

**ROYAL COMMISSION INTO  
ABORIGINAL DEATHS IN CUSTODY**

**REPORT OF THE INQUIRY INTO THE DEATH OF**

**JOHN PETER PAT**

**BY**

**COMMISSIONER ELLIOTT JOHNSTON, QC**

**ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY**

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30 March 1991

His Excellency the Honourable William George Hayden, AC  
Governor-General and Commander-in-Chief of Australia  
Government House  
CANBERRA ACT 2600

Your Excellency

In accordance with Letters Patent issued to me on 27 April 1989 and subsequently varied, I have the honour to present to you the report of my inquiry into the death of John Pat at Roebourne on 28 September 1983.

The same report is being provided to His Excellency the Governor of Western Australia in accordance with a Commission issued by him.

Yours sincerely

Elliott Johnston  
COMMISSIONER

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30 March 1991

His Excellency the Honourable Sir Francis Burt, AC, KCMG, QC  
Governor of Western Australia  
Government House  
PERTH WA 6000

Your Excellency

In accordance with the Commission issued to me on 21 June 1988 and subsequently varied, I have the honour to present to you my report of inquiry into the death of John Pat at Roebourne on 28 September 1983.

The same report is being provided to His Excellency the Governor-General in accordance with Letters Patent issued by him.

Yours sincerely

Elliott Johnston  
COMMISSIONER

## PART ONE

### INTRODUCTION

*Roebourne is a very significant place for Aboriginal people. This is a place where Aboriginal law has made for all Aboriginal people. The Aboriginal people are now suffering. They are sick in the heart. We need assistance to overcome the problems that have come since Europeans came here. We want the Royal Commission to help us with our ideas.*

*Yulbi Warri - Yindjibarndi Elder.*

John Peter Pat died of closed head injuries in the juvenile cell of the police station lockup in Roebourne on the night of 28 September 1983. He was almost seventeen years old. Earlier that night he had been arrested during an incident involving several police officers and an Aboriginal police aide. All officers were off duty at the time. The incident of which I speak was a fight outside the Victoria Hotel in Roebourne. The participants in the fight were several Aboriginal youths and several police officers. Of the five Aboriginal men arrested, John Pat was the only juvenile. During the fight he suffered a closed head injury which rapidly caused his death.

After his arrest, Pat was placed in one of the two police vans which attended the hotel and he and the other Aboriginal men who were arrested were taken to the police station. They were then unloaded from the vans. There, in the station yard, Pat and at least two other prisoners were assaulted to varying degrees by some of the police officers.

Pat was placed in an unconscious or semi-conscious state in the juvenile cell and left there until he was found dead during a cell check. When he was found is a matter of great importance.

Following the death there was a police investigation conducted at a very high level. This was somewhat ineffectual. An Inquest was commenced in Roebourne about a month after the death, at the conclusion of which four police officers and a police aide were committed for trial on a charge of manslaughter. They stood trial in the Supreme Court at Karratha and all were acquitted.

The death of John Pat became for Aboriginal people nation wide a symbol of injustice and oppression. Suspicion and a continuing sense of injustice in the Aboriginal communities throughout Australia saw the anniversary of John Pat's death marked by demonstrations calling for justice. International media attention focussed not only on his death but on the conditions in Roebourne and on the calls of the Aboriginal people for an inquiry to find the truth about this and other deaths.

The evidence before the Commission in this inquiry, both that given orally and that tendered in documentary form, was extensive and complex. The fact finding task has not been an easy one. I make it clear that I have not been able to find the truth about all aspects of the death. This report is necessarily lengthy but even so I have not dealt with all the issues which arose in the course of the inquiry but have limited the report to a consideration of the major events surrounding John Pat's death and its aftermath. At this stage I propose to give a brief overview of these events so that the report can be read in context.

Earlier on 28 September 1983, there had been a meeting of the W.A. Police Union of Workers ('the Union') at Karratha. It was a special meeting attended by Union officials from Perth and about twenty police officers from the Pilbara region.

Among those police attending the meeting were three officers from the Wickham police station.

Police from the Roebourne police station also attended. They were Senior Constables Ian Frank Armitt, Steven Alan Bordas, Terence James Holl, Sergeant John Patrick Devaney (the sergeant in charge of the police station) and First Class Police Aide Michael Walker.

The meeting was held at the Karratha Traffic Office, and at its conclusion the police went to the Karratha Golf Club for a few drinks at a function arranged by the Union.

After the golf club closed some of the police officers arranged to go to the Victoria Hotel in Padbury Street, Roebourne, for a drink prior to returning to their homes.

The Roebourne police eventually left Karratha for Roebourne at about 8.30pm driven by Sergeant Devaney in his own car. The Victoria Hotel is on the corner of Roe Street which is the main thoroughfare through town and Padbury Street which from Roe Street runs in a westerly direction and intersects with Sholl Street.

The Wickham police officers arrived at the hotel at about 9.00pm. They entered the saloon bar, also known as the Top Bar, and took up a position in the middle of the bar.

The whereabouts of John Pat during the day cannot be specified with any precision. However, it would seem that at some time in the evening prior to 9.00pm he was drinking with a group of friends in an area known as 'Plonk Valley'. This area was in the bush at the end of Padbury Street where it runs into Sholl Street. This area is more particularly located between the house then occupied by Mr Thomas Albert McPhee and his wife Mrs Coralie June McPhee (now Storey) and the Community Health Clinic. Aborigines who lived in the village would use this area not only as a drinking place but also as a short cut from the village to the centre of town. A significant portion of evidence at the Royal Commission hearing involved an examination of an account of a fight which McPhee said involved John Pat and which occurred outside his house.

When the Roebourne police arrived outside the Victoria Hotel, there was a dispute between a young Aboriginal man, Ashley James, and his defacto wife, Ann Stock. Two of the Roebourne police told them to go home.

The off duty officers sat in the saloon bar, known as the Top Bar, of the hotel but the Wickham and Roebourne police did not sit together as a group, nor did they mix with one another. Some alcohol was consumed by the police. A bar person, Catherine Mary Elizabeth Park (now Mrs Land) was serving behind the bar. She and the Roebourne police knew each other. Dawn Makeham, another of the staff, was on duty in the public bar--known as the Bottom Bar.

Ashley James entered the bottleshop and was seen by someone in the Top Bar who remarked that he was in the bottleshop. Armit spoke to him.

Upon hearing that Ashley James was in the bottleshop, Holl left the Top Bar, went into the street, and entered the bottleshop.

An altercation then occurred between James and Holl which precipitated the events which followed.

Holl then left the bottleshop and waited outside for Ashley James.

When Ashley James came out of the bottleshop he was intending to go home with his friends. An argument developed between Holl and James. A fight broke out between them and some other Aboriginal men joined in.

Meanwhile, in the bar, Armit noticed that Holl was missing and he went to the door to check on him. He went out into the street and saw fighting, with Holl surrounded by about five Aboriginal men. Shortly after Armit, Devaney and another, Bordas and Walker left the Top Bar. The accounts of what followed, given by the police, the participants in the fighting and onlookers, varied considerably. However, there is no doubt that Ashley James, Lennis James, John Pat, Geoffrey Lockyer (another Aboriginal man) and the Roebourne police officers (apart from Devaney) who were in the Top Bar were involved in a fight to varying degrees.

After leaving the bar, Devaney got into his car and drove to the police station--which was approximately 500 metres from the hotel--to obtain reinforcements. The Roebourne Police Station is situated on the corner of Carnarvon Terrace and Queen Street. Carnarvon Terrace is the extension of Roe Street.

Devaney called on the police officers on duty there (Constable James Young and Police Aide Cider Gilby) to come to the hotel. However, Gilby did not see or hear Devaney. Meanwhile, a police van from Wickham containing Constable Michael Emmanuel and the licensee of the Wickham Hotel, Adrian Delint, had pulled up at the Roebourne police station. Delint was also overseer of the Victoria Hotel, both hotels being owned by the same proprietor. On hearing a call to attend the hotel, Emmanuel drove his van to the hotel. It was closely followed by Young and Gilby in the Roebourne police van. A taxi driven by a Mr Armstrong also went to the station. Armstrong told Gilby there was a 'blue' on at the hotel.

The Wickham van pulled up in the middle of Padbury Street parallel to the hotel and the Roebourne van parked a few metres in front of it but angled slightly towards the kerb. When the vans arrived, the fighting subsided.

Appendix 1 is a plan of the hotel area showing the position of the vans.

I find that during the course of the fight John Pat sustained the closed head injury which rapidly brought about his death. There were several incidents during which John Pat could possibly have sustained this injury and I discuss them in some detail in Part Ten. For present purposes, I simply say that it is most likely that John Pat incurred his fatal injury in an altercation with Armitt as the latter attempted to effect Pat's arrest. He had been punching at Armitt and, when one of the punches connected, Armitt said he moved to arrest him. Pat went over backwards onto the ground probably striking his head and Armitt fell on top of him. What happened thereafter is contentious and I examine those events in some detail in the report.

During the course of the fight, several arrests were made. John Pat was the first person to be placed in the Wickham van. Peter Coppin was arrested by Bordas and was also placed in the Wickham van. Although Coppin was arrested for disorderly conduct, at the Roebourne Police Station a charge of hindering Armitt, not of disorderly conduct, was preferred. Brian Munda was arrested on a charge of hindering Armitt and Roy Smith was arrested on a charge of hindering Holl and they were also placed in the Wickham van.

Lennis James had been arrested for aggravated assault on Armitt and resisting his arrest by Holl. He was the only person arrested who was placed in the Roebourne police van. On 26 October 1983, a further charge of aggravated assault on Bordas was preferred against Lennis James.

After the prisoners were placed in the vans, Holl, Bordas and Armitt returned to the Top Bar. Walker had gone back to the bar some time earlier. Armitt spoke to Cathy Park about his facial injuries and was offered a paper towel with which to wipe his face. He declined the offer. The officers variously finished off their drinks or collected their change and returned to the police station.

Young drove the Roebourne police van and was accompanied by Bordas. Emmanuel drove the Wickham police van, accompanied by Delint and Armitt. Devaney drove Holl, Gilby and Walker in his private motor car.

The Wickham van arrived at the police station first and parked directly parallel to the male juvenile cell. The Roebourne police van arrived shortly after and parked parallel to the garages and at right angles to the Wickham police van.

Devaney stopped his vehicle at the driveway entrance to the Roebourne police station and his passengers alighted. Gilby went directly into the police station building and Walker and Holl went to the courtyard area with a view to assisting the removal of prisoners from the vans. Devaney continued to drive onto his residence situated next to the police station, parked his car in the garage and walked back through the police station yard, between the cells area and the station building to the fence around the

apron area of the courtyard and called to Young who was assisting in the unloading of the prisoner James to the fence.

Devaney told Young to ensure that everything was entered into the records and, according to him, that the prisoners' welfare was taken care of. He then returned to his home. Sometime later at around 10.18pm he telephoned the Regional Officer, Superintendent Raymond McGrath to advise him of the hotel incident.

Broadly, it can be said that there are two accounts of what occurred at the police station when the prisoners were taken out of the vans. Some of the prisoners alleged they were assaulted when getting out of the vans. Unbeknown to anyone present in the courtyard at the time, the removal of the prisoners from the vans was observed by Mrs Cecelia Howard and her son William ('Billy') Scaddan who lived directly opposite the police station in Queen Street. Mrs Howard and Billy Scaddan were attracted by the noise and went to a bedroom window where they saw a prisoner being taken out of the vans. They then moved to the front yard where they further observed what happened. They alleged that prisoners were dragged from a van, beaten and kicked and then dragged off apparently to the cells. Lennis James, Peter Coppin and Roy Smith alleged that they were beaten when they got out of the vans.

Appendix 2 is a plan showing the courtyard of the police station, the garage and the juvenile cell and the position of the two vans at the unloading; it also shows Mrs Howard's home in relation to the courtyard.

Appendix 3 is a plan showing in more detail the police station complex, including the courtyard and the juvenile cells.

The police account of what happened in the courtyard was strikingly different. This account generally was that three of the prisoners--namely Lennis James, John Pat and Roy Smith---went to the ground while being removed from the vans. James and Smith ended up on the ground after grappling with Holl. Munda caused no problems according to the police and he did not complain of any ill-treatment.

As to the removal of John Pat from the Wickham van, the police account is generally as follows. Bordas, Young, Holl and Walker were in the courtyard area when he came out of the van. Armitt was positioned at a gate leading to the cell block area and it was he who escorted most of the prisoners to their cells from there. According to Bordas and Young who observed Pat come out of the van, he stood up, put his foot out as if to step on a step, and fell heavily to the ground. The Roebourne van was fitted with a step onto the tray of the van. This had been fitted some time previously to assist police with the transport of drunken people. The Wickham van was not equipped with such a step. The police version was that Pat, who was familiar with the Roebourne van, looked as if he was expecting the step to be there, and fell to the ground. Holl testified that he first looked after he heard a thud. Armitt said he did not see Pat come out of the van but he saw him lying on the ground and then approached him.

Pat was on the ground for a period of some minutes; Armitt then picked him up and half dragged, half walked him backwards to the male juvenile cell.

Appendix 4 is a plan showing the courtyard and the detail of the juvenile cells (it shows the position of the body as it was said to be found).

After the prisoners had been lodged in the cells, Holl, Bordas, Armitt and Young went into the charge room to commence the appropriate paperwork. Emmanuel drove Walker home in the Wickham van with Delint.

Constable Stephen Ronald Phillip Puzey, who was also on duty on the afternoon shift at the Roebourne Station, had been on patrol since 8.45pm. He returned to the police station at 10.30pm. He was met on the verandah by Young who asked him to advise Robert Willie Hart, a Department of Community Welfare (DCW) Officer, of Pat's arrest. Puzey remained on the verandah for ten to fifteen minutes talking to Young and then left the police station to attend Hart's house. This was at 10.45pm. At about the same time, Young telephoned Guy Parker, another DCW officer, and advised him of Pat's arrest. Parker was

the DCW officer who was rostered for after hours duty. Parker asked Young what Pat had been charged with and was told aggravated assault and hindering a police officer. Parker was told by Young that it was not necessary for him to attend at the station.

At his trial, Young testified that he conducted a cell check of the adult prisoners at 10.45pm with Bordas-- although at the Commission hearing neither could recall doing this.

During the evening, Gilby took Armit to the hospital to have his facial injuries treated.

At about 11.30pm, Gilby said that he was requested by Young to check the juvenile cells as Young had forgotten to do that when he had conducted his cell check.

On attending the juvenile cell, Gilby saw John Pat lying on his back inside the cell and he did not appear to be breathing. Gilby returned to the station office and advised the officers that he thought that Pat was dead. Armit and Bordas went to the juvenile cell and Armit felt for a pulse. They then returned to the office and Holl went out to the cell and checked for a pulse. The officers formed the view that John Pat was dead. They testified that no resuscitation was attempted.

Armit telephoned Devaney and the local doctor, Dr Grant Lee Rigby. Devaney and Dr Rigby attended the police station shortly thereafter. The doctor ascertained that life was extinct and left very shortly after certifying that fact.

Devaney then telephoned McGrath to advise him of the death. McGrath instructed Devaney to keep all officers at the police station until the arrival of investigating officers from Karratha. McGrath then directed Inspector Wallace William Leslie of the Karratha Regional Office and Detective Sergeant Michael John Bartlett of the Karratha CIB to go to Roebourne and attend to inquiries.

Devaney testified that because of Young's distressed condition, he instructed him to go home. This was at midnight. Gilby left the station when his shift finished at midnight.

Puzey took photographs of the body and attended to the Sudden Death paper work. Once Leslie and Bartlett each arrived at the police station they inspected Pat's body.

The investigating officers obtained some brief information from the other officers. During the course of the night Hart attended the station, identified the body and later he and Puzey went to advise Mr Mick Lee, Pat's stepfather, of the death.

The off duty officers were driven to their respective homes by Devaney at 3.50am. Shortly after, the undertaker arrived at the police station, examined the body and removed the deceased. The body of the deceased was taken to Perth where a post mortem examination was conducted by Dr Hilton who found that death was due to closed head injury. He also found many other injuries, including some significant injuries.

At 6.00am on 29 September 1983, a cell check was performed by Devaney and Puzey. Smith was noticed to be ill. Devaney rang the hospital and Dr Rigby attended and directed that Smith be taken to hospital. He was hospitalised for five days suffering the effects of a back injury.

At about 10.30am, Senior Inspector Alan Russell Balcombe, who was the officer in charge of the Internal Affairs Unit in Perth, and Detective Sergeant Bruce Alan Scott were instructed to attend Roebourne to investigate the death. Information had been received from a Member of Parliament who had been told by an employee (Mrs Julie Tucker) that a police officer had kicked Pat the night before.

Scott, Balcombe and Constable Kenneth George Nicholson (a scientific expert) flew to Roebourne and arrived at about 3.15pm. In the meantime, Mr John Robert Quigley, a solicitor with the firm Kott Gunning, which had a retainer to act for the Union, had been instructed to fly to Roebourne to represent the interests of the Roebourne police officers. He arrived prior to Balcombe and Scott.

The Perth investigators were assisted by Detective Sergeant Ford, Senior Detective Tucker and Detective Von Poleski from Port Hedland for the first few days of the investigation. Some minimal assistance was also received from Bartlett whose primary responsibilities lay in running the CIB office at Karratha, and one or two officers stationed at Roebourne.

An inquest into the death was held by the Perth Coroner David Arnold McCann, SM, and was commenced in Roebourne on 31 October 1983. The inquest continued in Roebourne until 7 December 1983 before adjourning to Perth on 19 December 1983. The five officers were not called to give evidence. The Coroner handed down his finding on 6 February 1984. He found that John Pat died on 28 September 1983 in the male juvenile cell at the Roebourne Police Station lockup of a closed head injury. On that date he committed Armitt, Bordas, Holl, Young and Walker to stand trial in the Supreme Court sitting in Karratha for the offence of manslaughter of John Pat.

The five officers stood trial from 30 April 1984 until 23 May 1984 and were acquitted.

The present Commissioner of Police, Mr Brian Bull, who, in 1984, was Chief Superintendent (Discipline) was directed to attend the trial of the officers with a view to recommending what action if any should be taken in the event of an acquittal. On the basis of his observations at the trial, his discussions with the Crown Prosecutor and a comprehensive report prepared by Balcombe, he recommended, inter alia, that no further action be taken against the five officers and that they be reinstated to duty.

Following their acquittal, the five officers were reinstated to duty.

On 6 February 1984 the Coroner had written to the Attorney General outlining what he perceived to be deficiencies in the police investigation into Pat's death. In due course this was referred to the Commissioner of Police and Mr Bull was charged with the responsibility of investigating the Coroner's comments. He sought reports from a variety of sources and generally reported that there was no substance in the Coroner's comments.

- Those Aboriginal men, other than the deceased, who were arrested during the fight at the hotel were dealt with as follows.
- The hearing of the charge of hinder police against Roy Smith was heard in the Roebourne Court of Petty Sessions on 18 and 19 July 1984 and was dismissed.
- Lennis James pleaded guilty to the charges against him of aggravated assault and resist arrest on 18 July 1984 and was fined.
- The charges of hinder police against Munda and Coppin were heard in the Roebourne Court of Petty Sessions on 15 and 16 August 1984. The charge against Coppin was dismissed and Munda was convicted and fined \$40 plus costs.
- The charge against Geoffrey Lockyer of aggravated assault on Armitt was dismissed following a hearing in the Roebourne Court of Petty Sessions on 6 September 1984.
- Roy Smith commenced a private prosecution against Young on a charge of assault occasioning bodily harm. After a preliminary hearing in the Roebourne Court of Petty Sessions the magistrate held that Young had no case to answer.

I state my findings, the reasons for which appear in later parts of this report. These are my essential findings; other subordinate findings appear in the text.

1. John Pat died in the male juvenile cell of the Roebourne police lockup on 28 September 1983.



2. The cause of death was a closed head injury described as a subdural haematoma. The probable cause of that injury was the striking of the back of his head against a hard flat unyielding surface.
3. The deceased sustained the fatal injury in the course of a fight which occurred outside of the Victoria Hotel at Roebourne between about 9.15pm and 9.30pm on the evening of 28 September 1983.
4. That fight had its origin in a fight which occurred between an Aboriginal man, Ashley James, and Constable Holl, who was off duty on that evening and out of uniform and who with other off duty officers was in the Top Bar of the hotel after attending a meeting of their Union earlier that evening at Karratha. Constable Holl became aware that Ashley James, with whom he had shortly earlier had a confrontation, was in the bottleshop of the hotel. Constable Holl then left the bar and entered the bottleshop where a further confrontation occurred between himself and Ashley James. Constable Holl left the bottleshop and waited outside for Ashley James. Shortly, but not immediately, after, Ashley James emerged from the bottleshop, a fight erupted between these two men. This fight was immediately, or almost immediately, joined by three Aboriginal men: Lennis James, the deceased and another. Constable Armitt left the bar to check on Constable Holl and joined the fight. Constable Bordas and Police Aide Walker left the bar a little later and became involved.
5. The action of the out of uniform and off duty police officers meeting as a group in the Top Bar of the hotel was (at that time at least) unprecedented and ill-advised given the state of Aboriginal/police relations in Roebourne. The actions of Constable Holl were ill-advised, unprofessional and provocative. He bears the main responsibility for the outbreak of the fight.
6. The fight came to an end when the Roebourne police van and the Wickham police van (which happened at the time to be at the police station at Roebourne) arrived outside the hotel. The Roebourne van was driven by an on duty officer, Constable Young. Following the arrival of those vans, police officers arrested or completed the arrest of five Aboriginal men, of whom the deceased was one. The arrested men were conveyed to the Roebourne Police Station in the vans which were unlocked in the courtyard and the prisoners conveyed to cells. The deceased was dragged with his feet on the ground and supported by Constable Armitt, who had his arms under the deceased's armpits around his chest, to the male juvenile cell.
7. The male juvenile cell was inspected by Constable Young at some time which I am unable to determine but shortly before 10.30pm. The deceased was found to be dead. Resuscitation may have been attempted. I am unable to find whom, if anyone, Constable Young informed of the death of the deceased at that time but it is likely that Constables Armitt, Bordas and Holl were informed. No other person was informed. All officers present deny that they knew of the death before 11.30pm and that they participated in attempted resuscitation.
8. At 11.30pm, Constable Young asked Police Aide Gilby to check the juvenile cell. Gilby did so and found the deceased on the floor of the cell apparently dead. He reported his observation and, after checking, Dr Rigby was called and he certified life extinct.
9. A post mortem examination was performed on the body of the deceased by a forensic pathologist, Dr Hilton. The postmortem was very satisfactorily performed. Dr Hilton certified the cause of death as closed head injury. He found multiple external and internal injuries. I deal in detail with these injuries in Part Five.  
  
In particular, he found that there were present two injuries - a torn aorta and fractured ribs - which he thought to have been inflicted after death (post mortem) or at or about the time of death (peri mortem). Dr Hilton was concerned to ascertain whether resuscitation had been attempted and raised the question with officers conducting investigations into the death.
10. The deceased had not sustained the fatal injury before the start of the fight outside of the hotel.

He had sustained the injury by the time that he was put into the van. I am unable to identify with certainty the incident in which he sustained the injury. There was probably more than one incident in which the injury might have been sustained. One such incident involved the deceased and Constable Armitt. In the course of that incident the deceased fell backwards and the back of his head came into contact with the road. I am satisfied that that incident occurred. Constable Armitt gave evidence of further developments in that interaction between himself and the deceased. Those further developments may have occurred but I am not convinced that they did occur as described by Constable Armitt. If, however, they did occur they offer further possible opportunities for the sustaining of the fatal injury. On the balance of probabilities the fatal injury occurred in the course of this interaction between the deceased and Constable Armitt which occurred very shortly before the arrival of the vans and concluded almost exactly at the same time as the vans arrived.

11. In the course of the fight force was used by the Aboriginal people who engaged in the fighting against the police officers, and the police officers used force against those whom they were fighting. I do not find that the police officers or any of them used force disproportionate to the force used against them in the course of the fighting. I do not find that police officers or any particular police officers used excessive force against the deceased or committed any criminal act against the deceased in the course of the fighting. I refer subsequently (Point 4 of these findings) to the possibility of excessive force being used against the deceased by some person.

After the fighting and when the deceased was being taken towards the van, the probability is that he was kicked by an officer. The kick was not to the back of the head and could not have caused the fatal injury. The injuries observed at postmortem do not suggest a vicious kick.

12. In the course of the unloading of the vans at the police station at least three of the five prisoners (including the deceased) were assaulted by police officers. The deceased fell (using that word in a neutral sense) from the back of the van to the ground, falling partly on his front and partly on his left side, coming to rest with his body roughly at right angles to the back of the van, his feet a short distance from the back of the van. The deceased did not move from that point (although he was moved). At the time of his removal from the van the deceased was at best semi-conscious as a result of having sustained the fatal injury (and perhaps also partly because of other injuries and the effects of alcohol). The immediate cause of his so falling was that Constable Bordas called on him to get out of the van and at the same time grabbed him by the shoulder and pulled. It is possible that Constable Bordas, not knowing of the deceased's semi-conscious state, expected some resistance and did not mean to pull the deceased straight out of the van, although that was the actual outcome. The action of Constable Bordas was authoritarian and constituted an assault. On the ground, the deceased was further assaulted but I am unable to say with what force. Preparatory to him being taken to the cells he was turned over on his back and this change in position was almost certainly achieved by using a foot to roll him over. I do not accept as necessarily true much of the evidence of the officers relating to this incident. I am satisfied that the deceased pitched forward out of the van and landed on his front and side. I am thereby satisfied that he did not sustain his fatal injury in that fall.
13. I am unable to find what, if anything, was done to or with the body of the deceased after the discovery of his dead body at some time before 10.30pm by Constable Young. If anything was done to or with the body there is no reason to think that what was done went beyond a slight movement of the body to allow further examination and such movement as was involved in attempting resuscitation (if it was attempted).
14. The tear of the aorta and the rib fractures appeared at postmortem to be post or peri mortem (see Point 9). Such injuries having that appearance are not infrequently associated with attempts at resuscitation. Unless otherwise explained, they naturally suggest that explanation. It is unlikely that these injuries were incurred before the interaction with Constable Armitt referred to in Point 10 above. If Constable Armitt's account of that interaction is correct, it is unlikely that they, or at least both of them, were sustained in that interaction, at least until a point was

reached, according to the Constable, where he had the deceased backed against the side of a Toyota vehicle which was standing in the street. From that point onwards the deceased was under the immediate supervision of police officers until he was placed in the cell. The evidence of the officers as to what happened to the deceased from that point until he was placed in the cell does not allow for the sustaining of the torn aorta or, particularly, of the fractured ribs. That evidence, if true, combined with the medical evidence and the evidence generally, would lead to a conclusion that an attempt at resuscitation was made. However, I am not at all convinced that the evidence of the officers is true; I cannot exclude that the rib injuries and the aorta injury (or at least one of them) was sustained in loading the deceased into the van or immediately before that or in unloading him from the van. That being so, a finding that an attempt at resuscitation was made cannot be safely arrived at. I think it rather likely that it happened.

But I do find that either one or other of three things happened:

- the rib and aorta injuries were sustained as a result of an attempt at resuscitation which took place after the body was discovered and before it was seen by Gilby at 11.30pm; or
  - the rib and aorta injuries were sustained when Armitt fell upon the deceased and Armitt's account of what then happened is not correct; or
  - the rib and aorta injuries were sustained in an incident(s) which occurred after Armitt fell upon the deceased. This incident(s) must have involved police officers and must have occurred either immediately prior to the loading of the vans, during the loading, during the unloading or thereafter at the station. If such incident(s) occurred, it must have been known to some officer or officers and has been deliberately suppressed. In the event that this third possibility is true, such incident(s) must, given the evidence as to the fact of John Pat's condition at the relevant times, involve not only a suppression of facts but also the unlawful application of excessive force sufficient to cause those injuries. (I note that if either the second or third alternatives are the fact, death must have occurred very quickly, and blood circulation probably had been gravely impaired by the time of the sustaining of the injuries. It is probable also that the sustaining of the injuries was not followed by vigorous action on the part of the deceased particularly in respect of the rib injury.)
15. From 11.30pm, appropriate procedures were observed in relation to the death and the body was sent to Perth for postmortem.
16. Police officers were present at the post mortem examination and Dr Hilton conveyed to them his essential findings. Subsequently, he gave a written report of his findings. Apart from the fatal injuries, he found multiple external injuries which could be explained by reference to the application of moderate force in the course of a fight. He did not find any evidence of violent kicking or beating. He found an internal injury to the stomach consistent with a force being applied to the front of the body at stomach level with the back fixed. Following the postmortem, Dr Hilton raised with the investigators referred to below the question of whether resuscitation had been attempted and whether the body had been cleaned.
17. The death was reported shortly after 11.30pm to the Regional Officer at Karratha. He ordered two officers to make inquiries. They were Inspector Leslie and Detective Sergeant Bartlett. On 29 September 1983 they arrived (separately) at Roebourne at about 1.00am. They were taken off the investigation later the same morning by reason of the appointment of senior investigators from Perth. Their work was satisfactory in my opinion, save that they failed to separate the officers at the station (Constables Armitt, Holl, Bordas) and either require them to prepare a report or to interview them. Constable Young had been sent home at midnight because of his apparently upset condition. None of those officers (all of whom knew of Pat's fall from the van) informed either of the investigators of the fall. Constable Young informed Detective Sergeant Bartlett of the fall in the late morning (at about 11.00am). This was the first time Mr Bartlett knew of this incident. Constable Young's account was that the deceased fell forward. He gave this

information before the cause of death was known.

18. On 29 September 1983, Senior Inspector Balcombe, officer in charge of the Internal Affairs Unit in Perth and Detective Sergeant Scott of the Perth Criminal Investigations Bureau were assigned the task of investigating the death. They worked jointly but the former was more concentrated on disciplinary aspects and the latter on criminal aspects. They carried out their duties *inter alia* on behalf of the Coroner. The investigation was honestly and fairly and energetically pursued. Nevertheless, it was ineffectual at getting to the truth. This was because of five factors:
- (i) the fact that the accounts given by the onlookers were often internally conflicting and extremely contradictory, so that no clear picture emerged;
  - (ii) the officers, other than Devaney, did not co-operate with the investigators;
  - (iii) the guidelines relative to the questioning of members of the force about breaches of discipline or suspected offences (and particularly the latter) were quite unsatisfactory and should be changed. These guidelines were observed by the investigators and relied on by the officers;
  - (iv) the difficulties arising from these matters were compounded by some weaknesses in the work of interviewing both onlookers and police officers (although some statements were very well taken); and
  - (v) there was a failure to investigate the beginnings of the fight and a number of matters that arose out of the events at the station after the return of the vans and which clearly required investigation.
19. The inquest was conducted by Perth Coroner, Mr McCann, SM. The Inquest was very thorough. It suffered from some of the weaknesses of the investigation. The five officers subsequently charged were not called pursuant to a practice apparently then followed in coronial inquiries that if a witness proposed to decline to answer on the ground of self-incrimination, the witness was simply not called. This practice apparently was not limited to police officers but applied to police officers. I completely disagree with it. At the end of the Inquest the Coroner found the cause of death as certified by Dr Hilton and committed the five officers for trial on a charge of manslaughter. The trial proceeded before a Judge of the Supreme Court sitting with a jury in Karratha. The five officers were acquitted by unanimous verdict of the jury. The five officers returned to duty and at the time of the hearing before me were serving members of the Force.

To avoid undue length in this report I indicate that in respect of those persons whose names necessarily constantly reappear I will use their title when the name first appears in a Part; thereafter I will use only the surname. No offence is intended. I refer collectively to the officers who were committed for trial as 'the five officers'. The parties given leave to appear and their counsel are shown in Schedule 1. I refer in this report to the fact that in the pre-hearing conference a statement of Agreed Facts was drawn up. It was tendered early in the hearing. It was a useful outline of some facts not in dispute. I have not reproduced it in the report because all the Agreed Facts were otherwise proved and are reflected in the report.

## **PART TWO**

### **SOME COMMENTS ON THE METHODOLOGY OF THIS INQUIRY**

When I was appointed National Commissioner, I said that where there had been thorough Coronial Inquiries into particular deaths there would not be a mere re-run of those inquiries. In this case, despite the lengthy Inquest and trial of the five officers, and several other trials of others Involved in the events of

the night of 28 September 1983, there had not been any findings which have been made public concerning the circumstances surrounding the death of John Pat. The coroner did not publicly publish reasons for his decision to commit the five officers for trial. This was an understandable and proper decision in view of the pending trial. In addition, the five officers did not give evidence at the Inquest. The jury who tried the issues in the trial of the officers necessarily were examining one aspect of the night's events. The only issue for them was whether they were satisfied beyond reasonable doubt that the five officers, or any one or more of them, unlawfully killed John Pat. The verdict of not guilty reflects the answer to that narrow question only. It does not address the many and varied issues which I must examine pursuant to my Letters Patent and which arise in the context of how and why John Pat died.

Of the thirty-eight witnesses who gave evidence before me, nineteen were police officers--and a very significant part of the bearing time was occupied examining the five officers whose conduct was essentially under scrutiny.

The Commission sat for thirty-five days in Roebourne and then adjourned to Perth where I took evidence for a further seventeen days. Counsel Assisting tendered over twelve thousand pages of documents which included the various files provided by government departments, police, the transcripts and exhibits from previous legal proceedings and statements provided to the Commission.

The inquiry into the death of John Pat was the most lengthy of all the inquiries conducted by the Commission (there were over five thousand pages of transcript) and one of the most factually contentious. I have made findings which are summarised in Part One. The evidence was complex and generally marked by contradiction.

The Commission hearing has not answered all of the questions raised by John Pat's death. However, I hope that some of the anguish and heartbreak and uncertainty felt by John Pat's family, and the Aboriginal community in Roebourne generally, will be lessened to some extent by the findings I have made.

Apart from the evidence which was directly given before the Commission and some documentary evidence produced for the first time, the evidence before me in this inquiry consisted of files produced by the police and various government departments. Those files included statements initially taken from witnesses by the investigating police officers and by staff of the Aboriginal Legal Service (ALS), as well as those taken later for the purpose of other proceedings, transcripts of evidence given by many of those witnesses at the Inquest and other legal proceedings which followed. There was an enormous number of documents produced on subpoena and tendered by consent (with the exception of a handful of documents on which I made rulings, none of which assumed any significance).

It follows from what I have said that in respect of many persons there was before the Commission many discrete pieces of evidence attributed to them--in some cases up to eight or nine different statements or reports or evidence given at other proceedings.

In the course of this report I refer to the evidence of various witnesses or the effect of what they say without identifying in all cases where it was said. I do this quite deliberately because to do otherwise would make the report unnecessarily detailed and of an intolerable length.

The great majority of witnesses to the events surrounding the death were interviewed by the police at one time or another, usually within three weeks thereafter. Some were interviewed more than once. Many of them were re-interviewed by officers of the ALS. As well, most of the witnesses gave evidence at the inquest, at the trial of the officers and some gave evidence at other legal proceedings arising out of the events of 28 September 1983. For example, there are before me as exhibit 147-A to X, twenty-six relevant documents either made by the particular person relating to him including seven separate statements and passages of evidence extracted from relevant transcripts--to refer in each instance to the particular source would be extremely difficult. Where there is some particular reason for doing so I do refer to the source of the evidence (for example, where I quote a passage or where I point out inconsistencies). However, generally I state the general effect of what the witness has said.

