-

"they (the Guardianship Board) tend to sit and observe the effect of treatment over six to twelve months". (T.950).

3.11 Finally, Dr. Chamberlain seems to have little faith in the ability of psychiatrists to identify psychotic symptoms in patients. Although Dr. Davis acknowledged that it can be difficult with mild symptoms, it should not be with florid psychosis. He said:-

"Q. That was his point of view that Luke Donaghey was an intelligent young man who knew the right things to say in order to avoid getting treatment that he didn't want.

A. I think it would relate to the extent of the illness at that period of time; if he was a mild state, yes. I think if someone has a florid psychosis with the sort of symptoms that have been described, it would be very hard to keep that together and convince people otherwise over say a 24 hour period". (T.944).

3.12 Following the closure of Hillcrest Hospital and the Emergency Department at Glenside Hospital since 1996, the first-line of treatment for mentally ill patients has been either a General Practitioner or Casualty Department of a major hospital. In that case, it seems that there is more to be done in relation to training and information of

General Practitioners to understand and utilise the system better. I will discuss this issue again later in these findings.

4. **24 July 1999**

4.1 On Saturday 24 July 1999 Mr. Frank Donaghey arrived home from golf at about 6.20p.m. Luke had walked from his cottage to the Donaghey house in Windermere Avenue, Novar Gardens earlier in the afternoon, and had been talking with his mother.

4.2 It transpired that Luke and his brother Shaun had spoken on the telephone earlier, and Shaun had told Luke that their parents were considering selling the cottage. Shaun had heard them discussing such options after Mr. Donaghey's conversation with Dr. Chamberlain, and, according to his father,

“... thought that perhaps if he became aware that he might have support withdrawn, he might snap out of it”. (T.31).

4.3 Luke was obviously agitated at this development. An argument began, during which Luke threatened to go to Europe “and we'd never see him again” (T.37).

4.4 Mr. Donaghey again tried to convince Luke to take Olanzapine but he refused. He became agitated, saying that the pain they were causing him was “like cutting my face” (while moving his finger down his face) (T.39).

4.5 Luke then asked to borrow his mother's car. Recalling Dr. Chamberlain's words, they refused, and he became even more agitated. He tried to take the keys, Mr. Donaghey went to stop him, and the two men began wrestling. At one stage Luke pushed his father back into a sliding door, knocking it off its hinges. He then grabbed his father by the testicles.

4.6 Luke continued to scream for the car keys, and when he did not get them he went into the kitchen and got what Mr. Donaghey described as “one of those tiny little steak knives” from the drawer (T.42). He then menaced Mr. Donaghey with the knife, holding it 10cm in front of his eyes and threatening to cut them out, then grabbing his testicles again and screamed:-

“How would you like me to cut your cock off?” (T.43).

There was a little confusion as to the order in which these events occurred. Mr. Donaghey confirmed that they happened in the above order at T.166.

4.7 Mr. Donaghey was understandably shocked at these events, and went to the telephone and dialled “000”. He said:-

“I thought we needed some assistance here similar to ... what we went through with the ACIS thing”. (T.41).

Luke pulled the telephone from the wall socket. Mr. Donaghey said:-

“I wasn’t even aware that the damn call had registered, to tell you the truth”. (T.41).

4.8 After a further scuffle, Mr. Donaghey disengaged from Luke by giving him the keys, and Mr. and Mrs. Donaghey then left the house for a dinner engagement.

4.9 Mr. and Mrs. Donaghey were obviously deeply shocked by these events. Mr. Donaghey said:-

“I’ve got to tell you the single thing that made me in desperation dial 000 was the fact that Luke had grabbed me by the testicles. Now he’d never done that in his life, and he wasn’t that type of person, he was a gentle, nice person, he wasn’t that type, and it shocked the living tripe out of me I can tell you that, to the extent that I thought ‘God, we’ve got to do something here’ and that’s why I did”. (T.167).

5. **Police response**

5.1 Mr. Donaghey’s call to “000” was received by the Telstra operator at 18:58:55, or nearly 6.59p.m. The operator said that the caller asked for the police, she then heard a scream, and the line was disconnected (Exhibit C.11a, p2). The SAPOL Communications Centre (“ComCen”) operator, Constable Williams, tried to telephone the number provided, but the call was not answered (Exhibit C.22a, p2).

5.2 This call was duly transmitted to ComCen, but was not picked up until 19:00:57, because the incident operator was on a meal break.

5.3 At 19:01:50 dispatch operator, Constable Sarah Clarke tasked patrol Sturt 22 (Constable Halman) to the scene, describing the incident as a “106”, which is code for a domestic dispute. He requested back-up, and at 19:02:07 Sturt 6 (Senior Constable Downs) responded and made his way to the address. At 19:13:00 Downs requested ComCen to direct Halman not to attend at the house, as he had met Mr. Donaghey in Leander Street by that time. As I will discuss shortly, Halman had already made contact with Luke Donaghey by then.

- 5.4 From then on, the records indicate that the SAPOL personnel arriving at the rendezvous point in Leander Street included Alpha 905 (Senior Constable Nairn of the Dog Unit, who volunteered to attend “in case he wants to go for a knife, too” (Exhibit C.23b, p3). Nairn arrived at 19:20:19, Vixen 29 (Sergeant Bird) at 19:20:54, Sturt 23 (Constable Triplow and Probationary Constable McIlvena) at 19:21:34 and Vixen 20 (Sergeant House) shortly afterwards.
- 5.5 Having regard to the apparent urgency of the message on “000”, the SAPOL response was timely. Perhaps a minute or so was lost because an officer was on a meal break, but nothing happened during this time, and the delay had no effect on the outcome. Constable Halman was at the scene by 19:11:57, which is a good response time (see Exhibit C.56a, p1).

6. **Rendezvous in Leander Street**

- 6.1 At about the time he received the message from Downs via ComCen not to approach the house, Halman was standing in the driveway near the side door. He said that he saw Luke Donaghey in the kitchen. He walked quickly to the door and leaned out. He yelled and waved his arms about. Halman’s statement records:-

“He said: What do you fucking want?
I said: We received a call about a disturbance here.
He said: Get off the fucking property”. (Exhibit C.47, p2).

- 6.2 Halman said that he appeared very agitated and aggressive. He commented to ComCen:-

“Roger, considering his state of mind I would imagine, he was very, very aggressive towards me, but he’s gonna go off if we’re gonna do anything to him”. (Exhibit C.23b, p3). (my underlining).

This turned out to be prophetic advice.

- 6.3 Halman returned to the rendezvous point in Leander Street, where Downs was speaking with Mr. and Mrs. Donaghey. He said that he had a “very, very brief” conversation with Downs, in which he told him that Luke was aggressive and agitated (T.76)
- 6.4 Halman then spoke to Nairn, Triplow and McIlvena, while they were standing waiting for instructions. He told them of his observations of Luke, and of what Downs had told him about Luke’s behaviour with his parents in the house with the knife (T.78).

He understood that they had been requested by the parents to go into the home and detain Luke pursuant to the Mental Health Act. All this information from Halman had great influence on the actions of Triplow and McIlvena when they readied their weapons before entering the house.