Prior to the commencement of the public hearing, those counsel who were eventually granted leave to appear took part in several pre-hearing conferences with the aim of agreeing matters which could be incorporated into a statement of agreed facts and also to agree on what witnesses should be called to give oral evidence. This was in accordance with the Guidelines on which the Commission procedure was based. The holding of such conferences was supported by all parties. A statement of agreed facts was tendered at the outset of the hearing. As to the question of what witnesses should be called, there was unanimous agreement that at least the police who were involved in the events of the night of 28 September 1983 and those who were involved to a significant extent in the investigation would give oral evidence. As well, it was agreed that those who were able to give evidence about the alleged fight outside the house of Thomas and Coralie McPhee, including those police who investigated that allegation, should be called to give evidence; and also some others.

It was agreed among counsel that, generally, the witnesses to the fight outside the hotel, apart from the police, would not be called to give oral evidence as most, if not all, had testified on previous occasions and it was apparent that there were many inconsistencies in their various accounts which, seven years after the death, would be unlikely to be resolved by requiring them to recall again what had occurred. It was agreed that the various statements made, evidence given etc. by a large number of people, many of them Aboriginal people, should be tendered by counsel as evidence before me to be used as seemed appropriate in all the circumstances, including the circumstance that I had not personally seen the witness.

It was essential to call most of the police officers who were involved in the incidents of the night of 28 September or who were involved in the investigation as previous inquiries and legal proceedings had not examined all of the issues which were identified as requiring investigation in this Commission. For example, the issues of possible interference with the body or an attempt at resuscitation had not been fully examined by the Coroner as the five officers did not give evidence at the inquest and were not touched upon at the trial. Further, although some of the investigating officers provided statements to the Commission, these were not taken by Commission staff and were generally handed to Counsel Assisting very shortly before the witness was due to give evidence (usually on the morning of the day the witness was to be called). Accordingly, the statements often either did not cover all issues or needed some elaboration on some important points.

As already observed, the Coroner published no reasons beyond making a finding as to the medical cause of death. However, he did write to the Attorney-General giving his reasons and indicating the legal and factual basis upon which he had come to the conclusion that there was prima facie evidence against those he committed for trial.

There was both in 1983 and when I conducted my inquiry, difficulty in getting a clear picture of what transpired, either from the evidence of the police officers concerned or from the Aboriginal and non-Aboriginal witnesses - although everyone agreed that there was a fight, agreement as to other matters was not easy to find. In particular, there was the greatest difficulty in achieving any clear picture of who had struck blows or otherwise applied force to whom, irrespective of whether one is talking about force applied to Aboriginal people or non-Aboriginal people. This is not meant necessarily to imply any criticism of anybody. There were many people involved in one way or another; it was at night; the light was poor, in my experience it is always true that such disturbances produce a welter of evidence consisting of partial and often contradictory impressions. Accordingly, the Coroner's view as disclosed to the Attorney-General was that the evidence did not provide a basis for an allegation that a particular person had caused the fatal injury although he was of the opinion that there was sufficient evidence to put the officers on trial for manslaughter for acts done in Padbury Street and/or in the police station yard.

The prosecutor approached the case primarily on the basis that it was not possible to identify a particular act or person responsible for the fatal injury. The Crown case was put on the basis that four of the accused in the hotel had formed an intention to unlawfully assault Aboriginal people 'willy nilly', that they had put that purpose into effect and as a result of carrying it out, John Pat had been subjected to physical force and, as a probable consequence of the prosecution of the unlawful purpose, Pat died. Young was

not alleged to be part of the common purpose insofar as it related to events outside the hotel. But it was alleged that the common purpose extended to events at the station and that Young was then party to that common purpose. At the station, Pat had been further subjected to physical assault. The case was that, as a result of the violence inflicted outside the hotel or that combined with that inflicted at the station, he had sustained the fatal injury and died from it. The Crown case was that if the jury were not satisfied beyond reasonable doubt that what occurred at the station either killed Pat or accelerated his death then Young should be acquitted and the jury would have to consider what happened at the hotel.

The Crown relied on Section 8 of the Criminal Code of Western Australia which then provided that:

*[W]hen two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.*

The Crown Prosecutor also opened a third limb to his case - that unconnected with any common purpose he would be seeking to show that Holl struck the blow which caused the fatal injury. That however did not loom large in the trial and was in fact not relied upon in the final address. However, at the request of the Crown Prosecutor the trial judge left that issue to the jury. Briefly, the jury were directed that if they were not satisfied beyond reasonable doubt of the Crown's case in relation to the other four accused then they could consider whether Holl struck a blow which caused the fatal injury and if so whether that was done unlawfully.

I mention these matters because counsel for the five officers in his submissions to me said that by their verdict the jury 'implicitly rejected' the Crown's case and any interpretation of the evidence that did not explain the death as arising from an accident and further rejected the scenario of an attack on prisoners (and in particular on Pat) as they were removed from the vans at the police station. I reject that submission.

The verdict of the jury commands respect and finally determines the issue which the jury decided. But in this case, more than most others, nobody can know what the verdict of the jury entails except that they were not satisfied beyond reasonable doubt that the five officers or any of them were guilty of manslaughter. But they may have reached that conclusion on any number of grounds and it is impossible to know upon which. Although extremely unlikely, it may even be that the jury were not satisfied beyond reasonable doubt of proof of the cause of death in the medical sense. They may not have been satisfied beyond reasonable doubt about the existence of a common purpose in which case the whole prosecution case failed (subject to the point about Holl). They may have been satisfied about common purpose relating to what happened outside the hotel but not satisfied that it extended thereafter. They may not have been satisfied that the death was a probable consequence of the prosecution of the unlawful purpose to assault Aboriginals generally, assuming they were satisfied there was such a common purpose. The permutations in this case are manifold.

In short, therefore, no specific portion of the evidence can be identified as having been rejected by the jury.

For these reasons I consider my task is to approach the evidence uninhibited by the constraints arising from the verdict of the jury beyond the simple fact that on the case made out by the prosecution the jury returned a verdict of not guilty of manslaughter. My task is to make findings on the balance of probabilities. But where findings relate to matters of importance or affect the interests of individuals I am to have regard to the seriousness of the issues in arriving at any conclusion that a finding is warranted. This is the civil standard of proof and has been accepted by every Commissioner in this Royal Commission and is the generally accepted standard by which Royal Commissions operate.

It will be seen from the brief synopsis that nobody - no court, no coroner, nobody charged with any responsibility to do so - has ever made a finding about how John Pat came to die other than as to the cause of death in the medical sense.

No finding has ever been made that his death was related to the events which occurred at the hotel or thereafter at the police station. Nor has there ever been any finding as to what injuries he had (with the exception of the fatal injury), nor as to how he came by them or whether any person contributed either directly or indirectly, negligently or otherwise to those injuries or to the sustaining of those injuries.

The Aboriginal people of Roebourne with whom officers of the Commission discussed the inquiry and the legal advisers for the family stressed that it was these factual answers that they were looking for. They were not wanting to institute a witch hunt or to worsen community relations or to reopen old wounds. There was a very general acknowledgment that community relations, including relations with the police, had improved since 1983 as a result of efforts of the Aboriginal people and of the police. But they believed that it was important to clear the air. This is what I have tried to do.

In the opening remarks of his written submission to me, Mr Singleton QC, counsel for the five officers, submitted that both Counsel Assisting consistently, and I, at times, exhibited a 'perceptible bias' against his clients 'with the officers being involved in what amounted to dual cross-examination at times from the Commissioner and Counsel Assisting, and having misleading questions and incorrect propositions put to them during their cross-examination'. No specific examples were cited in support of these comments. During the course of the hearing all counsel, including Mr Singleton, objected from time to time about the form or content of questions put by Counsel Assisting and occasionally by myself (although given the length of the hearing these objections were relatively very infrequent). Very often, the questions were rephrased; if not, I heard argument on these objections and made rulings, sometimes upholding the objection and sometimes not. As far as Counsel Assisting is concerned, I say merely that the allegation is, in my opinion, quite unjustified. As far as I myself am concerned, I do not enter into discussion as the transcript is available and speaks for itself. I merely note that the same submission described the judge at the trial of the five officers as being a 'pro-prosecution' judge.

## **PART THREE**

### **JOHN PAT AND HIS FAMILY**

John Peter Pat was born on 31 October 1966 in the District Hospital, Roebourne, in the Pilbara region of Western Australia. He was Yindjibarndi. Mavis Pat, his mother, was then sixteen years old and his father, Len Walley, was approximately thirty-six years of age.

Mavis Pat was the daughter of a station hand and a domestic worker, and the eldest of five children. She had worked around a station until she was about 11 years old and then had gone to school for about five years. When Mavis started school in 1960 she could not speak English. For the first three years she went to a segregated school known as the 'Native School' in Roebourne, where her cousin would translate for her. After another two years at the new and non-segregated Roebourne school, she went to spend the school holidays with her parents at Mt Florence station and was there married to Len Walley. Mrs Pat's account was that she had pressure put upon her by the Elders to marry Mr Walley because she had been promised through Aboriginal law to him. She did not return to school after her marriage. She was working as a domestic when she became pregnant with her first child, John. Before the birth in October 1966, Mrs Pat went to Hamersley where she worked catching dingoes that were killing the sheep. She also left her husband who, according to Mrs Pat, used to drink a lot.

Len Walley had been a drover and stockman until 1947. That was about the time of the pastoral strike. After that, he worked as a truck driver and driver's off-sider transporting asbestos from Wittenoon to Point Samson. This was a twenty-four hour round trip. Mr Walley said that the driver and the off-sider would take turns 'to ride the load... We used to have a rest and then we would lie down on the load'. He also worked transporting bulk fuels. In all he worked on the trucks for fifteen years until 1962. After that time, he worked as a forklift driver, fencer, musterer, workers' cook and casual labourer. He stated that he had



a nervous breakdown as a result of driving too many hours on the trucks.

Sometime after leaving Mr Walley and when John was still a young child, Mrs Pat commenced to live with Mick Lee. The local Department of Community Services officer described Mick Lee as a responsible person and said that he was regarded as a leader within the Aboriginal community. He worked at the Youth Centre in Roebourne for a number of years and Mrs Pat went on to become a teacher's aide at Roebourne school. Both Mr Lee and Mrs Pat helped with a programme which involved taking local children out into the bush where a billy would be boiled, damper made and traditional Aboriginal and stockmen's yarns told. Mick Lee died in 1984.

John Pat was the eldest of the three children borne to Mavis Pat. He lived at Mt Florence station with his family before coming to the Roebourne Reserve with them when he was about nine years old. When he started school, there was a scheme operating whereby children were picked up from the Reserve and taken to school. About a year later the Aboriginal people were moved out of the Reserve to the Aboriginal Village in Roebourne. The Reserve was bulldozed. John Pat lived with his mother and stepfather in the Aboriginal Village. He went to school until second year high school, and then left to work at Pyramid Station as a station hand. He worked there for only a couple of months before returning to Roebourne.

In July 1981, John Pat was placed under the control of the Department for Community Welfare (DCW), as it was then known. He was not removed from the family. The order was made because of his offending and not a result of a care and protection application. The order expired on 30 October 1982, that is when Pat turned sixteen, and there was no application made to extend the order.

The offences which resulted in the order being made were two charges of aggravated assault. The apprehension information in the police file indicates that the first incident which brought him to the attention of police occurred when Pat was seen walking down a street in Roebourne with three others and carrying an unopened bottle of beer. The police account was that when he was interviewed about another matter, Pat raised his voice and then hit one of the constables with the bottle of beer. He was then placed in the van and taken to the lockup. When Pat was stepping out of the van he kicked out with his left foot striking one of the constables in the testicles. It was recorded that Pat had been drinking although he was not drunk. The account recorded in Pat's DCW file indicates that Pat's version of the events of that night was that he was very drunk when the police stopped the group and commenced to arrest them. He admitted to hitting one officer with the bottle of beer, but said that the officers then threw him into the van almost knocking him out. According to this account, at the police station, Pat 'was still fighting and managed to kick the same policeman'. He pleaded guilty to two charges of aggravated assault.

Just over one year later, on 8 September 1982, before the Community Welfare order expired, John Pat was convicted on other charges of being disorderly by fighting and aggravated assault on police. When he was arrested on the charge of disorderly by fighting, according to the apprehension information, he again assaulted a constable at the lockup, this time by hitting him in the face. That officer was Constable Holl, who was one of the five subsequently charged with Pat's death. Pat's account of what had happened, as recorded in the DCW file, was that he was quite drunk when arrested and had hit the policeman because he was angry. He also thought that he was kicked by an officer while in police custody and he had a graze over his left eye. Pat pleaded guilty to the charges and was ordered to perform a total of seventy hours community service.

After the assault on Constable Holl, John Pat was next apprehended on three separate occasions over the one week from 16 to 22 November 1982. These were all in connection with liquor related offences. Police and DCW records indicate that, in the three months prior to his death, he had been brought before the Court on another seven occasions on charges relating to liquor. There was no indication that these offences involved violence and none resulted in a custodial sentence although it would appear to have been common for Pat to spend the night in the lockup after being arrested on drunk charges.

On the night of his death, John Pat was one month away from his seventeenth birthday. He had been

unemployed for almost three years and had a record of several offences involving consumption of alcohol and a number of convictions for assault against police officers. He claimed to have been provoked by the police on these occasions, although the complaints indicate that he pleaded guilty to the charges. The last recorded incident involving John Pat and the police occurred just three weeks prior to his death in custody, when he was arrested and charged with being a juvenile on licensed premises. He pleaded guilty to that charge, just as he had to every other charge that was preferred against him. Although an officer from DCW was present on each occasion, Pat was not legally represented in any of the criminal proceedings taken against him. There was at the time no permanent Aboriginal Legal Service representation in Roebourne.

Apart from noting his convictions, official records give little indication of what John Pat was like. His DCW file records that at fifteen years of age he was 'very mature'. This reference was made at the time Pat was convicted on two counts of assaulting police and was placed under the control of DCW. Pat's medical file describes him at the end of 1982 as being a 'very quiet sort of chap. Stays with his parents'. Another entry in early 1983 indicated that he cooperated well when receiving medical treatment.

The impressions of those who knew him give quite a different picture than his official records. A school friend of John Pat stated:

*When we were at primary school, John Pat and me used to go out with the Elders and learn law. He always said how much he loved the bush. He loved drawing things. I never saw him have a fight, never saw him get upset. He used to joke about things. This was when he was still attending school.*

*[Later] when he used to come into town every fortnight he might drink down the village. I never saw him drinking down the town. I never went down the town very often...*

*I used to go and see him when he came into town because we were good mates. But I have never seen him out of his head. But I also knew that he'd finish up drinking down the pub as a normal thing.*

Mavis Pat described her son in the following terms:

*He was always good to me, never got cheeky, always happy. He never gave me any trouble, not like some kids you see. He was always talking about working at the station. He really liked the work he did at Pyramid Station. That was the only job he had.*

*... He wasn't bad, he was only in the lock up for drunk and silly things like that.*

John Pat's death at the age of sixteen in the lockup of the Roebourne Police Station was one of the major catalysts behind national and international demands for a Royal Commission into Aboriginal deaths in custody. Mavis Pat said in her statement to the Commission:

*When I heard about the Royal Commission ... I used to wish it would come to here (Roebourne).*

*I don't know what's going to come out of the Royal Commission but I hope it makes everything alright for Aboriginal people.*

*I'm sick of the Royal Commission, it's taking a long time. I wish it to be over. I wish something to happen soon.*

Mavis Pat's hopes for the Royal Commission may not be realised. A Royal Commission of itself cannot make 'everything alright for Aboriginal people' - it can make findings and recommendations that may help point the way to social justice. But that alone cannot alleviate a mother's grief. I hope this report will at least explain what happened to John Pat and to that extent ease some of her anguish.

The position of John Pat and his family and the position of all of the other people who lived in Roebourne at this time cannot possibly be understood except against the background of the history of Roebourne and its wider surrounds since the arrival of non-Aboriginal settlers in that area. I feel it is necessary to say something about that history but in order not to interrupt the narrative I have dealt with this material in Part Fifteen.

## **PART FOUR**

### **THE RELATIONSHIP BETWEEN ROEBOURNE ABORIGINAL PEOPLE AND THE POLICE IN 1983**

Before I move to the circumstances surrounding the death of John Pat, I think it would be useful to introduce the police who were in Roebourne at the time, and to examine the relationship that they had with the Aboriginal population and the method by which the town was policed in 1983.

The police station is located on the corner of Carnarvon Terrace which is the extension of Roe Street, the main road through the town, and Queen Street. It is only about 500 metres away from the hotel and would take less than a minute to drive from one place to the other.

#### **4.1 THE ROEBOURNE POLICE IN 1983**

In 1983, there were ten police officers stationed at Roebourne. I refer to all officers by their ranks in 1983. The Officer-in-Charge, Sergeant John Devaney, had only been in Roebourne for about six weeks before John Pat's death. Prior to then he had spent much of his police career, indeed about eighteen years, in the scientific branch, his expertise being fingerprinting. He had little operational experience, and even less contact and experience with Aboriginal people. He had had no experience in a country town.

Devaney had no training in Aboriginal culture before his transfer to Roebourne except for a short in-service training session about a year before he came to Roebourne. He was aware that Roebourne had a large Aboriginal population, that it had, according to him, one of the highest arrest rates in Western Australia and that 'it was a particularly violent town'. Given his assessment of the town he was singularly ill-equipped in terms of training and experience to take over the key responsibility of Officer-in-Charge.

Devaney had no experience with the sort of events that happened that night, either in the hotel or the fight outside. He had never seen anything like it before. He was appalled and upset by what he saw and I have to say he was ineffectual as a leader. He left it to the off duty officers to handle the situation. He took no active part in supervising the conduct of his officers either at the hotel or at the police station when the prisoners were unloaded and thereafter.

Devaney was in the witness box for several days and during that time I assessed him to be a quietly spoken, sensitive and nervous man - one who had pride in his role as a police officer and who took it seriously. I believe that he would have been at pains to come to grips with the problems in Roebourne and to establish a good rapport with his fellow officers. I believe that is why he accompanied them to the hotel on 28 September, against his better judgement and contrary to his clear preference to return home. I regard him as an honest witness.

The other officers who feature significantly in the events in question are as follows.

The most senior of them was 1st Class Constable Ian Armitt. At the time he was thirty-five years old, married with three children. He joined the police force in July 1973. Prior to that he had completed an apprenticeship as a carpenter and joiner. In 1970 he was conscripted and saw active service in Vietnam for twelve months. Prior to going to Roebourne in about March 1982, Armitt had been involved in general

duties including about two years at Jurien Bay which is a small coastal town approximately halfway between Perth and Geraldton. He is a big man, about 6'2" tall - he said that in 1983 he weighed 95-97 kg.

Constable Steven Bordas was twenty-three years of age and was a single man. He graduated from the Police Academy in 1979 and prior to his transfer to Roebourne in early 1982, he had been involved in general duties in suburban police stations in Perth. At the hearing Bordas said he was 5'10" to 5'11" tall and weighed 97-100kg but was heavier than that in 1983. Bordas said that he applied for transfer to Roebourne to gain some experience in a country station. He had never worked in the country before. He received no training for posting to a country town and in particular no training in dealing with Aboriginal people and the particular problems they might face. However, he had worked in a suburb in which lived 'quite a number of Aboriginals'.

In September 1983 Constable Terrence Holl was almost thirty-four years old. He joined the police force in January 1975. Like Armitt, he was a somewhat older recruit than usual as he was a qualified boilermaker/welder and had worked in that trade before joining the police force. He was conscripted during the Vietnam war and saw active duty in Vietnam for seven or eight months. Holl is married with three children.

Holl was posted to Roebourne in August 1982. Prior to that he had spent most of his police career at the Victoria Park police station in Perth. He said that he applied for several north west postings as he had worked there in private enterprise and liked the Pilbara and North-west lifestyle. Holl testified that he was about 5'10" tall and although he said he did not know what he now weighed or weighed in 1983, he agreed that when he joined the police force in 1975 he weighed 13 stone 2 pounds. I observed him to be quite a well-built man who bore a remarkable facial resemblance to Armitt.

Constable James Young was born in Scotland and came to live in Australia when he was seventeen years old. He joined the police force in November 1975. In 1983 he was thirty-three years old. He spent about six years in various police stations in the Perth metropolitan area before his transfer to Roebourne in May 1981. He said that usually the postings in Roebourne were for two years but he 'liked the town and the people in it' and enjoyed the lifestyle there so he stayed on after the initial two years.

The two Police Aides at the Roebourne police station at the time were Michael Walker and Cider Gilby. Both had qualified as aides in November 1975 and were in the second group of aides in the Western Australian scheme.

Walker was born in Port Hedland but was brought up in Roebourne. He reached Grade 7 at school and left when he was thirteen years old. In 1983 he was thirty-two years of age. At the relevant time, Walker was living with a woman by whom he had three children; the couple also had a foster son. Prior to becoming a police aide, Walker worked almost continuously including on stations in the North West, the Tin Mine at Marble Bar and the Shire of Port Hedland. He was driving trucks in Roebourne when the opportunity of applying for a position as an aide came up. His employer was prepared to hold his job open for him during the trial period that an aide had to serve following appointment. I have no doubt that he was a good worker, well regarded by his employers. Walker said that he knew everyone in Roebourne and was related to many of the Aboriginal people who lived there. He said that he had experienced no problems as an aide and did not find that the people were reserved or reluctant to tell him things because he was a police officer. He felt that there was no difference between his duties as an aide and those of a fully qualified police officer and that the other officers treated him as a police constable.

Gilby was an initiated member of the Yindjibarndi people. He had been married by tribal law and considered himself to be a respected elder in the Roebourne community. He said that he spoke a number of Aboriginal languages. Gilby had also been an aide since 1975. He would not accept that he had a good grasp of the police procedures in Roebourne as he said that he was only an aide. It is clear that his perception of his role and responsibilities as an aide was different from that of Walker who regarded himself in effect as a police officer.

While it may have had something to do with personality, the main reason why Gilby was treated differently was that he was illiterate. This was regarded by almost all of the Roebourne officers as something which limited his whole role. It was said that he spent most of the time on the verandah smoking (with which he agreed).

I think that the two police aides were of considerable help to the officers but that Gilby's use was under valued. I thought that there were a number of marks of condescension towards him. It seems to me to be a great pity that a man of his apparent standing, and certainly with connections, was not given the opportunity to study literacy (he said he had not had such an opportunity) and to give some formal instruction to police officers passing through the station on local Aboriginal history, tradition and culture.

The other officers stationed at Roebourne were Constable Puzey, whom I refer to later and two others who play no part in this matter.

#### **4.2 POLICE PATROLS**

The police patrolled Roebourne and especially those areas where Aborigines were likely to congregate with frequency and regularity. The patrols would be conducted sometimes as a result of a complaint or 'call' but most often simply to demonstrate the presence of the police in the town - 'showing the flag', as Bordas put it. According to him it would prevent breaches of the peace. He did not think it would be provocative if the people were doing nothing wrong.

Although the patrols could take in Cossack and areas as far afield as Whim Creek, about 84 kilometres towards Port Hedland, most of the patrols were of the Roebourne townsite. This is hardly surprising as that is where the population was concentrated. The townsite patrols could be covered, if there was no trouble, in about ten minutes. At times two vans would be out patrolling the townsite. Of the townsite area the most frequently patrolled areas were the hotel and the riverbank. Holl testified that if the police van did not come around the hotel every fifteen minutes or so then the police were not doing their job (although on the basis of the evidence of the other officers this is a considerable exaggeration).

The frequency of patrols was greater during the afternoon shift and in pension week. This was no doubt attributable to the greater number of people likely to be at the hotel at those times and the increased likelihood of trouble in pension week due to greater alcohol consumption. The overseer of the hotel testified that the police would patrol the hotel half a dozen times a day and of an evening twice to half a dozen times depending on how busy the hotel was (this, I think, was an underestimate).

Bordas testified that most patrols went past the hotel and most times into the hotel.

*The purpose of going into the hotel was to show the flag. Show the uniform. I still do the same thing today. It shows the uniform to those who are there in case there might be trouble.*

However, the officers testified that when people were affected by alcohol, the uniform was no deterrent - offences were committed and often police abused. It is apparent that these regular patrols did not prevent breaches of the peace. The police presence clearly did not prevent the drinking of alcohol and it seems to have had little effect on associated offences - drunkenness, Liquor Act breaches, disorderly conduct, assaults etc. The policing policy certainly enabled the police to be readily on hand to effect arrests when offences were committed.

Armitt referred to the continual presence of the police in the town when testifying as to how the police would know how long a particular person had been in the hotel bar. It was not, he said, necessary to ask anyone about that as Roebourne is only a small town and 'we were round basically all the time'. It is implicit in his evidence that the police had a very fair idea of what people were doing most of the time because of the size of Roebourne and their constant patrolling of it.

The number of patrols which were conducted (mainly in a police van), the number of arrests of Aboriginal

people and the violence associated with some or many of them (however instigated) must have potentially, if not in fact, instilled in the Aboriginal people of Roebourne a deep resentment and distrust of the police. The selection of an officer in charge who had little operational experience, no country experience, no training in Aboriginal culture or tradition and little, if any, real contact with Aboriginal people in his police career was clearly not conducive to innovation and had the potential of perpetuating the perceived role of the police to keep drunks off the street and out of sight.

#### **4.3 POLICING AND ALCOHOL**

*If you took alcohol away you'd virtually be able to close down the police station. (Constable Ian Armitt)*

The Roebourne Police Station Occurrence Book was in evidence before me for the periods 20 June 1983 to 4 August 1983 and from 19 November 1983 to 31 December 1983. The population of the town was estimated at 1670, of which about 860 were Aboriginal people. The two periods cover a total of eighty-nine days. There were 730 arrests, virtually all of Aboriginal people, nearly one-third being female. The number of separate individuals arrested was just under 300. The figures is a little imprecise because of slight variations in the spelling of names. No doubt, there were some Aboriginal people arrested from out of town. Over 75% of the offences for which the arrests were made were drunkenness or offences related to licensed premises. Many of the others, I would suggest, were for drink-related offences - drinking in a public place, fighting etc.

What those figures mean is that a substantial proportion of the population were arrested twice over the period of eighty-nine days. This is a monstrous figure. If one counts the families of those people who were arrested, it must mean that a large part of the Aboriginal population was affected in one way or another.

It would seem that this must lead to tension between the people and the police.

There were very few arrests of Aboriginal people for serious crimes. It was an endless round of arrests for offences against activity which was no doubt distasteful to many non-Aboriginal people. It was greatly related to Aboriginal people living in the open, drinking in the open and being highly visible. Many of them were arrested for drinking in the reserve to which I refer in Part Fifteen.

#### **4.4 THE QUESTION OF THE UNIFORM**

The officers who gave evidence were of the opinion that the attitude of some Aboriginal people was very different depending on whether the officer was in uniform or not. The uniform commanded respect. Sergeant Devaney was very strong on this. The officers generally said that this was generally true but it certainly applied in Roebourne.

This was one of the reasons why many of them did not to go the hotel out of hours.

#### **4.5 INCIDENTS OF VIOLENCE WITH POLICE OFFICERS**

The officers said that they were often the subject of some violence. When making arrests of people under the influence of alcohol the people often started fighting.

Armitt said that he did not usually go into the town out of uniform except early in the morning because of the possibility of getting into a fracas.

I mention these two matters because, in all the circumstances known to the officers, other than Sergeant

Devaney, it was an unwise thing to go to the hotel on the night of the fight having had some drinks themselves. Had they driven up to the hotel, gone straight into the Top Bar (where few Aboriginal people drink), had their drinks and left quickly, it was unlikely that there would be trouble.

Police officers, of course, have the same rights as others to have a night out and go to a hotel. But these officers acknowledged that discretion was important

But in my opinion, it was extremely foolish for Holl to engage himself with Ashley James, to go out of the bar and into the bottleshop, to wait outside the bottleshop and to finish up, as he acknowledges to be the case, face to face with Ashley James, both of them shaping up to each other with fists raised, before any fight had started.

I do not mean to suggest that the police officers in Roebourne had an easy job. They did not. They had a very hard job. Nor do I mean that they or their predecessors at the Roebourne Police Station were responsible for the position. They were not. As Part Fifteen shows, it was the whole process of European domination of the Pilbara that had brought about the situation. Nor had they been given any training in Aboriginal culture and practice, or the history of Aboriginal relations with the wider society. And, of course, the patterns of policy were not set by the constables or the sergeants but by the policy of the Department over years. The submission of the Police Federation of Australia and New Zealand to the Royal Commission (to which I refer in my final report) speaks well on these matters.

What the evidence shows is that there was no meeting of the people involved. The hotel sold the beer, the Aboriginal people in many cases became very intoxicated, the police arrested them. There seemed to be little effort from the side of the authorities to break the cycle. Part Fifteen and Commissioner Dodson's *Regional Report of Inquiry into Underlying Issues in Western Australia* shows that there are some changes that promise better things for the

## **PART FIVE**

### **THE MEDICAL EVIDENCE AS TO THE CAUSE OF DEATH AND OTHER MATTERS**

There was extensive medical evidence from distinguished experts available to the Commission as to the injuries which John Pat sustained and as to the cause of his death. I shall deal with that evidence at this early stage of my report as my findings as to what happened to John will have to be considered in the light of the forensic pathology evidence.

#### **5.1 FORENSIC PATHOLOGY**

As earlier remarked, death was certified at about 11.30pm on 28 September 1983. The body was transported to the State Mortuary and on 29 September, at approximately 12.30pm, Dr John Napier Miller Hilton commenced a post mortem examination. Neuropathology was performed by Professor Byron Kakulas. Dr Hilton found that the cause of death was a closed head injury.

The adequacy of the autopsy conducted by Dr Hilton was not questioned at the hearing. I find that it was competently performed with all necessary and relevant tests being carried out. I make the same finding in respect of the work of Professor Kakulas.

Subsequently, on 5 October 1983, Dr William Laurie conducted a secondary post mortem examination and certified the cause of death as brain damage and subdural haemorrhage.

Drs Hilton and Laurie and Professor Kakulas gave evidence at the inquest and Dr Hilton and Professor Kakulas testified at the trial of the five officers. As well, Dr Bryant Stokes, a neurosurgeon of

considerable repute, testified at the inquest and the trial. Drs Hilton and Stokes provided statements to the Commission as did Professor Donald Simpson who is an eminent neurosurgeon in South Australia. Dr Hilton also testified before the Commission.

Apart from certain of Dr Laurie's opinions outlined below and which are not supported by the other medical specialists, the medical evidence is not contentious in the sense of there being any essential conflict of opinions.

As was the normal procedure, Dr Hilton's post mortem examination was conducted in the presence of a police officer, and in this case two, Detective Sergeant Griffiths and Constable Thomas.

At the conclusion of the post mortem examination Dr Hilton told Griffiths that the cause of death was a closed head injury. During the course of the post mortem examination a summary of the post mortem findings would have been made available.

Samples of blood, urine and liver from Pat's body were analysed at the State Health Laboratories. Relevantly, it was found that the blood alcohol content in the blood was 0.225% and in the urine was 0.331% (the former is the more reliable).

## **5.2 CAUSE OF DEATH**

The preponderance of medical opinion agrees with Dr Hilton's certification of the cause of death as a closed head injury. His view is that an application of force to the left occiput resulted in a centre coup injury which caused damage to the right frontal area of the brain. The backwards and forwards movement of the brain within the skull and, to some extent, its twisting within the skull, stretched and tore a number of the smaller veins which caused subdural bleeding resulting in a subdural haemorrhage. Dr Hilton estimated that this haemorrhage was about 140 mls in volume. The weight of medical opinion is that a haemorrhage of that volume is considerable. Only Dr Laurie dissented from that view.

A subdural haemorrhage is a collection of blood in the space between the two membranes which cover and protect the brain. It was this haemorrhage which eventually compressed the brain sufficiently to cause the shut down of the brain's respiratory centres so that Pat stopped breathing.

(In this report I shall use the term 'fatal injury' to refer to the application of force to the occiput and the consequences thereof as described above.)

## **5.3 EFFECT OF ALCOHOL**

Professor Kakulas was of the view that the cerebral lesions alone would certainly have accounted for the death without needing to postulate the added effect of alcohol. However, he postulated that the alcohol may have contracted the period between the fatal injury and death.

Professor Simpson was of the view that the size of the acute subdural haematoma was such that death might certainly have resulted from it had the deceased been entirely sober. He referred to studies which suggested that the severity of brain injuries is increased if there is a high blood alcohol level but it would appear that there is contradictory evidence concerning this issue. Professor Simpson thought it was possible that a high blood alcohol level did contribute to death but considered there is no conclusive evidence to support that view. Dr Stokes was unaware of any experimental evidence or clinical evidence which would support a statement that alcohol itself accelerated the bleeding in the brain, But he thought it would have played some part in reducing cerebral function.

Taken as a whole, the evidence of the medical specialist was to the effect that John's intoxication:



- (a) may have aggravated the depth of coma;
- (b) would have contributed to the depression of respiration;
- (c) may have contracted the period between the fatal injury and death;
- (d) may have increased blood flow from the dilation of vessels. Further, there is evidence that bleeding in the extracranial tissues (the scalp and those layers) can be increased by alcohol; and
- (e) may have produced some depression of vital centres, i.e. the respiratory and medullary centres.

Alcohol would have played a part, if only by altering the person's conscious level; this, superimposed upon the compressive effects of the subdural haematoma, would make the assessment neurologically of the patient extremely difficult.

Only Dr Laurie was of the view that the degree of damage in the brain would not have killed Pat if he had not been very drunk. He considered that alcohol played a significant part in causing Pat's death. However, his opinion is not supported by the other specialists and I am not persuaded to accept it. Further, no counsel submitted that Dr Laurie's view should be preferred nor took issue with any part of Dr Hilton's view as to the cause of death.

The preponderance of opinion is that had John Pat been sober it is most unlikely he could have survived and, even in the best of hands, with treatment given immediately after the fatal injury the prospects of Pat surviving would have been minimal.

#### **5.4 TIME OF FATAL INJURY**

Although there are methods for determining a chronology of injuries to the brain, in this case the specialists were of the view that because of the short time between the infliction of the injury and death this was not possible. However, Professor Kakulas testified (trial) that he could differentiate (in time) lesions which were at intervals of twelve hours or greater. Professor Simpson stated that the longer the survival, the easier it is to find age related changes in the brain. He went on to say that Professor Kakulas's opinion that the contusions of the brain were probably less than twelve hours old is as exact as he would expect any post mortem examination could be.

Based on the evidence obtained from the postmortem alone, it is reasonable to draw the conclusion that time of death was not more than about 12 hours after the fatal injury.

But, of course, there was other information available which the experts were asked to assume for the purpose of expressing further opinions. As subsequently appears, certain matters of fact were established beyond any doubt at all (and indeed formed part of the agreed facts). Certain of these were as follows: John Pat was dead at least by about 11.30pm; he had been placed in the police van at about 9.30pm and unlocked from that van a matter of minutes afterwards; that prior to being placed in the van he had been very actively engaged in a fight involving police officers and Aboriginal persons over a period which had started about 9.15pm; that immediately prior thereto he had had a very short conversation with a police officer, the terms of which showed that he fully comprehended what was said to him by the officer and was able to answer appropriately and to the point; and that for at least a short time before that he had been in a position where he could be seen by a number of people and nothing unusual was noted about his behaviour.

Assuming those matters were to be factual the experts were able to narrow the probable time gap between fatal injury and death. The time of death is not known but it had certainly occurred by 11.30pm.

Professor Simpson did not believe it was possible to be precise as to the time frame within which the fatal injury was incurred but suggested a time of between twelve hours and 30 minutes, although his own

inclination was to postulate a comparatively short time of between half an hour and two hours. Dr Laurie considered that the bruising to the brain had been inflicted within six hours of death.

On the whole of the medical evidence, I consider it unlikely that the fatal injury was sustained more than two hours before death. I refer later to the time of death.

## **5.5 THE TRAUMA REQUIRED TO CAUSE THE FATAL INJURY**

Dr Hilton considered that a substantial degree of force would have been required to cause the fatal injury by, for example, a fall or accelerated fall. The other specialists did not disagree with this opinion. However, Dr Laurie considered that if this were the case Pat would have smashed his skull. On the other hand, Professor Simpson would not expect the skull to fracture in the place it did (I refer to the fracture later) if Pat had fallen backwards or had been propelled backwards from a standing position and hit his head on the ground unless he had hit the right side of his skull at the indicated point. Professor Kakulas's opinion is to the same effect.

I find that falling backwards from a standing position and striking the head on the roadway could cause the fatal injury. None of the parties contested this proposition. Of course, the medical evidence can establish nothing more than that consistency. I take the position to be that any scenario which duplicated those conditions would also cause the injury, i.e. a force applied in such a way that the back of the head came into violent conflict with a flat, smooth, unyielding surface.

## **5.6 BEHAVIOUR AND LEVEL OF CONSCIOUSNESS AFTER INFLICTION OF THE FATAL INJURY**

The specialists were questioned at length in all forums as to John Pat's expected behaviour and his level of consciousness following the infliction of the fatal injury. Their evidence on this point is crucial in assisting me to make findings as to when John suffered his fatal injury. Their evidence was given against the background of acceptance that the cause of death was subdural haematoma caused by trauma to the back of the head resulting in a forward-backward movement of the brain (the centre coup effect). Insofar as they expressed views about Pat's likely condition in the police van and when the van reached the station those views were expressed on the assumption that he had received the fatal injury before being put in the van and in the course of the fight at the hotel.

I summarise the views of the specialists (apart from those of Dr Laurie who only gave evidence at the Inquest and who was not questioned on all issues) this way. They all agree that this was an acute and serious subdural haematoma. They all agree that it is probable (but not certain) that the trauma causing this type of injury would be likely to cause some immediate change in the conscious state; they all agree that this immediate change might be followed by a period of improved conscious state but not normal conscious state; they all agree that as the size of the haematoma increased with the bleeding there would follow unconsciousness, coma and death. I have already found on the individual evidence that it was unlikely that death occurred more than two hours after the sustaining of the fatal injury and might have occurred considerably earlier.

The references to conscious state in the above paragraph are based upon the effects of the fatal injury without taking into account the effects of alcohol. These effects would tend at every point to reduce the level of conscious state.

The differences between the specialist doctors are as to matters of degree within that framework of agreement. It is the view of each of Drs Hilton and Stokes and Professors Simpson and Kakulas that a loss of consciousness or at the very least a considerable degree of loss of consciousness would occur immediately following the injury; each considers (but with some varying degrees of likelihood) that this might not necessarily happen. All agree that, excluding the effect of alcohol, the injury would not, other than in the immediate sense (and not certainly in that sense) have prevented Pat from carrying on some

purposeful activity. Professor Simpson probably allows for a higher level of activity than the others during this period, he thinking that it is quite possible that Pat could run, walk, fight and talk for a period of 20-30 minutes following the injury. Dr Hilton does not absolutely differ from this but thinks it less likely. Generally I interpret the evidence of Dr Stokes and Professor Kakulas as being less inclined to envisage this level of activity as a possibility.

The scenario was put to them of John being taken from the van in the following way: being stood up and then held from behind by Armitt placing his body immediately in the rear of that of the boy, with his arms around the boy's body, under the arms and then the boy being walked backwards, his heels being on the ground. The question was whether John could co-operate by purposely taking some backward steps; on the basis of this occurring 30 minutes after the sustaining of the fatal injury. The view of the medical specialists was that this was possible (Professor Simpson), to, possible with varying degrees of high unlikelihood. (I repeat that these opinions were based on the head injury to which is to be added the effects of alcohol.)

The specialists appear to me to be agreed that shortly (say half an hour) after the injury the overwhelming probability is coma, deepening coma and death without recovering consciousness.

The above summary of the expert evidence relates only to the likely effects of the fatal injury upon John Pat's capacity to perform certain actions following the receipt of that injury. However, the post mortem showed other injuries which if sustained before or at the same time as the fatal injury would have affected that capacity, as perhaps would have the alcohol he had consumed.

I turn then to consider the non fatal injuries found at post mortem.

## **5.7 HEAD INJURIES**

### **5.7.1 THE FRACTURE**

There was a fine hairline fracture (which could only be seen microscopically) which traversed the temporalis on the right. Professor Simpson was of the view that this was probably caused by direct force applied to the temporal area because the fracture was reported as being vertical and confined to the inner table. Skull fractures due to occipital impacts are more likely to be horizontal. He stated that it is unusual for skull fractures to result from blows of a fist. However, he considered it possible that a blow from a fist or a boot, or a fall, might have caused a fracture of this comparatively trivial area, given the structure of the skull at this point. He considered that the three distinct areas of bruising found by Dr Hilton would certainly support the idea of punches or kicks on this side of the head.

Dr Laurie considered that the deceased's skull was thin. Other experts did not consider the skull to be unusually thin.

### **5.7.2 INJURIES TO THE SCALP AND SKULL**

On the scalp, Dr Hilton found extensive focal bruising of the epicranium and of the deeper layers of the scalp, most marked in the epicranium on the right and on the deeper layers of the scalp on the left occipital zone. He considered this bruising to be fresh.

Further, he found three distinct areas of bruising on the outer lining of the skull and five on the actual scalp. He thought that some of the bruising on the lining of the skull could correspond with those on the scalp. He considered that there was at least one application of force to the back (on the occiput) and approximately six to the right hand side of the head.

### **5.7.3 BRAIN INJURIES**

Dr Hilton found extensive frontal contusion and lacerations extending from the frontal pole back towards the temporal pole involving the inferior and lateral aspects of the right frontal lobe. There was a minor degree of traumatic subarachnoid haemorrhage present over the right parietal and occipital lobes. However, the specialists agreed that the subarachnoid haemorrhage was not relevant to the cause of death and was simply indicative of trauma.

Professor Kakulas testified at the inquest that he found two areas of contusion on the brain - one in the right frontal area and the other in the left temporal area. He postulated that the contusions in the right frontal area were the more significant and these were related to a blow to the left side of the head posteriorly; although a force applied to the right side of the head posteriorly in the occipital region would be equally consistent.

Professor Kakulas considered that the left temporal contusions would probably have been related to a force applied to the right side of the head in the region of the temporal bone. In his experience it is the usual case not to find evidence of injury at the point of the blow.

Further, Professor Kakulas was of the view that the subdural haemorrhage arose probably from one injury. However, he considered that there would be two injuries to account for the contusions - 'a minimum of probably two serious head injuries. There could have been any number of others but they did not really cause distinguishable changes in the brain'. He testified that there were at least two injuries that he could separate and feel confident about - one injury that caused the right frontal contusions and the right acute subdural haematoma, and the other injury that caused the left temporal contusion. I understand Professor Kakulas to be saying that the latter was probably the injury which resulted from the fracture of the skull on the opposite (right) side. As to the injury causing the left temporal contusion, Professor Kakulas was of the opinion that it could not be said whether it was caused by a kick or a blow or with an instrument, but that it was consistent with being caused in any of those ways. Professor Kakulas testified that in his view it was possible for both the left and right sided contusions to have been caused by one trauma but believed that it was much more likely that they were due to separate injuries, the right frontal relating to a left occipital or parietal trauma and the left temporal relating to perhaps a right temporal or parietal trauma. In his view there was a 60% chance that the left temporal injury was due to an occipital trauma and a 30% chance it was due to a right temporal trauma.

Professor Simpson favoured the left occipital impact as being causative of the left sided contusions in the brain. However, he stated that he certainly could not contest Professor Kakulas's belief that it may have been due to a trauma in the right temporal region. In that regard he stated it was impossible to be very precise and he did not consider that there was much difference in their opinions in this regard.

I find that given evidence found by Dr Hilton at post mortem examination supporting a number of applications of force, it is most likely that the contusions in the brain were caused by at least two applications of force.

If there were two applications of force which caused the left and right sided contusions in the brain, and if the left sided contusions (which were of less severity than the right) had occurred after the right sided contusions, then Professor Kakulas was of the view that death would have been accelerated in the sense of hastening the development of oedema and contributing to the depth of coma and shortening of the period of survival. Following the left occipital impact, if 'further worthwhile trauma' were inflicted to the head of the person, that may or may not have accelerated the accumulation of blood by widening the tears in the veins or causing further veins to rupture. However, he thought that more importantly such other trauma might accelerate the swelling process, and thus further affect the level of consciousness. Once the brain is injured, it becomes, in his opinion, more vulnerable to further injuries and these may be of a lesser extent than the original injury but they would all have a cumulative effect.

His evidence at the trial of the five officers was that in this particular case death was due to the cumulative effect of a number of traumas.

Professor Simpson would have 'no difficulty' in explaining all the brain injuries apart from the skull fracture by a single impact to the left occipital region. However, given the 'good evidence of multiple impacts to the head' he considered 'it quite likely that these may have augmented or increased the effects of the major left occipital impact'.

Clearly, the deceased suffered a number of brain injuries. Whether they could all have been caused by the one trauma is subject to debate. The outstanding fact is clear in that the trauma to the left occipital region, which I have already found (in accordance with the medical evidence) caused the subdural haematoma, could have caused more than one injury to the brain. The clear evidence of multiple external injuries to the skull suggests that multiple internal injuries may have had more than one source. But whether they did or not the lesser brain injuries should, on the evidence, probably lead to an acceleration of the fatal outcome of the subdural haematoma.

At the inquest Professor Kakulas was asked to express a view concerning the effects of placing a person (in a comatose or progressing state of coma) on his back. His view is as follows:

*To anyone with any first aid training or medical training this is an extremely dangerous posture because of the possibility of obstruction of the air ways and the normal first aid attention would be to turn the patient on his side. This is to clear the air way. I think first aid personnel are equipped with air ways that they insert in unconscious patients because there is a great danger of the patient inhaling his own secretions or obstructing the air way through abnormal posturing, the tongue falls back, the head flexes and so on, and lying supine like that, I think, is dangerous, and it would have aggravated the degree of anoxia and, therefore, accelerated the rate of development of the swelling, because anoxia itself will cause cerebral swelling, cerebral oedema. It is a combined effect, and that may have contributed to the very short duration of his survival after the injury.*

## **5.8 EXTERNAL INJURIES OTHER THAN TO THE HEAD ('THE EXTERNAL INJURIES')**

The external injuries were consistent with a fight or fights in the course of which Pat fell on to or came in contact with a hard surface such as bitumen.

At the trial of the five officers, Dr Hilton agreed with defence counsel that apart from the injury to the occiput, the external injuries were trivial in the extreme. They were the common sort of injuries one sees in the ordinary run of the mill brawl.

He considered that there were a number of applications of force to the front of the head and face. He put the number of applications of force to the face including the left ear at five.

On the three occasions on which Dr Hilton gave evidence as to his findings, he was questioned at length about the nature and degree of force required to cause the external injuries.

Dr Hilton believed the degree of force to inflict the injuries to the face to be of modest proportions as there was no disruption to the facial skeleton - the teeth, jaw or cheekbones were not broken. The injuries to the left hand side of the body, that is, to the ankle, hip, elbow, cheek and earlobe, could have been sustained at the one time; for example, if Pat had fallen onto concrete from a height of two feet.

There was no evidence that would support the suggestion that Pat received full, hard kicks to the head; that he was kicked a number of times to the left hand side of the head; or that he had been kicked on the top of the head.

Apart from the bruising on the occiput, Pat had a number of injuries which would be consistent with blows of modest severity. There was no evidence of any extreme degree of violence by kicks or any other means.

These external injuries were incidental to death. There was certainly no evidence that the external injuries caused death or directly contributed to death and I so find.

Dr Hilton made a number of incisions in the relevant parts of Pat's body looking for further bruising and saw none. However, he could not on that basis exclude absolutely that there were no other bruises.

At the inquest, when shown photographs of the body in the cell displaying blood stains on the floor, Dr Hilton agreed that it would be surprising if the blood came from the minor abrasion on the elbow and agreed that if that quantity of blood had come from the elbow, one would have expected smears of blood from the site of the wound where it had tricked down. He agreed that there must be a question mark as to how the blood on the floor fitted with the clean state of the body delivered to him.

## **5.9 INTERNAL INJURIES (OTHER THAN HEAD INJURIES)**

On internal examination, apart from the head injuries, the only significant findings at the post mortem examination were as follows:

There was an intimal tear in the aorta immediately beyond the arch. This was in a transverse plane and showed no evidence of haemorrhage at the autopsy.

There were fractures of the right ninth rib in the mid axillary line and the left sixth rib in the anterior axillary line.

There was some oedema and bruising of the retroperitoneal tissues in the lumbar region which I shall refer to in layman's terms as the 'belly bruising'. The feature of this injury was that it was internal and there was no corresponding injury on the outer surface of the stomach.

### **5.9.1 THE AORTA**

The aorta is the principal artery of the body. Like other arteries, it consists of an outer layer, a thick muscular layer and a smooth, thin inner layer. In this case, there was splitting of the inner smooth layer and the middle muscular layer. Dr Hilton conducted tests and came to the view that the split was traumatic. Further, there was remarkably little bleeding in it.

It was a fairly extensive tear immediately beyond where the aorta hooks around down behind the heart to descended down through the chest and abdomen. There was no bleeding from the tear at all. When Dr Hilton examined the tear under the microscope, there was what appeared to be passive spillage of some red blood cells but there was certainly no evidence of any active bleeding from this tear.

The absence of bleeding was one of the factors which caused Dr Hilton to question whether there had been an attempt to resuscitate Pat because if the circulation was failing at the time of the injury to the aorta, this would explain why there was not more bleeding. He said that the general expectation with that sort of tear in the aorta would be of massive haemorrhage because there is a substantial pressure in the tube. If Pat had been involved in increased physical activity such as running or fighting, the chances of a haemorrhage from the tear in the aorta would be greater. However, he considered that even if there had been massive haemorrhage from the tear, it would not have necessarily incapacitated movement.

Dr Hilton said he had seen similar injuries where there had been an unsuccessful attempt to resuscitate - the injury being related to the pressure on the body in the course of the resuscitation attempt. Although he conceded that it was possible for the tear in the aorta to have occurred prior to death, he considered that probably it occurred *peri mortem* (i.e. at the time of death) or *post mortem*.

Although the injury to the aorta was a major injury to a major vessel, there were no consequences from it.

### **5.9.2 THE RIB FRACTURES**

Dr Hilton considered that the location of the rib fractures suggested a compression force of back to front or front to back as the most likely cause of the fractures, especially in the absence of any bruising of the chest wall. However, he believed the most likely mechanism of the rib fractures and probably also the aortic tear was the chest being squeezed from front to back, the back being supported at the time (e.g. the subject lying on his back).

There was no bruising in the tissue overlying the fracture sites to the ribs. Dr Hilton was of the view that the absence of significant localised bleeding would indicate that the circulation was ineffective at the time of the fracturing; the most likely scenario being that the rib fractures occurred about the time of or after death. Dr Hilton gave a specific answer to a question on this issue:

*The absence of significant localised bleeding would indicate that the circulation was ineffective at the time of the fracturing. This could be because a) it had ceased (death) b) there was partial shutdown of circulation possibly as a part of the shock syndrome. Alternatively, the absence of bleeding could be a highly unusual chance phenomenon. The most likely scenario is that the rib fractures occurred about the time of or after death.*

Dr Hilton considered the injuries to the ribs to be of the type which he would see 'moderately frequently' in association with resuscitation. Professor Kakulas testified at the inquest that the fractures to the ribs and the tear in the aorta were 'entirely consistent' with 'rather vigorous measures to resuscitate the patient'.

Fracture of the ribs of a seventeen year old male is less likely--whatever the mechanism of the injury---- than of a person aged 50-60 years. Dr Hilton testified that when such fracture does occur, it is usually due to a short sharp application of force, rather than a more steadily produced compression force. He would expect a substantial application of force in that situation for the ribs to break and the aorta to be torn, assuming the injuries to be caused at the same time.

Dr Hilton was of the view that if a person weighing ninety-five kilograms fell onto a seventeen year old male, and if that caused the tear in the aorta and the fracture of the ribs, he would expect the person to be winded. He agreed that such winding would impair the ability of the person winded to engage in sudden physical activity such as getting up suddenly and running suddenly.

Dr Hilton considered that the gentle application of a considerable weight (e.g. a simple sitting on the body) would not be likely to cause the fracture to the ribs. However, the sharp application of a heavy weight (e.g. somebody sitting down on the boy with considerable force or bouncing once in position) might.

Whatever the mechanism, Dr Hilton considered there would need to be a substantial application of force for the ribs to break and the aorta to be torn.

### **5.9.3 THE BELLY BRUISING**

The belly bruising was not associated with any bruising to the spine or to the skin overlying the particular area at the back or front. Dr Hilton considered that a considerable blunt force or a localised compression force caused the belly bruising. It was his firmly held opinion that the direction of the force was from the front and not from the back and that the back was supported at the time. There would not be any bruising to the front wall of the belly if the force had been applied over a sufficiently wide area at the front. He considered that substantial force was required to produce the contusion which he found. It was consistent with a very heavy punch from a large fist. However, if it had been caused by a fist he would

have expected to see bruising of the anterior wall of the belly. Again, if the injury had been caused by a kick from a shod foot, he would expect to find bruising of the anterior belly wall. If it had been caused by someone's knee coming down on top of the stomach or the flat of a foot, this would not necessarily result in anterior bruising but considerable weight behind the knee would be required to cause the internal bruising.

He considered that a blow from a fist could cause the belly bruising without causing an external physical injury if the person had been pinned to a vehicle and punched with his back anchored against the side of the vehicle.

Dr Hilton was shown photographs of the footwear said to have been worn by the five officers on the night. Without going into detail, he did not consider any of them likely to have been involved in the infliction of this injury. From this evidence I draw the conclusion that the larger (within limits) the surface of the object applying force to the area, the greater the chance of injury internally without external injury; and the more firmly the back of the body is anchored the greater the chance of a smaller surfaced object producing the same result.

Professor Kakulas considered that the lack of anterior bruising was:

*... not unusual because those muscles tend to be elastic and in any case if the tone of the muscles is affected by either alcohol or depressed consciousness then the normal protection, the reflex afforded by the contraction of the abdominal muscles would be lacking and they would be spared injury.*

#### **5.9.4 THE THREE INTERNAL INJURIES CONSIDERED TOGETHER**

Dr Hilton considered that one application of force could possibly account for the injuries to the aorta, ribs and belly. A possible explanation for the single application of force causing those injuries was suggested by him at the inquest.

He postulated that if a person were to fall on another person with the former lying flat on his back on the ground, one knee striking the centre of the chest and the other in the middle of the abdomen, this could well produce that son of collection of injuries. However, because of the distance between the injuries, it would require some separation of the two knees. I mention that there was no evidence of this happening during the fight, although Armitt said that he fell on the deceased but not with his knees making contact.

Dr Hilton considered that one application of widespread force was sufficient to cause the two rib fractures and the tearing of the aorta. It would not be absolutely necessary for there to be a second application of force to cause the belly bruising if the object producing the compression was sufficiently widespread from the upper part of the chest to the mid-point of the abdomen. However, he considered that it was perhaps more likely that there were two separate applications. An argument against one application causing the three injuries is that one application over such a wide area would probably cause damage to the liver which in this case was not damaged.

At the Royal Commission hearing, Dr Hilton said the fractures to the ribs, the tear to the aorta and the belly bruising could have been caused by the one application of force provided it was applied at two points. Counsel for the five officers put the possibility that all these injuries could be caused by a person falling on the prostrate subject, the falling person putting out his hand to break his fall and the heel of the hand coming into contact with the body. Dr Hilton thought this was possible but that there was 'not an awful lot of room' for the possibility. I say at once that this seems unlikely to me. If the attempt to break the fall were to cause the belly injury then the fall would be so broken as to be highly unlikely to cause the other injuries. Such a fall might, it would seem, cause the aorta and rib injuries (but probably would have to be *peri mortem* or *post mortem*).

I comment that although there was a good deal of evidence as to whether these internal injuries could be



sustained at the one time, it needs to be borne in mind that there is nothing in the medical evidence to suggest that they actually were. The fact that both the aorta and rib injuries were more probably peri mortem or post mortem tends to link them to each other, but not necessarily so, and not to the belly injury. All these injuries have this in common: that they are likely to be caused by a force applied from front to back with the back supported at the time; but to cause all injuries at the one time requires the one application at two separated points. One can no doubt devise a scenario to fit this but it is not a possibility that appears probable.

## **5.10 THE GENERAL STATE OF THE BODY AT POST MORTEM**

Following the conclusion of the post mortem examination there were two matters arising from the state of the body upon which Dr Hilton required further information. In his view, the body was very clean and he was interested to ascertain whether it had been washed after death. Further, certain injuries found on the body, in particular the two fractured ribs and the torn aorta, were consistent with an attempt at resuscitation and Dr Hilton was interested to ascertain whether there had been any such attempt. He stated that he immediately conveyed those two queries to Detective Sergeant Griffiths.

Some time later, Dr Hilton received information that there had been no attempt to resuscitate John and there had been no attempts to wash the body. He was unable to recall when he received that information and who had given it to him. He testified that he was not prepared to accept the information that he had received and he 'kept at it' and 'kept getting the same reply'.

## **5.11 LIAISON WITH POLICE INVESTIGATORS**

Dr Hilton testified that he was reasonably certain that he had telephonic contact with Detective Sergeant Scott and that the question of resuscitation and cleansing of the body had been raised with the latter prior to the commencement of the inquest.

His memory is that he received the initial feedback concerning resuscitation and cleaning of the body within a day or so of the post mortem examination; he would not have thought it was as late as a week later.

Dr Hilton had no positive recollection of discussing with either Scott or Inspector Balcombe the nature of the injuries which he found on the deceased and the nature and degree of application of force which may have caused the injuries; however, he would expect that to have been done.

Dr Hilton testified that it was raised with the investigating officers whether the deceased had been involved in a fight earlier than that which occurred at the hotel. He could not recall whether it was he who raised the possibility of an earlier fight with the police or whether it was discussed as a result of a rumour that there may have been an earlier fight. However, he thought that it was the week after the post mortem examination that he was told there was no evidence of an earlier fight and he thought it was Scott who advised him of that. There was no specific finding at post mortem examination which caused Dr Hilton to wonder if there had been an earlier trauma.

As already mentioned, Dr Hilton found the body (including the face) to be clean. There was a little ingrained dirt on the feet and some greyness showing in the photograph of the left ankle which may have been ingrained dust. There was no dust, sand or gravel (or its equivalent) on the deceased's shoulders or chest or in his hair. He testified that if there were red dust on the body and it was washed, then unless 'a particularly good job' was done, there would be likely to be streaks of red on the body.

The analysis of the jeans revealed that there was significant blood staining, the blood being consistent with John's grouping and a trace of blood was found in the sample of his hair sent for analysis. Further, a large quantity of blood stained froth was found in the deceased's trachea. Dr Hilton thought that a

possible explanation was that John was lying on his back bleeding from the back of his nose or his lips and tongue and inhaling the blood. Moreover, the examination of John's jeans revealed that there was ingrained dirt in several areas. There was no mention made of any loose dust, grit or gravel. There was no significant amount of blood found on his face and none on his torso.

I shall refer to this issue in more detail later in this report together with an examination of whether there was an attempt to resuscitate.

The state of the body 'intrigued' Dr Hilton so much so that he is sure in his own mind that he discussed this matter with either Scott or Balcombe some time in the immediate post death phase. By that he meant the early part of the week following the post mortem examination.

Each of those police officers testified that the issue of whether the body had been cleaned was raised by Counsel Assisting the Coroner, Mr Lee, QC. Scott was certain that when he spoke to Dr Hilton on 30 September, he (Hilton) did not suggest that the body may have been cleaned nor did he express any opinion as to the cleanliness of the body. Balcombe said that as a result of Counsel Assisting's comments, he made inquiries on the issue and interviewed the undertaker and Bob Hart, who identified the body. It is clear that these interviews were not until after the commencement of the Inquest.

As to the issue of attempted resuscitation, Balcombe's memory on this was vague although he did recall being told by someone that there had been no such attempt.

Scott recalled Dr Hilton asking if there had been an attempt to resuscitate but not when. Moreover, although Scott believed inquiries were instigated to ascertain if there had been attempted resuscitation, he could not recall any details of the inquiries.

Generally, Dr Hilton said that there was 'a reasonably free interchange of ideas' between himself, Scott and Balcombe. Scott said that he spoke to Dr Hilton on 30 September 'specifically to get an idea of what would [have been] the possible causes of the injuries'. If that is right, it would be extraordinary if Dr Hilton did not raise then his suspicions about the issue of attempted resuscitation; I find the probability is that he did do so on that or an earlier occasion.

However, whatever the contact and discussion between Dr Hilton and the investigators, it is clear that the question of a possible cleaning of the body was not pursued until raised by Counsel Assisting at or after the commencement of the Inquest. Further, as none of the five officers appears to have been specifically asked about an attempt to resuscitate, it is likely that this issue was not one which was of any particular concern to the investigators.

## **5.12 SUMMARY OF FINDINGS ON THE MEDICAL EVIDENCE**

As to the medical evidence concerning the cause of death and injuries to John Pat, I make the following findings:

1. The cause of death was a closed head injury.
2. The impact causing the injury was inflicted to the left occipital region and resulted in extensive frontal contusions and lacerations and an acute subdural haemorrhage.
3. There were at least two applications of force to the head resulting in right frontal contusions and the left temporal contusions. In view of Dr Hilton's post mortem findings as to other areas of bruising on the scalp, it is probably that there were up to six impacts to the head.
4. The fatal injury could have been caused by John Pat falling or being propelled backwards from a standing position and striking the back of his head on a hard surface or by any other event which reproduced a similar conjunction of forces.

5. The fatal injury was inflicted between thirty minutes and two hours prior to death. However, given the relatively minor distortion of the brain caused by the subdural haemorrhage, the absence of organisation of the clot and the absence of its adherence to the dural membrane, it is likely that the fatal injury was incurred less than two hours before death. A combination of the medical evidence and of the factual matters which I mentioned earlier which are not in dispute allows a further conclusion to be drawn. Immediately before the fight commenced at about 9.15pm, John Pat was able to have a lucid conversation with a police officer; when it did start he was able to participate with vigour and for a period of probably between ten and fifteen minutes; the medical evidence is consistent with the fatal injury having been sustained after 9.15pm. I find that John Pat had not sustained the fatal injury prior to the outbreak of the fight.

I indicate, at this stage without reasons, that I find the fatal injury was suffered in the course of the fight outside the hotel. I will later indicate how I arrive at this conclusion.

6. John Pat's intoxication did not, *per se*, contribute to his death.
7. The prospects of recovery, even with immediate and expert treatment, were remote. Expert treatment was not locally available.
8. Following the infliction of the fatal injury it is probable that John Pat was at least stunned or even knocked out.
9. He may have recovered consciousness for a time but the combined effect of the fatal injury and his intoxication would make it likely that his level of consciousness would have been impaired.
10. If, after the infliction of the fatal injury, there was further trauma to the head such as to cause internal bruising, it is likely that swelling of the brain would be accelerated as would death.
11. Other external injuries did not contribute to the cause of death. They were of a minor nature and consistent with having been inflicted with modest severity in a fight.
12. There was no evidence of a sustained beating by punching or kicking. However, the possibility of further undetected bruising could not be excluded.
13. The injury to the aorta was probably but not certainly inflicted about the time of or after death.
14. The ribs were probably but not certainly fractured about the time of or after death.
15. The combination of the tear in the aorta and the fractured ribs was consistent with an attempt to resuscitate but was also consistent with other applications of force.
16. The belly bruising was inflicted by means of a considerable blunt force or a localised compressive force applied from the front with the back being supported at the time.
17. It is possible that a single application of force could have caused the injury to the aorta and ribs and the belly bruising but it is more likely that separate applications of force were applied, the belly bruising being discrete.
18. Given the circumstances surrounding the death the body was clean to a degree which surprised Dr Hilton, an experienced and able forensic pathologist.
19. The placement of a person who had suffered the fatal injury on his back would aggravate the degree of anoxia and might contribute to a shortening of the period of survival.

## **PART SIX**

### **SOME GENERAL BACKGROUND TO THE FIGHT**

#### **6.1 THE ABORIGINAL COMMUNITY IN ROEBOURNE**

In the township of Roebourne on the evening of 28 September 1983, twilight ended about 6.30pm. The moon was almost in its last quarter and did not rise until just before 9.00pm - there was some cloud forming. It was a dark night. There was a light breeze and the temperature was about 26 degrees.

The movements of John Pat during the day cannot be charted with any precision. However, it would appear that he spent the day with friends in various locations about the town including at Ashley James' house and down by the river. John and his friends had been drinking throughout the day. By the time he came to the attention of the police outside the hotel he must have consumed quite a deal of alcohol. His blood and urine alcohol content at postmortem was 0.225% and 0.331% respectively. However, it would seem that he was not incapacitated by the alcohol he had consumed as he was observed actively participating in the fight with the police later in the night without the appearance of being unduly affected.

At some time prior to 9.00pm, Pat, together with John Sandy, Ashley James, Ann Stock, Kevin Stewart and probably others, was in a vacant area at the top of Sholl Street where it intersects with Queen Street. This was between the house of Thomas and Coralie McPhee and the Community Health Clinic. This area was often frequented by Aboriginal people as a place to sit, talk and drink. It was also part of a thoroughfare from the Village to the centre of town. It has been variously described as 'Plonk Valley', 'the Gully', 'the Valley' or 'up on the hill'.

At some stage, Ashley James, his brother Lennis (now deceased), Ann Stock, April Boonga and John Pat left the group on the hill and made their way down to the hotel. Ashley James wanted to buy some more alcohol and then go home. The members of this group were by that stage affected by alcohol.

Meanwhile, as was usual in Roebourne of an evening, some of the towns people were gathering in and around the hotel. Generally, Aboriginal people would drink in the Bottom Bar at the hotel and non-Aboriginal people in the Top Bar. The hotel was a place where people would congregate either to drink or to meet up with friends. There also seemed to be a practice of gathering in Padbury Street to watch any fights, arguments, arrests or other incidents that might occur around the hotel. Usually, people interested in such matters would either sit in cars across the road from the hotel or stand or sit in that vicinity. The police in Roebourne referred to this gathering of people as 'the gallery'. It is a sad comment on the lack of leisure time activities and facilities in the town that people would gather in this way for this purpose. However, the hotel was the only place in town where Aboriginal people could buy alcohol and sit and meet with friends. The Recreation Club was open to Aboriginal membership but few Aboriginal people were members.

Although there was evidence from Constable Holl and Dee Morris, one of the cooks at the hotel, that there was an unusually large number of people outside the hotel on this night, I am not satisfied that there was. There was no evidence as to what was usual, and other witnesses said that there was nothing unusual that night. I consider that there is sufficient consensus in the evidence on this point to find that prior to the fight between police and Aboriginal people, there were about twenty people outside the hotel in various nearby locations.

The evidence is that during pension week, and certainly on some days and nights in pension week, there was increased activity at and near the hotel. This was not pension week (a matter of some importance for what happened as subsequently appears). But there was evidence from two police officers that some adjustment of Social Security Benefit payments had been found to be due and that a number of people had received some extra payment during this off week. There is no evidence from the Department or any

Aboriginal people about this. The suggestion arose late in the Commission hearing during the evidence of Constable Armitt, although Holl had made some mention of it at his trial. What is clear is that the officers did not know at the time of any such payment and their understanding was that this was an ordinary 'off pension' week. It may be true (although I think there is room for error in recollection); but in any event I think the payments, if any, were small, and I do not think they impacted on what happened.

## **6.2 IN THE HOTEL**

In the hotel, Cathy Park was bar person in the Top Bar and Dawn Makeham in the Bottom Bar. The licensee of the hotel, Ron King, was rostered off duty and, according to his evidence, which I accept, was in Dampier this night. I find that Terry West, the bar manager, was in the environs of the hotel but, for reasons I shall refer to later, I find that he did not have anything to do with the off duty Roebourne police officers and in particular did not speak to them, let alone buy them a drink as he claims to have done.

As it was a Wednesday night and not a pension week, the hotel was not particularly busy. Estimates as to the number of people in the Top Bar vary but I am satisfied that after the arrival of both the Wickham and the Roebourne police there were only about fifteen or twenty people in the Top Bar.

Outside the hotel the first sign of trouble was developing.

## **6.3 THE DISPUTE BETWEEN ASHLEY JAMES AND ANN STOCK**

As Ashley James and Ann Stock made their way to the hotel an argument broke out between them. The evidence of the onlookers as to what occurred between Ashley James and Ann Stock is not particularly cogent. However, this is probably because arguments and fights outside the hotel were a common feature and there was nothing outstanding about this particular argument to excite anything more than casual observation. Indeed, Dee Morris went outside to see what was happening and saw an Aboriginal man shoving a female but it did not look particularly interesting to her so she went back inside.

The off duty officers returning from the union meeting observed this altercation when they arrived back at the hotel.

## **PART SEVEN**

### **EVENTS PRIOR TO THE FIGHT OUTSIDE THE HOTEL - WAS JOHN PAT INVOLVED IN AN EARLIER FIGHT?**

#### **7.1 INTRODUCTION**

Several days of the Commission's hearing were taken up with the investigation of a suggestion that on the night of his death John Pat was involved in a fight outside the house of Thomas and Coralie McPhee. It will be remembered that this home was located at the intersection of Padbury and Sholl Streets near an area referred to as 'Plonk Valley'.

As it turns out this alleged incident does not impact at all on the death of John Pat. However, the potential significance of it was that if John Pat was involved in a fight the question arose whether he sustained his fatal injury at that time. I therefore interrupt the narrative to deal with this area of evidence in this distinct chapter. It has to be understood that the question of this alleged fight and John Pat's alleged involvement in it was never raised at the time of the post death investigation either with the police

or with the Aboriginal Legal Service; accordingly there was no suggestion of it at the inquest or at the trial of the five officers. The officers of the Commission became aware of the suggestion when they were investigating the death. Counsel Assisting quite correctly had the matter thoroughly investigated, called all relevant witnesses and consulted the medical specialists on the question of whether it was possible that the fatal injury was sustained at the time at which it was alleged that the fight took place.

## 7.2 THE ALLEGED FIGHT

Thomas McPhee gave evidence before the Royal Commission and said that on the night of Pat's death he was standing on the verandah of his house and saw a number of Aboriginal people, including John Pat, walk out of what he called 'Plonk Valley'. He described the group as coming down from the hill to the roadway where a fight occurred between Pat and an Aboriginal man whom McPhee described as his (Pat's) brother, during which Pat was knocked to the ground and kicked in the head and the stomach several times by his brother. He saw John Pat get off the ground, step back from a hit, lose his balance, fall backwards and hit his head on the cement kerb at the side of the road. John Pat's brother then kicked him twice more in the stomach area. The group, other than John, then made their way towards the hotel down Padbury Street. John then stood up and wandered off towards the hotel. McPhee went inside and then heard a 'great commotion' and on returning outside saw a large group of people fighting outside the hotel. He then saw John Pat barge his way into the crowd. This account was contained in McPhee's first statement about this incident; and later statements and evidence which he gave at the Royal Commission essentially are to the same effect although there are some significant differences in detail to which it is not necessary to refer for the purposes of this report.