6.5 Information gathering

As I have already mentioned, Mr. Donaghey was surprised that his call to “000” had got through. When he saw Downs’ car in Leander Street he signalled it to stop. He then spoke to Downs, and told him what happened.

6.6 As each officer of higher rank arrived, he assumed the role of “forward commander” of the incident. Downs held that role for a short time until Bird arrived, and House took over from Bird when he arrived.

6.7 I will list the information which changed hands during this process:-

- as I have already outlined, Halman told Downs of his observations of Luke Donaghey;
- Halman then told Nairn, Triplow and McIlvena all he knew of the incident;
- Frank Donaghey said he told Downs:-
 - he and his wife were in a state of shock;
 - Luke had threatened to cut his eyes out and his penis off with a knife;
 - they wanted the police to take Luke to the Queen Elizabeth Hospital for assessment;
 - Luke was in an agitated mood and needed medication;
 - (in answer to questions) there were no drugs in the house and Luke had not been drinking;
 - there were no guns in the house;
 - Luke was alone in the house;
 (Exhibit C.46, p8-9)
- Luke was more than six feet tall but only 11 stone or so (T.64);
- he was in an agitated state and needed to be treated with caution (T.65);
- he could be verbally aggressive but he did not expect that Luke would be a physical danger - he was a gentle-natured person (T.66);
- the police had their permission to enter the house, and they handed over the keys to Downs (T.66).

6.8 One piece of information which Mr. and Mrs. Donaghey did not give was about Luke’s negative attitude to the police arising out of the previous ACIS visit. Mr.

Eaton suggested that the police may have acted differently had they known that (T.827).

6.9 I doubt that this was an important factor, really. The police knew that Luke was agitated, and they knew through Halman that he was aggressive and uncooperative. Having assessed the physical risks, I doubt that they would have acted differently had this information been imparted.

6.10 Sergeant House, who made the decision to enter the premises, interpreted the information he received from Halman, Downs and the Donagheys as follows:-

- he heard Halman on the local radio channel saying “I’m at the address, he’s not armed but he’s a fairly big guy. I want some extra hands down here.” (T.544).

(I have some reservations about this evidence. Mr. Bailes, counsel for House, did not cross-examine Halman about this conversation. Halman’s evidence only referred to his radio transmissions through ComCen, during which he made the comment that Luke may “go off”, which House said he did not hear - T.563).

- Downs told him about the threats Luke made with the knife (T.545);
- during a conversation with Mr. and Mrs. Donaghey:-

“I said: Number one, are there any firearms in the house?

She said: No.

I said: What about this knife?

She said: Don’t worry, the knife would have been put away by now.

I said: What is his reaction going to be if we go in there?

She said: There will be no problem.

I said: (asking about his size and strength)

He said: He’s about six foot three, but he’s only 11 stone”. (T.546).

- during the same conversation, one of them said (words to the effect of):-

“he will abuse you, he will abuse you verbally, but there will be no danger” (T547)

Mr. Donaghey said that he had no memory of any such conversation (T.130).

6.11 Although much time was spent during the inquest analysing who said what to whom, it comes down to the fact that, on the basis of two factors, House decided to attend at the Donaghey house in Windermere Avenue and “gauge a response” from Luke. Those factors were:-

- Luke was no longer armed;
- he was not of powerful build, and they would have no trouble overpowering him physically.

7. Attendance at Windermere Avenue

7.1 House told Bird, Downs, Nairn, Halman, Triplow and McIlvena that they were going around to the house. It was generally understood that the plan was to “gauge a response” (see Downs at T.210, McIlvena at T.400, House at T.547). It is clear that there was no explicit contingency plan if the response was negative - i.e. that Luke did not come out willingly and submit to detention.

7.2 Sergeant House explained his plan as follows:-

“A. The gist of it was we would go up to the house and see what sort of a reaction we'd get from Luke with the intention of getting Luke out of the house and getting him to the hospital for assessment.

Q. Is that what one can refer to as the plan of action.

A. That's right”. (T.547-548).

All of the other officers gave evidence to the effect that they understood this to be the plan, except perhaps Sergeant Bird, who had a more cautious approach:-

“No plan really but from the experience of Downs, House and myself that were there, there would be the initial attendance there to assess the situation and find out whether he was going to be aggressive towards us, what threats would be made and if there was any there, then we'd just back off and contain the area and call in the appropriate resources”. (T.349).

Unfortunately, Bird did not have any role in what subsequently transpired. If his plan had been complied with, the outcome may have been different.

7.3 Once they arrived at the house, Bird and Halman went around to the backyard, as part of a “cordon and contain” tactic (T.349) Downs, Triplow and McIlvena went to the front door. House pressed the doorbell and 15 - 20 seconds later the door was opened and Luke stood behind the locked screen door. Downs said “Luke, it's the police” and Luke replied “Fuck off” and slammed the door (T.214).

7.4 Downs heard footsteps toward the side door to the carport, then that slammed, too. Downs said:-

“I looked towards Sergeant House and he nodded, so at that stage I put the key into the screen door to unlock that as quietly as I could, then I opened that and put the key in the main wooden door and opened that. At that stage we have access to the house and I can still hear Luke in the house, because I could still hear footsteps and the sounds of things being knocked over, and at this stage it's coming further towards the back of the house. I said 'We're in'. I went in through the front door - I was the first one in - and that gives access to a hallway and there's a door off to the left which leads I think into a lounge room”. (T.214-215).

House said that after he followed Downs inside, he called out:-

“Luke, Police here”. (T.553).

This is another piece of evidence that was something of a surprise, since Mr. Bailes did not question any of the other witnesses about it. It does not fit well with Downs’ evidence that they had the tactical advantage of surprise, because Luke did not know that they had the keys (T.255).

- 7.5 In any event, House followed Downs through the front door, down a short passage, turned left, then through a doorway into the lounge room.
- 7.6 Triplow had drawn his police issue revolver, and had it down, with his finger off the trigger, by his leg. He followed House inside and into the lounge room. McIlvena had taken out her capsicum spray canister as a precaution, and held it in her right hand and her torch in her left.
- 7.7 It was while the four officers inside the house were in these positions that the tragic events then unfolded with great rapidity, so much so that it is to be expected that impressions and memories will be different. In my opinion, Constable McIlvena was in the best position to describe everything that happened.

It is a great credit to her courage and professionalism that she was able to give such a clear and demonstrably accurate description of what happened:-

- she had only taken a “couple of steps” inside when she heard a noise and stopped;
- the noise was a clattering or banging noise, perhaps something being opened;
- the last she saw of Triplow was of his back going through the door to the left into the lounge room;
- as she was scanning the hallway, she saw Luke Donaghey come through the door at the end of the hallway. He was carrying a knife - she saw it sticking up in the air at an angle;
- as soon as she saw the knife she started spraying the capsicum spray;
- the capsicum spray seemed to have no effect on him - he continued to charge at her with no change of pace;
- she remembered seeing Luke’s mouth open, and his face distorted with anger;
- when Luke was only 1.5 - 2.0 metres away, she heard two shots in very quick succession;
- after the second shot, Luke stopped, dropped the knife, and his right shoulder went forward and he fell to the floor;
- she kicked away the knife, then picked it up with a covered hand and took it outside;
- she then ran back inside and, despite the heavy cloud of capsicum spray, tried to administer first aid. (T.404-409).

7.8 For his part, Triplow also described what happened in detail:-

- he followed Downs and House inside;
- he turned left into the lounge room only a short distance;
- he heard someone yelling, and the opening of drawers in the kitchen;
- he moved back towards the door into the hallway, and saw Luke Donaghey holding a knife;
- Luke was initially stationary, but then started to rush down the hall towards McIlvena;
- McIlvena called “spray”;
- as Luke rushed down the hall, he said:-
 - “Get out of my (fucking) house” and “I’m going to (fucking) kill you” (the word in brackets was used, but he was unsure when);
- he concluded that the capsicum spray had been ineffective;
- having reached that conclusion:-
 - “I raised my firearm to the male and at the last possible moment, where I believe that injury was going to occur to Constable McIlvena, I fired two shots”. (T.489).
- Luke was only about 1.5 metres away from him when the shots were fired;
- Luke was only about two metres away from McIlvena when he fired, and the knife was still raised;
- the shots were in quick succession;

- he fired because:-

“If I didn’t fire I felt that he was going to kill or seriously injure Constable McIlvena”. (T.485-490).

7.9 Constable McIlvena also gave evidence that she was in fear of her life, and that Triplow had no choice but to fire. She said:-

“A. When he first came through the door I was concerned for my personal safety. I sprayed him I suppose - thinking that I’d seen it work before, and at that stage I just thought, okay, I’ll see if the spray works. As soon as he kept coming through the spray I thought he was going to kill me. I had nowhere to go, I couldn’t back up as fast as he was coming forward. I wasn’t sure if there was a door behind me or not. I thought there was a little (step behind me) somewhere and if I turned my back on him I’d have no chance of defending myself. If I tripped and fell over while I was trying to back away I’d be even more vulnerable, so I just stood my ground and tried to lean my torso back and spray him.

Q. Presumably your training would be that you would never turn your back on somebody with a weapon.

A. No. Once you take your eyes off them you’ve got no chance whatsoever. At least where you’ve got your eyes on them you might have some chance. But really I was confined by the passageway. I had nowhere to sidestep or anything, to get out of his way.

Q. Can I ask you this question, it may be an unfair one, you say so if you think it is. If you’d had your gun out rather than the spray at that time, what would you have done.

A. I would have shot him.

Q. You were that much in fear of your life.

A. Yes”. (T.417).

7.10 Constable Clarke at ComCen was notified of the shooting at 19:32:04 (7.32p.m.) and recorded that fact on the computer (Exhibit C.56, p4).

7.11 McIlvena alone, perhaps because of her high state of anxiety or alertness, was seemingly unaffected by the spray. All the other officers were forced to leave the house and “decontaminate” with water outside.

7.12 Nairn went inside and assisted McIlvena to get Luke outside on to the lawn. They proceeded to administer what first aid they could. Nairn is a former ambulance officer, and is highly experienced in that area.

7.13 An ambulance was called by ComCen at 7.33p.m., and Luke was conveyed to the Flinders Medical Centre, arriving at 7.41p.m. Unfortunately, his injuries were overwhelming, and he was “asystole” (no heart activity) when they arrived. Further attempts to resuscitate him were made, but the position was hopeless, and his life was pronounced extinct at 8.07p.m. (Exhibit C.2a, p2).

- 7.14 When Mr. and Mrs. Donaghey came to see his body at Flinders Medical Centre, Mr. Donaghey leaned over to kiss his cheek. He said:-

“I leant over and gave him a kiss on the cheek and said goodbye. I got this rather severe stinging sensation in my eye and I had no idea what it was. I said to the nurse ‘For God’s sake I can’t see out of my right eye’, because that was the eye that made contact with Luke’s cheek. It was a brush not a deep impact contact and it left me - my eye was stinging like blazes and I couldn’t see out of it. I said ‘What on earth is that’, and she said ‘You need to pour water on it’. So I went around to where there was a sink and a tap and I stuck my head under the tap and turned it on for about five minutes before I got relief from this sensational stinging in my eye, which turned out to be Mace so it seems”. (T.55).

It was not Mace, but capsicum resin. This is a stark illustration of the difference in reaction to the substance between people.

8. **Cause of death**

- 8.1 A post mortem examination of the body of the deceased was performed by Dr. J.D. Gilbert, forensic pathologist, on 25 July 1999. Dr. Gilbert found the cause of Luke’s death to have been:-

“.357 magnum gun shot wounds to chest and abdomen”. (Exhibit C.3a, p1).

- 8.2 A re-enactment was performed by Triplow and McIlvena at the request of the investigators. A videotape was taken of the action (Exhibit C.52). Having seen the video, Dr. Gilbert was of the opinion that the first wound received was the one where the bullet entered through the muscle at the back of the right upper arm (the triceps muscle) and through the abdominal cavity, almost exiting on the other side. This wound was potentially treatable and not immediately life-threatening. It would not have immediately disabled Luke (T.173), although the triceps muscle injury may have limited his ability to use his right arm (T.182).
- 8.3 The second wound would have caused Luke to lose consciousness within 15 - 30 seconds, and to die within a matter of minutes (T.173). It caused a rupture of the aorta, and was untreatable (T.174).
- 8.4 Having seen the re-enactment and examined the body, Dr. Gilbert commented:-

“Of course we have to accept the evidence given by the people who were present at the shooting, but I found nothing in my autopsy findings that causes me to question any of that information, and I’m prepared to accept that Constable Triplow was present in the

lounge room and fired through the French doors towards Mr Donaghey as Mr Donaghey headed from the kitchen to the front door area". (T.174).

- 8.5 In particular, the position of the wound to the right arm was consistent with McIlvena's description, that the right upper arm was forward of the body, not outstretched, and not by his side (T.181).
- 8.6 Mr. Kenny sought to demonstrate from the angles described by Dr. Gilbert that Luke may have stopped after the first shot, thereby making the second shot unnecessary (T.193). However, Dr. Gilbert was at pains to point out that these angles are inexact. Having regard to the number of variables involved, Dr. Gilbert said:-

"I don't think the court really ought to rely on these angles to work out exactly where the gun was when it went off". (T.185).

8.7 Toxicology

Following the post mortem examination, Luke Donaghey's blood was analysed by Mr. Dominic Vozzo, a Forensic Scientist based at the Forensic Science Centre. The results of the analysis were as follows:-

4. Results

Tetrahydrocannabinol (THC) and 11-nor-9-carboxy-THC were present in the blood.

The blood contained

- (a) 0.24mg diazepam per L(therapeutic);
- (b) 0.20mg nordiazepam per L(therapeutic).

None of the drugs alcohol, lithium or other common basic drugs (including phenothiazines and antipsychotics) were detected in the blood.