McPhee's allegation was first heard of by a police officer in 1985, according to McPhee and other evidence. It was not investigated until November 1987. How it came to be made and how it came not to be investigated until 1987, and how statements came to be taken from other people, will be dealt with in the part of the report dealing with the post death investigations. For present purposes, it is sufficient to say that the first written statement was taken from McPhee in November 1987 and he was re-interviewed in March 1988.

At the Commission hearing, evidence was given by McPhee, Coralie McPhee (now Coralie Storey), and William Dawson who was McPhee's half-brother. Dawson testified that he was at McPhee's house on the night in question and saw the fight and identified John Pat. Coralie McPhee testified to seeing a fight that night, although with interruptions, since she left the verandah at times to attend to the preparation of the evening meal. Evidence was also called from Aboriginal witnesses and the investigating officers also gave evidence of the interviews they conducted with various witnesses.

I find that this incident, if it occurred, had no significance for the death of John Pat, even assuming he was involved in the fight. The evidence of McPhee always has been that the incident occurred after he arrived home from work and before he had tea. This is supported by his wife and by Dawson. McPhee always said he observed what he observed by natural light and that the incident happened at the latest before 6.00 pm. In fact, at times he put it significantly earlier. Dusk that night in Roebourne was at about 6.30 pm.

The medical evidence does not rule out the possibility of the fatal injury being sustained at say 5.30pm. But what it does rule out, if it was sustained at or about that time, is that John Pat could have conducted himself as all the evidence, Aboriginal and non-Aboriginal, says he did as between about 9.00pm and 9.30pm; he was vigorous, sure footed and able to have a short but meaningful discussion with Holl outside the bottleshop. The medical evidence is clear that he could not have done those things if he had suffered the fatal injury in the incident referred to by Thomas McPhee. Finally, I note that counsel for the five officers, who naturally and properly treated all the evidence concerning this matter with great care, did not contend that the fatal injury was received outside the McPhee house (although he did contend that I should accept the substance of McPhee's evidence).

For reasons which appear, I am unable to find that there was a fight at about that time and place on the

night of John Pat's death. However, on the evidence of Coralie McPhee, whom I found to be a very reliable witness, I am satisfied that there was a fight in that area at about the time of, but before, the McPhee household took their evening meal (about 6.00pm) on an occasion at about the time of the death of John Pat and which her husband subsequently spoke about to her in connection with the death. But I do not think it is established that the fight was on the night in question and even less that Pat was involved in it.

The fact is that the interviews with McPhee (both by police and the officers of the Commission) were conducted on the basis that he had known John Pat personally and his evidence and his questioning before the Royal Commission proceeded on that basis. It was only towards the end of his evidence that he himself volunteered, in answer to a question which assumed he knew John Pat, that in fact he did not. It turned out that he knew, by sight only, a person who had occasionally turned up as an observer at football training in which McPhee was involved as a player. McPhee had just observed this person. On the night of the fight, he thought that the fighter who was knocked down was this person. He did not see this person about Roebourne after the fight, and somebody whom he could not identify subsequently told him that this person was John Pat. McPhee had not seen this person other than at the football oval and had never spoken to him.

Coralie McPhee did not know John Pat at all and did not purport to identify him, but said her husband had subsequently told her that John Pat was the name of the man she had seen fighting.

William Dawson claimed to know John Pat and to identify him as the fighter, but when closely questioned about his knowledge of Pat he said he had met John on pay days at Ieramugadu, an Aboriginal organisation which contracts for gardening and other work and employs Aboriginal people to do the work. Dawson said he had no knowledge of John Pat other than through his association with Ieramugadu. (Dawson came from Port Hedland, not from Roebourne.)

However, according to the records of Ieramugadu, William Dawson did not work there until after John Pat's death. Significantly, there was other evidence which casts doubt on whether Dawson's account, even if basically true in some respects, related to the night in question.

He identified the occasion as having occurred when he was living with a certain named woman and went to McPhee's house for dinner. The evidence of the woman (with some supporting detail) suggested quite clearly that he did not commence living with her until after John Pat's death.

Furthermore, he said that after the fight and after tea, he walked from McPhee's house down Padbury Street to a video shop in Roe Street and returned back to McPhee's house. He said that, on the way, he saw two police officers pull two Aboriginal men apart and place them in a police van which was parked in Padbury Street on the same side as the hotel and near the hotel's breezeway, with the back of the van towards Sholl Street. He testified that another van was parked in Roe Street. He recognised one of the police officers as Police Aide Walker whom he said was in uniform. It is clear from other evidence that Walker was not on duty on 28 September 1983 at that time, and indeed, was at the Union meeting in Karratha. On Dawson's account all this must have occurred not later than 7.00pm. The evidence from Aboriginal witnesses, and from the police records, is that there simply was no such incident and no such arrests, either at about 7.00pm or at any relevant time. There are, accordingly, three quite separate and independent strands of evidence which clearly demonstrate that Dawson has, at best, got the date of that incident wrong. Additionally, the evidence strongly suggests that Dawson never knew Pat.

I have no confidence in the evidence of Dawson, that evidence being flawed at many points and fatally flawed in respect of what he said happened afterwards.

As far as McPhee himself is concerned, it is clear on his own evidence, that he was not in a position to identify John Pat. This is, of course, crucially important but in a sense the following point is even more so. McPhee was adamant, from the time of the first statement, that very shortly after the fight he personally watched the man whom he identified as John Pat join in with a large scale fight taking place outside the hotel. He said it was still quite light and he could see the crowd and this fight from his

verandah. There was no such fight; there was no such disturbance at that time. The fight that occurred that night erupted after 9.00pm when it was dark and the street lights were on. And in any event, the Aboriginal evidence and the police evidence is at one that Pat did not enter a large scale fight that was in progress - he was involved from the beginning. But most importantly, the simple fact is that there was no fight or any other disturbance outside the hotel before about 9.15pm. In fact, it was a quiet day and evening -that was one of the agreed facts placed before me by all parties. People from the hotel gave evidence, police gave evidence, Aboriginal people gave evidence. Nobody asserted the existence of such a fight. Either McPhee has entirely invented the story or has confused two different occasions.

### **7.3 CONCLUSION**

For these various reasons, I have some doubt as to whether there was a fight outside McPhee's house on 28 September. At the very best there may have been a fight as described, and with the aftermath as described, on some other occasion but not on 28 September; alternatively, there may have been a fight without either of the aftermaths described by Dawson and McPhee.

There is absolutely no reliable evidence that John Pat was involved in such a fight. I do not have any confidence in McPhee's account of the fight in matters of such detail as the steel boots which he said were worn by the brother (partly because of the poorness of the light which must have prevailed on his own account, and partly because his account improves with the various tellings).

I should add that there is a sound basis for everyone being confused about whether there was a fight outside McPhee's house on the night of the death because, according to the evidence, there were fights at about this point very commonly.

Finally, I repeat that quite apart from the question of whether there was a fight in which John Pat was involved outside the McPhee home that night, it is quite clear from a consideration of the very strong medical evidence allied with subsequent events that he did not suffer the fatal injury at that time, or at any other time prior to the fight with police outside of the hotel.

## **PART EIGHT**

### **EVENTS PRIOR TO THE FIGHT OUTSIDE THE HOTEL - THE POLICE OFFICERS**

#### **8.1 THE ROEBOURNE POLICE**

On 28 September 1983 Sergeant Devaney, Police Aide Walker, Constables Holl and Bordas worked the morning shift. That shift ended at 4.00pm and the officers went home, changed into casual clothes and prepared to go to the Union meeting to be held in the traffic office at the Karratha Station. It was Constable Armitt's rostered day off and he spent the day at home but he also was to attend the meeting.

No special roster arrangements were made because of the Union meeting. Police Aide Cider Gilby, and Constables Jim Young and Steve Puzey were working the afternoon shift which was to end at midnight. From then until about 6.00am when the Officer in Charge did his rounds the station was unstaffed.

In the nearby town of Wickham, Constable Emmanuel was rostered on the afternoon shift. The other officers from the station, Sergeant Barry Pethick and Constables David Watt and Mark Weir went to the Union meeting in Pethick's car.

The Roebourne officers agreed that Devaney should drive the other officers to the meeting in his private car which was a fairly new white Commodore sedan. Devaney had agreed to be the 'skipper'. Indeed, it



appears that Devaney was only a light drinker on any occasion. I find that the police who attended the meeting had a general expectation that there would be some son of function after the meeting which would involve the consumption of alcohol.

The Union meeting started at about 5.00pm. It had been organised as part of a North West tour by the Council and General Secretary of the Union. The tour party comprised the General President, Eric Couzens, the General Secretary, three Councillors and a solicitor from the firm of Kott Gunning which had a retainer to act for the Union.

## **8.2 THE UNION MEETING**

About 25 officers from the region attended the meeting. The Roebourne and Wickham officers in attendance were asked what was discussed at the meeting, but generally they were unable to recall although some officers mentioned an early retirement plan, superannuation and a general airing of grievances. Couzens gave detailed evidence as to his recollection of the issues raised from the meeting and as to the strong feeling on the part of the police especially those from Roebourne about these issues. Couzens spoke of complaints about the 'whole scene of aggravation ... in relation to the problems that occurred with [the officers'] wives and children'. It was said that the children were ostracised at school because of their white race, the wives felt abandoned by the police department, their houses were badly sited next to troublesome and quarrelsome people who constantly harassed officers' families while they were at work. Holl and Armitt recalled the matter of housing being discussed but in their evidence to the Commission said that the complaints they made about housing were in terms of the standard of housing and the state of repair.

I have no doubt Armitt and Holl raised such matters (since it is quite clear that the Union officers came to their homes the following morning to look at their homes); but I have no doubt that Couzens, who was a most careful and precise witness (and who had chaired the meeting) is right about the other complaints being made. I mention that Armitt and Holl were married with children and lived in adjoining houses. Puzey and Bordas shared accommodation. Sergeant Devaney lived in a house next to the police station.

## **8.3 THE FUNCTION AT THE GOLF CLUB**

No alcohol was consumed during the Union meeting but afterwards an officer who was a member of the Karratha Golf Club arranged for the club to open and for those at the meeting to go there for a drink. The officers arrived at the club at about 7.00pm. The Union paid for the drinks which were consumed at the club and it is likely that about \$100.00 was spent.

There was evidence as to the amount of alcohol consumed at the club which was generally consistent. The evidence of the officers as to the quantity of alcohol they consumed is as follows: Walker, six or seven glasses; Bordas, five to seven glasses; Holl, six glasses; Armitt, six glasses, In each case the glasses held 7oz except that Armitt said that his glass held 5oz. Armitt is probably in error since everyone else including the Wickham police and the bar person spoke of the beer being served in 7oz glasses. I find that the probability is that the officers (other than Devaney) had six or seven glasses of beer (7oz capacity). Devaney drank at least three stubbies of light ale. The club closed at 8.00pm and there was probably a short 'drink up' period before the police left. I find that the Roebourne police, apart from Devaney, must have been mildly affected by the alcohol they had consumed in the space of an hour or so but that they were not intoxicated.

## **8.4 THE ARRANGEMENT TO MEET IN ROEBOURNE**

Prior to leaving the golf club some arrangement was made for the Wickham and Roebourne police to go the Victoria Hotel in Roebourne for a drink. The evidence as to how this arrangement came about is

scant. Certain officers from each of the stations, including Pethick and Devaney (who in fact had known each other many years before but had not seen each other since) suggested and agreed between themselves that the two groups should meet for a drink at the Victoria Hotel. Those who made the arrangement conveyed it to others from their group and it seems to have been accepted by all, save that Watt said he did not know of it.

Couzens has a very precise recollection of being invited by the Roebourne police to go back to Roebourne with them to see the conditions at the Victoria Hotel and the circumstances under which the officers had to work. He testified that none of the Union executive could go to Roebourne that night so it was arranged to go the next morning at 6.00am to see the living conditions of the Roebourne police (or at least of some of them).

I find that it was unprecedented (at least at that time) for a group of off-duty officers to arrange to have drinks at the Victoria Hotel. Most of the officers rarely drank at the hotel. I find that Devaney and Holl were reluctant to go to the hotel and only did so because it was an 'off pension' week and there was not likely to be trouble.

Given the depth of feeling indicated by Couzens on the part of the Roebourne officers about their lot in Roebourne, the fact that the Union Executive did not go to Roebourne that night may have annoyed and disappointed some of the Roebourne police. I say this because there was some discussion when they arrived at the hotel that the meeting had been a waste of time.

Prior to leaving for Roebourne the Roebourne police went to a take away food shop and bought and consumed some chicken and fish and chips. They left Karratha at 8.30pm and Devaney drove back to Roebourne.

The Wickham police arrived in Roebourne at about 9.00pm and entered the Top Bar of the hotel by the rear door. They took up a position along the middle of the bar and ordered a beer. The Roebourne police arrived about five minutes later.

## **8.5 THE DISPUTE BETWEEN ASHLEY JAMES AND ANN STOCK**

The altercation between Ann Stock and Ashley James was in progress when the off-duty Roebourne police arrived in Padbury Street. The two were observed by the police as they drove up. It is likely that Ashley James, Ann Stock and another male Aboriginal were in the vicinity of the bottleshop when the police arrived and that the remainder of their group were up near the chain fence abutting the car park to the west of the hotel. The group of Aboriginal people noticed by the police numbered about eight people.

Devaney had turned right into Padbury Street from Roe Street and executed a U turn in front of the hotel. He was in the process of parallel parking his car when it was brought to his attention that the car should be angle parked. Before the car was re-positioned, Holl, Armitt and Bordas got out but Walker remained in the car. All the police, with the exception of Walker, heard the sound of breaking glass. However, there is no evidence as to the cause of that noise.

What happened next between the Aboriginals and the off-duty police and especially between Holl and Ashley James is important because it sets the scene for the later conflict between them and explains to some extent the later over-reaction by Holl to James being in the bottleshop. However, there are some substantial difficulties in making findings as to exactly what occurred. Those difficulties include the following.

- It is likely that the onlookers' recollection of these events was affected, confused and overtaken by the more dramatic events which occurred later in the night;
- The onlookers did not consider this incident to be anything unusual or of much interest;

- The police themselves, with the possible exception of Holl, did not regard the incident as serious or of much concern;
- One would expect that the recollection of those who, on their own evidence, were affected by alcohol would be impaired to some extent especially when they did not take any particular interest in the incident;
- Many of the witnesses were a considerable distance from the incident, the street lighting was not particularly good and there were vehicles parked in the street which may have obscured their vision.

Accordingly, I shall not attempt to resolve all the inconsistencies in the evidence. However I am able to make findings about the significant aspects of the incident and they are as follows:

I consider that there is sufficient consistency in the evidence to find that James and Ann Stock were yelling at one another and that James was chasing her at some stage, pushing and trying to grab her. At one stage James tried to hit her. No witnesses other than the police say that James succeeded in doing so.

However, the police evidence on this point is not consistent as to the location of this particular incident nor as to where and how Ann Stock was struck. Armitt testified that James punched her in the face but she did not fall over as she leaning against a wall at the time. At first, Bordas testified that he could not recall any physical contact between James and Ann Stock - they were just arguing, it was 'a domestic'. Later in his evidence he said that he did recall James hitting Stock, that he struck out at her. Holl testified that Ann Stock was bending over when she was struck on the back or the back of the head but he did not see her leaning up against a wall when he saw her hit.

It may be that the three police observed different incidents of striking which could account for the difference in their accounts. However, I do not consider that it is necessary for me to make a finding as to whether or not James hit Ann Stock. Suffice to say there was at least some physical contact between the two which was capable of constituting at least a minor assault by James on Ann Stock.

Further, I do not consider it necessary to make a finding as to what the argument was about. It was probably about money. Whatever the topic it only lasted for a short time.

Armitt got out of the car and told the group to go home, saying words to the effect of 'you mob have had enough, you can all go home'. At this time Ashley James and Ann Stock were engaged in their dispute and there is no evidence to support a finding that they heard this direction. The other members of the group may have heard it but their evidence about their dealings with the police at this time may have referred either to Armitt or Holl. I find that Armitt did not view the altercation as serious as he said as much. He did not approach the group. He merely called out on his way from the car to the hotel entrance. For this reason I have some doubts about his evidence that Ashley James punched Stock in the face which in my view might well have caused him to intervene in the altercation to a greater degree than he did. However, it may be that Armitt regarded the dispute as a 'domestic' which did not warrant intervention. Armitt took no further action in the matter at this stage; but Holl decided to take the matter further. He did so after Armitt's remarks and after Armitt began to move towards the entrance.

I find that Holl told Ashley James and Ann Stock to 'piss off' (although stronger language may have been used) and that James retorted by sweating at Holl. The group then started to move up Padbury Street followed by Holl who in turn was followed closely by Bordas whose stated reason for doing so was to ensure that nothing happened to Holl.

According to Holl and Bordas whose written reports of this incident are almost identical, James referred to Holl as being off duty and challenged him to a 'rip' -a fight. There was no other evidence of this being said by James. James has always maintained that he did not know that the three men were police

officers until told so by Stock after the police went into the Top bar.

Holl claimed that James struck blows at him which connected. James denied this. I doubt this allegation for several reasons. Bordas' various accounts did not generally support Holl's account that the blows connected and none of the Aboriginal witnesses support it; and I doubt if Holl would have been prepared to let the matter rest if blows of a fist had been aimed at him. However, I do not think that the matter is clear or particularly important. I think it quite likely that there was some pushing and shoving, and abuse. It was, I believe, a hostile encounter that ended with Holl telling the group to go home.

Holl and Bordas remained for a short while to assure themselves that the group were moving up the hill and then made their way back towards to Top bar. They testified to shouts of abuse from the group following their departure but were satisfied that they were moving on. They then entered the Top bar to join their fellow officers.

Armitt and Bordas thought that the Aboriginal people were on their way home when they went into the Top Bar. Holl, however, testified that he did not think that Ashley James was going to do as he was told and anticipated that there could be trouble with him. This could account for Holl's later behaviour.

It may be that James did not initially recognise all of the men as police officers as they were out of uniform, they had travelled in an unmarked car, it was dark, the police had never before gone to the hotel as a group out of uniform and there was no reason for him to know Devaney who had only been in Roebourne a short time; and there is no evidence that the police identified themselves as such. However, I am satisfied that at some stage during the argument (to use a neutral expression) Ashley James must have recognised Holl (whom he knew as Constable Terry). Further the very nature of the interaction might have indicated that these men were police officers.

## **8.6 WHY NO ARRESTS WERE MADE**

Before continuing with the narrative, I shall consider the evidence of the officers as to why there were no arrests made in connection with the altercation between Ashley James and Ann Stock. Armitt, Holl and Bordas had after all, on their accounts witnessed an assault on Ann Stock by James.

Generally, their reasons for not making an arrest were that they had been drinking, they were off duty, it was a social occasion for them, the group moved off when requested to do so and at least Holl and Bordas said that they did not want to become involved with a 'drunken Aborigine'. Further, they seemed to regard the incident as one of a sort which occurred on a regular basis and did not warrant intervention in terms of an arrest. Holl expressed the view that those watching the incident would be within their rights to complain about police inaction if the police did not intervene at least to some extent. He also said that the fact that the police were not in uniform made them 'fair game' implying that intervention could provoke an incident and cause some detriment to the police.

I cannot believe that a potential complaint by any of the onlookers about police inaction had the police simply ignored the incident would have worried Holl.

However, I consider that Holl was concerned as to how his own behaviour as a police officer would appear to those watching.

Whatever the reasons for not arresting James, it is clear that the officers did not want to become involved to any greater extent than telling the group to move on -understandably, they were off duty and did not want their evening out spoiled. However, irrespective of what exactly happened, I am sure that Ashley James' attitude would have riled Holl (and probably vice versa). I find that despite what Holl says about only 'advising' James to move on this was in the nature of an instruction or direction and that is why Holl followed the group up the road and continued watching as he walked to the Top bar. Such a finding also gains much support from Holl's subsequent action in the bottleshop which I shall deal with later.

I think that had Holl been in uniform he would have arrested James.

I do not criticise the police for not arresting James. The discretion to arrest or to warn is one which police officers exercise on a daily basis. However, I find that the incident between Ashley James and Ann Stock was not as serious as portrayed by Armitt and Holl and that James did not punch Holl, so that an arrest for the latter incident would not have been justified in any event. Although there was at least a minor assault on Ann Stock and arguably disorderly behaviour by both her and James, I accept as reasonable and understandable the reasons for not arresting.

## **8.7 THE ON-DUTY ROEBOURNE POLICE**

Meanwhile back at the Roebourne Police Station, there had been patrols of the town site resulting in two arrests. The first occurred between 5.25pm and 6.00pm and the second was of a person found drunk in Roe Street (time unknown but before 8.30pm). Although there is no note in the Occurrence

Book, Constable Puzey testified that he went on patrol in the station's yellow Toyota security van at 8.45pm. This patrol took in the town of Cossack where the Army had established a base as part of the Operation Kangaroo exercise. As it turned out, it was a long patrol with Puzey returning to the station at 10.30pm. He was unaccompanied and made no arrests.

I now turn to what happened in the Victoria Hotel, the events immediately preceding the fight and how the fight started.

## **PART NINE**

### **EVENTS IN THE HOTEL AND THE START OF THE FIGHT**

#### **9.1 THE ROEBOURNE POLICE ENTER THE HOTEL**

The Top Bar of the hotel was an L shaped bar, the long leg of which ran almost the whole length of the western wall of the room and the short leg being parallel with the southern wall. Towards the short leg end of the bar was a staff entrance into the bottleshop. Patrons entered the bottleshop by the doorway off Padbury Street. Bar staff were thus able to service both the bottleshop and the Top Bar through the doorway. Access to the bottleshop was possible however by lifting the end portion of the bar, going behind it and then through into the bottleshop. There was a Coke machine on the bar which was almost directly opposite the staff entrance into the bottleshop. There was a pool table in the room and some toilets were located on the eastern side. There were two entrances to the Top Bar - one from Padbury Street and the other on the opposite (southern) side of the room from the car park. Appendix 1 shows the general outline of the hotel.

The Wickham police on arrival had positioned themselves at a point roughly mid-way along the long leg. There were some builders engaged on a local project near to them but further along the bar (i.e. further away from Padbury Street).

The Roebourne police settled near or at the corner where the long leg meets the short leg of the bar. Constable Armitt was probably at the short leg closest to the staff entrance into the bottleshop. Sergeant Devaney was at the end of the long leg of the bar from where he was able to see into the bottleshop but only to the extent of being able to see the person serving customers. He was not able to see anyone on the customers' side of the serving counter. Constable Holl was next to Devaney but I am unable to find whether he was on Devaney's right or left nor whether he was seated or standing. Police Aide Walker was seated somewhere along the short leg of the bar. Constable Bordas was seated to the right of the

Coke machine, and hence to the right of Devaney, and was able to see into the bottleshop. Dee Morris was seated next to Constable Bordas but, again, I am unable to say on which side. I am clear on the evidence particularly of Devaney but also of other witnesses that Bordas was the furthest of the officers along the bar from Padbury Street, i.e. that he had the best view into the bottleshop and probably the only view of the customer side of the bottleshop.

As mentioned previously the Roebourne and the Wickham police did not sit together or mix - indeed they did not even acknowledge each others' presence.

Walker ordered the first round of drinks which he said consisted of four glasses of beer and a can of light ale for Devaney. However, Cathy Park, the bar person, said that the first round was five 7oz glasses of beer and this is corroborated by Devaney who was anxious only to drink light ale. I accept their evidence on this point.

## **9.2 THE EVIDENCE OF CATHY PARK**

Before embarking on a discussion of what happened in the bar and the demeanour and behaviour of the officers in the bar, I will first discuss my impression of Cathy Park who was a crucial witness as to these matters. Her involvement is not in dispute and as to the matters that I now outline is supported by the whole of the evidence. Cathy was the bar person on duty that night and the only person on duty in the Top Bar. She poured the first round of drinks for the officers and remained in the bar whilst they were there until she was summoned to the bottleshop to attend to a customer who turned out to be Ashley James. He made an order for liquor and she attended to it. While she was in the bottleshop Armitt at least put his head around the dividing wall between the bar and the bottleshop and spoke to Ashley James. While she was attending to the order Holl entered the bottleshop, had an interchange with Ashley James and left the bottleshop. She was still in the bottleshop when Ashley James left the bottleshop. For the next few minutes she was either in the bottleshop or behind the bar. At some stage she became aware that there was a fight on outside. She decided to call the Roebourne Police Station; for this purpose she called out from behind the bar something to the effect that there was a fight and asked the telephone number of the Roebourne Station. Some of the Roebourne officers had certainly left the bar at this time and others of them had either left or were in process of leaving; the Wickham police were in the bar. One of the Wickham police officers provided her with the telephone number. She went to the telephone which was behind the bar at the far end further from Padbury Street and telephoned the station; there was no answer probably due to the fact that Constable Young was just leaving the station to attend at the Hotel. She was thus in a position to observe a great deal of what happened in the hotel.

Cathy Park is now a married woman conducting a business in Perth. In 1983 she was twenty-one years old. She came to Roebourne in mid-1982. Initially she worked at the Roebourne Club for about six months and then got a job as a bar person in the Victoria Hotel--this was in July 1983. She knew all the officers concerned other than Sergeant Devaney. She had met them socially and gone to barbecues arranged by officers and by others. She knew Young and Bordas from her work at the club. She knew all of them in her capacity as an employee of the hotel and in their capacity as on-duty police officers who attended at the hotel; she knew Bordas as a person who sometimes drank at the hotel.

Cathy Park's evidence generally was unfavourable to the police officers with the exception of the sergeant. My belief is that she is basically an honest witness but that her evidence is, for a number of reasons, flawed, and quite badly flawed at some points. There is no question of her bearing any animosity to the police force in general or the members of the force in question. On the contrary, she showed every indication of having grown up with a high opinion of the role of police officers and of their function in society. At the personal level she had had no trouble with any of these officers; had met them socially and was happy to do so. As far as the officers were concerned, they all (apart from the sergeant) said that they knew her both in the line of their duty at the hotel and socially. They knew of no reason why she should bear any animosity towards them or they to her. There is some slight suggestion that at one stage she had an association or wanted to have an association with Bordas which came to nothing but I am quite satisfied that whatever truth there may be about that matter (and I think there was very little

to support the fact of some incipient friendship), it had no effect on anybody's conduct or attitudes on the night in question; she had other friendships in the meantime. She certainly displayed no hostility either to Bordas or his then friend, Dee Morris, on the night in question.

I make the point that Cathy Park knows nothing about the fight that occurred outside the hotel and has never suggested that she does and in fact has always stated that she knows nothing about it other than that there was a fight. It is absolutely plain that she was very upset by what she perceived to be the conduct of the officers in the hotel and by that of Holl in the bottleshop. This upset was unrelated to the fact that there was a fight outside the hotel or what happened in that fight or by the death of John Pat. She said that she voiced her criticism of the police conduct that night after work when members of the staff were sitting upstairs in their own quarters having a drink; that she criticised the conduct strongly and made it quite clear to those in her hearing that she was quite prepared to speak up about the matter. There is other strong evidence to support the fact that she made those remarks at the time and in the circumstances mentioned. I find that she did so express herself and that she was expressing genuinely held beliefs and I make the point that she did so before it was known to her and to the others present or to any other person about the hotel that John Pat had died. The extent to which her criticisms are justified is, of course, another matter but I am quite clear that she believed that the conduct of the police officers fell very far short of what she regarded as appropriate conduct for a police officer. She was very upset.

I will have to deal with the various aspects of her evidence as I come to specific incidents but I make the following observations. I do not think that she was trying to make trouble for the police officers; I think that there is a sub-stratum of truth in what she has said but that her evidence before the Commission is somewhat exaggerated and that this also was the case on earlier occasions when she gave evidence although not necessarily to the same extent. I think that the exaggeration has a number of different causes; I think that perhaps to some degree she had an overly high expectation concerning police officers and this may have coloured her reactions. Secondly, she was unaware of the background to the officers being at the hotel, their attendance as a group at the union meeting, and I think that she attributed to alcohol a boisterousness and loudness which owed something to alcohol but probably a good deal more to other matters. She was sacked immediately upon her return to the hotel from the police station following her making a statement to the investigating police, a fact which she not unnaturally has come to believe is associated with her making that statement and the close connection which she observed between police and hotel management; but which I am satisfied was not essentially due to that fact. However, the immediacy and the manner of the sacking may well be, and I think probably was, related to her attendance at the station. She gave evidence at length at the inquest and again at the trial of the five officers and was subject to vigorous cross examination (before the Commission it was put to her that she was a liar). These various experiences, and other subsequent matters of which she complained, have, over time, produced in her mind an exaggerated picture of the facts. I repeat, however, that I think that she is basically honest, that there is an element of truth in most if not all of her assertions and, indeed, there is support for many things that she said.

### **9.3 THE Demeanour OF THE ROEBOURNE POLICE**

The issue of the demeanour of the Roebourne officers in the bar occupied much time at the Inquest, the trial and the Commission hearing. On this issue Cathy Park was one of the important witnesses. Her accounts have consistently been that the Roebourne police (with the exception of Devaney) had either been obviously drinking or were drunk and that their behaviour was louder than usual.

She testified that Armitt and Holl were obviously drunk and were affected by alcohol to a substantially greater degree than the others. She said that Armitt's words were a lot slurrer than usual and that he needed support. She said that Holl was more aggressive than usual.

She described Bordas as loud, but in her view he was always loud. She was not able to recall Walker's condition in the same detail as the others but said that he was obviously affected by alcohol - in any event he was usually a lot quieter than the others.

The acting postmaster, Phillip Thatcher, who was one of the patrons of the bar that night, described the officers as a bit boisterous and loud and excited. Indeed, Armit্ত agreed at the hearing that a description of boisterous or rowdy would fit the group.

None of the other patrons of the bar whose opinions were sought as to the behaviour of the police described them as drunk. Indeed, the impression of those whose evidence can be attributed some cogency because of their proximity to the officers is that they were a group of men out for a drink. Some of the Aboriginal people who were interviewed about the incidents outside the hotel which were to follow described the police as affected by alcohol or drunk but I find that those assessments were conclusions which were understandably drawn from what was going on rather than from any objective assessment of their sobriety.

I accept the evidence of Cathy Park and of the officers that they had only two rounds of drinks in the bar with the possible exception of Bordas who ordered a third beer. The evidence supports a finding that the second round was interrupted by events outside the hotel and that thereafter some of the officers returned to the hotel to finish their second (for Bordas perhaps third) drink.

I do not accept Cathy Park's evidence before me that several of the officers were drunk. I am quite satisfied that they were not. But I am equally satisfied that individually, and probably in different ways, they were in an unusual state of excitement or agitation, or both, in which the liquor they had consumed probably had a greater effect than it might otherwise have had. I think there were probably many contributing factors to their unusual state and certainly many indicators in the evidence of its existence.

In the first place, this was a night out. It was an unusual occasion. The Union was undertaking a first - an interesting first - of taking the executive or part of it to the North to give the members a direct input. It was a chance for a group of the Roebourne police to get away from the usual humdrum, meet their mates from other stations and have a few convivial drinks. It was a bit of a night out with a difference - a serious difference - it was a union meeting, a chance to have their say. Some of the officers voiced some of their frustration's and complaints. They asked the Union leaders to come to Roebourne that night to see the situation for themselves. They could not come. That was a let down.

But there was another factor. The new sergeant was skipper for the night. He was different. He was a policeman who had spent most of his career in the Scientific Branch. He had a few things to learn about Roebourne. Walker bought fish and chips in Karratha which he ate in the car. That was worth a few jokes as the sergeant was particularly fussy about his car. The sergeant drove rather slowly and carefully and this was the subject of some fun.

The police arrived at the hotel - the sergeant (who had never driven into Padbury Street, or gone to the hotel on duty or otherwise) parked incorrectly and when corrected, re-positioned his car. One can almost bear the remark, 'You'd better get it right Sarge, we wouldn't want you charged'. The police then went into the hotel, the sergeant and Walker first. Walker, well knowing that the sergeant was drinking light ale deliberately ordered five glasses of beer. If I am wrong about that I am not alone in being wrong - the sergeant was quite definite that the others were setting him up for a few drinks which he did not want to have. And when they all arrived and it was money on the bar, the position was that the sergeant had none, his interest being in going to the meeting and getting back home to his domesticity (as he quite frankly said).

I feel convinced that this is the clue to the extraordinary fact that there was absolutely no contact between the Wickham police and the Roebourne police, despite the fact that there was an arrangement for them to meet to which some members of the Roebourne group were a party and the others knew of it.

From the standpoint of the Wickham police it was quite understandable. They were the guests in the other town. If the hosts did not want to speak to them, so be it. But from the standpoint of the Roebourne police officers this failure to join their fellows from Wickham and not even to acknowledge them was curious behaviour, explicable only, in my view, on the basis that they were a close group, some of whose



number had presented a strong complaint to the union; who were somewhat frustrated by the non-attendance of the union officers that night (it was Counsel for the five officers who put to Cathy Park that it was said at the bar that the union meeting was a waste of time), a group that had some in-group jokes and in-group concerns going, who were happier in each other's company. They were a group who had never been to the hotel together before (even leaving aside the new sergeant).

I think they were excited and boisterous and Cathy Park observed it and attributed to alcohol what was in fact attributable to the effect of other factors, which effect was heightened by alcohol. In her original statement, taken on 30 September 1983, she said the officers' 'behaviour and talking was louder than usual' (although I think the clear implication was that she associated that with alcohol). My finding is that the officers were not drunk but that (other than Devaney) they were somewhat excited, somewhat boisterous, and that alcohol played some part in their behaviour and that their judgment was impaired by their state of mind.

#### **9.4 CHECKS OF THE SERGEANT'S CAR**

Holl said that while he was in the bar he was concerned about the safety of Devaney's car. He feared that Ashley James' group might damage it in some way. Accordingly, on three occasions he went outside to check on the car and to see if the group had indeed moved on. He testified at his trial that on the second and third occasions the group had moved progressively closer to the hotel. On the third occasion he thought that James might do something to the car and that there might be 'another shemozzle like when we first arrived'. According to Holl no-one was with him when he went out and he did not observe anyone else go out.

However, Walker testified that he had the same concern as Holl for the safety of the sergeant's car and that he also went to the door of the bar to check on the car. He did this on two occasions. He did not suspect anyone in particular. Like Holl he did not mention to anyone what he was doing nor did he mention his concerns to anyone.

Both Bordas and Armitt saw Holl go to the door of the hotel on more than one occasion and each said he presumed that he was checking on the car. Neither apparently discussed Holl's movements with each other or with Holl.

If this evidence is to be believed it means that two officers, Holl and Walker, each independently of the other and without reference to each other or anyone else feared for the safety of Devaney's car and went out to check on it. Further, Bordas and Armitt who saw Holl but not Walker go to the door of the hotel, each assumed that he was checking on the car. I find it odd that no-one mentioned this to anyone else. I have doubts as to whether Walker went to check on the car but I make no finding on that issue. As to Holl's claims of checking on the car, I find that at least an equal motive for going outside was to keep an eye on Ashley James and his group to make sure they were not returning to the hotel. After speaking to James outside the hotel earlier on he anticipated further trouble and it is my view that he was in no mood to tolerate it should it occur. I base this finding on the frequency with which he left the bar and his alacrity in confronting James when it was noticed that he was in the bottleshop. As to the latter, I shall refer to that in more detail below.