5. Interpretation

5.1 Cannabinoids

Cannabinoids are a group of compounds found in Cannabis. Tetrahydrocannabinol (THC) is a cannabinoid and the major psychoactive constituent of Cannabis. Blood THC concentrations reach a maximum a short time after Cannabis use and then decrease rapidly. Low concentrations of THC may be detected for up to a day following Cannabis use depending on dose and frequency of use.

11-nor-9-carboxy-THC is the major metabolite of THC in blood. It may be detected for several days after Cannabis use.

5.2 Diazepam/nordiazepam

Diazepam is a minor tranquilliser of the benzodiazepine group with anti-convulsant, sedative and muscle relaxant properties. It is used frequently in the treatment of anxiety and tension. Diazepam is metabolised to nordiazepam which is at least as active as its parent. Therapeutic blood diazepam concentrations generally range from 0.05 to 2.0mg/L. The

combined diazepam and nordiazepam concentration in the blood (0.44mg/L) is within the reported therapeutic range”.
(Exhibit C.4b, p3-4).

In a later report, Mr. Vozzo explained:-

“Interpretation of the significance of the concentrations of THC and 11-nor-9-carboxy-THC is extremely difficult as they vary rapidly after use of Cannabis. Another factor that complicates the interpretation is the subject’s history of use. Low concentrations of THC may be detected in blood for up to a day in frequent users of Cannabis, but may not be detected in infrequent users several hours after use. There is no definitive correlation between THC concentration and effect. Once THC is detected an estimate of the time of use of Cannabis can be determined by taking into consideration the history of use and also the amount of Cannabis used.

Without knowledge of the actual scenario of use, all that can be said is that the presence of THC in blood would indicate that the subject had used Cannabis some time within the previous 24 hours”. (Exhibit C.4c, p2).

Dr. Gilbert agreed with Mr. Vozzo that the levels of THC and 11-nor-9-carboxy-THC indicated that Luke had used cannabis in the last 24 hours, although it was doubtful that he was acutely intoxicated at the time of his death (T.178).

8.8 The levels of Diazepam and its metabolite, Nordiazepam, were at “therapeutic” levels (T.178). Dr. Gilbert commented that such a drug may have had a disinhibiting effect, and may have been even more harmful in combination with THC on a person with a psychotic illness (T.778-9). I will discuss this issue again when considering the evidence of Dr. Davis.

9. **Issues arising from the inquest**

9.1 Psychiatric treatment

I have already discussed (in section 3) several of the issues arising from Dr. Chamberlain’s treatment of Luke Donaghey, particularly since February 1997 when Luke last saw a specialist. There is no doubt that Luke continued to display florid symptoms of psychosis from time to time after that, and yet the only treatment he would accept was tranquillisers. He continued to smoke cannabis.

9.2 Dr. Chamberlain displayed what I suspect is (or was) a widely held view that the mental health system is ineffective in dealing with people who are uncooperative, and that using coercive powers like detention leads to a “revolving door” situation where patients are discharged either immediately or the next day.

9.3 Unfortunately Dr. Chamberlain did not ever put the system to the test in Luke Donaghey's case. Indeed, it could be argued that his ongoing prescription of Ducene (Diazepam) could have been aggravating the psychosis, particularly when combined with THC from smoking cannabis. Indeed, instead of sedating him, it could have had a paradoxical effect and led to increased aggression (see the evidence of Dr. Davis at T.977).

9.4 Ideally, whether by coercion or otherwise, the treatment approach should have been as Dr. Davis described:-

“A. That varies a lot depending on the individual and the degree of insight and the nature of the illness. For some they are happy to take the medication as they become unwell, use it through a phase of illness and when they stabilise, stop the medication but it requires considerable insight to pick the fact that you're getting unwell and for many that's not the case, they in fact don't pick it, the family and friends do or they come to the attention of authorities. In that case, and this would probably be the majority, the strategy is a maintenance approach whereby you start the treatment, find the drug that suits, find the dose that is adequate, hopefully minimal to no side effects and then hold it as a long term strategy. That's assuming you've established a pattern of recurrence or ongoing symptoms. Schizophrenia is a term to describe a great variety of normal mental states. It's like an umbrella term really. For some people it's one episode, for others it's a chronic psychoses. Once you establish a pattern of recurrence, the strategy is a maintenance approach, one drug if possible perhaps for life, certainly for many years.

Q. From what you saw in regard to Luke Donaghey had there been established that pattern.

A. Yes, there was evidence of recurrent psychotic symptoms over several years, at times probably complicated by the drug use but I don't think that was always the factor and there were ongoing symptoms right up to July '99 evident in the documents". (T.930-931).

9.5 As to Dr. Chamberlain's fear that he might lose his therapeutic relationship with Luke, Dr. Davis commented:-

“Yes, I'm aware of a couple of instances, I've been involved myself, where they take offence at that decision and that act, and it fractures the alliance, although more often I would say that people who are detained will come back to acknowledge the fact that was the right decision, and you can actually work through it". (T.942).

As I commented earlier, there was little point in maintaining a therapeutic alliance if no therapy was taking place.

9.6 If Luke failed to follow recommended treatment, it was always possible to approach the Guardianship Board for a Treatment Order pursuant to Section 20 of the Mental Health Act 1993.

9.7 Interpretation of Mental Health Act

Dr. Chamberlain said that he interpreted the powers of detention and treatment in the Mental Health Act narrowly, and that he generally understood that they should only be used if the patient is a risk to his or her own safety or the safety of others (T.901).

Section 12(1) of the Mental Health Act is as follows:-

“If, after examining a person, a medical practitioner is satisfied -

- (a) that the person has a mental illness that requires immediate treatment; and
- (b) that such treatment is available in an approved treatment centre; and
- (c) that the person should be admitted as a patient and detained in an approved treatment centre in the interests of his or her own health and safety or for the protection of other persons,

the medical practitioner may make an order for the immediate admission and detention of the person in an approved treatment centre”.

(my underlining)

Section 20, in relation to treatment orders, is to similar effect.

9.8 In my opinion, a good argument could be made for reading the phrase “health and safety” in Sections 12 and 20 disjunctively, so that the powers are available if either the patient’s health or safety are at risk. However, I am aware that there is authority to the contrary. For example, in Ceric v Guardianship Board (29/2/96) Judge Noblet said:-

“We have no doubt that the appellant should be given treatment for his illness in the interests of his own health ... However, the policy of the Act seems to be that health on its own is not sufficient. It must be established that the treatment should be given in the interests of the person’s health and safety, or for the protection of other persons”. (p.3)

Similar discussions were made in Recinga (29/2/96), Davies (22/9/97), and Luppino (30/8/99). In that last-mentioned case, Judge Noblet analysed the word “safety” as meaning “secure from liability to harm, injury, danger or loss;”. His Honour held in that case that the risk of financial ruin was sufficient to come within the term “safety” (see p.5-6).

9.9 Using the same reasoning, surely a deterioration in health, particularly when considering such a serious illness as schizophrenia, would constitute “harm” and hence endanger “safety”, in any event.