#### **9.5 ASHLEY JAMES IS NOTICED IN THE BOTTLESHOP**

I return to Ashley James and his group. As it transpired, they did not go home as 'directed' by Holl but Ashley James persisted with his original intention to buy some alcohol. He went in to the bottleshop to do so. I have put the word 'directed' in quotes. In fact it was a direction of a son to go home. It was without lawful significance. It was standard practice for Roebourne police to tell Aboriginal people (possibly others, I do not know) to 'go home'. What it meant was that if you go away (probably not necessarily home, just out of the area) nothing will be done; if you do not, you risk arrest for being drunk, disorderly

etc. In that sense I think that what Holl said can be regarded as advice (no doubt with some implied threat). I think the evidence was all one way on this point. Telling a person to go home in the sense of giving the person an option to go home rather than risk arrest was a common (and sensible) way of exercising discretion.

The evidence of the Roebourne police in the bar and that of Cathy Park differs in many respects as to what happened next. Cathy Park said that she had just served the officers with the second round of drinks (four 10 ounce middies and a can of light ale) when she heard the buzzer sound in the bottleshop and saw an Aboriginal man (whom she did not know but who was Ashley James) standing in there. In her statement to the police made on 30 September 1983, she said that Holl and Armit্ত looked into the bottleshop and Holl swore at Ashley James and Armit্ত yelled out 'We'll have you'. They then moved around to the end of the bar and lent into the bottleshop and further swore at James and threatened him. She said that Armit্ত was carrying on 'like an idiot'.

Generally, the account of the Roebourne police as to what happened is that one of their group noticed James in the bottleshop and made some mention of it. None of the five police admitted to being the person who did this. However, Walker, in his first report to the investigating police about the matter said that after Bordas bought a drink, he (Bordas) noticed Ashley James in the bottleshop and 'told us'. He said that Bordas was the only one of the group who was positioned to be able to see into the bottleshop. In fact, I find that those who were seated or standing along the long leg of the bar would have had at least a partial view into the bottleshop but that Bordas was the only one who could see into the customer area. Bordas denied even seeing Ashley James in the bottleshop, denied being the person who said that Ashley James was in the bottleshop and denied hearing anybody mention this fact. He maintained that he was talking to Dee Morris (with whom in fact he was going out at the time). Dee Morris, however, heard someone remark about James' presence in the bottleshop. Holl said that it was a physical impossibility for him to see into the bottleshop (without moving) and that he did not make the remark attributed to him by Cathy Park. Armit্ত said likewise.

I find that it was Bordas who saw Ashley James in the bottleshop and informed the others. It is noteworthy that none of the officers acknowledged that he was the one who noticed Ashley James and called out. It may be that it was an attempt to distance themselves from what subsequently transpired; it may be that Bordas has forgotten. The fact is that every officer remembers one of their number remarking that Ashley James was in the bottleshop, except Bordas who was in the best position to see and whom I find did see James. Also interesting is the immediate reaction to his being seen.

Devaney was the most specific. He testified that one of the officers on his right (i.e. consistent with Bordas) called out to someone in the bottleshop words to the effect of 'What are you doing in there? I told you to get on your way ... You've had enough. Get on your way'. He said that there were no obscene or threatening words used. Then either that officer or another put his head through the staff entrance to the bottleshop and spoke to someone (obviously a customer) in there. After that, Holl walked out of the bar. At the Commission hearing Devaney said he had a recollection that each of Holl and Armit্ত spoke to the person in the bottleshop. It is seen that there is strong support from Devaney for some aspects of Cathy Park's account (but not for her account of the words used). There is also support for Cathy Park in her assertion that Holl spoke to Ashley James from the bar and also from Ashley James himself, but for reasons which appear I do not put much weight on that fact.

If Devaney's recollection of the words spoken to the person in the bottleshop is absolutely accurate, then the speaker must have been either Armit্ত or Holl as they were the only officers who had earlier spoken to James and told him to go home - to be on his way. But Devaney was not purporting to be able to reproduce the exact words but only the general sense. Bordas was of course aware of what Holl had said. Bordas could easily have said, 'We told you to go home' or 'You were told to go home'.

Armit্ত testified that on hearing that James was in the bottleshop, he opened up the flap of the bar adjacent to the wall between bottleshop and bar, advanced to just behind the bar and put his head around the wall so that he was looking into the bottleshop. He saw James there and asked him what he was doing there. James replied that he was buying a flagon and going home. Armit্ত thought James looked

affected by liquor but not to the extent that he should not have been served. Armitt also testified that if someone in the hotel was on the verge of being intoxicated he would make a 'suggestion' (Armitt's word) that he leave the licensed premises and go home. Sometimes the person would request permission to purchase liquor to take home and 98% of the time this would be allowed. When he looked into the bottleshop, Armitt saw Ann Stock in there but he did not see Holl. Armitt said that his conversation with Ashley James was quite amiable, that the latter's conduct was not objectionable in any way, that he was satisfied that Ashley James could appropriately be served and that he intended to go home after making his purchase. Armitt was accordingly quite satisfied with the situation, returned to his position at the bar and took no further action until he observed that Holl, having gone outside, had not returned.

Holl testified that on hearing that James was in the bottleshop he left the bar to look into the street to see if a police van was there. I shall return to Holl's actions shortly.

I am not satisfied that the officers yelled or called out obscene, offensive or threatening words to James from the bar. No-one else heard words of that nature and I cannot believe that any of the officers would be so audacious as to do that in the presence of the new sergeant who would almost certainly have heard them. It may be that Armitt and Holl spoke in some such terms about Ashley between themselves and it was overheard by Cathy Park and she has reported it as being yelled at Ashley.

However, certain interesting observations can be made about this evidence. Ashley James entered the bottleshop and was making a purchase. An officer saw him (I find it to be Bordas), and called out across the bar and into the bottleshop (according to Devaney) and in that or some other way alerted the other officers to Ashley's presence in the bottleshop. The other two of the three constables then reacted in quite a decisive way to that information; Armitt half entered behind the bar so that he could speak to James, and Holl left the bar to go to the bottleshop. All three reacted and at least two of them in at the very least a hostile way. Whether Armitt's reaction was hostile or not depends on whether one accepts Armitt or Cathy Park. But whichever is accepted, the result is extremely interesting for what happened between Ashley and Holl.

Armitt gave a clear and concise account. He did not speak of having a vague recollection. His account is of a normal exchange between himself and Ashley James without any animosity on either side. It simply cannot stand with Cathy Park's evidence.

If Armitt is correct, then it is clear that James' behaviour was not confrontational, not hostile, but that of a person simply intending to buy liquor and take it back to the village with his friends (which it seems quite likely to have been his intention all along and the subject of his dispute with Ann Stock); and that this was his attitude immediately prior to Holl coming into the bottleshop (I mention that Cathy Park said that his demeanour as a customer was perfectly acceptable and this was not contradicted).

On the other hand, if Armitt is not telling the truth about this matter, it would appear that his only reason for so doing would be a consciousness that he had acted in an offensive and improper way as suggested by Cathy Park.

As to the conflict between Armitt and Cathy Park, I am unable to make a finding. However, one or other of two things follows as being the position immediately prior to Holl entering the bottleshop; either

1. Ashley was a person who had acted very properly to Cathy Park and had just had a straight forward sensible conversation with Armitt, with which Armitt was perfectly satisfied (Armitt's evidence); or
2. Ashley was a person who had acted very properly to Cathy Park and had just been abused and threatened by Armitt (Cathy Park's evidence).

## **9.6 THE INCIDENT BETWEEN CONSTABLE HOLL AND ASHLEY JAMES IN THE BOTTLESHOP**

It is common ground that on learning that Ashley was in the bottleshop Holl left the bar, walked up Padbury Street and entered the bottleshop by the public entrance. The issue of what happened in the bottleshop between Holl and James was never pursued to any great degree at the Inquest nor at the trial of the five officers. Further, it would appear that the investigating officers did not consider it to be a matter of great importance to their investigation. I made it clear early in the Commission hearing that I regarded it as important because, even on the agreed facts and more so on the evidence as it unfolded, this incident was closely related to the outbreak of the fight.

There are three accounts of what happened in the bottleshop: those of Holl, Ashley James and Cathy Park. Ann Stock was in the shop for part of the time only and her evidence adds little except on one point. Lennis James (Ashley's brother, now deceased) claimed that he was in the bottleshop. I doubt that he was, as only one of the Aboriginal people outside the hotel claimed to have seen him enter. Further, neither Ann Stock, Ashley, Cathy Park, Armit or Holl saw him in the shop. I do not have regard to his evidence.

Holl's account is as follows. He was upset about Ashley being in the bottleshop because he had been given warnings (i.e. to go home) and had abused them and that he (Holl) saw it as part of his job to do something about it. He was definitely going to send Ashley home because he was on licensed premises and if he refused to leave he would be arrested. This, said Holl, was his state of mind when he entered the shop. He said to Ashley, 'What do you think you're doing?

I told you to get going'. Ashley said, 'I'm getting a flagon. I'll give you a rip'. Holl said, 'You're carrying on like a gift Ashley. All you want to do is fight. You'd better get going'. Holl said that he added, 'Get out of here. You have been warned. You will end up in trouble.' and then left the bottleshop fearing that if he did not there would be trouble or a fight in there. In short, Holl says that on entering into the bottleshop he was almost immediately challenged to a fight.

I turn now to Cathy Park's account. I should first say that it appears likely that she did not see the whole incident. Ashley James asked her originally for two bottles of beer. (At the trial she testified it was a carton but her recollection by then was clearly mistaken.) He was holding a \$10 note. The bar was just behind her and she placed that order on the counter. Ashley then asked for a flagon of port. She had to go to an area behind the bottleshop to procure it and she was then unable to see into the bottleshop and may have been unable to hear what transpired there. Without going into detail I merely say that all the evidence including from Armit and Holl appears to support that part of her account.

Cathy Park said that she saw Holl enter the shop, grab Ashley and say that, 'I'll have you outside. Get outside. I'll have you out there'. She said that while this was going on Armit was yelling out from the bar. She said that Holl then left the shop. She was very upset, was fearful of what would happen if Ashley (whom she did not know) went outside; that she advised him not to go out and to stay in the shop; that an Aboriginal boy and girl looked into the bottleshop and said something like, 'Come on, get the stuff and go' and that Ashley James then left. In short, she says that Holl immediately took hold of Ashley and spoke to him in a hostile and what can only be described as a threatening way.

Ashley James' account was that he entered the shop and placed his order. While there he could see across to the bar (as was the case) and an off duty officer said words to the effect that there would be 'no more beer for you'; that he looked hard at the officer before he recognised him to be Holl. In his statement to the police shortly after the event, he said that in response to this remark he swore at the officer and said that he was only getting some alcohol and would then go home. As to what transpired in the bottleshop he said in a statement to the police, dated 1 October 1984, that he got into 'high words' with Holl in the bottleshop (meaning thereby an argument or words getting close to a fight). He repeated that at the inquest and under cross examination said that he had no recollection of an officer abusing him but only of telling him that there was no more grog; he also said that he could not remember who asked who for a fight because he was drunk. At the trial of the five officers he said that he could not remember anything apart from telling Holl that he was buying alcohol and going home because he was drunk.

One aspect of James' account of the 'bottleshop incident' is puzzling. In none of his accounts did he

mention Holl actually being in the bottleshop. It was not until the officers' trial that he was specifically asked (under cross-examination) whether Holl was in fact in the bottleshop and he replied that he did not think he was. This was not pursued further by any counsel at the trial. As to the start of the fight, James said that as he stepped out of the bottleshop, Holl came out of the bar. I can only attribute James' belief that Holl was not in the bottleshop to a memory lapse - perhaps caused by his intoxication on the night or perhaps due to the effluxion of time before he was actually asked about the matter.

Holl's account and Ashley's account (unreliable and contradictory as this account is) appear to have one thing in common, namely, that while he was in the bottleshop he had 'high words' with Holl, Ashley saying that they were spoken between himself in the shop and Holl in the bar; Holl saying they were spoken in the shop. It is absolutely clear that Holl did enter the shop and I find that the 'high words' were with Holl in the shop. The real conflict is between Cathy Park and Holl on the question of whether the opening gambit was that Ashley immediately challenged Holl to a fight or whether Holl immediately made hostile and threatening remarks to Ashley. I find that there was talk of a fight: Holl said there was; Ashley said there were 'high words' and later said that he wanted to ask Holl to forget what he said in the bottleshop; Cathy Park said she was fearful of what would happen outside and advised Ashley James to stay in the bottleshop. Taking those things together I make the findings mentioned. I also find that in the course of those 'high words' Ashley in some form or another spoke of fighting. The question is in what context.

If one accepts Cathy Park as against Armit in respect of Armit's conversation and as against Holl in respect to Holl's conversation then Ashley's mention of speaking of fighting is against the background of having been crudely abused by Armit and then immediately thereafter threatened by Holl. Given that Ashley was affected by liquor, a fighting reaction would not be unexpected.

If one accepts Armit against Cathy Park and accepts Cathy Park as against Holl, then the situation is that Ashley conducts a perfectly normal conversation with Armit, is then immediately afterwards grabbed and threatened by Holl, and there is talk of fighting which would appear to be provoked by Holl's approach and his threats.

If on the other hand one accepts Holl as against Cathy Park and Cathy Park as against Armit, then it the position is that Ashley immediately challenges Holl to a fight on the latter's entry against the background of having been abused by Armit immediately prior to that entrance. Those three scenarios all make some sense.

If, on the other hand, one accepts both Armit and Holl as against Cathy Park, then one has a scenario where Ashley James carries on a perfectly reasonable conversation with Armit but immediately afterwards (I think that no more than thirty seconds could have elapsed between Armit's discussion and the entry of Holl), on the latter's entrance and before the latter has opened his mouth, challenges him to a fight. To my mind, that scenario is possible but unlikely.

I have already said that I cannot reach a finding on the conflict between Armit and Cathy Park but I conclude that Cathy Park's account as to what happened in the bottleshop is closer to the truth than is Holl's.

I have a number of reasons for so concluding.

- On Cathy Park's account, the immediate direction that Holl gives is 'get outside'. Holl's account as to his state of mind is that as he went to the bottleshop he intended to send Ashley home, have him off the licensed premises and arrest him if he did not leave. Cathy Park obviously knew nothing about his state of mind but that state of mind fits exactly with her account of what is said.
- According to Holl's evidence, he has been at least half expecting Ashley to come back, has been three times out to the street to watch his progress, is plainly in no mood to put up with any nonsense and I think that a hostile approach is absolutely in keeping with what he himself said about what he thought and did before he entered the bottleshop.

- The remark which he himself says he made to Ashley, 'You're carrying on like a girl Ashley; all you want to do is fight' is one which I can see only as provocative. Holl himself said that by these words he meant you're carrying on like a child'. I myself can see little basis for thinking that 'you're carrying on like a girl' can mean 'you're carrying on like a child' and less basis for using that expression in preference to 'you're carrying on like a child', if that was the intended meaning. In the context of men talking, particularly in some excitement, the expression 'you're carrying on like a girl' means not carrying on like a man. In my experience it is a very common phrase used with that meaning. One can hear it used at any football match applied by irate spectators to a player allegedly 'squibbing the issue'.
- As I will show in due course, Holl was not very forward in saying that he had ever been into the bottleshop.
- As I have said, I find that Cathy Park was upset at what happened inside the hotel and without any reference to what happened outside the hotel at all. I think that this was one of the things that so upset her.
- I find that Cathy Park's description of Holl's attitude when he came into the bottleshop fits the attitude which he displayed when he took action to follow up the group outside the hotel in the Ann Stock/Ashley James incident. Armitt and the others had passed it off as no great account; and indeed, intervention turned what I think was a minor incident into a more major incident. It was also, as I subsequently find, in line with the attitude that he displayed back at the police station when the vans were unloading following the fight.
- There are other features of the incident in the bottleshop as to which I find difficulty with Holl's evidence. He said that when he went into the bottleshop his opinion was that Ashley James was too intoxicated to be served and ought not to be served and that the only reason that he did not intervene to stop the transaction was that it had been consummated when he arrived. I do not think it had been as a fact but in any event I doubt whether that would or should have stood in the way of his preventing it if he so believed; but in any event, even if he felt that he could not do anything about the transaction because it was completed his plain duty in those circumstances was to do something about the offence which Cathy Park had committed in making the sale; he did nothing.
- I simply do not believe Holl's evidence as to his state of mind when he left the bottleshop. If Cathy Park's evidence is correct, Holl's expressed state of mind was that he would 'see Ashley' outside the bottleshop. Holl said he went outside to wait for the police van which he expected to
- arrive in the normal course of patrols but if the van did not arrive he would have called the police at the station to request their attendance to arrest Ashley for disorderly conduct. He denied that it was his intention to wait for Ashley and said that he intended to have no further dealings with him. The fact is that he had no reason whatever to expect that the van would arrive at that particular time.
- Further, it would be obvious that the van was not there when Holl stepped through the door and he could have gone straight to the saloon bar to telephone the station.
- On Holl's own evidence and the evidence of many other witnesses he was outside the bottleshop door when Ashley emerged. Now it is certainly true that there was no long delay between Holl's exit from the bottleshop and Ashley's exit but there was some delay - Cathy Park had to complete the transaction and she may have warned Ashley not to go outside. I accept her evidence that two people put their heads inside the door and spoke to Ashley after Holl had left. I am satisfied that between Holl's exit and Ashley James' exit from the bottleshop there was sufficient time for Holl to move away from the entrance if he wished to do so. That he waited for Ashley lends some support to Cathy Park's version of the incident and at the same time is not consistent with his

evidence that he wished to have nothing further to do with Ashley.

I do not mean to imply that I accept Cathy Park's evidence in totality, and in particular that I accept as accurate her exact account of what Holl said, but I accept her evidence to this extent: that Holl entered and spoke to Ashley in a hostile and provocative manner and that this led to an argument and 'high words' in the course of which there was talk of fighting and that she became alarmed as to Ashley's safety if he left the bottleshop.

As the main action now moves to outside the hotel and onto the street, I summarise my findings.

1. The officers cannot be criticised for going to the hotel in their own time out of uniform. But it was ill advised; the sergeant was not keen about it at all, nor was Holl; Walker would have gone to the hotel in any event but whether he wanted to go with the officers I do not know; Bordas would have gone to the hotel, I think, in any event; I had no impression of Armitt's attitude but his general attitude was that he kept away from the hotel as a customer except occasionally and only then early in the day if he was down at the shop to make a purchase. The view common to them was that there was a different attitude towards a police officer out of uniform than one in uniform; some people regarded an officer out of uniform as someone who could be treated in quite a different manner with the danger of them getting involved in an incident. I think that their going to the hotel as they did reflected a loss of judgment associated with the factors of excitement that I have spoken about arising from their group activity and the influence of the alcohol they had consumed.
2. Their behaviour generally, apart from Devaney and perhaps Walker in the hotel, was somewhat loud and boisterous, reflecting the same factors. Holl's continual going out and checking on what Ashley James and his party were doing was foolish; he was working himself up in relation to the group, creating the possibility of getting involved in an incident when he was out of uniform and when he himself had had some drinks and was involved in having more.
3. The action of the three constables in reacting to the presence of Ashley James in the bottleshop was a reflection of a lack of good judgment caused by the factors just mentioned (this would not apply to Armitt if his account of his conversation with Ashley James is correct but even that was a somewhat unnecessary intervention). All three of them reacted in different ways to an incident of no real significance. Holl's reaction was quite unwarranted and unprofessional and what he did in the bottleshop set the scene for what happened outside the bottleshop and the fight that ensued.
4. Devaney gave no leadership and exercised no control. It was clear that his men were out of uniform, had had a few drinks, were out for a good time partly at his expense or in his honour or settling him into Roebourne or however you care to characterise it. It seems to me that he should have recognised (having heard and seen the things which he described-- somebody observing Ashley and calling out to him from the bar to the bottleshop, and then one or possibly two officers putting their head(s) around the wall and talking to the customer) that there was the possibility of an incident and he should have advised his men to keep out and telephone the station if they thought that any action should be taken.

## **9.7 WHAT HAPPENED WHEN HOLL LEFT THE BOTTLESHOP**

Holl's accounts of what happened when he left the bottleshop have been consistent. He said that he walked outside and nearly tripped over John Pat. He warned Pat to move on as he was only a juvenile. Pat replied, 'I'm waiting for Ashley'. With that, Holl said that Ashley James came out of the bottleshop, handed his flagon to Pat, ripped off his shirt and began to shape up to him. Holl's version is that the fight commenced virtually as soon as he left the bottleshop. I find this not to be the case for reasons which follow. I have already found that he had time to get clear of the area if he wanted to do so before Ashley James emerged.

Holl said that when James shaped up to him he raised his hands to defend himself. He said to James 'You're carrying on like a girl, Ashley. All you want to do is rip. You are going to get into trouble well and truly. You have been told to go, now go. You have only just got out of the regional' (meaning the local prison). He said that James continued with his challenges to fight, then began to swing punches which he managed to block. He then said 'You have done it, now you're in trouble'.

Holl said that John Pat came up swinging punches, followed by Lennis James and another Aboriginal whom he later identified as Geoffrey Lockyer. There is other evidence from both Aboriginal and non-Aboriginal witnesses that throws great doubt on this account.

David Robert Peck was a taxi driver who was seated in his taxi which was angle parked adjacent to the hotel between the Top Bar and the Breezeway. He was waiting for a fare and was reading a book to pass the time.

Peck saw Ashley James enter the bottleshop. He then saw Holl come out of the Top Bar and speak to an Aboriginal man whom he purported to identify as Lennis James. However, his description of the man does not fit Lennis James but roughly describes John Pat. Peck's evidence was that Holl went up to the man and told him to 'piss off home'. The man retorted by swearing at Holl and saying that he was waiting for his mate in the bottleshop. This coincides with the substance of the conversation Holl said occurred between John Pat and himself when he left the bottleshop. The exchange between the two was repeated and then according to Peck, Ashley James came out of the bottleshop and told Holl to 'fuck off'. James and the other Aboriginal man then went behind a Landcruiser and when they came into sight again, they had their shirts off. There was in fact such a vehicle roughly in the position described by Peck.

The Landcruiser, a Toyota, belonged to Steven John O'Donnell. He had angle parked his Toyota almost between the entrance to the bottleshop and the entrance to the Top Bar in Padbury Street. I refer later to his evidence.

Julie Tucker was seated in her car across the street from the hotel. She made a statement to the police shortly afterwards. In her first statement she said she saw Holl come out of the Top Bar and saw him looking through the glass door of the bottleshop, then lean against the wall between the bottleshop and the Top Bar. He waited there a couple of minutes and then she saw James come out of the bottleshop with a bottle of beer in his hand.

I find it more likely that what was seen by Peck and Tucker occurred after Holl had been into the bottleshop. Holl was only in the bottleshop for a very short time. Peck was reading his book and may not have seen Holl enter the bottleshop, similarly Tucker's attention may have been distracted. Again this sequence of events is not one which would have attracted much interest.

Ashley James' accounts of what happened after he left the bottleshop have been substantially consistent. In his statement to the police he said that when he stepped out of the bottleshop 'Terry' (Holl) came out of the bar. He said that he walked up to Terry and had some 'more words' with him. He was unable to recall the details of the conversation with Holl. However, he went on to say that he and Holl shaped up to one another and then Holl punched him in the face, knocking him to the ground. He then regained his feet and punched Holl. Others then joined the fight. His accounts in his undated statement to the Aboriginal Legal Service and at the Inquest were substantially the same. However, at the Inquest he said that when he went to speak to Terry there were four other police officers standing around laughing. No other account supports this and James did not repeat it (nor was it raised by any counsel) when he gave evidence at the trial. I find it not to be the case.

At the Inquest James testified that he went to talk to Holl to tell him that he was going home. At the trial of the officers he said that he wanted to tell Holl to forget about what had happened in the bottleshop, that he had bought his alcohol and was going home and that he could not fight Holl because he would only be 'picked up' in the morning. (I take what 'had happened in the bottleshop' to mean his and Holl's calling out to each other across the bar.)



In all his accounts James has maintained that Holl threw the first punch. He was vigorously cross-examined about this at the trial of the officers and did not resile in any way from that assertion. In the course of his cross-examination at the trial about this issue and about his intention when he went to speak to Holl, it being put to him that he wanted to fight with Holl, he was asked why he simply did not go straight home up the hill when he left the bottleshop. James replied that he tried to but he heard Terry calling out to him. He was then asked why he did not 'just turn around and walk up the hill' and James repeated what he had said on previous occasions that he wanted to tell Holl that he had bought what he wanted and was going home. He said that he did not get a chance to tell Holl what he wanted because an argument broke out.

There was evidence before the Commission of four Aboriginal witnesses (who claimed to be sober and were positioned in different locations) to the effect that when James came out of the bottleshop, Holl called out to him.

Robert Harris, who was either in or in the vicinity of a car parked across the road from the bottleshop, stated that Holl 'flew' out of the saloon bar and called out to James and Pat that they were just 'girls'. He said that Holl was not telling James to go, but was calling him back. James appeared to ignore Holl who kept calling him back. James then went back and took off his shirt.

Julie Tucker who was with Harris, said that when Ashley James came out of the bottleshop Holl said something to him. The two started to talk and Holl said in a loud voice several times, 'You're just girls', in a 'teasing tone of voice'.

Nina Smith was one of the occupants of Julie Tucker's car. Her account was that while Ashley James was in the bottleshop Holl waited outside the door. However, she said that Holl had not gone into the Top Bar with the other police after the first encounter with Ashley James but had walked towards the door, looked back and seen Ashley James and others walking back towards the hotel. He did not go into the bottleshop himself but waited outside the door. However, at the inquest, she testified that after Ashley James and his group started to go up the hill following the first encounter with the police, she thought all the trouble was over and did not have any particular reason to watch the area where they had been. It is clear that Nina Smith did not see Holl going to the Top Bar and abundantly clear from other evidence that he did. However, I find it understandable that Nina Smith who had no particular interest in observing the scene outside the hotel after the trouble with Ashley James was over, could have failed to see Holl go into the Top Bar and assumed when again attracted to the scene that he had not done so. It is the same process of intermittent observance which may explain the accounts of Julie Tucker and David Peck that Holl did not enter the bottleshop.

At the inquest, Nina Smith said that Ashley James came out of the bottleshop (she believed with Ann Stock and Lennis James, although her accounts as to this have not been consistent) and started to walk up the hill. Holl appeared to say something and the group stopped going up the hill and turned back. There was a conversation between Holl and Ashley James which she could not make out although she did hear Ashley James use the word 'fight'. The two started shaping up. Ashley James took off his shirt and punched Holl. She then got out of the car with Susie Churnside and walked up the hill towards the butcher shop from where she observed the remainder of the action. At the trial of the officers, she testified that she only saw the two men shaping up and did not see Ashley James punch Holl.

Brian Adam, who had parked in the car park adjacent to the bottleshop, said that after the first exchange between Holl and Ashley James, he saw Holl at the front of the hotel and heard him call out to James, 'Ashley, let's me and you, man to man'. He saw James 'go down' and the two men were arguing but Adam took no further notice. At the Inquest, Adam testified that Holl kept calling out to James to 'have a go'. At the officers' trial, he testified that James started to walk past him when Holl called out to him to come back and 'have a rip'. James then walked back and an argument ensued.

The evidence of O'Donnell, the driver of the Toyota Landcruiser, lends cogent support to aspects of the evidence of these witnesses. When he pulled up at the hotel, O'Donnell saw an off duty police officer shaping up in a boxing stance to two Aboriginal males who had their backs to him and who were walking

slowly up the hill up towards Sholl Street. He was sure that the Aboriginal men were wearing shirts. The officer he described as 5'4" to 5'6" tall, of medium or solid build, greyish hair. He said that he had seen the officer on duty on other occasions and that he wore service ribbons on his uniform.-This description undoubtedly fits Holl. O'Donnell said he did not hear any exchange between the police officer and the Aboriginal men. However, as he was watching he got the impression that the officer said something because one of them spun around. The other Aboriginal man grabbed him by the shoulder in what he (O'Donnell) thought was an attempt to pull him in the direction of the hill. The two men were at about the entrance to the bottleshop and the police officer was about eight to ten feet away from them on the footpath. O'Donnell did not wait to see what transpired but entered the Top Bar wherein he stayed until about 11.00pm. He did not see or hear anything else in connection with the events of the night, other than having Cathy Park say something about a fight and ringing the police.

O'Donnell was rather vague about time. But I have no doubt that he saw Holl interacting with two men and this happened before the fight started. It could only have been Holl's first or second argument with Ashley James. The position described does not fit the first. It is more likely to relate to the second.

The evidence is very confused and confusing. However, taken together it throws doubt on Holl's evidence that the fight started as soon as Ashley James came out of the bottleshop. In the light of what happened the Aboriginal witnesses may be thought to be partisan but this certainly does not apply to Peck or O'Donnell. I have found that I do not accept Holl's evidence as to what happened in the bottleshop. I cannot accept what he says happened outside the shop. Some of the other accounts are fragmentary only and do not give a picture of the start of the fight; others of them are contradictory of each other. I am unable to make a finding as to exactly what happened or who struck the first blow. I do find that there was some time delay after Ashley James came out of the shop and before the start of the fight.

I am satisfied that Holl was waiting for Ashley James and that he spoke to him as James emerged. I note that on his own evidence he repeated the taunt about acting like a gift (as to which he is supported by two Aboriginal witnesses) and that that was said before any fighting started.

I have already found that Holl provoked the talk of a fight in the bottleshop; he waited outside and continued his provocation; it may well be that the two men separated and Holl called Ashley back but I do not find that this is so. Whether he did or not, he waited, continued the provocation and bears the main responsibility for the start of the fight - both because he was an officer and should have been able to exercise better judgment and control and because in any event it was his actions and words that brought about the inflammatory situation.

Ashley James was, of course, not without blame. He had started the whole affair with his unruly behaviour with Ann Stock before and at the time of the arrival of the officers. He was affected by liquor and plainly making a nuisance of himself to Ann Stock and other members of the group. He was given the chance to go home but insisted on getting more liquor. However, I think it is clear that after the officers had entered the hotel his only intention was to go to the bottleshop, buy his liquor and go home and that the intention to go home after the liquor was purchased was shared by the whole group. Additionally, he could have stayed in the bottleshop as advised by Cathy Park and if in fact he was walking away he could have continued to do so and taken no notice of Holl's calls to come back (if they were made). But he was fairly much affected by liquor and had been subject to upsetting and taunting behaviour.

In my opinion Holl bears the main blame for the start of the fight, irrespective of who struck the first blow (as to which I make no finding).

From the point of view criminality, at the worst one of the men assaulted the other, at the best it was a common street fight. Unfortunately, but predicably, others joined in and one situation led to another.

## 9.8 WAS TERRY WEST IN THE BAR?

Before I deal with the fight outside the hotel I must refer to the evidence of Terry West. Terry West was the bar manager. As such he was responsible to the Licensee, Ron King, although it would appear that their duties to some extent overlapped. It was an issue at the hearing as to whether West was in the Top Bar at the same time as the Roebourne police on 28 September. The issue assumed some importance because on each account he had given about the night he maintained that he spoke to the Roebourne police and that they were sober and friendly. At the Inquest, however, he testified that he bought the Roebourne police a drink and was in their presence for about five or ten minutes. He did not resile from that at the Commission hearing but was unable to say in what circumstances he bought the drink, that is, whether he pulled the beers himself, somebody else did, or whether he left some money on the bar. He said he was 'financially committed to buying them a drink'. At the trial of the officers he testified that he spoke to the officers and was in the bar for about two or three minutes, maybe a bit longer and that they were sober and friendly.

Of the Wickham police (who all knew West), only Constable Watt had a recollection that West was in the bar - he had some recollection of West playing pool. However, West did not think that he did so and the Commission hearing was the first time that Watt had been asked about the matter. I am not convinced that Watt's memory about this is reliable; he also believed he had seen Ron King at the hotel that night but all the other evidence, including that of King himself, is that the latter was at Dampier. It is likely that Watt was confusing this night with another occasion.

West gave some evidence about seeing some of the police after the fight and the vans driving away. However, his evidence as to this did not correspond with other evidence on the point. I do not use this discrepancy against West as to whether he was at the hotel as the aftermath of the fight was not something that would necessarily stay in his mind.

Of the Roebourne police only Bordas had any recollection of seeing West at the hotel before the fight but this was only a fleeting encounter on his way into the hotel and he did not recall seeing West after that. Of course, the five police officers who stood trial would probably have known of West's evidence at the Inquest and certainly knew of his testimony at the trial. West was called by the Crown at the officers' trial but not examined in chief. He was cross-examined by defence counsel. I consider it to be a matter of some significance that none of the defence counsel at the trial asked West whether he had bought the officers a drink, notwithstanding that the evidence which he gave at the Inquest would have been helpful to their clients on the issue of his being with them and able to speak as to their sobriety. In any event, given West's evidence at the inquest and the trial I would expect that if he had been in the bar, spoken to the officers and bought them a drink, that is something that would be remembered by them. This is particularly true of Devaney. West, as bar manager, had a great deal to do with the police. Devaney said that on the night in question he had heard of West and of his position at the hotel but had never met him. Devaney denied that he met him that night. It would be remarkable if Devaney did not remember such a meeting. Devaney had no reason to lie on this question because West's evidence was helpful to the police. Cathy Park and Dawn Makeham, the bar staff, said that they did not see West around the hotel that night.

There is absolutely no support from any of the five officers that West had a discussion with them or that he bought them a drink, or offered to, or put money on the bar or anything of that kind. I make the point that this was not something that the officers were having drawn to their attention for the first time at the Commission hearing. They had heard West give evidence at their trial, a matter of months after the event. One might think that if they had had any contact with West that night his evidence at least would fix it in their minds. I find that he was not in the Top Bar before the fight and had no contact with the officers. I think he was probably in the Poinciana Room which was in a building separate from the bars. He himself said that he was in that room when he was told about some trouble and that attempts were being made to contact police.

My finding that West was not in the Top Bar when the Roebourne police were drinking there prior to the fight by necessary inference carries with it a finding that he lied at the Inquest, the trial and the

Commission hearing. It would be speculation to suggest any motive for his untruthfulness. However, there is no doubt in my mind that the police at Roebourne and the management of the hotel enjoyed a very close professional and personal relationship and it may be that West took it upon himself to give evidence which he believed would assist his friends.

There is another puzzling matter involving West. There was a note in the CIB diary of Detective Sergeant Michael Bartlett, one of the police called in to investigate immediately after the death, that he was recalled to duty from holidays on 3 February 1984, three days before the Coroner handed down his findings, 'to inquire and obtain statement from Terrence West re results of Inquest a/c John Pat'. Bartlett was unable to give any explanation for this notation at the hearing and at my request undertook to make further inquiries. He subsequently swore an affidavit confirming his inability to shed any light on the matter despite discussions with West himself. I find the notation in the diary most odd but in the absence of any other evidence on the matter I must leave it as one of the issues which remain unresolved.

I shall now examine in more detail the development of the fight outside the hotel.

## **PART TEN**

### **THE FIGHT OUTSIDE THE HOTEL**

#### **10.1 PRELIMINARY COMMENTS**

It will not be possible to make detailed findings as to what happened in the fight. Accounts of fights are notoriously inaccurate because of a variety of factors that have nothing to do with the honesty of the witnesses - the action is swift, many things happen, there is a degree of shock experienced by the spectators and participants and accounts are likely to be dramatised. Some witnesses may give consistent accounts of what happened but differ in the sequence of events. Estimates of times are also likely to be inaccurate and especially so when made some time after the events.