9.10 Be that as it may, there is now a fairly well-established line of authority in the District Court to the contrary view. In my opinion, that interpretation may be leading to an overly-restrictive approach to the interpretation of Sections 12 and 20, particularly by General Practitioners in the field (see the evidence of Dr. Chamberlain at T.902, and Dr. Davis at T.936). Given those comments, I draw the issue to the attention of the Minister for Human Services and the Attorney-General, to consider whether the legislation needs amendment in light of these difficulties.

9.11 Information and Training about the Mental Health System

I received into evidence a statement of Barbara Wieland, Regional Director of the North Western Adelaide Mental Health Services, which outlines many of the developments in mental health, particularly since 1996 when the entire State system was realigned around the three major hospitals in Adelaide. The statement is Exhibit C62.

9.12 Ms. Wieland refers to the National Mental Health Plan, adopted in 1992. Consistent with that plan, the realignment included the establishment of a number of new agencies including:-

- Assessment and Crisis Intervention Service (ACIS);
- Mobile Assertive Care (MAC);
- Continuing Care, Clinic and Consultancy (CCCC);
- Day and Rehabilitation Programs;
- Inpatient services at the general hospitals, private hospitals and Glenside Hospital.

9.13 The Department of Human Services has gone to considerable length to train and inform General Practitioners about the availability and function of these services, including:-

- mail-outs, both direct and through the Divisions of General Practice;
- “shared care” projects;
- development of an early detection of psychosis information kit, with information about ACIS;
- a similar project in relation to Anxiety Disorders including treatment strategies and referral process;
- seminars for General Practitioners;
- referral of patients back to the General Practitioners;
- education of carers in relation to early warning signs and strategies to manage.

- 9.14 It is sufficient to say that it is tragic that none of the services available were given a chance to operate. As Mr. Donaghey observed:-

“I tell you what, it’s a shame that my level of awareness wasn’t there on that because I mean obviously that was the solution that we were looking for”. (T.162).

I am afraid that much of the responsibility for this lies with Dr. Chamberlain. If he was not aware of the availability of these services, he should have been, or he should not have been treating a patient with a mental illness. If, as he asserts, he was aware of these services, then it was a serious error of judgment not to have referred Luke to the mental health system, where there was a much better chance that he would get the treatment his illness demanded.

10. **Police response to emergency call**

- 10.1 I have already commented that the response to the “000” call at ComCen was quite timely, with the loss of perhaps a minute or so because Constable Clarke’s colleague was at a meal break. As I also observed, that had no effect on the outcome here.

- 10.2 There are two other areas where there are potential areas of concern. Firstly, at 19:40:00 Senior Constable Downs told Clarke over the radio:-

“Leander ... and can you ... ah, yeah ... we’ll have to notify ACIS perhaps the Vixen can come down here as well, please”. (C.23b, p2).

In cross-examination, Mr. Woods suggested that Clarke should have reminded Downs, or House, about that issue (T.685). Detective Superintendent Eaton thought so, too (T.842).

I do not think that this is a significant issue. House had no intention of calling ACIS - he had thought about it, but decided that they would take too long to get there (T.548).

- 10.3 At 19:17:24, Clarke sent a message to Senior Sergeant Voigt advising him of the job “for info in case male decides to rearm himself”. At 19:18:56, Voigt messaged back “rgr.tks ... do they require STAR div” ... that message went into a “message waiting” box on the computer. Clarke did not go to the box and “open” the message until after the shooting. Voigt did not follow it up either. Again, I do not think that this is significant - House did not think the attendance of STAR Division was necessary, and, as forward commander, it was his decision. Detective Superintendent Eaton did

say, however, that the computer system was being reviewed so that such messages are more likely to reach the operator.

- 10.4 Apart from that one area where the computer system could be improved, I can find no grounds for criticism of the ComCen staff arising out of this incident.
- 10.5 Finally, it is worth observing that there was no State duty Officer rostered on that night. This role, to provide on-the-spot supervision and guidance of operational police by a senior officer, is an important one. Such an officer can also give approval for certain functions (e.g. forced entry) which others may not. Normally, this function was performed by a commissioned officer, often newly-commissioned. This was downgraded to non-commissioned officers who had qualified for commission, and then simply to Senior Sergeants. Even one of these officers was not available, although Senior Sergeant Voigt was on duty at ComCen.
- 10.6 A properly qualified State Duty Officer might have provided the sort of input into the police response which would have led to a different outcome, although this is pure speculation.

11. **Police tactics**

- 11.1 I have already outlined the process by which the group of police officers arrived at the Donaghey's house, ascertained the nature of the problem and then entered the house.
- 11.2 It was accepted by all police witnesses, including House himself, that Sergeant House was the forward commander at the relevant time when these decisions were made.
- 11.3 There was much attention given during the inquest to the question whether the circumstances on 24 July 1999 should have been classified as a "high risk situation". Such a situation, pursuant to SAPOL General Order 3690, calls for the deployment of the STAR (Special Tasks and Rescue) Division.
- 11.4 "High Risk" situation is defined in G.O.3690.2.3.1 as follows:-

"The following definition of High Risk is from the 'National Guidelines for the Deployment of Police in High Risk Situations'.

The circumstances and types of situations which may be defined as 'high risk' vary widely. The essential judgment that needs to be exercised is whether the real or impending violence or threat to be countered is such that the degree of force that could

be applied by the police is fully justified. In this context, one or more of the following criteria may be used to define ‘high risk’ for the purpose of these guidelines:

- Seriousness of the offence committed by the suspect/offender.
- Expressed intention by suspect/s to use lethal force
- Reasonable grounds to believe that the suspect:
 - may use lethal force;
 - has or may cause injury/death;
 - has issued threats to kill or injure any persons.
- The suspect has:
 - a prior history of violence;
 - no recent history of violence but known to be violent in the past;
 - is exhibiting violence now.
- Involvement of innocent participants, eg VIPS, hostages or bystanders.
- Tactical difficulties associated with a specific incident site.
- Support for execution of warrants.
- Task beyond normal police resources and capability.

Any reference made in this General Order to ‘high risk’ relates to this policy”.

- 11.5 It is to be noted that this General Order should be read in light of the preamble to the General Orders, which at that time read as follows:-

“Preface

To all Members of the South Australia Police Force

The General Duties Manual is issued to all members for their instruction, advice and guidance in the effective and efficient performance of their duties. To this end all members are to make themselves thoroughly conversant with the contents of this manual.

All General Orders are made under the authority of section 23 of the Police Act and are to be complied with by all members unless, in the circumstances of a particular case, commonsense dictates otherwise. Any deviation from these orders without justification may attract disciplinary action.

1 December 1985

D.A. Hunt,
Commissioner of Police”.

(my underlining)

- 11.6 It is to be noted that General Order 3690 does not provide an exhaustive list of high-risk situations. It says that such situations “very widely”, and that the criteria set out “may be used ...”. Accordingly, if a situation fits one of the criteria on the list, it may be classified as high risk. But the converse is not true. Just because it is not on the list does not mean that it is not to be classified high risk.