In this case the circumstances compounded the usual difficulties. The light was not good, many, possibly most, of both the witnesses and the participants had consumed alcohol and to varying degrees were affected by it. But additionally, it is obvious that on both sides people joined the fight at different times; the action was not always at the one point; it is clear that there were some quite separate incidents involving particular people; at other times there was more concentrated action; it seems clear that in some cases at least individual police officers were involved with an individual Aboriginal man on more than one occasion. Therefore different witness may describe an incident involving the same persons but in fact be referring to quite separate occasions. A witness may watch part of one incident and then be attracted to another. The whole is a moving kaleidoscope of action in which each observer sees only a part of the whole. I do not necessarily reject evidence because it is inconsistent with other evidence (or appears to be) or because it appears contradictory. This applies to those who were participating and those who were watching; those who were police and those who were not; those who were non-Aboriginal and those who were Aboriginal. In this situation it is difficult to act on the evidence of any one witness unless that evidence is supported by others.

The various accounts given by many of the individual Aboriginal witnesses show inconsistencies from one account to another and are inconsistent with the accounts of other witnesses. Nevertheless, their sworn evidence must be considered with care. Aboriginal witnesses are likely to be somewhat overawed by legal proceedings, to have difficulties in understanding all the implications of questions and of answering with total clarity. Experience indicates that they tend to agree with propositions put to them in leading form. I think that words are often used loosely by Aboriginal witnesses and others. If a witness says 'A was dragged to the van' I do not take the witness to necessarily mean some part of 'A' was dragged along the ground. 'He was chucked into the van' may not necessarily mean any more than that he was put in

the van more roughly than the witness thinks necessary.

Findings about individual incidents and episodes in the fight can be made in some cases. However, it is not possible to suggest a chronological sequence of those incidents and episodes. Honest witnesses would be understandably inaccurate in this regard.

It is proposed to address the following issues in this report with particular focus being on (a), (b) and (c):

- (a) The start of the fight:
- (b) The involvement of John Pat in the fight including an examination of the allegations against the police as they concern their treatment of Pat;
- (c) What injuries Pat received in the fight and in particular whether he received his fatal injury and if so how and when; and whether he received his other principal injuries namely fractured ribs, torn aorta and bruised belly (or any of them) in the fight and if so how and when.
- (d) The arrests of the other four Aboriginal people including an examination of the allegations against the police of excessive force. The relevance of this aspect is particularly as showing the attitude of the participants.

## **10.2 THE ON-GOING INVOLVEMENT OF THE POLICE OFFICERS**

After Constable Holl went out of the Top Bar to go to the bottleshop, Constable Armitt became concerned that he had not returned and went outside to investigate. He said that he saw about four Aboriginals shaping up to Holl and went to his assistance. He became involved in the fight. I accept his evidence about his involvement; it is not in contradiction of any body of Aboriginal evidence and as to his time of leaving has the support of others in the bar.

Devaney said that he thought Armitt seemed somewhat concerned before he left the bar, when neither Armitt nor Holl returned he himself became concerned and went to the bar door and looked out. He said that he saw a crowd on the road and the two officers outnumbered by a number of Aboriginal men who were fighting them. He decided to go the station to summon uniformed officers and the van. He was very strong in his belief that this would change the situation. He said that he returned to the bar door, put his head inside and called out. He then got into his vehicle, backed carefully because of the crowd and drove to the station and called out to the Roebourne police (and the Wickham van which he found to be at the Roebourne station). He then returned but took no part in the fight at all either by participating himself or giving orders to his officers although he did speak to some of the onlookers after the arrival of the vans. I accept his evidence as to what he did and why.

When he left, Bordas (with Dee Morris) and Walker were still in the bar. Bordas and Walker subsequently left the bar, in that order. Bordas joined in the fight to support Armitt and Holl. Shortly afterwards Walker joined in but in a very restricted way. Several minutes had, I find, passed between Holl's leaving to attend the bottleshop and Walker's leaving the bar.

All the Wickham police were still in the bar at the time of Walker's leaving. Shortly afterwards Cathy Park hurried in from the bottleshop and asked for the telephone number of the Roebourne Station saying there was a fight and that police were involved or words to that effect. Sergeant Pethick then left, followed by Weir, Watt stayed to give Cathy Park the telephone number, saw her go to the telephone at the far end of the bar and appear to call a number. He then left the bar, being the last of the police officers to do so. The Wickham officers took no active part in the fight. Weir helped Young to put Lennis James into the Roebourne van. But that is to anticipate events.

The Wickham officers support Cathy Park's evidence as to her telephoning. Constable Young says the

telephone rang just as he left the station. I find that Cathy Park did ask the Wickham police for the station number, that she was given the number, that she telephoned and that the Wickham officers left in the order stated.

At the inquest Cathy Park said she heard police say 'Right, we'll go outside' and Bordas say 'Yeah, we'll go out there and get 'em'; later her evidence was that the officers stated 'We'll go outside and we'll see them out there'. At the trial of the five officers she testified that as she went back into the bar the Roebourne police were just walking out the door and she heard Bordas, Dee Morris and Armitt saying 'Oh, we'll get them out there. Come on let's go and get them. Come on we'll get them outside. We'll sort them out there'. It is likely that Park did hear some officer make some comment when they left the bar about going outside to get or see 'them'. Further, it is likely that her earlier accounts of what was said are more reliable than the later ones. I think her evidence is probably composed of a number of recollections.

No counsel suggested that, before they left the bar, the Roebourne police had formed any intention to assault Aboriginal people either specific individuals or generally. The Aboriginal witnesses testified that Holl was originally alone and none suggested that the other officers arrived on the scene as a group. In fact they arrived like Brown's cows.

Armitt left the bar when he became concerned about Holl's absence. Devaney then left because he was concerned that neither Holl nor Armitt had returned. Probably by the time Bordas and Walker left the bar somebody had raised the alarm. I am satisfied that none of the officers remaining in the bar knew there was a fight on when Armitt left the bar and that was also the case when Devaney went outside. Bordas may well have heard the sergeant's call into the bar or some other indication of a fight. It would be in character, in my opinion, for Bordas, if he knew there was a fight, to say something about going out and getting them.

I have no doubt that Holl, then Armitt, then Bordas were each involved to varying degrees in a fight with up to at least eight Aboriginal men shortly after they came out of the bar (although I do not mean to imply that the eight Aboriginal men were all involved in fighting at the one time). Their Counsel submitted that until the vans arrived on the scene the police were on the defensive and it was only when the vans arrived that they were able to change their approach and to go about the process of arresting the individuals involved. This submission contradicts the evidence of Armitt. Armitt said quite specifically that he decided to arrest and took steps to arrest John Pat before the vans arrived. I accept that the police were initially outnumbered by their opponents and that at least generally speaking they were on the defensive. Neither the police nor the Aboriginals involved in the fight (apart from Pat) suffered anything other than minor injuries in the fight which indicates that each group was able to defend itself from the actions of the other at least to the extent of avoiding serious injury. My general impression is that Ashley James, John Pat and Lennis James, Geoffrey Lockyer and perhaps one or two others at the most, were fighting more or less all the time, and that others such as Roy Smith delved into the fray at particular moments.

I have dealt in the previous Part with the outbreak of the fight and Holl's involvement. I think that Armitt and Bordas became involved immediately after their leaving the bar. This was the situation when Walker appeared. He went to the assistance of the officers but in a very particular and limited way. His evidence was that he saw his nephew (Ashley James) involved in the fighting and in what he took to be in the act of an assault on Armitt, he took hold of Ashley, took him to the ground and sat on him. Walker took no other part in the fight except that without retaliation he was kicked at by some of the Aboriginal men. After the arrival of the police vans Walker released Ashley James on the latter's undertaking (which he carded out) that he would go home. Thereafter Walker said, occupied himself looking for his expensive darts which had fallen from his pocket and his cigarettes. Walker then went back into the Top Bar. I accept the substance of his evidence. His evidence about sitting on Ashley is supported by others and it is not alleged that he took any active role. However, I think he probably saw a little more than he told me about.

I think Armitt very correctly described his state of mind when he said at the trial of one of the Aboriginal men who was charged following the fight that when he went outside he did not know what the situation was between Holl and the Aboriginal men. He said 'I don't know whether Constable Holl deserved it. I

don't know what happened from the time he went out to the time I arrived out. He might have hit someone and they were getting a punch back to him. I didn't know. I knew they were throwing punches at him and that he was blocking punches'.

I believe that that essentially states the position of each of the officers (other than Holl) and also probably much the same is true of the Aboriginal men other than Ashley James. The officers supported their mates; the Aboriginals supported theirs. Police Aide Walker who, in a sense, was in both camps supported both sides.

It is quite impossible to make findings which give a picture of the fight as a whole in any connected way but there are some findings which can be made and I set them out before dealing with some particular incidents which are of importance.

- The fight started between Ashley James and Holl near the entrance to the bottleshop.
- It was joined immediately or virtually immediately by John Pat and Lennis James. By the time the fight came to an end there were eight or nine Aboriginal persons who had to one extent or another become involved in the actual fighting on the one side, the three Roebourne police constables and (in a very restricted way) Police Aide Walker. It appears that no other non-Aboriginal person, whether police officer or non police officer, joined in the actual fighting.
- Thirty or forty people gathered around the fight but for the most part, were not closely gathered around. Many of them were on the opposite side of Padbury Street watching from the footpath or thereabouts. Others were on the footpath on the hotel side of Padbury Street; mostly they were people who had been outside the hotel before the fight started but some were people who came from the Bottom Bar onto the footpath. Apart from the police officers, very few people came out of the Top Bar.

Most of the observers were Aboriginal; many and probably most were calling out either support for the Aboriginal participants or expressing hostility towards the police. Some of those gathered around went on to the road, no doubt to get nearer to the action.

- Some of the Aboriginal participants moved back into the crowd at some time or times and then darted back into the fray. Fighting covered an area which probably extended from the footpath to near the mid-point of the road and from beyond the bottleshop entrance towards Sholl Street to about the entrance to the Top Bar but the main centre of gravity of fighting was nearer the bottleshop entrance than the Top Bar entrance.
- Bottles were thrown during the incident but probably not more than two or three and they appear not to have done any harm, although, of course, the sound of breaking glass would have been alarming.
- The fight proper came to an abrupt end when the two police vans arrived in close succession. The Aboriginal participants and the observers tended to drift away. Arrests were made. There were some incidents (to use a neutral term) associated with the arrests but they were individual incidents and not part of a fight.
- The first van to arrive was the Wickham van summoned by Devaney, driven by Constable Emmanuel who was accompanied by Adrian Delint, the manager of the Wickham Hotel who, according to his evidence, wanted to go to Roebourne to speak to Ron King and had managed to pick up a ride with Emmanuel; the second was the Roebourne van driven by Young, who was accompanied by Gilby.
- Holl arrested Lennis James who was active in the fight throughout its duration. That fact is attested to by the police officers and by Aboriginal witnesses. Pat was probably involved in

fighting with all three officers

- (i.e. Armitt, Holl and Bordas) at one stage or another and certainly with Holl and Armitt; Lennis James was equally active. Young took over the custody of Lennis who was taken to the back of the Roebourne van. Weir, of the Wickham police, who either observed this arrest or the immediate aftermath of it, went to the assistance of Young in exercising control over Lennis James. Lennis was put in the Roebourne van. He resisted and was shouting and banging about in the van, apparently attempting to get out of it, the consequence of which, the doors of the van were locked and nobody else was put in the Roebourne van. It is an agreed fact that Lennis James was the first person arrested, the first person to be put in a van and the only prisoner put in the Roebourne van.
- Walker said that when he came out of the hotel he came across the following situation: Holl, Bordas and Armitt were lined up with their backs against the near side of O'Donnell's Toyota and were being attacked by three Aboriginal men who were running in, throwing punches and dashing back. He described Armitt as being nearest to the gutter and Ashley James as being about to attack Armitt. This is a rather particular formation. It puts the three officers in the same place in the same position both physically and tactically. I would have thought it might stay in the memory. Walker, at his trial did not describe such an incident nor did Bordas or Holl. Armitt did. Walker gave that account to me. I have some considerable doubt about it given the scant police and other support for it. It is not necessary to make a finding about it. I think that probably at least one officer was in that position and was being attacked by Ashley James and that Walker then intervened to take hold of Ashley, wrestle him to the ground, sit on him and thus immobilise him. I am satisfied that Walker took this step because Ashley was his nephew and he wanted to take him out of the fight for his own sake.

I mention this incident for a number of reasons. As I have said, it is a very particular situation which one might think would be remembered by others. I can see no reason for Walker manufacturing the incident. I am also surprised that it has such little support from others. I believe it demonstrates the difficulty which people have of remembering and describing fights of this sort. Armitt speaks of being in this situation but Of being involved with John Pat. He does not speak of the recollection of being attacked by Ashley James and in effect being delivered from that attack by the intervention of Walker. Of course, people may have re-grouped and John Pat got into a fighting situation with Armitt. There was not a great deal of time. I am satisfied that Armitt said that it was in this incident when he was being attacked by John Pat that he decided to arrest him and that there was then certain interaction between them and then the vans arrived. I am satisfied that very little time elapsed between the appearance on the scene of Walker and the arrival of the van.

I turn now to examine the question of whether there is evidence of incidents involving John Pat which could have caused his fatal injury and his other serious injuries which were internal.

### **10.3 WHETHER JOHN PAT WAS INVOLVED IN ANY INCIDENT WHICH COULD HAVE CAUSED HIS FATAL INJURY**

The evidence is universal that until shortly after the police vans arrived on the scene, Pat was active, interacting with Aboriginal people and the police, fighting, running, and showing no evidence whatsoever that he had sustained the fatal injury or any other significant injury.

I have found on the basis of the medical evidence that the injury was consistent with being caused by the back of his head striking a flat, unyielding surface such as a road; but that it is also consistent with any other conjunction of events which produces a like situation. Various witnesses spoke of Pat being flat on his back lying on the ground.



I now examine the question of whether there is evidence of any event(s) outside the hotel which could have produced the fatal injury.

One potential explanation as to how Pat received his fatal injury is as follows and I am able to deal with it shortly. One of the Aboriginal witnesses testified to Bordas banging Pat's head on the ground. She testified that she saw Bordas come out of the hotel and Pat was already lying on the ground. No other witness spoke of this situation; Bordas denies it and the otherwise undisputed evidence was that when Bordas came out of the hotel Pat was still on his feet and participating in the fight with the police. Further, this witness conceded that she 'must have been drunk' that day. Accordingly, I reject this account as having been the cause of Pat's fatal injury without the necessity of considering whether on the medical evidence such action could have caused the fatal injury.

There are other incidents outside the hotel which have some support in the evidence and which might be argued could account for the fatal injury.

1. Armitt said that during his struggles with Pat, the latter went to the ground on two occasions. On the first occasion, Armitt came down partially on top of him. Pat could have hit his head during these incidents. I raise the possibility later of the injury being sustained at a later point in this incident when Armitt claims that they were at the side of a Toyota motor vehicle.
2. At least two witnesses spoke of Pat being kicked by a police officer in the region of the head.
3. Pat was placed in the van in a manner such that he could have hit his head.
4. Constable Watt said he saw an Aboriginal man shape up to Holl who punched the man. The man then fell back and struck his head on the ground. Susie Churnside and Robert Harris spoke of Holl punching Pat who then fell down and lay as if unconscious until put into the van.

I have listed all the possibilities that appear from the evidence as to how Pat may have sustained his fatal injury outside of the hotel. Some can be dealt with shortly.

The accounts of how Pat was placed in the van vary. For present purposes, it is sufficient to say that there is little police evidence as to how Pat was placed in the van. The other accounts of this come from the Aboriginal witnesses. All of these were along the lines of Pat being dragged to the van and thrown in. However, even if those accounts or some of them were true, I doubt that his head would have hit the tray of the van with sufficient force to cause the injuries to the brain found at autopsy. The thrust of the medical evidence is that the fatal injury is likely to have been caused by the contre coup of the back of the head hitting a flat surface so that the brain comes into violent contact with the front of the skull. The descriptions of Pat being put into the van suggest, if correct, and if his head was hit in the process, more of a glancing blow to the back of the head. I am not suggesting that the Aboriginal accounts of Pat being put in the van are or are not accurate (nor, indeed, that Armitt's account is or is not accurate) but only that neither appears to me to give a satisfactory explanation of the fatal injury. I explain this in more detail. The medical evidence is of a trauma essentially to the back of the head. The evidence relating to John Pat being put into the van suggests that, if his head hit the floor of the van the contact would be a skidding contact; on the other hand if the head hit some resistance towards the front part of the lockup section of the van the blow would be to the top, not the back, of the head.

Likewise, it is from a medical viewpoint unlikely that any of the sorts of kicks inflicted in the way described by the various witnesses could have caused the fatal injury. Nor were there any external injuries associated with a kick delivered in such a way that, on the medical evidence, it could cause the fatal injury. Accordingly, I am prepared to find that there is no evidence that a kick or a combination of kicks caused the fatal injury.

I turn to the other incidents outside the hotel which might have caused the fatal injury - these are the struggle with Armitt and the alleged punch by Holl as described by the those who claim to have seen it. As to the latter it will be necessary to determine whether what Watt saw was the same incident as that

seen by the other witnesses who said that Holl punched Pat and irrespective of that issue whether the punch referred to by Watt was delivered by Holl to Pat. Each of these incidents, if they occurred, involve the distinct possibility of a fall from a standing position onto the back of the head. As I discussed in Part 5, the fatal injury is very consistent with a trauma to the back of the head.

#### 10.4 THE STRUGGLE WITH ARMITT

Counsel for Armitt submitted that, 'The injuries suffered by Pat, in our submission, are completely consistent with the evidence of his falling backward and hitting his head, and of Armitt falling on top of him'. The 'injuries' referred to in this submission I take to be the fatal injury and the injuries to the ribs and the aorta, and the belly bruising. I shall therefore examine this incident in some detail as it is the only one on the evidence of the police (apart, perhaps, from Watt) which could account for Pat's fatal injury.

Armitt said that he had his back to the near side of the Toyota and had been blocking punches from Pat and others when one of Pat's punches connected and that he (Armitt) then moved in to arrest him. In his report dated 7 October 1983 (his first written account), Armitt stated that Pat apparently did not expect him to do so; he back-pedalled and as Armitt grabbed him he slipped and they both ended up on the ground, Pat on his back with Armitt landing on top of him in the region of Pat's stomach. Pat managed to get partly to his feet again before they both fell to the ground, Pat landing on his back with Armitt straddling his face and pinning him to the ground. Armitt said he was then kicked by Lennis James; Pat broke free and ran off, Armitt gave chase and caught up with Pat near to the van (near side of the Toyota). He said that he had Pat pinned up against the Toyota and that punches were exchanged at very short range; that his watch-band came loose and as he was putting it in his back pocket, Pat somehow escaped, moved to his left and went to the ground. This was just as the vans turned the corner into Padbury Street. Pat lay on the ground until he was picked up and placed in the Wickham van by Armitt and another person whom Armitt has been unable to identify (nor has anyone else).

The first account given in any detail by Armitt of this encounter with Pat was at the trial of the five officers. There he testified that he landed on top of Pat.

*He seemed to be like a springboard. He was just straight up in the air again. I was in close proximity to him and I managed to wrestle him to the ground again.*

He elaborated on this at the Commission hearing by testifying that on the first occasion Pat landed flat on his back with him (Armitt) on top; Pat appeared to roll over onto his stomach almost immediately and get up on all fours. He said that 100% of his weight was not on Pat as his knees were on the ground and he was trying to get a grip on Pat's shoulder. However, Pat was slippery with sweat and he was unable to get a hold on him. When Pat 'sprung up', Armitt was able to grab him and pull him to the ground again. On this occasion, Armitt testified that Pat was virtually parallel with the kerb with his feet facing Sholl Street and his head facing Roe Street. Armitt was on his hands and knees with Pat's head wedged between his legs, Armitt facing towards Pat's feet.

Whilst restraining Pat in this manner Armitt's testimony was that he was kicked by Lennis James and Geoffrey Lockyer and pulled by Coppin. As a result Pat was able to break free. There was some suggestion that the kicks which were directed at Armitt may have landed on Pat. However, even if this were the case, it is in the highest degree unlikely that they were consistent with the mechanism which caused the fatal injury, since at this time Pat's head was protected by Armitt's legs and the back of his head could not have been kicked.

Armitt testified that when Pat broke free and went towards the Toyota he was not 'super quick' but he agreed that from any point of view Pat was very active although not as active as he had previously seen him. When Armitt caught up with Pat near the Toyota he pinned him against the vehicle and blows were exchanged. Armitt testified that at this stage Pat was 'well and truly aware of what he was doing'. Pat did not sag at any time when he was up against the Toyota and appeared to Armitt to have 'plenty of oomph' left in him. He said that Pat broke free when he was attending to his broken watch-band but went to the

ground almost immediately and remained there until he was put in the van. (I use this neutral term 'went' because Armitt said that he did not see him go to ground - he first saw him lying on the ground.)

The evidence of Armitt as to these events raises two questions: firstly, is it accurate? and secondly, could it account for the fatal injury?

I think it should first of all be plainly stated that Armitt himself does not pretend to know how Pat sustained his fatal injury; he merely says that these things happened. His Counsel, against the background of the whole of the evidence, argues that I should find that Pat sustained the fatal injury in this incident.

I point out that the incident described by Armitt is of very short duration in time and packed with action. Armitt makes to arrest Pat; Pat retreats and in doing so falls on his back; Armitt falls on top of him; Pat rolls over and jumps up; Armitt still has some hold of him; as a consequence Pat falls on his back; Armitt gets to his knees, his knees being close to Pat's head and he holds the head between his knees; two people rush in and kick him; Pat escapes and rushes to the side of the Toyota; Armitt catches and grabs him; they are face to face, Pat with his back to the side of the van; there are blows but of no force since they are so close together; Armitt's watch-band breaks, Pat escapes but goes to the ground. The vans arrive. That is Armitt's account. It is an account which, from the intensity and the rapidity of the action, is very liable to be inaccurate in detail, even if generally true. Likewise, if any witness saw it, I would expect a rather different

I am quite satisfied that there was an incident between Armitt and Pat in the course of which Pat went to the roadway, falling on his back, the back of his head on the road. Quite apart from the evidence of Armitt there is police support and Aboriginal support for Pat being on his back on the road with Armitt on top of him and, indeed, Geoffrey Lockyer admitted kicking Armitt while the latter was on top of Pat. (However, surprisingly, there is no other account as to how Armitt and Pat went to the ground.) I find that there was an incident of that general description. I do not find that it happened just as Armitt describes it, nor do I reject his account. I further find that Pat could have sustained his fatal injury in the incident described by Armitt, and particularly in the first part of it when Pat fell backwards and landed on his back.

I add that Armitt gave his first account of these matters after it was known that Pat had died of a closed head injury. It follows, therefore, that he knowingly gave an account which might be said to involve him in the fatal injury (not necessarily in a way which might be criticised as blameworthy or criminal, but at least factually). That gives his account, in my opinion, a certain gravity.

Nevertheless, I have much doubt as to whether the fatal injury was sustained in this encounter assuming the truth of Armitt's evidence as to the latter part of the incident; if Armitt's account of the latter part of the incident is not correct the first part of the incident may very well be the source of the fatal injury. The question arises whether I should accept his evidence as to the latter part of this incident. (I accept his account of being on top of Pat while the latter was on the ground).

As this is a vital matter, I state my reasons.

1. The medical evidence is to the effect that the probable immediate consequence of the sustaining of the fatal injury would be some immediate change in the conscious state; perhaps unconsciousness, at least stunning. Armitt's account does not accommodate that view (which of course does not cast doubt on his account but only on the proposition that the incident caused the fatal injury). Armitt is very specific that after the first part of the incident when he fell on top of the deceased Pat was 'up like a springboard'; and that when Pat got away the second time he was running (although not with full acceleration) and that he was able to exchange punches when against the side of the Toyota.
2. Armitt's account of Pat's escape after being pushed against the Toyota (namely that he, Armitt, relaxed--in effect--while he attended to his broken watch-band) is not very convincing, although I accept that it could happen. But even less convincing is that this man, who has been trading punches and has just broken free, should fall to the ground within two feet and remain there

without Armitt even seeing him fall being able to offer any explanation at all as to how he went to the ground.

3. Armitt says that when Pat fell he had moved slightly towards his (Pat's) left (i.e. towards the middle of the road) and that he fell with his head to the centre of the road and just beyond the rear of the Toyota and that this happened just before (perhaps at the time that) the vans came around the corner. I have great difficulty in understanding how the drivers of the vans did not see this person lying on the roadway (as clearly from their evidence they did not). I cannot see any real incentive for either of the drivers to lie on this point.
4. But adding to this third point is another. Armitt said that after the vans arrived he and another person whom he could not identify (but who he thought to be an officer in plain clothes) took hold of Pat (one on each side, each holding an arm and a leg) and carried him along Padbury Street toward Short Street to the back of the Wickham van (the back of the van being open). They then put him into the van in the manner of throwing a person into a swimming pool (Armitt's words) backwards (that is, as I understand it, the body going forward and upwards prior to throwing) so that Pat came to rest sitting on the back of the van and they then turned him around and pushed his legs into the van.

The point about this explanation is that it necessarily involved the Wickham van being further up Padbury Street than the point at which Pat trod, according to Armitt, been lying on the ground. I put this to Armitt who readily accepted that this was so and identified the position of the Wickham van as he remembered it on a sketch which became an exhibit. In doing so, however, he placed the Wickham van at a point significantly further towards Sholl Street than had been accepted at the trial of the five officers, by prosecution and defence, and further than it was shown on a plan apparently tendered by consent and referred to by both sides in the course of the trial (being that position shown in Appendix 1).

5. I find it extraordinary that neither Armitt nor any other officer can remember who assisted Armitt to place Pat in the van despite their discussion of the events not more than two hours or two and a half hours afterwards when they knew that Pat was dead and despite the investigators directing their attention to the question a few days after the event. There are a number of points relevant to this. Five people were arrested and put in vans. There is no uncertainty about any of the others. The relevant officer says he made the arrest and describes how the arrested person was put in the van. Various other officers support these accounts. There were altogether 11 police officers and aides (Devaney and the five officers charged; Gilby, Emmanuel and the three officers from Wickham who had been in the bar) all within a short distance of the vans. None of Young, Gilby, Devaney, Walker or the four Wickham officers admits to putting any prisoner into the Wickham van or assisting to do so (other than Emmanuel who opened the doors of the van). No witness suggests that they did; no witness suggests that any non police person put any prisoner into the van. That leaves Armitt, Holl and Bordas, all of whom say that they put prisoners into the van and are said by others to have done so. Armitt says that he put John Pat into the van with the help of another person and by a method which absolutely required a second person assisting. But no officer can remember who that other person was.

Quite apart from who the other person was, only two persons, other than Armitt, have associated Armitt with putting John Pat into the van. One of those was Emmanuel who was at the back of the Wickham van. Emmanuel said that Armitt put the first prisoner into the Wickham van (it is clear Pat was the first prisoner into the van). Emmanuel said that that prisoner was 'standing OK' which conflicts with Armitt and much other evidence. Coppin early said that 'Ian' (Armitt) was one who took John Pat to the van but in later evidence said it was Holl and Bordas.

There is one other matter which bears on the question as to whether Armitt was associated with putting John Pat into the van. The face sheet relative to the arrest of John Pat was on the face of it prepared by Holl and Holl confirms that he in fact prepared it. It was prepared that night. Holl said that most of the information contained in it he was able to write from his own observations. However, on his account, he

had to rely on Armitt for information as to his contact with Pat, The account on the face sheet of Armitt's contact with John Pat does not accord with Armitt's evidence. The content of the face sheet, taking into account when it was prepared, can be from one point of view regarded as confirmatory of Armitt's evidence that he was involved in pulling John Pat into the van (at least, to the point that Armitt is said to have arrested him). On the other hand, in a certain sense it can be said that once the face sheets were handed to the investigators Holl was most certainly locked into the position of saying either that he saw Armitt arrest John Pat or was told by somebody, presumably Armitt, that this had happened; and in a certain sense Armitt was locked into that position although not firmly. Holl's face sheet read as follows:

*At about 9pm on Wednesday the 28th of September 1983 an off duty police officer was attending to a disturbance outside the Top Bar of the Victoria Hotel, Roebourne. As a result of this a fight (actual fist fight) started between the off duty police officer and a person the off duty police officer was trying to arrest. Whilst the off duty officer was trying to arrest the offender the accused continued to rush up to the officer attempting to hit him with his fists and yelling out in an attempt to incite others to roit [sic] and hit at the police officer. With the accused's actions he incited approximately 40 other persons either to gather around or become involved with the disturbance. After approximately 10 minutes several other off duty police officers attended and became involved with the disturbance. One officer, Ian Frank ARMITT effected the arrest of the accused [who] was wrestled to the ground into submission. After about 2 minutes the accused began to kick and punch Constable ARMITT. As a result he was conveyed to Roebourne Police Station where the present charges were referred.*

The position then is as follows: Armitt gives an account of Pat falling backwards, his back and head on the roadway and with Armitt on top of him. I accept that something like that happened. Pat, then, according to Armitt, jumps up like a springboard, is again brought to the ground (but in a way less likely to cause the fatal injury), again gets away, moving quickly, is pinned against the Toyota and strikes blows with 'oomph'. All that makes it improbable that Pat suffered his fatal injury in this encounter since if he had the medical evidence strongly suggests that it is improbable that he could so act. I find Armitt's account of Pat getting free from the side of the Toyota and immediately going to the ground and remaining there virtually immobile as being not very likely if the rest of his account is true. I have less confidence in it when Armitt gives a very special and vivid account of himself and another, whom he cannot identify, lifting Pat up from this position and putting him in the van and nobody admits to being the other man; and less again when I observe that Armitt's account involves Pat going to the ground and lying there before the arrival of the vans and yet not seen by either of the drivers--although it would seem to me that he certainly should have been if he was lying in that position. Further, Armitt's account of John Pat's arrest--and the sketch he drew of the relative positions of the Toyota, Pat and the Wickham van--involves the Wickham van being in a position contrary to the evidence which many other witnesses appear to have accepted, and was certainly treated as common ground in the trial of the five officers.

Of course, I acknowledge that, as a matter of logic, the second part of Armitt's account can be inaccurate (for whatever reason) without detracting from the possibility that first part of the incident described by him, namely the fact of Pat falling backwards (which I accept) caused the fatal injury.

I pause here to mention the other three injuries which it is suggested could all have been caused by the fact of Armitt falling on top of Pat. The medical evidence seems to establish (and I accept) that the injuries looked at individually, could possibly have been caused by the one application of force (Armitt falling on top of Pat's body) but in my judgment this is highly unlikely as separate applications of force to separate parts of the body are required. However, it is theoretically possible. But both the aorta and the fractured ribs are, according to the medical evidence, both likely to be peri mortem or post mortem. There is evidence to which I later refer, both from Aboriginal and police witnesses, that Pat was alive when unloaded from the van at the police station. This would make the injuries if so sustained neither peri nor post mortem. The broken ribs are also said to be likely to cause immediate pain and to restrict movement. It seems to me to be straining the evidence much too far to find that a fall by a very solid man on a teenager could produce both these quite separate injuries (let alone three), before death, when as a matter of probability both the injuries are peri or post mortem. I realise that the doctors talk in terms of probability. This suggestion involves an accumulation of improbabilities: that the fall would cause multiple

injuries, that Pat could jump up, be pulled down, jump again, run, fight with two broken ribs and a torn aorta (as well as the fatal injury) and that neither the ribs nor the aorta would show the signs one would expect to see if the injuries were sustained before death - both of them, quite independently, appear as injuries sustained at or about or after death. I can accept as a real possibility that one of these injuries was sustained in the fall by Armitt and that for some reason it gives the appearance of a peri or post mortem injury but not that two quite separate injuries are produced at the same moment and each against the probabilities fails to exhibit the signs of being sustained before death. However, given Armitt's account of Pat's behaviour, it is in the highest degree unlikely that, if one of these injuries did occur in the altercation with Armitt, it was the fracture to the ribs.

Accordingly, my finding is that (quite apart from the fatal injury), it is unlikely that John Pat suffered both the broken ribs and the aorta injury in this incident, although he may possibly have sustained one. As to the belly injury I say only that the possibilities of a further injury being sustained at the one time seems to me to be remote indeed.

I summarise my findings as to this incident:

1. There was an incident which involved Pat being on his back with the back of his head on the road and Armitt on top of him.
2. This incident was of a sort which could well produce the fatal injury.
3. It is, however, unlikely to have done so if Armitt's account of what followed afterwards is correct, namely that Pat was turning over, jumping up, struggling, running and fighting since the probability is that the immediate result of the fatal injury would be to terminate consciousness for a short time or to produce at least a stunning effect.
4. Armitt's account of what followed the fall is subject to some doubts for the reasons discussed but those doubts relate mainly to the final stages.
5. The fall of Armitt on top of Pat was capable of causing both the broken ribs and the torn aorta which Pat suffered; it is improbable that it caused either since both appeared at post mortem as being peri mortem or post mortem; the fractured ribs would probably have caused immediate pain and restricted movement which also makes it improbable that the injury was so caused if Armitt's account of what subsequently happened is accepted.

However, I mention another possible scenario. There are reasons (I do not say that they are absolutely decisive) for entertaining doubts about Armitt's account of what happened after he fell upon the body of the deceased. If one rejects that part of his account and poses the possibility that Pat lay relatively still on the ground following that fall, and was loaded into the van from that position, one has an incident capable of producing the fatal injury and perhaps one other of the injuries, and a scenario which meets some of the difficulties to which I have referred. That, however, is speculative.

## **10.5 THE INCIDENT INVOLVING CONSTABLE HOLL**

I have found that Holl arrested Lennis James at about the time of the arrival of the vans. There is no dispute about this point. Lennis was taken to the back of the Roebourne van. Young was in charge of the van. Gilby was with him but appears to have done nothing. Weir, a Wickham officer, went over to the back of the van and assisted Young to put Lennis into the van. There is no dispute about these matters.

I have already found Constable Watt was the last of all of the off duty police officers (whether from Roebourne or Wickham) to come out of the Top Bar of the hotel. Watt said that when he did so he saw Young and Weir holding an Aboriginal man whom they then placed in the Roebourne van. This person must have been Lennis James. Thus far the accuracy of his observation is confirmed by the evidence and, indeed, by the agreed facts. Watt says that his attention was then directed to an Aboriginal male

who was between the hotel and the Roebourne van and who was yelling abuse at police and in particular at Holl. This man shaped up to Holl and struck him a blow and Holl retaliated by punching the man in the chest. The Aboriginal man fell backwards to the ground, landing on his back. At the inquest, Watt testified that the Aboriginal man fell on to his backside, then onto his back and then onto his head. At the trial of the five officers, Watt's testimony was that the man fell straight backwards, hitting his head 'fairly hard' on the ground. Watt saw the man lying on the ground, the officer standing beside him and his attention was then attracted by another incident involving Bordas. Watt did not see what happened afterwards in relation to Holl and this man.

I have carefully read and considered Watt's statement to the investigators and his evidence at the Inquest, trial and before the Commission. I was impressed by Watt as a good witness - and equally so when I read his earlier evidence. He seems to me to be objective and accurate.

There are three crucial matters arising out of Watt's evidence of the incident between Holl and the Aboriginal man. Did the incident happen; if so did it happen at the time of or after arrival of the vans; and were Constable Holl and John Pat the persons involved?

Did the incident happen?

I have no hesitation in believing Watt. He can be mistaken as to detail but not as to the general factual situation. I am quite certain that the incident he described did happen.

Did the incident happen after the arrival of the vans?

There is strong evidence that Watt was last to leave the bar; he gave the station telephone number to Cathy Park. Sergeant Pethick said, as did Weir, that when he left the bar and came on to the street one van had arrived and the other was just arriving. Their evidence, therefore, supports the proposition that if Watt emerged after they did the vans must have arrived and any incident seen by Watt must have been after the arrival. Furthermore, Watt says that his attention was disturbed from this incident to an incident involving Bordas. His description of that fits the weight of other evidence relating to an incident in which Bordas arrested Coppin. I find, despite some evidence to the contrary, that that incident occurred after the arrival of the vans. The fact that Watt saw part of what appears to be this incident supports that he is talking about events after the arrival of the vans. Accordingly, I find that when Watt came out of the hotel the vans had arrived. Anything that he saw must have been after the arrival.

Were Holl and John Pat the persons involved in the incident?

I am completely satisfied that Holl was the person who Watt saw punch an Aboriginal man. Watt could hardly be mistaken in his identification of Holl. He knew the man. He had spent the late afternoon and evening in his company and he had seen him in the bar. He could hardly have mistaken him for one of the other officers.

Whether John Pat was involved raises two quite separate questions. While I am quite satisfied that what Watt saw happened after the arrival of the vans, a question remains as to whether he may have got the subsequent sequence of events wrong. Did he see the incident of Holl punching the man before or after the placement of a man into the Roebourne van by Weir and Young?

If Watt's account is right then the person who he saw punched could not have been Lennis James as he was already in the Roebourne van and no-one else was placed in that van that night. Thus it must have been someone else. It could have been John Pat. As against it being Pat I note the following matters:

1. Watt's description does not fit Pat in some respects. I am not much impressed by that deficiency. The general description fits John Pat. Watt said that the Aboriginal man was clean shaven. Pat had a close cropped beard and I doubt whether in the flurry of the fight it could have been observed and I would not be surprised if it was not.

Watt also said that he thought that the Aboriginal man was wearing a short sleeved dark blue shirt. Pat was, on most accounts, shirtless after the start of the fight. This poses a greater difficulty. However, when one examines the discrepancies in the evidence, confusion about the presence or the absence of a shirt is understandable. Overall, I would not reject that the man who was knocked to the ground was Pat on that basis of a discrepancy in the description.

2. Armitt's evidence of his involvement with Pat points against him being the man punched by Holl. I have already pointed out the difficulties in believing Armitt's version of events in this regard for reasons associated with the medical evidence and for other reasons.
3. Holl said that he did not engage in any such incident after his arrest of Lennis James. I would generally prefer the evidence of Watt to that of Holl, but it is a matter to be taken into account.
4. There is a little support for Holl having knocked down John Pat. Two Aboriginal witnesses speak of such an incident happening. Susie Churnside says that she saw Holl knock down John Pat but associates that with the early stages of the fight. Robert Harris speaks of a similar incident. In one part of his evidence he appears to associate it with the early stages of the fight but it is also part of his evidence that he saw Roy Smith run across to John Pat after he had been knocked down. This tends to place the incident more towards the end of the fight but still according to Harris before the arrival of the vans.
5. There is no evidence which directly suggests that the man who was knocked down in the incident described by Watt was John Pat or that the man was arrested.

In summary and on the assumption that Watt has got the sequence of events completely right, there is no compelling evidence to say that it was not John Pat who he saw punched by Holl but more importantly, there is no evidence to say that it was John Pat.

In my view, the strongest argument for the man being John Pat is the nature of the circumstances themselves. That is to say that, at a point in time when the Roebourne officers were at the scene in force and when the fighting has more or less stopped, an Aboriginal person shapes up to and strikes a blow at a police officer, Holl. That police officer defends himself by striking a blow which causes the man to fall to the ground. In those circumstances one would expect that man to be arrested. If he was arrested then it cannot have been Lennis James (since the assumption is that he was already in the Roebourne van) and the description of the man who went to the ground does not fit any of the others arrested nor is there the slightest suggestion that Peter Coppin or Brian Munda were knocked to the ground by Holl. There is an allegation that Holl punched Roy Smith but this is alleged to have occurred much later and in a different part of Padbury Street - Smith was quite clearly the last person arrested. However, that is an insufficient basis on which to make a finding.

The second possibility is that Watt is right about everything except the sequence of events as between seeing Holl knock someone down and on the other hand Young and Weir putting a man into the back of the Roebourne van. If Watt is mistaken about that then the whole story falls into place - Holl knocks a man down and then pins him to the ground, Young comes to his assistance. Young takes the man from Holl to the Roebourne van and Weir assists Young place the man in the van. Watt's description of the man fits Lennis James very well except for the colour of his shirt which is a matter of detail.

I find the position very difficult to resolve. I have much faith in Watt as a witness and in him having the sequence of events right. However, on balance, the probability is that Watt has the sequence out of order given the very considerable correspondence between the incident described by him and what appears to have happened to Lennis James and the fact that Watt's description of the man so closely fits Lennis James. It would be a remarkable coincidence that Holl should knock down Lennis James (as he clearly did) after having been struck by him and after or at the arrival of the vans; and then immediately knock down another person in the same circumstances (i.e. after being hit by him). And given that the fighting largely stopped when the vans arrived it would be surprising if this double knocking down was not seen and remembered by somebody. Nobody describes such a scenario.



I come to the conclusion that it is not established that the man whom Watt saw knocked down by Holl was John Pat. Armitt's account of what happened immediately preceding the arrival of the vans is not therefore, by that branch of the evidence, shown to be false.

## **10.6 THE ALLEGATION THAT HOLL PUNCHED JOHN PAT**

Putting aside Watt's evidence, there is some other evidence that Holl punched John Pat as a result of which he went to the ground and hit his head.

As I said earlier, Susie Churnside's account of this appears to place this incident very early in the fight. If this is the case then whatever happened and even assuming that John Pat fell backwards, it seems improbable (but not impossible) that he suffered his fatal injury by reason of his ongoing participation in the fight.

Harris' account of John Pat being knocked down associates Roy Smith with coming to his aid. Smith does not say that he did so in the sense of him running across the road to tend to someone. Holl says that Smith ran in and assaulted him while he was restraining Lennis James on the first occasion and Holl says that this is why Smith was subsequently arrested.

Nina Smith (Roy's sister) says that her brother ran across to John Pat but timed this as happening immediately after Armitt was on top of John Pat.

Curiously enough, Holl says that his immediate interest in dealing with Lennis James on the first occasion was because James was seen to run and kick Armitt while he (Armitt) was on top of an Aboriginal person. I think that there may be confusion among incidents. I do not reject that in the course of the fight Holl may have struck a blow that knocked down John Pat.

## **10.7 DID JOHN PAT SUFFER THE FATAL INJURY DURING THE FIGHT?**

In my opinion the evidence establishes that John Pat did suffer his fatal injury during the course of the fight. I base this on two grounds.

The first part of the incident involving Armitt and John Pat which has already been described has considerable support to the extent that Armitt was on top of Pat. Therefore there is no reason for rejecting Armitt's account that Pat went backwards onto the ground, hitting his head.

I pause to add something on that incident. There is evidence from Holl that when he prepared the face sheet that night relating to the charges against Pat, he asked Armitt for his account of things. He said (and I record that Armitt denies this) that Armitt replied by saying that he was grappling with Pat face-to-face and that he put his foot behind one of the feet or both of the feet of John Pat and at the same time tried to push him over. Holl described the manoeuvre as a 'trip'. This would be very likely to lead to a fall onto the back with a striking of the back of the head.

Whilst there is no other clear or satisfactory evidence of a particular incident in which John Pat went to the ground on his back, there are, as I have said, witnesses who say he was knocked to the ground and there are several witnesses who say that they saw him lying on the ground apparently unconscious. Looked at individually the evidence is for various reasons either not very satisfactory itself or in contradiction with other evidence or both. Nevertheless it has to be borne in mind that evidence about this sort of matter is virtually always unsatisfactory. I think that such a weight of evidence permits me to draw a conclusion that in some way or another or perhaps in some ways John Pat did come into contact with the road in such a fashion that the back of his head may have struck the roadway surface.

Accordingly I find that the evidence establishes that the scenario required by the medical evidence for the suffering of the fatal injury, namely the back of the head coming into forceful contact with a flat unyielding surface did occur in the course of the fight and may have occurred on more than one occasion and that at least one of those occasions (that involving Armitt) was not far in time from the arrival of the vans.

I have already found that John Pat had not received the fatal injury before the start of the fight. I have just found that he could have sustained it in the course of the fight and I now find that he did sustain his injury in the course of the fight.

The reason for so finding is that there is evidence Pat was lying apparently knocked out. Armitt described him as lying virtually motionless on the ground before he was placed in the police van. A Mrs Nicholson, who lived just opposite, said she saw a man lying motionless on his back just before the arrival of the vans at a point generally consistent with Armitt's evidence. Others describe him at varying times as being prone on his back, apparently knocked out. The description of what Pat did in the van given by other prisoners in the van is consistent with him having suffered serious injury and, for reasons I give later, I do not think that anything happened at the station which could have caused the fatal injury (as opposed to other injuries). Hence my conclusion that the fatal injury was suffered in the course of the fight.

I am unable with certainty to identify the circumstances in which Pat suffered that fatal injury. I think as a matter of probability the fatal injury was probably associated with the interaction with Armitt. One important factor is that this was late in the fight, just before the arrival of the vans. In the interaction described by Armitt there is the possibility that the first fall caused the fatal injury; the second fall is less likely to have done so as it appears to have been more a wrestling fall rather than a clear fall. It seems to me that there is a third possibility if Armitt's evidence is accepted about a struggle at the side of the Toyota after these falls. The possibility was not adverted to in the hearing. But it appears to me possible that in such a struggle, in which Pat had his back to the vehicle, the back of his head could have come into violent contact with the side of the vehicle. Given the medical evidence that the injury would cause immediate unconsciousness or at least stunning, this would explain the sudden fall to the ground and remaining there. I do not say this happened. It is perhaps a possibility.

It is very interesting to note another matter. The most probable explanation for all the (non brain) internal injuries is the application of force to the front of the body, the back of the body being fixed. The deceased lying on the road, and force being applied downwards on the front of his body fits this scenario. But so, too, does the scenario of the deceased being wedged against the side of the Toyota, front out. The application of considerable force to the front of the body by punches or a combination of punches and using one's body forcibly to thrust into the chest area of the deceased could explain the aorta, ribs and belly injuries. And the banging of the back of the head onto the side of the car might cause the head injury.

This possible scenario was not raised during the beating. Armitt suggests that he and the deceased were in those relative positions in relation to the Toyota and that they were exchanging punches. There is no evidence to support that heavy blows were struck but as against that there is no evidence to support Armitt's account. The incident (if it occurred) seems to have gone unnoticed. I do not do more than raise it as a possibility.

Insofar as any evidence suggested that John Pat was struck a blow from a fist to the body and as a result fell backwards, the striking of such a blow with a fist does not constitute in my view excessive force. The evidence from a whole body of witnesses is that at least Ashley James (until restrained by Walker), Lennis James, Geoffrey Lockyer and John Pat were on an on-going basis fighting with police officers and in the course of doing so were kicking at them and/or striking at them with fists. Upon that basis it cannot generally be found that a blow with a fist to the body causing a backwards fall was an excessive use of force. The same observation would apply to pushing and shoving and generally to the use of force commensurate with the force being used against police.

## 10.8 ALLEGATIONS OF ASSAULTS ON JOHN PAT

Some witnesses testified that Pat was kicked in the head by one or more police officers. The medical evidence was to the effect that the injuries found to Pat's scalp and skull were consistent with kicking but they were also consistent with other applications of force, for example, punching.

In evidence from Aboriginal witnesses it was frequently asserted that Pat was kicked by one or more police officers. At least five persons who claim to have been eye witnesses to the fight alleged that Pat was kicked. However, there was a conflict of evidence as to the incidents - as to the time when in the sequence of events the kicking was alleged to have occurred, as to the place, the alleged perpetrator, the type of kick, what part of the body was kicked and so on. Specific allegations were made against each of Holl and Bordas. No particular allegation was made against Armitt, although it must be said that some witnesses were unable to identify who were the perpetrators.

The bodily injuries were inconsistent with a violent kick. There were some accounts of eye witnesses which would account for the head injuries. For example the injury to the back of the head was the type of injury typically caused by falling backwards and hitting the back of the head.

There is no evidence that can be relied upon to find that Pat was kicked violently outside the hotel. More particularly I cannot find that any identified individual officer was responsible for kicking Pat. Insofar as Pat's death is concerned, it is not vital to make such a finding as I am satisfied on the basis of the medical opinions that the fatal injury was not caused by a kick to the head. However, I am unable to exclude that Pat was kicked by one or more officers.

I examine one particular allegation of Pat being kicked as it was investigated in some detail by the police and was probably what initially prompted the dispatch of Scott and Balcombe to Roebourne. Julie Tucker had told Devaney that she was going to complain about the actions of the police when he was attempting to pacify the crowd after the fight. Her account was of noticing a boy who seemed to be unconscious lying on the roadway between the van which was parked in the middle of the road and the pavement alongside the road outside the bottleshop area. She knew Pat but not very well. She was unable to identify who of the people arrested that night was Pat but she believed him to be the shirtless boy who was lying on the road as if unconscious. Her account was that she saw an off duty officer grab the boy by the hair and drag him along the bitumen on his back towards the van. She then saw 'Steve' grip the boy's hair, pull his face upwards and then kick him in the lower level of his face. The boy was lying on his back on the ground and his head had been raised to a half sitting position. At the Inquest she testified that one officer was holding the boy up and another was kicking him.

Scott felt 'uneasy' about Tucker's account and asked her to demonstrate what had happened using himself as the person to be kicked. He said that Tucker positioned him on his front, something which he did not question her about even though it was inconsistent with what she had said in her statement. Scott's testimony at the Commission was to the effect that Tucker was unable to inflict a kick despite several and varying attempts to do so. In his statement prepared for the Inquest, Bartlett stated that he came into an office at the police station and saw Scott lying on the floor with Julie Tucker carrying out a demonstration. He said that Scott was lying on his stomach but robed over onto his back. Tucker tried on several occasions to inflict a kick to Scott's face but according to Bartlett 'was having difficulty in carrying out this demonstration'. It does not necessarily follow that because Tucker was unable to demonstrate the infliction of the kick that it did not happen.

I deal with this incident not because it can be associated with the fatal injury but because it played a most important part in the importance which the police department attached to the investigation and set the scene for the investigation which was to follow.

I am prepared to accept the evidence of Julie Tucker to the extent that I believe that there was some rough handling involving some kicking to a person who was probably John Pat as he was taken to the van. Julie Tucker was sober at the time she observed the incident; she complained to Devaney that same night before she knew Pat had died (indeed before the vans had left for the station), she

complained to her employer who was a member of Parliament and who brought it to the attention of the police in Perth, she made a statement to the police including an attempt to demonstrate what she had seen, she gave generally consistent accounts of the incident at the Inquest and at the trial and was subjected to long and vigorous cross examination on each occasion and did not resile from her general account of the incident.

However, I do not find that the person who perpetrated the kick was Bordas or any other individual (although it must have been a police officer). Further I do not accept that the kick was inflicted in exactly the way described by this witness - she was excited, upset and there were undoubtedly many visual images playing on her mind at the time of the incident. Further, the medical evidence is not consistent with any blow which cause the external injuries being inflicted with any degree of violence. However, I believe there is something in what she has said about this incident and that may go some way to explaining why it is that no-one is anxious to recall who it was who with Armitt placed John Pat in the van.

### **10.9 THE ARRESTS OF OTHER PERSONS**

I shall deal briefly with the arrests of the other four Aboriginal men on this night. Evidence of those arrests is relevant to the attitude of the police concerned to the arrestees when they got back to the station when three alleged that they were assaulted when taken from the vans. However it is not possible within the constraints of this report which must deal primarily with the death of John Pat and the circumstances surrounding that to cover all of the evidence and issues relating to the arrests of the other four Aboriginals.

The arrest of Brian Munda is basically uncontentious. He allegedly interfered with the arrest of Peter Coppin as he was being taken to the Wickham van. Neither he nor any bystanders made any allegation of any improper behaviour on the part of the police in so far as their behaviour concerned Munda. I shall not say anything further about Munda's arrest.

I have already sufficiently detailed the circumstances surrounding the arrest of Lennis James above and say no more about that.

Peter Coppin was arrested by Bordas for disorderly conduct. Watt supports the fact that a person unknown to him was acting in a disorderly fashion towards Bordas and that Bordas subsequently arrested this man.

The arrest of Coppin was observed in part by Watt but also by Pethick. It is clear that Coppin ran away from Bordas and then being almost overtaken turned to face Bordas. Peter Coppin says that he was struck by Bordas. This is denied by Bordas. He was certainly grasped by Bordas including by the hair. He says that he was dragged by the hair from the point of arrest to the van - again this is denied by Bordas. There is other evidence that Bordas took hold of Coppin by the hair and evidence (including photographic evidence taken by the police) that Coppin had a bald patch where apparently hair had been lost.

Coppin was not subsequently charged with the offence of disorderly conduct but with hindering Armitt in his arrest of John Pat after discussions back at the station.

I find that Peter Coppin was very drunk. He was not a strong man and known to the police to be unwell (indeed there is some police evidence that at this time Coppin was suffering from scabies). I mention this not to suggest that he did or did not intervene with Armitt (although he was later acquitted of the charge of hindering Armitt) or that he did not behave in a disorderly way.

I have already indicted earlier that Holl's evidence is that when he was grappling with Lennis James, on the first occasion, Roy Smith attempted to assault him and as a result of that intervention Lennis James was able to escape from Holl. Holl said that after the vans arrived and Lennis had been placed in the Roebourne van, he (Holl) looked around for other offenders and saw Roy Smith on the opposite side of

the road and decided to arrest him for hindering him in his arrest of Lennis James. He proceeded to do so.

There is considerable conflict of evidence as to what happened in the course of Smith's arrest. It is not disputed that Bordas joined in to assist Holl. Generally speaking the police claim that Smith resisted and that Nina Smith assisted him in that resistance. Smith and others claim that the police used excessive force, by punching him and thereafter dragging him to the van.

I consider it to be unnecessary to make any findings about the arrests of Peter Coppin and Roy Smith. Obviously violence intruded in both instances but as John Pat had been arrested earlier it did not impact on what happened to him outside the hotel.

I think that once the vans arrived, most of the Aboriginal people drifted off, the fighting stopped and physically the police were in total charge of the situation and were not disposed to tolerate any interference with what they were doing.

#### **10.10 THE CONDUCT OF THE POLICE AND THE BYSTANDERS GENERALLY**

I am prepared to accept that the people who were observing the fight outside the hotel shouted abuse at the police and encouragement to the Aboriginal participants of the fight. Further, there was evidence that certain missiles were thrown during the course of the fight - these were variously described as stubby bottles, empty cans and sometimes just the sound of glass breaking.

There was also a considerable body of evidence which referred to the conduct of the police generally in the course of the fight. No less than six witnesses testified at proceedings prior to the Commission that some of the police at various times challenged people to fights and/or adopted an aggressive stance. Dawn Makeham testified as to a boxing stance adopted by Holl and Bordas shortly before the arrest of Roy Smith. She said that the incident 'disgusted' her as she believed that off duty police officers should have been attempting to calm people not 'standing up in a boxing stance'. Counsel for the officers submitted that the evidence of challenges to fight issued by some officers was either misinterpreted by the onlookers or exaggerated. In the confused state of the evidence I am unable to find that the police or some of them did or did not challenge people to fight in the sense of inviting a fight. However, it is likely that some police put up a show of force including taking a boxing stance to frighten onlookers into desisting from their behaviour and/or noise. In this connection, I mention that at his trial Holl said that when Ashley James came out of the bottleshop and first shaped up he (Holl) shaped up in self defence. This was before the fight. He said that he then realised that this might create the wrong impression and so dropped his stance. There was then further words and the fight started.

#### **10.11 WHAT HAPPENED AFTER THE FIGHTING WAS OVER**

After the prisoners had been placed in the vans, Bordas, Holl and Armitt returned to the Top Bar either to collect their change or to finish their drinks. Armitt was bleeding from a cut on his face and Cathy Park offered him a paper towel. Armitt declined the offer saying words to the effect that he would fix it up at the station. Much was made at the trial of the officers about the words allegedly spoken by Armitt to Park. She was cross examined by defence counsel at length apparently because Counsel considered that she was intending to convey the impression that the police intended to go back to the station to assault Aboriginals. However, Park's evidence at the trial under cross examination leaves no doubt in my mind that she was not intending to convey that impression.

The Wickham police also returned to the Top Bar. Later they went to a Chinese restaurant in Roebourne and had a meal and thereafter returned to their respective homes.

Devaney drove Walker, Gilby and Holl back to the police station in his car. Armitt went with Emmanuel

and Delint in the Wickham van. Bordas went in the Roebourne van driven by Young.

## **PART ELEVEN**

### **THE UNLOADING OF THE PRISONERS AT THE ROEBOURNE POLICE STATION**

#### **11.1 INTRODUCTION**

In this part of my report I shall deal primarily with what happened to John Pat after the police vans arrived at the station up until the time he was placed in the juvenile cell. This is of obvious importance. As I earlier noted, I find on the medical evidence that the fatal injury was inflicted between thirty minutes and two hours before death. From a time point of view, the fatal injury could have been sustained at the station. Indeed, at the trial of the five officers it was the case for the prosecution that this in fact could have happened, or that at least John Pat sustained at the station some injury which exacerbated the fatal injury. But what happened to the other prisoners is also important as tending to throw light on the attitude of the officers.

This report would be unduly lengthy if I were to examine all of the evidence relating to the unloading of the prisoners other than Pat. I have briefly outlined the evidence on these issues and have made findings of a general nature at the conclusion of this part. I think it more important to look carefully at what happened to John Pat as his death was the subject of my inquiry.

Initially I shall give a brief overview of what the various participants and 'witnesses say happened.

#### **11.2 OVERVIEW**

On arriving at the police station, Sergeant Devaney parked his car at his residence which was adjacent to but outside the fenced perimeter of the police station. The police vans which transported prisoners to the station parked in a courtyard. This building has its frontage parallel to Queen Street and is close to the courtyard but separate from it by the cyclone fence which surrounds the courtyard. The male juvenile cell is at the front of this building. On the eastern side of the courtyard is a three vehicle garage and store room. The whole courtyard area is surrounded by a cyclone fence. The juvenile cells are in an old stone building separate from the adult cells. Generally a van would back up to a gate in the courtyard fence which opened onto a set of steps leading down into the compound area where the cells were located. On the night in question the Wickham van parked parallel with the front of the juvenile cells on the northwest side of the courtyard and was prevented from backing up to the gate by the arrival of the Roebourne van, which parked parallel with the garage with the front of the van pointing towards the gate opening onto the steps.

The lighting in the area was rather poor.

Constable Holl and Police Aides Walker and Gilby travelled to the station in the sergeant's car. The latter went to his house, Gilby to the office and Holl and Walker to the unloading area. Constable Young drove the Roebourne van back to the station. Constable Bordas was a passenger. Constable Armitt travelled in the Wickham van. He obtained the keys, unlocked the charge room and the relevant gates, including the gate separating the courtyard from the steps leading down to the compound area.

The first prisoner removed was Lennis James, the only prisoner in the Roebourne van. At the time he was removed, Holl, Bordas, Walker, Young and Constable Emmanuel were present in the courtyard (as was Adrian Delint, although he was, according to the evidence, sitting in the passenger seat of the Wickham van). While this was happening Devaney came to the fence and called to Young and gave him

instructions with regard to the prisoners. Devaney said that he did not see the removal of any prisoner. Armitt had taken up a position on the compound side of the fence, obviously intending to take prisoners to the cells after receiving them at the steps leading from the courtyard.

Lennis James was pulled from the van by Bordas. He was then involved in a struggle with Holl. Bordas and Holl took James to the steps area where they were met by Armitt. Armitt took James to his cell.

The Wickham van was then unlocked by Emmanuel. Emmanuel left the area and went inside the police station to the toilet. All prisoners had been unlocked by the time he returned. Before doing so he requested Munda to move an engine block which was in the back of the Wickham van. He thought that the prisoners might throw it at the officers. Munda alighted from the van after having been called out by Armitt and walked unescorted to the steps leading to the cell block from where he was taken to the cells by Armitt.

John Pat was the next person removed from the Wickham van. At least Bordas, Holl, Young and Walker were in the courtyard area at the time. The evidence of the police officers was that Bordas told Pat to get out of the van (or words to that effect), reached in and touched him. Pat was attempting to get out of the van when he missed his footing and fell face forward on to the concrete where he remained for some minutes with the officers nudging him and telling him to get up. They believed he was playing 'doggo'. Armitt entered the courtyard and also nudged him telling him to get up and eventually picked him up and assisted him off to the juvenile cell. Peter Coppin and Roy Smith said that Pat was pulled from the van and then punched and kicked by police officers.

Roy Smith was then removed from the van and also went to the ground, either by being pulled from the van or in a struggle with Holl. He was taken off towards the steps. Smith alleged that he was assaulted at the back of the van and was pushed by Young Holl kicked in the back and fell to the ground on the way to the cells. The officers said that he did not fall but Young nudged him in the back to keep him moving; at one stage he did collide with the fence but did not fall to the ground. Young denied kicking him. Smith said that Young took him to the cells and the police said that Armitt took him to the cells. That night Smith complained to Young of pain in his back. The following morning Smith was taken to hospital.

Peter Coppin was the last prisoner removed. He alleged that he was beaten at the back of the van after climbing out. His allegations were denied by the officers, most of whom said he was intoxicated and staggered off to the cells with Young holding onto his clothing. Young, and later Walker, said that Coppin lent up against the closed left hand rear door of the van while Young closed the right door before Young took him off to the cells. At the steps area, Armitt gave Young the keys to the cells and Young continued through to the cells with Coppin. When Coppin was medically examined four days later he was found to have bruising to the ribs.

Of the five prisoners removed, the police said that three of them either fell or went to the ground at the back of the van when being taken from the van. Three of the surviving prisoners complained of being beaten when they got out of the vans. Munda is the only surviving prisoner who claimed not to have been assaulted and whose evacuation from the van was without incident.

Unbeknown to anyone in the courtyard at the time, the removal of the prisoners from the vans was observed by Mrs Cecelia Howard and her son, William Charles Scaddan, who lived in Queen Street directly opposite the police station.

In 1983 Mrs Howard had been residing at that house for seventeen years. Mrs Howard is an Aboriginal woman who was born in Broome and came to live in Roebourne in 1955. She met and lived with her husband within a few years of her arriving in Roebourne and remained with him until he died in 1981.

Mrs Howard has worked at the Roebourne District Hospital for about twenty years and has brought up two sons, William and Rodney.

Mrs Howard and her son had their attention drawn to the events taking place in the courtyard of the police

station by noise. They went to a bedroom window from which they observed the vans and a prisoner being beaten apparently by police officers. They went outside and saw another two prisoners also beaten on being removed from the van. She then returned to her lounge room and 'more or less wiped it out. I didn't want to hear any more'.

Mrs Howard did not know the police officers in Roebourne personally. She knew the police aides Gilby and Walker. She knew them to talk to but did not have social interaction with them. She knew the families of both men but she did not know John Pat or his family.

Mrs Howard became aware of the death of John Pat through watching a television news broadcast. This is what she did and thought about it, according to her evidence. She did not discuss what she had seen that night with others; what she had seen had worried her terribly and she felt 'a weight on her shoulders' and was pleased when she told the Aboriginal Legal Service (ALS) lawyer about what she had seen. Prior to telling the ALS, she had discussed with her son what they could do. They were scared to go to the police because after what they had seen they did not know what to expect and they did not know how the police would receive the complaint. She did not think about reporting the matter to the Wickham police. She was a practising Roman Catholic and considered confiding in the Catholic priest. However, she decided that he would probably tell her to go to the police. She was not aware of any ALS lawyer or field officer operating in Roebourne and indeed there were none at the time, the first ALS field officer in Roebourne being appointed following the death of Pat. She considered talking to Dr Rigby about it but decided against it. She thought that he might not want to get involved. By the time that she was approached by Mr L. L. Davies of the ALS she was glad to 'have it off her chest'.

At the hearing, Inspector Balcombe testified that he went to the Howard residence during the course of the first week or so to see if they had any information but there was no-one at home. Balcombe was not aware that Mrs Howard worked at the hospital. He agreed that he did not follow the matter up at that stage, and said of Howard,

*She is a pretty intelligent sort of woman; neat in appearance. I think one might have thought that if she had such important information that she might come and speak to us. I mean we were around the area day and evening, all the time. They'd have to see us poking around there.*

In 1983, Mrs Howard had problems with her eyes, something similar to cataracts but she was still able to see 'pretty good' although she volunteered that she could not recognise people at a distance. It is of note that when cross examined at the trial and asked to agree that her fence line was 75 metres from the police yard, she replied that it was more like 60 metres. The plan prepared for the investigation measured it at 54 metres from the bedroom window.

Mrs Howard was a quiet, social drinker and gave evidence of drinking two stubbies of 'Swan Gold' before tea that night. She had nothing further to drink that evening. It had been her day off.

The only officers that she was able to identify were Walker and Gilby.

Mr Scaddan was approximately twenty-five years of age at the time and was either unemployed or working at the Mount Welcome garage. His usual occupation was a mechanic. He gave evidence that on that particular night he had three or four stubbies before tea and nothing more after.

Mrs Howard and Mr Scaddan were interviewed by the ALS. Mr Davies and Mr Hedges of the ALS reported the substance of the interviews to Inspector Balcombe. As a result, the investigating officers interviewed Mrs Howard and her son.

However, well before this happened, the investigators were aware of allegations that prisoners had been assaulted at the back of the vans. After Smith was taken to hospital he made a statement to Balcombe alleging that he had been beaten.

All prisoners were photographed on 29 September 1983 and Smith and Coppin were examined by Dr



Rigby. Dr Rigby had Smith admitted to the Roebourne District Hospital from the lockup because of back pain. He remained in hospital until 4 October 1983, experiencing pain which hampered his walking. Dr Rigby's diagnosis was muscular bruising to his left lumbar paraspinal muscles. Dr Rigby considered that the injury was consistent with some form of blunt trauma to that region.

Peter Coppin was not seen by Dr Rigby until 3 October 1983, and was at that time complaining of pain to his left lower lateral chest wall as well as having hair pulled out from the right side of his head. Dr Rigby's examination of the chest wall revealed localised tenderness over the left lower lateral chest wall, but no evidence of external bruising. Dr Rigby's findings with regard to the scalp were consistent with having hair pulled out from the right side of his head and the chest wall tenderness he considered to be consistent with a mild blunt trauma to that region.

Although Lennis James was not seen by a doctor following the event, Mr Peter Nicholson, the Justice of the Peace before whom he appeared the following morning in court noticed that James had a split lip.

The evidence of all police is consistent that Lennis James, Brian Munda, John Pat, Roy Smith and Peter Coppin were removed from the vans in that order. The evidence of the prisoners is not inconsistent with that. The order potentially attracts some importance as it is one of the factors by which the accuracy of the evidence of Howard and Scaddan of quite vicious assaults perpetrated upon the prisoners as they were taken from the vans can be assessed. However, their evidence is not helpful in determining the order of the prisoners out of the vans as neither was able to identify any of the prisoners apart from Brian Munda. I find that the sequence of events as described by them is not reliable. I am prepared to accept that the prisoners were removed from the vans in the order outlined by the police.

### **11.3 THE KANGAROO EXPERIMENT**

Before analysing the evidence further, I will refer to an experiment which was conducted by the police investigators from Perth on 20 October 1983 apparently for the purpose of testing the accuracy and/or truthfulness of the evidence of Mrs Howard and Scaddan. I shall refer to this experiment as the 'kangaroo experiment' as it involved police officers dragging dead kangaroos from a police van and kicking them in the same conditions (insofar as the lighting was concerned) which were present on the night of John Pat's death. Holl testified that the officers had heard the allegations which had been made and so they knew what the experiment was about. The experiment was observed by Detective Sergeant Scott and Balcombe and, according to Holl, he too made some observations.

At the Commission hearing, Balcombe testified that Armit, Walker and Gilby and other officers were involved in the experiment, and of those who were involved, some were in uniform and some were not. Scott testified that five or six officers were in the yard. Holl testified that those involved included Armit, Walker, possibly Young, and himself and others. Balcombe said that the activities were observed from the front yard of Mrs Howard's house. However, Scott said that he viewed the station courtyard from outside Mrs Howard's window and from inside her bedroom. He also testified to sitting in her lounge room and listening to any sounds which were made. I doubt Scott's memory on these latter two points as he also testified that Mrs Howard and Scaddan did not know that the experiment had taken place and it is most unlikely that the police would have had access to the inside of their house without their knowledge and consent.

Balcombe testified that he could see reasonably clearly. He was not able to identify the non-Aboriginal officers by their features but he was able to distinguish people by reference to their size. For example, he could differentiate between Armit and Bordas. He could quite clearly identify Walker and Gilby. He could see the kangaroo being dragged from the van and it being kicked. He could clearly hear the doors of the van closing and the sound of kicking the kangaroo and its head hitting the ground with what he said was a son of a dull thud. He was unable to recall whether he could distinguish whether the officers were wearing uniforms but thought it was possible.

At the hearing, Scott said he found it impossible to identify any individual as he was only able to see the

silhouettes of those in the courtyard. This is substantially what he said in his undated statement which he prepared for the Inquest (which was not tendered) in which he said that all sounds could be clearly heard. However, I have reason to doubt the reliability of Scott's memory as he was unable to recall whether a kangaroo had been used, whether any Aboriginal officers were involved, the position of the vans and who else (if anyone) apart from Balcombe was present with him.

Holl testified that at one stage he went over to Mrs Howard's house and stood watching with Balcombe. He testified that he was unable to pick an officer who was in uniform from one who was not. He could see something being dragged out and someone leaning into the van and making a movement to drag something out. He could see Armitt making a kicking movement. He could hear the metallic sound of a door being opened and shut.

Accordingly, despite the variations in the accounts of what police could see and hear from Mrs Howard's house, I find that it would have been possible that she and her son would have been able to have a fair view of proceedings at the unloading (assuming they were watching, which I accept); that individual figures would have been discernible but not identified unless well known; that movements generally could have been detected; that detail could hardly have been perceived with any accuracy; that some movements would not always have been easy to detect and could easily be mistaken; that the sound of the van doors could have been heard and thudding noises, however caused; that struggling could have been observed and people being put to or on the ground could have been observed.

#### **11.4 FINDING AS TO THE CREDIT OF MRS HOWARD AND MR SCADDAN**

The evidence of Mrs Howard and her son of the assaults perpetrated on at least three of the prisoners suffered from the difficulties to be expected of accounts of the circumstances as they existed at the time. They were some distance from the courtyard; the lighting was not particularly good; they were startled and distressed by what they saw; their first accounts of the incidents were not given until about three weeks later.

I have no doubt that, apart from the inevitable inaccuracies and inconsistencies which one would expect from these sorts of accounts, there were elements of exaggeration in their accounts. However, bearing on that, there was another process at work. Both were very upset at what they had seen. They considered that the behaviour of the police was very poor. Accordingly, I believe that they interpreted the actions which they could see rather dimly in the worst way.