11.7 Considerable effort was expended during the inquest on the question whether this situation fitted the criteria or not. Chief Inspector Hoadley, formerly the Officer in Charge of STAR Division, argued that it was a high risk situation, because of Luke's threats to injure Mr. Donaghey with the knife (T.712).

11.8 The senior police officers at the scene, however, thought otherwise. For example, Sergeant Bird said:-

“We had made an initial assessment but as the information unfolded towards us and the information that we received we didn't believe that there would be any risk whatsoever”. (T.342).

The information he referred to was:-

- it was only a small knife;
- Mr. Donaghey said that it would have been put away;
- Luke would have “calmed down by now”
- Luke was tall, but weighed only 11 stone;
- he might be verbally aggressive but no physical threat;
- he had been given the keys, the subject of the dispute with his parents.

(T.342-3).

11.9 If that assessment was made with the purpose of deciding whether to attend the house, there was nothing wrong with it. Neither Chief Inspector Hoadley nor Detective Superintendent Eaton had any criticism of the actions of House and the others up until the time that Luke slammed the door and it was apparent that he would be uncooperative from then on.

11.10 From that point onwards, both men argued that the situation should have been treated as “high risk”, and the STAR Division notified. Eaton said:-

“(after Luke slammed the door) ... It's a strong warning to you that the person inside doesn't want you to come in ... and walk across that threshold and you don't know what's going to happen ... And if you look at safely performing an operation then the risk substantially increased; we had control of it up until the time we went through that door - we lost control when we went in”. (T.867, 870).

11.11 One factor, above all others, of which House did not take sufficient heed was that Luke was in a floridly psychotic state. In those circumstances, discussion of whether he might have calmed down, or put the knife away, was somewhat pointless. The

behaviour of such people, particularly when confronted or threatened, is notoriously unpredictable (Eaton at T.824).

11.12 McIlvena had previous experience working with people with disabilities, and she was aware of this. She said:-

“I would say that I’m still very cautious of people with behavioural problems or anger management problems or mental illness, anything like that, because you just don’t know, everyone’s different, particularly if you haven’t built up a relationship with that person ...”. (T.458).

11.13 In fairness to the officers, although they were very experienced and had dealt with many mentally ill people, they had received little training on the subject. For example, Senior Constable Downs said that the training he has received since the incident has now made him more conscious of this issue, and he would be more inclined to take it into account (T.288).

11.14 The plain fact of the matter was that Luke could easily have re-armed himself at any stage of the incident. Constable Clarke, the ComCen operator, anticipated that possibility, as did Triplow and McIlvena, as I will presently discuss. Hoadley said:-

“A. In the circumstances that you’ve described to me and the circumstances in the report that I received from Senior Sergeant Feltus, I would say that given all those circumstances, no the police officers should not have entered the house. There was -

Q. Particularly -

A. There was no reason to do so and what it does is it creates a danger for the police officers themselves and the person inside the house.

Q. Can you tell us why you believe it creates a danger for the police officers themselves.

A. They may be attacked by the person inside the house and in this circumstance although the first police officer who arrived saw that the person was not armed, any reasonable person would imagine that a house would contain some knives, a number of knives and the person could quite easily arm themselves again”. (T.720-721).

This was not such a problem while they remained outside. But, as Hoadley observed:-

“Yes, I think it’s a very important thing to not cause any confrontation that they can’t retreat from”. (T.732).

11.15 Hoadley said that the correct procedure would have been for House to have radioed to ComCen, who would have contacted him. He said that, having been briefed:-

“Further, I would advise him to cordon the place, try and talk to the person inside and ask them to come out peacefully and not to take any other action until STAR Division arrived with a negotiator”.(T.723).

The investigation established that a STAR Division team was available that night, as were the negotiators. If called upon, an ACIS team was also available to provide advice on how to handle Luke (Eaton, T.788).

12. **The decision to enter**

12.1 House said that he was aware that Luke Donaghey was suffering from a mental illness, and took it into account in deciding that the situation was low-risk. He said:-

“Q. Did you consider the fact that Luke Donaghey may be suffering from a mental illness as the thing to be taken into account in considering whether something was a high risk situation.

A. Yes I did.

Q. What did you conclude when you thought of that.

A. Thought that we had the resources at hand to handle the matter”. (T.590).

12.2 In my opinion, this is the nub of the matter. House thought that the situation was low-risk, and that he had the resources available to handle any contingency.

12.3 House offered another reason for his decision to enter and not wait. During his interview with Eaton on 12 August 1999 (Exhibit C.54a), he said:-

“Q178 Did you consider the option of leaving him inside the house and seeking other resources or other alternatives to do that.

A. No, no we didn't.

Q179 Why not.

A. Because he was a danger, he'd already threatened his parents and by leaving he was going to be a danger to himself and then we'd be criticised like hell if we left him there and he bloody hurt himself”.

This was the first time, either during the incident or since, that anyone had mentioned the possibility that Luke might harm himself. Certainly, this was not discussed with the parents, nor with any of the other police officers on the night.

12.4 House said that although nothing was said, he gained the impression from the parents that the situation was urgent (T.605).

12.5 He gave the same reason for not consulting the ACIS team:-

“Depending on the time, I probably would have tried to find out urgently, how long they’d be. In this situation I don’t think ACIS could have done anything, I think it was up to us to enter the place as quickly as we could”.(T.610),

and again in relation to calling STAR Division:-

“I would have considered it, but still depending on that time limit. If they’d said they were going to be 15 to 20 minutes, it would be too long”. (T.611).

12.6 I think that this is an *ex post facto* rationalisation on House’s part. None of the other officers discussed or even considered that entry was urgent. Indeed, it is noteworthy that none of them were cross-examined on the topic.

12.7 Hoadley conceded that there might be some cases where emergency action was called for. He said:-

“A. I’m not an expert on mental illness, but I wouldn’t imagine that mental illness on every occasion is associated with suicide.

Q. I accept that, but isn’t it one of the factors that causes this matter to sway, possibly sway in the other direction and require immediate action.

A. Given the information that I had initially when I gave my opinion and the further information that I’ve got now, it is my opinion that there wasn’t a case for entering the place to save the person’s life. There was nothing to indicate that he was going to take his”. (T.742).

Detective Superintendent Eaton gave the same evidence (T.820).

12.8 In the light of all of this evidence, I reject the suggestion that House decided to enter the house because he thought Luke would hurt himself. I think that he did so because he thought it was not risky, and that, with four officers, they could handle any eventuality.

12.9 Conclusion

In making that decision, I think that House made an error of judgment. Luke Donaghey was in an agitated, psychotic state, and his reactions were inherently unpredictable. He had attempted to barricade himself in the house, and by entering, his security was threatened. His illness probably caused him to think that he was in danger, and needed to act to protect himself.

12.10 Having entered the house, the officers were enclosed, and had no retreat. McIlvena, in particular, was trapped in a small hallway, with nowhere to go. As Eaton said, House had lost control of the incident, and thereby put himself and others at risk.

12.11 Having said that, I would like to state clearly here that I consider that House's actions were well-intentioned, and that he had Luke's welfare in mind when he went to detain him. He did not act in a deliberately confrontational, aggressive or "gung-ho" manner. I think that House failed to appreciate the extent to which Luke was ill, the unpredictability of his illness, and that by entering, he was confronting Luke and putting him in fear. I am sure that with further training, as I will presently discuss, House will be more aware of such matters in future.

13. **Triplow's use of his firearm**

13.1 It is clear to me, on the evidence, that whatever House, Bird and Downs thought, Triplow and McIlvena thought that entering the Donaghey house was a high-risk tactic.

13.2 Both Triplow and McIlvena had spoken to Halman, and he had told them that Luke was mentally ill, angry and agitated. They knew he had menaced his father with a knife (see McIlvena at T.399, 430 and Triplow at T.483-4).

13.3 Both Triplow and McIlvena had recent experience of such incidents, and how dangerous they could become. On 10 June 1999, in an incident at Plympton, McIlvena was saved from being injured with a knife by another officer using capsicum spray on a mentally disturbed man (T.414). Only two days before the Luke Donaghey incident, on 22 July 1999, in an incident at Myrtle Bank, a mentally-disturbed person was prevented from stabbing Triplow by McIlvena spraying him with capsicum spray (T.412). That was apparently an attempted "suicide by police", in that the man kept saying he wanted the police to shoot him (T.474).

13.4 As a result of these experiences, Triplow and McIlvena had developed a tactic whereby McIlvena would use the capsicum spray, as a first line of defence, and Triplow would draw his gun as the last line of defence (T.485).

13.5 It is also clear that Triplow believed that a baton was of no use in dealing with a person armed with a knife (T.511). Downs agreed (T.258). Sergeant Hardwick, the Operational Safety Training Unit instructor, said:-

"We have trialled in scenarios, incidences where we've tried to replicate the person with an edged weapon and a person with a baton and go one on one and every time they lose". (T.639).

This conclusion was also accepted by the Victorian Coroner in cases of Simon (p17, finding 13/6/96), Markle (p18, finding 21/10/96,) and Tully (finding 20/7/95, p3).

- 13.6 Mr. Kenny, counsel for the Donaghey family, attempted to draw support for the proposition that it was inappropriate for Triplow to draw his weapon from the fact that House and Downs had not drawn theirs. But House said:-

“You’ve also got to understand Constable Triplow was probably more highly trained than any of us, and the fact that he was even becoming an instructor with operational safety, so he is more aware of everything that is going on than any other officer there, and knows exactly how to behave”. (T.585).

Downs also deferred to Triplow’s superior training. When asked why he and House did not draw their weapons, he said:-

“A. We’re older and sillier.

Q. What do you mean by that. A. Well the younger breed of police officer is a little bit safer than what we are. They’re taught to - and I suppose we get lulled into a false sense of security and had Luke come around the other way I probably would have been dead and so would have Sergeant House, so that’s why I say we were older and sillier”. (T.285)

- 13.7 The action of Triplow unholstering his weapon was also done in accordance with his training. He referred to the “21 foot rule”, 21 feet being the distance a person can cover when rushing at a police officer in the three seconds before he can withdraw his firearm (T.479). He was asked:-

“Q. What about a situation where they were armed before, but they (the police) don’t know whether they are still armed.

A. They are still armed. That is probably a situation where yes, I would be saying, ‘Okay, think about it, and yes, draw your gun.’ You are going to stop that lag time of, you know, two or three seconds. The mere fact of drawing a firearm doesn’t mean they are going to use it. The gun is out. The finger is off the trigger. They are safe”. (T.654).

Sergeant Hardwick confirmed that it was a matter for Triplow’s discretion (T.623). He said:-

“No, the advice is given to the officer that it is their responsibility to make up their mind what they are going to do, what weapon they will use, in varying circumstances, and it is based on what is there at the time, because no two scenarios or incidences are alike. So the officer must make that decision themselves”. (T.653).

13.8 Constable Triplow was criticised by Mr. Kenny for not advising House or Downs that he had withdrawn his gun. House was criticised by both Eaton and Hoadley for not properly briefing his team before they entered the house. Hoadley said:-

“A. I would expect in a situation like this the person in charge would direct a particular person or persons to draw firearms and have some tactic for their use. I would also expect them to direct other people to have batons ready for use. There has to be a plan. It can't be just left to everybody's discretion.

Q. In the absence of a plan though, is there anything wrong with a police officer drawing his or her weapon if they personally apprehend the danger of a situation.

A. No there's not". (T.738).

Eaton gave evidence to similar effect (T.836-8).

13.9 One can only agree with these observations that House should have made it his business to determine who was drawing what weapon before they entered the house. In fact, Triplow and McIlvena were left to their own devices, and acted accordingly. On my finding that they correctly apprehended a high-risk situation was developing, there was nothing inappropriate about Triplow withdrawing his firearm.

13.10 The fundamental point is that Triplow should not have been put in that position. If House and Downs had correctly appreciated the risk, they would not have entered the house in the first place.

14. **Triplow's decision to fire**

14.1 I have already outlined Triplow's evidence, which I accept, that he fired his gun because he apprehended that, if he did not, Luke Donaghey would have killed or seriously injured McIlvena with the knife.

14.2 General Order 3375 states:-

“Justification for Use

Members will not resort to the use of firearms except in the following circumstances:

2.1 when the member believes on reasonable grounds such use is necessary to protect life or prevent serious injury and only then when satisfied no other means are available; or

2.2 for the lawful destruction of animals and birds”.

(my underlining)

14.3 Sergeant Hardwick told me that officers are trained to aim at the centre of the “seen mass” (ie the torso), otherwise there is a high risk that they will miss altogether (T626).

14.4 In this instance, Triplow, in accordance with his training, fired two shots in quick succession. He had no opportunity or time to check on the results of the first shot before he shot again. Luke continued to move toward McIlvena after the first shot. He was therefore justified in firing the second shot.

14.5 **Conclusion**

I find that Triplow was justified in firing his weapon to prevent the death or serious injury to McIlvena, that he fired his weapon appropriately, in accordance with his training, and with the Police General Orders.

15. **Capsicum spray**

15.1 There is no doubt that it was appropriate that McIlvena used the capsicum spray to try and prevent Luke Donaghey from charging at her with the knife. The use of the spray was clearly necessary, and proportionate to the threat of harm she was presented with (see General Order 3065.8).

15.2 It is apparent that the spray had no effect on Luke Donaghey, and no effect on McIlvena either. It did affect House, Downs and Triplow to the extent that they had to go outside and “decontaminate” with water. Indeed, Mr. Donaghey felt the effects

of the spray when his eye brushed Luke's cheek at Flinders Medical Centre some hours later.

- 15.3 I note that in a finding in the matter of Colman, delivered on 10 February 1999, the Victorian Coroner heard evidence that, from an analysis of 217 cases in that State where the spray was used, total disablement was achieved in only 82% of cases, minimal effects were noted in 15%, and in 3% of cases there was no effect.
- 15.4 Dr. Morris Odell, a Forensic Physician from the Victorian Institute of Forensic Medicine, seems to be one of very few people in Australia with technical expertise in the effects on the human body of capsicum spray. His report is Exhibit C.59a.
- 15.5 Dr. Odell said that the principal effects of the spray are intense irritation of mucosal tissue in the eyes, nose and mouth, burning of the skin, and, if inhaled, irritation, coughing, shortness of breath and even exacerbation of asthma (p.2).
- 15.6 Dr. Odell points out that there is usually a time-delay between the application and the effects. This may be up to several seconds. He also points out that:-
- “ • Highly excited states, where the effect of adrenaline and related substances are expected to occur, may result in delayed or altered perception of painful stimuli. Such behaviour has been described, for example, in soldiers who have been able to continue in battle despite severe wounds which become apparent later. In this case Mr. Donaghey was also suffering from a psychotic condition which could have altered perception or his interpretation of pain in an unpredictable fashion.
- It is reasonable to expect that the police officer who was apparently unaffected by the spray would have been in a highly emotionally excited state at the time, which could have affected any response to the spray as described above”.
(Exhibit C.59a, p3).

Dr. Davis agreed that a person suffering psychosis could act in this way (T.978). Dr. Odell concludes:-

“Such apparent insensitivity is unpredictable and highly idiosyncratic and is not expected to be universally present in all agitated intoxicated persons. There is no reason to doubt that oleoresin capsicum spray remains a safe and effective agent for use by police against violent subjects”. (p.4).

- 15.7 Clearly, the limitations of capsicum spray as a defensive weapon should be kept steadily in mind by SAPOL when training officers in its use. Officers should be aware that not everybody will be affected by it, and, in closely confined situations, it may not work in time to provide the required protection.

15.8 Bearing that in mind, there is no reason to doubt that the spray remains a safe and effective defensive weapon, and there is no reason to recommend against its continued use.

16. **Training issues**

16.1 Prior to 24 July 1999, the training received by the police officers involved varied greatly.

16.2 According to Detective Superintendent Eaton's report (Exhibit C.58), Sergeant House had undergone a non-commissioned officers course in October 1988, and that had included a module on cordon and containment, and a "VATS High Risk response course" in October 1991. He also had Local Service Area training in Emergency Resources (May 1994), Sieges - 1st response (March 1995) and Mental Health (November 1996). House could not recall that last-mentioned course (T.591).

16.3 Sergeant Bird's training was similar to House's, with the addition that he had recently completed an Operational Safety Implementation Course, on 14 July 1999.

16.4 Senior Constable Downs' training had consisted of a Local Service Area training course in command and control in August 1997.

16.5 **The Operational Safety Review**

In 1998, the Commissioner of Police initiated an Operational Safety Review within SAPOL. A report was prepared (Exhibit C.58d) and an Operational Safety Implementation Project was set up to implement the core findings of the report. The focus of the consequent training program is on skills, rather than cognitive learning, and deals with such areas as incident management, communications, negotiations, conflict resolution and defensive tactics (see the statement of Assistant Commissioner Brown, Exhibit C.58i).

16.6 Mr. Brown's statement details the extensive and varied activities which have been undertaken since that time to implement a new operational safety philosophy.

16.7 As a result of these efforts a course entitled Incident Management and Operational Safety Training, or "IMOST", has been developed, and it is planned that 2,200 metropolitan, and 670 country officers will have undergone this mandatory, four-day course by 24 December 2000. This is an enormous undertaking, and one which I am

sure will prove beneficial. Certainly, most of the officers who gave evidence before me gave a positive report of its value (see for example Sergeant Bird at T.386).

16.8 Mental health issues

In 1999, as part of the above process, and following the death of Debby Edgell on 11 February 1998, steps were taken by SAPOL and the Department of Human Services (“DHS”) to develop a Memorandum of Understanding (“MOU”) between the two agencies in relation to the way SAPOL and ACIS teams were to operate together in the community. I referred to this matter in my findings following the inquest into Ms. Edgell’s death (Inquest No. 27/2000).

16.9 The statement of Commander Dean Angus (C.58j) discloses that the MOU provides for the following protocols between the two agencies:-

- “
- Criteria and procedures for the disclosure of information.
 - Criteria and procedures for mutual assistance.
 - Assessment of persons detained in police cells.
 - Criteria and procedures for mutual assistance - Rural and Remote Service.
 - Procedures to be adopted at siege situations.
 - Procedures to be adopted for hand-over situations.
 - Problem solving procedures for the provision of mutual assistance”. (p.2).

16.10 The MOU also provides for a structured approach to liaison between the two agencies, and for collaboration between the two agencies in developing training programs for police:-

“with the aim of continuing to improve police skills in identifying the presence of mental illness and promoting appropriate responses by police in dealing with a mentally ill person”. (p.3).

The MOU is Exhibit C.62, Appendix 10. It was signed on 31 July and 1 August 2000.

16.11 It is to be hoped that the MOU will lead to much-needed improvement in the degree of understanding and cooperation previously displayed by the two agencies. As I have said, the police will increasingly find themselves in the front line when dealing with mentally ill people, and they will need the assistance and expertise of ACIS personnel when that happens.

- 16.12 In relation to training, the North West Adelaide Mental Health Service (NWAMHS) has undertaken responsibility for training police cadets, from January 2000, and also coordinates the mental health component of the IMOST program.
- 16.13 All of the police officers who had undertaken the IMOST course since 24 July 1999 said that it had increased their awareness of mental illness, the mental health system, the role of ACIS teams, and how to deal with non-compliant mentally-ill people. Sergeant Bird, for example, spoke of taking a non-confrontational approach in such cases (T.387). See also Hoadley's evidence at T.753.
- 16.14 I am sure that this training will be of great benefit to police officers who, since 1996, are likely to have become involved in situations involving mental illness with increasing frequency. That, together with specific training about assessment of high-risk situations, should go a considerable way towards avoiding such tragedies as Luke Donaghey's death in future.

17. **Findings**

I find that Luke Francis Donaghey, aged 26 years, late of 3 Inverarity Street, North Glenelg, died at Flinders Medical Centre, Bedford Park, on 24 July 1999 as a result of .357 magnum gunshot wounds to the chest and abdomen.

18. **Recommendations**

Pursuant to Section 25(2) of the Coroners Act 1975, I make the following recommendations:-

- (1) that the Minister for Human Services and the Attorney-General consider the need to amend the Mental Health Act 1993, so that the phrase "health and safety" in Sections 12 and 20 should read "health or safety";
- (2) that the steps taken by the Commissioner of Police since before Luke Donaghey's death to improve training in the areas of incident management and operational safety (IMOST) be supported, and that the proposed annual follow-up to the initial four-day course be rigorously implemented;
- (3) that the steps taken by the Department of Human Services to provide information and training to General Practitioners about mental illness and the mental health system be supported, and that those steps should continue;
- (4) that the Commissioner of Police should continue to review the wording of the General Orders to ensure that they are accessible and provide clear guidance to operational officers.

Key Words: police shooting; death in custody; mental health/psychiatric issues; training

In witness whereof the said Coroner has hereunto set and subscribed his hand and

Seal the 15th day of September, 2000.

.....
Coroner

Inq.No.29/2000