I found Mrs Howard to be a witness who was determined to tell the truth. She was prepared to make reasonable concessions about what she had seen - for example, she was prepared to reflect on her initial account of a uniformed police officer kicking one of the prisoners and then to acknowledge that perhaps he was only trying to turn the prisoner over. I am reinforced in my assessment of Mrs Howard by the comments of the Coroner and Chief Superintendent Bull who observed her and Scaddan give evidence at the trial of the officers. The Coroner found her evidence to be 'of considerable strength' and found 'ineffectual' the efforts to discredit her and Scaddan at the inquest. Bull described Mrs Howard as a 'good witness' and Scaddan as an 'honest witness and generally reliable'. Further, there was not one iota of evidence which suggested that either Mrs Howard or Scaddan had any motive for lying or exaggerating their accounts.

I find them both, and particularly Mrs Howard, to be honest witnesses. Their evidence is to be considered in the light of the matters mentioned above.

#### **11.5 THE EVIDENCE GENERALLY AS TO THE UNLOADING**

It will be seen that the available evidence as to unloading has problems. Neither the prisoners nor the police are really independent in that their interests are involved. Additionally, the prisoners were

intoxicated to quite a degree. Mrs Howard and Mr Scaddan had a far from perfect view. Fortunately, there are some broad areas of agreement. I can find with confidence that the Roebourne van was unloaded first; that the order of unloading from the Wickham van was Munda, John Pat, Smith and Coppin; that there was not any trouble of any kind associated with the unloading and removal of Munda; that there was a struggle associated with the unloading of Lennis James (from the Roebourne van) in which at least Bordas and Holl were involved and which involved James going to the ground and at which Young was present; that there was 'trouble' (to use a neutral term) associated with the unloading of John Pat and that he fell from the tray of the van to the concrete courtyard, that at least Bordas and Young were present at the rear of the van, that Armitt came to the back of the van and dragged Pat to the juvenile cell; that there was a struggle associated with the unloading of Smith which involved at least Holl and in the course of which Smith went to the ground, Young and Bordas being present at the rear of the van; there is little agreement about the unloading of Coppin. The matters which are not in dispute indicate that a number of things happened which lend some support to the evidence of Mrs Howard and her son in general if not in particular.

## **11.6 THE REMOVAL OF LENNIS JAMES**

It is clear from most accounts, including that of Lennis James, that he was making a considerable commotion by shouting and kicking the sides of the van before he was removed from it. This noise was loud enough to attract the attention of Mrs Howard and Scaddan for some period of time before either of them left their television viewing to observe the activity in the courtyard of the police station.

James' several accounts of his removal from the van have not been consistent except in a very general sense. Basically, his account was that two officers pulled him from the van and then he was kicked and punched and fell to the ground. His accounts are confused not only as to the identity of those who he claimed assaulted him but also the location and number of such assaults.

The evidence of the police officers is briefly to this effect. Young opened the door of the van. James was seated on the right hand side up towards the front. Bordas called on him to get out and James did not respond. Bordas then partly got into the van, reached over, took James by the shoulder and pulled him out.

Holl had taken up a position at the rear of the van. His accounts of James' exit have not been entirely consistent, save that he interpreted James' arm movements as manifesting an aggressive intent. The first written accounts of Bordas and Young were along the same lines. However, none of these officers said that James struck anyone. Young (who was not physically involved in removing James), when questioned at his trial, testified that it looked to him as if James was going to punch Bordas, but that was only a 'guess'. However, at the hearing, he could not say whether James' arm suggested aggression. Holl testified at his trial that he caught hold of James' right arm when he was midway out of the rear and both he and James went to the ground, Holl being on top. There was a struggle and Holl eventually regained control.

Walker was standing at a point just inside the entrance of the courtyard not far from the back of the Roebourne van and saw a struggle between Holl and Lennis James.

Both at the Inquest and at the trial, Lennis James said, in answer to a completely leading question--which was not followed up--that he came out of the van fighting. That might mean one of a number of things; that he was actually fighting, that he responded to aggression; that he was in a fighting mood. In point of fact, according to Bordas, he resisted being pulled from the van but did not strike or otherwise assault Bordas or grab hold of him. Bordas was nearest to him. He did not hit Holl--on Holl's own evidence--at least before Holl had grabbed him.

When Holl overcame James, he and Bordas took an arm each and together they walked him off to the steps where they were met by Armitt. The latter took James to the cells without further incident.

Mrs Howard testified to seeing a prisoner on the ground between the van marked 'R' (the Roebourne van) and the garage, as did her son. She said that this was the second prisoner taken from the van (as to which point I do not accept her evidence).

Mrs Howard observed the prisoner who was near the garage being shaken and told, 'Don't you dare hit a policeman again whether he is black, white or brindle'. She also testified hearing, 'Come on, fight you bastard' and, 'You want a fight, well fight now'. The person was held and punched in the stomach whilst he was held and then around the chest area. She said that she saw Walker, who was on the Queen Street side of the prisoner, kick him twice. This was the only time she observed Walker kicking a prisoner. It was this prisoner who Mrs Howard also observed a uniformed officer kick--although later she observed that it may not have been a kick but a nudging or turning over of the prisoner. There was never any demonstrated motive as to why either Mrs Howard or Scaddan should lie about what they saw at the station either for or against the police. That Mrs Howard was prepared to reflect on her account of the uniformed police officer kicking the prisoner and testify that it seemed more like a nudging goes a long way in my view to demonstrate her as a witness who was trying to tell the truth.

Scaddan said he observed Holl, Walker, Bordas and also Armitt giving this man a beating. They repeatedly punched and kicked the man on the ground. He saw Walker kick the man and this was the only prisoner that Walker did kick. At the officers' trial Lennis James said he did not see Walker or Gilby when he was taken from the van. He testified that Walker stood back at first and then moved in and gave him two or three kicks. He heard the words 'black bastard' and other swear words used. Walker denied assaulting Lennis James in any way. His evidence was that on alighting from Devaney's car he took up a position just inside the entrance to the courtyard not far from the back Roebourne van and observed a struggle between Holl and Lennis James.

I think it is clear on at least two grounds that Mrs Howard and Scaddan saw something of the unloading of Lennis James. Firstly, they correctly identify the area (near the garage) and no other prisoner was near that area. And Mrs Howard at least correctly identifies the position where Walker was standing. These matters are quite significant. Their evidence would lend some support, but only in a very general way, to that of Lennis James. On the other hand, I am quite satisfied that Scaddan is wrong in saying that Armitt was involved and that Mrs Howard is wrong in saying that this was the second prisoner unloaded. I think that the likelihood is that Mrs Howard is also wrong in attributing the kick by the uniformed officer (which later she thought might have been a nudge) to this incident. But those two matters can be seen as mistakes of sequence which are very likely to occur in these matters. I do not regard them as going strongly to credit, particularly since it is common ground that another prisoner was nudged with the foot.

Although Walker denied any involvement at all, he acknowledged that he thought that it was Lennis James who was one of those who had struck at him whilst he was sitting on Ashley, and of all the prisoners James was the only one who Walker had a potential particular motive for paying back. The words alleged of, 'Don't you dare hit a policeman again whether he is black, white or brindle' would appear to be more appropriately directed to Lennis James because he was the only prisoner who was alleged to have struck both a white and a black officer.

Whilst James was being taken from the van, Devaney called Young over to the fence and gave him a general instruction to ensure that everything went in the 'book'. (I take this to be the occurrence book.) Devaney testified that the instruction given to Young included a direction to ascertain the prisoner's welfare, whether they had suffered any injuries and to let him know. At the time that the instruction was given, it is clear from Young's evidence that James had been removed from the van and was still involved in some activity with Holl and Bordas at the back of the van.

I am satisfied that Mrs Howard would not deliberately invent an allegation about words being loudly called out about not hitting a policeman, black or white. She could not possibly be mistaken about such a matter. The evidence of Balcombe establishes that such words could be heard across the street if loudly shouted. I find that some such words were shouted and that they must have been clearly audible to all the officers in the courtyard, although Holl and Bordas might not have heard them (if they were shouted by others) because of their concentrating on the struggle.

The words suggest that the person who shouted them believed that the person then being unloaded (whom I have found to be Lennis James) had hit a police officer, or officers, including a black officer. Walker had that later belief (his evidence at his trial). Neither Holl nor Bordas claimed such a belief; Young had not seen the incident; Armitt was not in the courtyard. On the balance of probability, I find that Walker shouted these words. Walker denies hearing those words said.

The words suggest chastisement. Why would somebody standing well clear (as Walker says he was) say words like that? I think that Walker delivered some chastisement to Lennis James as he said those words and that chastisement took the form of a kick or kicks not necessarily delivered with great force. I add that Mrs Howard said of this incident that she could not believe that Walker would do that sort of thing, which hardly suggests invention on her part.

I cannot make confident findings about man aspect of this incident. It was quite violent--the struggle moved from the back of the van to the side of the van and it continued after Holl and James had recovered their feet (or partially so). I can see no justification for Holl grabbing hold of James, the latter had made no clearly aggressive move and Young's evidence before me and earlier was that there was no clear indication of their doing so. He was on his own and facing five officers, four of them almost immediately in front or to the side of him. It is possible that there would have been trouble despite his situation. Holl made certain that there was trouble. His behaviour was consistent with his behaviour earlier at the hotel and later in relation to Roy Smith.

#### **11.7 THE REMOVAL OF BRIAN MUNDA**

Emmanuel did not have a key to the handcuffs which had been used to fasten the door of the Wickham van. He was unable to unlock the handcuffs until he was provided with a key by Bordas. Counsel for Mavis Pat submitted that to convey prisoners in the back of the van with the door locked in such a manner that it could not be easily opened was negligent in the circumstances, especially as the door was locked without first checking to ascertain whether the key was to hand. The foolishness of doing so is obvious. In the case of an emergency concerning one or more prisoners in the van, vital time could be lost. Overall, I believe that Emmanuel did not stop to consider the implications of securing the van with handcuffs--it was careless but nothing turned on it in this case. Obviously it should be avoided.

Whilst waiting for the handcuff key, Emmanuel looked in the back door of the van and observed the engine head; he considered that it was potentially dangerous and asked Munda to move it away from the rear area of the van.

When Bordas provided the key, the handcuffs were unlocked and the van opened, whereupon Emmanuel left the courtyard area of the police station and went to the toilet. Armitt called for Munda to he sent down to the steps where he was waiting. Munda was told to get out of the van, did so and was directed to the steps from where Armitt escorted him to the cells. Armitt claimed that the reason for calling Munda was to place him in a cell with other Aboriginal prisoners as there was one vacant bed in that cell and as Munda never caused any trouble he would be an appropriate prisoner to place in the cell with the others. Mrs Howard did not observe Munda being removed from the van. Scaddan identified Munda as the only prisoner he observed removed from the van who was not subjected to a beating, and Munda himself has always said that he got out of the van and went straight to the cell. I find that Munda was not assaulted in any way on his removal from the van. (The fact that Scaddan says that Munda was not beaten tends to support his honesty.)

I record the following matters without myself attaching any particular significance to them. Munda was affected by alcohol but perhaps not noticeably so; he had not taken part in the fight; the offence of hindering with which he was charged was, on any view, of no great significance; he was not regarded as a trouble maker or a nuisance; additionally, he is extraordinarily powerfully built and, at least to my observation, extremely strong.

It is to be remembered that Mrs Howard was not able to identify any of the prisoners. Her evidence that the words, 'Don't hit Brian', or 'not Brian' were used is accordingly entitled to considerable weight in the light of the fact that Munda's other name is Brian. I find that some such words were used and that they probably meant that he was to be treated differently from the rest which in context may well mean that he should not be harassed.

## **11.8 THE REMOVAL OF JOHN PAT**

By way of preface to an examination of the evidence concerning the removal of John Pat from the van, I shall look at the evidence concerning his position in the van when he was originally placed in it at the hotel, what it was on the way to the station and when the van doors were opened at the station.

### **11.8.1 PAT'S POSITION IN THE VAN**

At the Commission hearing Armitt testified that when Pat was placed in the van he climbed up and sat on the seat on the passenger's side of the van. The Aboriginal witnesses who claimed to have seen Pat placed in the van testified that he was dragged or carried to the van and thrown in. Armitt himself said that Pat was placed in the van by a person on either side of Pat taking hold of an arm and a leg each and lifting him so that his buttocks were on the tray of the van and then swinging around his feet. He described the action as very much like throwing a person into a swimming pool. Because I have doubts about whether Armitt was one of those who placed Pat in the van, I consider it unsafe to rely on Armitt's evidence on this point, notwithstanding the possibility that even if he were not involved he may have seen Pat placed in the van.

As to Pat's position at the time that the van door was opened, Bordas said that he was facing the van doors and that Pat was sitting quietly near the van doors on his right. Young's evidence corroborated this. Holl, Walker and Armitt did not observe Pat at this time. Emmanuel did not know Pat but observed four prisoners in the van. He said that they were all quiet and conscious, saying nothing, doing nothing and sitting.

By comparison with that evidence, Peter Coppin stated that in the van on the way to the station Pat had staggered around in the van and had fallen face down with his head facing the doors. He did not move from that position. The medical evidence was to the effect that even if Pat were not fully conscious he would have been capable of such movements. Roy Smith could not remember if Pat was sitting or lying but to his recollection he was on the floor of the van. In his statement to the police, Munda said that Pat was lying on the floor of the van, 'guts up', with his feet towards the doors. At the Inquest, he testified that he was lying 'on his guts', which he explained as meaning on his stomach, his head was towards the front of the van, he was not moving and was still lying there crying when he (Munda) was taken from the van.

I am unable to reconcile the evidence of the prisoners as to Pat's position in the van. However, it would appear from their accounts that he was lying down. This conflicts with the evidence of the police who said Pat was seated on a seat--Armitt putting him on the passenger side at the hotel and Bordas on the driver's side at the station.

Given the undisputed evidence of the presence of the engine block in the van and Munda's evidence that he sat on the tray of the van near the rear doors to get out of it, I find it difficult to accept that there would have been any room for Pat to have been lying on the floor. Even if there were room, I doubt whether Munda would have been able to manoeuvre his not inconsiderable bulk around Pat. He made no mention of any difficulty in getting out of the van. Although it is possible that at sometime during the journey back to the station Pat may have been on the floor of the van, by the time the van arrived at the station I find that it was more likely that he was on the seat towards the rear doors.

It was the evidence of Bordas, Young and Walker that Pat attempted to get out of the van by standing on

the tray of the van (somewhat bent over because the height of the van precludes standing straight up) and then, taking a step out of the van as if to put his foot on a step which in fact was not there. As a result fell to the ground landing half on his left side, half on the front of his body, head furthest from the van and roughly at right angles to the back of the van.

Both the Wickham van and the Roebourne van were Ford F100 vehicles. However, the Roebourne van was fitted with a step at the back of the van, whereas the Wickham van was not. The step had been fitted by the Roebourne officers to assist with getting prisoners in and out of the van. Holl testified that it was made of metal and was eight inches deep (i.e. from front to rear). The original step had been made from wood but had caught fire from the exhaust pipe. Following that incident, the wood was replaced with metal plate. Holl testified at the hearing, 'I never had anybody in an accident situation who overbalanced or missed it or slipped on it'.

Holl's evidence was that he did not see John Pat being removed from the van. He said he was standing near the rear door of the Roebourne van on the right hand side. He heard a dull thud and, on turning around, saw Pat in a semi-prone position on his left hand side on the ground. Armitt's evidence was that he was not in the area and did not observe Pat's removal.

Bordas testified that he put his hand on the shoulder of John Pat and told him to get out. As Pat started to respond to the command, he stepped aside, being wary. He claimed that Pat moved independently and then appeared to step on a step that was not there.

In his report to the investigating officers, Young corroborated Bordas in that he stated that Bordas put his right arm in the van and as Pat 'lowered' his head to come out, he (Bordas) took a step backwards. Pat lifted his right leg, seemed to step into nothing and fell backwards landing heavily on the ground. He also testified (in the proceedings Smith v. Young) that nobody pulled Pat to the concrete. However, at the Commission hearing he testified that there was no reluctance on Pat's part in coming out of the van and he did not know why Bordas put his arm in. Young testified that Pat took no evasive action in the fall. This is consistent with him being in a less than full state of consciousness due to the fatal injury (and perhaps his blood alcohol level).

When questioned by Inspector Balcombe on 1 October 1983, Young said that Pat 'stepped out of the van and fell heavily to the ground'. He landed 'slightly to his left, but more to his front'. Balcombe did not notice that Young had stated in his report that Pat fell 'backwards' until it was brought to his attention by counsel assisting the coroner shortly before he testified at the Inquest. Balcombe then contacted Young and reminded him of his note of his conversation on 1 October. Young told Balcombe that the word 'backwards' was a typographical error and should have read 'forwards'. The matter was not further pursued by Balcombe. It is an odd typographical error. But I accept it as a mistake of some sort because falling backward was, in the circumstances, inconsistent with falling slightly to the left but more to the front..

Walker said he was standing behind the Roebourne van. He testified at his trial that the first time he saw Pat was when he saw a person lying on the ground at the back of the van and that he then realised it was Pat. Later in his evidence he said that the first part of him he saw was his head and shoulders and Pat was putting all his weight on something as if he was stepping on something. This would indicate that Walker believed that Pat got out of the van of his own motion. His evidence of Pat attempting to step on something would seem to support the accounts of Young and Bordas. In his evidence before me, he described Pat as standing up, balancing himself by holding onto the structure on each side, and stepping forward as if to put his foot on the step which would have been there had it been the Roebourne van.

Contrary to the police evidence, both Smith and Coppin, who were the remaining prisoners in the van, said that Pat was pulled out of the van. Smith said in his initial statement that Pat was pulled from the van. At the trial of the five officers, he testified that Bordas pulled Pat out of the van by the hair and he fell on the ground. Under cross examination he said that Pat was grabbed by the hair, maybe the collar, but not his arm or shoulder. He had previously testified at the Inquest that Pat had been grabbed and thrown out on his face and that it was Bordas and another whom he identified as Holl who pulled Pat from the

van.

Coppin said that Pat was pulled out of the van--first to the ALS without naming who had done so and later he told the police it was Young. At the inquest he testified it was Bordas and Holl who pulled Pat from the van. Again at the trial he testified that it was Bordas and Holl. Coppin's evidence on this issue clearly cannot be relied upon.

Smith's evidence was that he did not see any kicking or punching. Indeed he did not see Pat again after he saw him lying on the concrete. He did not hear any voices telling Pat to get up or any swearing by Pat. He did not observe Pat's demeanour in the van prior to his removal and his confusion was such that he believed Lennis James was in the van.

The three officers who saw the incident (together with Holl who heard a thud and then looked towards the back of the van) substantially agree about John Pat's position on the concrete surface of the courtyard, which position I describe as follows: his body was roughly at right angles to the back of the van, the head furthest away from the van, his feet a short distance only forward from the back of the van and lying partly on the front of his body and partly on the left side. There is no other evidence to support it. It is, however, consistent with being pulled from the back of the van, and at the Inquest Smith referred to his being thrown out on his face, which is also consistent. I find that John Pat emerged from the van and landed roughly in that position. How he came to do so is a more difficult question.

It was plainly the suggestion of Young, Bordas and Walker that the opinion they formed at the time was that Pat had stepped forward, intending to put his foot on the back step of what he apparently supposed to be the Roebourne van and there being no step on the Wickham van he stepped into nothing and pitched forward and made contact with the concrete in the position described.

I completely accept that the deceased, in his injured state and affected by alcohol, may have assumed that he was in the Roebourne van. The two vans are very similar. I also accept that he would have known that the Roebourne van was equipped with a step, partly because he had been in the van but mainly because he must have seen it driving around hundreds of times.

However, I absolutely reject the proposition that Pat's fall came about in the way suggested and I also reject, for other reasons, the suggestion that this was the opinion which the officers then and there formed. The explanation for the fall is based upon the proposition that John Pat assumed he was in the Roebourne van, knew that it was equipped with a step and took a step out from the tray to put his foot on this step. The officers also suggested that he deliberately got himself in a position at the back of the tray to take such a step. In the first place, I do not think he was in a condition to act with such deliberation, but more importantly, if he had acted with such deliberation and consciousness, he would not have done what he is said to have done. This involves a little closer consideration of the step.

The step is situated (naturally) between the floor of the van and the ground but nearer to the floor of the van. It is supported by two uprights which are affixed to the underside of the back of the van and the step projects forward from these uprights. It is a fixed construction. The evidence from some officers was that the depth (that is from the front of the step to the back of the step) was eight inches (20cms) or a little more. Photographs confirm to my mind that the depth was no greater. Photographs also suggest to my mind that the step was recessed a little behind the outer edge of the tray. However, the officers say that this was not so and I accept their evidence. The length of an adult male foot is, of course, more than eight inches. It follows that if a person were to stand on the tray and deliberately put a foot straight down with the back of the leg rubbing against the end of the tray so that the foot was as little forward as possible, the toes would still extend over the outer edge of the step. Anyone who stood on the tray and took a step of any significance forward would inevitably miss the step. Even the smallest movement forward would result in the heel of the foot making contact with the outer edge of the step. In short, a person standing on the tray of the van and wanting to use the step would not take a step forward but would gingerly lower his foot as close as possible to the back of the tray so as to get a safe position on to the step. Accordingly, I reject the idea of a deliberate act by a person who was conscious of what he was doing, who believed that he was in the Roebourne van and consciously tried to take advantage of the



step he knew to be a feature of that van.

Furthermore, if the fall had happened as the three officers, Bordas, Young and Walker describe it, it would have been obvious then and there what had happened and indeed the officers say that it was and that they drew the conclusion that it was an attempt to use the step. I also reject that they drew that conclusion that night.

Either it did not happen as they say and accordingly, they did not draw the conclusion they claim to have drawn; or it did happen and they drew this conclusion in which case they allowed two prisoners, known to be intoxicated, to get out of the van without warning them that it was the Wickham van and that it did not have a step. There is no dispute about the absence of a warning; each of the officers confirms this. The general account is that it did not occur to them to give a warning. It seems to me that if they drew the conclusion I have mentioned then it could hardly have not occurred to them to give a warning. If another person is to come out of the van why should that person not do exactly as John Pat had done. Failure to give the warning could only be due in my judgment to deliberate and callous disregard for whether Smith and Coppin might harm themselves. It is hard to be confident about such matters but my impression is that Young was not that sort of a man. I think that if he had drawn the conclusion he would have realised the significance of it to the others and would have warned them. I find that Pat's fall did not occur in that way and that the officers did not there and then form the view that it had.

I find that it is probable that John Pat's fall from the van came about in the following way: that he was sitting on the seat near to the exit door, that his condition at the time was that he was in a state of less than full consciousness; that Young opened the doors; that something was said about Pat getting out of the van; that there was nothing done by him to indicate any unwillingness to do so, although it may be that in his less than fully conscious state he made no move to comply; that Bordas put his arm into the van and grabbed Pat by the shoulder or thereabouts and tugged at him with a view to 'getting him going'; that Pat in his less than fully conscious state offered no resistance, toppled off the seat and sprawled headlong out of the van, landing in the way and in the position that I have earlier described.

I base that finding on the following matters: on his own evidence and that of others, Bordas leaned into the van and made contact with Pat at somewhere around about the shoulder and I can see no reason for him doing so unless to encourage him in some way to get out of the van; the fact is that on Bordas' own evidence he had pulled at Lennis James; that John Pat was in a less than fully conscious state is consistent with the medical evidence, consistent with the evidence of the other prisoners about his conduct in the van and consistent with the fact that he lay prone on the ground after the fall and made no effort to get up or to undertake any other meaningful act; Mrs Howard's evidence would suggest that the second person from the Roebourne van was pulled out and Scaddan asserted it. (I take into account their unreliability as to sequence of events mentioned earlier.) I think that this sort of action is something which Mrs Howard and her son would have been able to see from their position although they would not be able to see the detail of it; it is consistent with what Smith and Coppin say, although in the light of outstanding deficiencies in their evidence I put little weight on that fact; and finally, the officers are unable to provide me with an explanation which I find acceptable on how he did exit from the van.

It is indeed possible that Bordas intended to, and did in fact, pull John Pat straight out of the van; but on the whole of the evidence of the unloading I think that is unlikely; I think it more likely that Bordas gave him a tug to start him on his way, probably assuming that there would be some opposition or resistance and without, of course, understanding that he was suffering the early effects of a head injury; I am prepared to find on the balance of probability that Pat's falling from the van was a result of a pulling on the part of Bordas which in ordinary circumstances would not have led to Pat catapulting out of the van but that it happened that way because of his physical condition. I accept the evidence of Young that Pat had not given any indication that he was resisting removal and I find that there was no occasion for Bordas to lean into the van and take hold of the prisoner. It was an act of unnecessary authoritarianism but on the balance of probability not intended to cause any harm (as it had not caused harm to Lennis James).

I do not find that the officers necessarily invented the story of Pat stepping out of the van onto a non-existent step. Not knowing of his condition, I think they may have been quite surprised at what happened

and on thinking over it and seeking an explanation afterwards they may well have engaged in a process of reconstruction. It is, of course, possible and indeed probable that in his fall one of Pat's feet may have been put forward of the tray of the van and into space but, on my finding, not in any deliberate purposeful way and in particular not with the aim of getting onto a step; nor, I find, did he stand up and lower his head, as claimed, as a preliminary to stepping out.

### **11.8.2 WHAT HAPPENED WHILE JOHN PAT WAS ON THE GROUND AT THE BACK OF THE VAN?**

The evidence of the officers is that John Pat remained on the ground; that he was lying there; that they thought he was lying 'doggo'. Coppin's evidence is that the door of the van was shut but he could see through the grille. He originally claimed to have seen Pat being kicked and struck (tests showed that he could not have done so because of the line of sight from the grille); but at the trial agreed that he could not see Pat through the grille but could see the officers milling around and could hear the sound of kicks and blows. Coppin's evidence is not reliable on any matter--I think that he was most affected by liquor.

Smith said he did not see or hear anything after John Pat fell on to the concrete.

Mrs Howard and her son cannot identify any particular prisoner. Their evidence would support other evidence of assault in a general way if it existed but it cannot provide direct evidence of assaults on John Pat.

As far as the officers are concerned, nobody suggests that Holl or Walker had any contact with Pat while he was on the ground; everybody agrees that after Pat had been on the ground for a short time Armitt came through the gate and up to the group.

Young, Bordas and Armitt each admitted to physical contact with Pat. Bordas and Young each said that they told Pat to get up and that he swore on each occasion. Young says that he 'patted' the young man on the back while telling him to get up; Bordas said that he nudged him two or three times (he illustrated this by making half a fist and indicating a to-and-fro movement with his hand). Walker said that Young nudged Pat with his foot. Young denied this. Mrs Howard said that she saw a uniformed officer (Young was the only officer present in uniform) kick a man on the ground. At the Inquest she said that what she described as a kick may have been a nudge to turn the prisoner over. There are indications that she was talking of Lennis James but her account may well be incorrect as to sequence and may perhaps refer to John Pat.

Armitt said that on approaching the group he told Pat to get up, to which the latter replied 'get fucked'. Armitt says that he then gave the young man a nudge with his toe in the stomach area on the right hand side. Armitt then picked him up.

### **11.8.3 ARMITT TAKES PAT TO THE CELL**

Young's evidence was that Pat was on the ground for a minute or a couple of minutes before Armitt picked him up. Walker's evidence was that they were trying to get Pat up for two to three minutes.

Armitt said that he lifted Pat into a sitting position, put his arms around him and picked him up in a 'bearhug' hold, with Pat's back to Armitt's chest and walked off backwards to the cells. Pat's heels were dragging along the ground. He said that Pat was taking about 50% of his weight. Armitt said that when he bent down to pick Pat up he did so in the belief that Bordas was going to assist him to carry Pat to the cells. This did not eventuate. Having got Pat to his feet, the latter's head was on Armitt's shoulder and Pat was assisting by taking some of his weight. Armitt testified that he was not holding 100% of Pat's weight but that when he went to slacken his grip a couple of times, Pat wanted to slump down again.

Armitt's evidence that he lifted Pat in such a hold is corroborated by Young, Holl, Walker and Bordas with

some degree of variation.

Each officer stated that Pat's legs were moving as if he were walking. Holl said that Pat was taking two paces to Armitt's four paces and described Pat's feet as haft walking, half dragging.

I find that Armitt took Pat to the male juvenile cell. That was the natural place to take him. He was seen by the doctor there. All the officers say he was taken there. There is no evidence to the contrary of this proposition but I mention that there is no non police evidence to support it. Mrs Howard and her son did not see Pat taken to the juvenile cell (I do not mean to imply that they observed anything in contradiction of that) and Delint did not see it.

I am not surprised that Mrs Howard and her son did not see this. During part of the journey Armitt and Pat would have been considerably further away and at a level lower than was the action in the courtyard; part of the journey was in a darker area and the entrance to the cell would have been obscured by the Wickham van. As far as Delint is concerned, I am satisfied that he was determined not to see or hear anything while outside the hotel or at the unloading, or alternatively not to speak of it if he did.. Accordingly, I attach no significance to the fact that he says that he did not see Armitt take the young man to the juvenile cell.

However, I do not accept that the young man was taking fifty percent of his weight. I think that that is inconsistent with the medical evidence, inconsistent with the evidence that he was taking two steps to Armitt's four and, indeed, inconsistent with the method described in that if the person being dragged (and who was far from upright) was taking fifty percent of his weight the force of doing so would resolve into a very strong backward pressure against Armitt and which would make backward walking more difficult.

Armitt's evidence was that when he lowered the prisoner to the ground to turn on the lights, he semi-collapsed. Armitt claims that on being told to get himself to bed, Pat turned around, rolled over and looked at him telling him to 'get fucked '. He said the roll over was to his side, to get away from the light and he raised his arm to shield his eyes from the light. In Armitt's view he was conscious. He did not suspect that John Pat had been injured. He did not observe any flowing or even any congealed blood on him. He considered that Pat was very tired and was still playing 'doggo', despite that when he first observed Pat he was lying on the concrete at the back of the van, had not responded to attempts to make him get up and had to be half carried to the cell. I gravely doubt that Armitt's evidence is right on these matters. I think that the deceased was at least only semi-conscious.

#### ***11.8.4 DID JOHN PAT SUFFER ANY INJURIES AT THE STATION?***

Clearly the most important question is whether he could have suffered his fatal injury at the station. I find that he could not have suffered the fatal injury at the unloading from the van. I have found that he pitched forward to his front, which is not an action which, on the medical evidence, was of the sort which could have caused the fatal injury (or indeed could have caused the broken ribs, aorta injury or belly injury). It is apparent that he either turned himself over or was turned over onto his back before Armitt picked him up. I find it was the latter. There is nothing to suggest that his head was violently bumped against the concrete. I think it was likely that he was rolled over by Armitt with a foot placed underneath his torso. It is possible that the belly injury could have been caused at that stage since there is evidence of a foot or feet being placed in the vicinity of the body. It is possible that downward pressure was exerted on the stomach. I do not find that this happened but it is a possibility.

None of the injuries mentioned could possibly have been sustained when he was dragged to the cells. Armitt is the only person who could give any evidence about what happened inside the cell (with the possible exception of Delint). Armitt said that he lowered John Pat to the ground and then left. It would, of course, be the case that had he dropped him onto his back from some height then the back of Pat's head would have come into contact with the floor of the exercise yard of the cell. However, there is no evidence which supports any such possibility and I find positively that the fatal injury was not caused in this way. I do so because I am satisfied that the fatal injury had been caused before he was taken to the

cell. I base that finding on the matters mentioned in Part 10, on the descriptions (varied though they be) given of Pat by the other prisoners who were in the van on the way to the station and all of which suggest that he was then in very great distress, and on the fact that he lay still when he pitched forward from the van. The lowering of the prisoner to the floor whether done very roughly or reasonably, could not possibly have caused the other injuries mentioned.

My further finding is that on the evidence neither the aorta nor rib injuries were caused at the station during the process of unloading of Pat from the van or putting him in the cell. The belly injury may possibly have been caused at the van. It is not possible to make a finding as to whether Pat suffered any other injuries of a lesser nature at the unloading such as were observed at post mortem. In any event, such lesser injuries played no part in his death. I believe it extremely likely that he was treated more roughly than the officers deposed to, given all the circumstances. But the medical evidence seems to me to exclude that he was aggressively bashed or kicked. It is absolutely clear on the evidence of the officers that they assumed that he was lying 'doggo' but made no effort at all to ascertain whether in fact he was injured from what had happened previously or in the fall. Each of them made contact with him by hand or foot and, as I have found, probably more forcefully than was indicated in their evidence.

I think that on any view of the evidence they were guilty of lack of care. On their own account, this was a very significant fall--a man had pitched forward from the back of the van, landed on concrete with his head eight or nine feet further forward than it was before he fell. The base of the van was about 2 1/2 feet high. The top of the body before the fall would have been 7 or 8 feet above ground level. In my opinion, if the man does not then stir, then some investigation is called for rather than a blind assumption that he is lying 'doggo'.

## **11.9 THE REMOVAL OF ROY SMITH**

Smith testified that he was punched in the mouth by Holl as he got out of the van and the impact caused him to fall to the ground.

Holl's account has been that Smith jumped to the ground swinging his fists about; Holl grabbed him and took him to the ground.

Young, in his original statement to the investigators, said that Smith had his arms raised as if wanting to fight and Holl grabbed him and pulled him out of the van. At the trial Young said that Smith was out of the van before Holl grabbed him. Bordas' evidence has been to the same effect.

The evidence of Mrs Howard and Mr Scaddan would suggest that Smith was dragged from the van.

I do not examine all of this evidence because I am clear on Holl's own evidence before me that he assaulted Smith and it is of no importance for my purposes whether he pulled him from the van or not. Holl said that Young opened the doors and he stood by the left hand side of the van. Smith came out in a fighting stance. I find that Holl was one or two steps away, partly behind Smith. He stepped forward, grabbing Smith around the pinning his arms and they went to the ground, he on top. He said that the going to ground was caused by the forward movement and the two of them falling. I do not believe him. He had to take one, or, at the most, two steps forward. He could quite easily have pinned Smith's arms to his side (assuming that he felt obliged to do anything --Smith was a small man facing four police officers). On Holl's own account of the circumstances, I think that he deliberately wrestled Smith to the ground. He had had an incident with Smith outside the hotel and was angry (as he said at his trial). I find that he vented his anger and frustration by a quite excessive use of force. He may have pulled Smith from the van but I do not find it necessary to reach a conclusion on that.

Young took Smith to the steps. Smith says he was knocked down and kicked, told to get up or he would be knocked down again. He said Young did this and that Young took him to the cells. All the officers say that Armitt took Smith to the cells and I find that it was so, since Young was immediately involved in the unloading of Coppin and plainly the arrangement was for Armitt to take over each prisoner as that

prisoner came to the steps. I find that Young may have given Smith a push along as he went to the steps but that Young did not kick him or cause him to fall to the ground. I think that Smith made contact with the fence of his way to the step. Whether that was the result of his staggering or being pushed I do not know but in any event he righted himself and proceeded to the steps. He suffered no injury as a result of the incident. I cannot make any finding as to what happened between the steps and the cell.

Smith suffered back injury. That can well be explained by what happened at the back of the van without requiring any reliance on an incident at the steps which I am far from convinced actually happened.

#### **11.10 THE REMOVAL OF PETER COPPIN**

Coppin's evidence was that after he got out of the van, he was punched in the head by Bordas causing him to fall to the ground. Bordas, Armit and Holl punched him and Walker watched, and Bordas banged Coppin's head on the ground. He further alleged that he was kicked in the ribs about twenty-five times, that he blacked out and was dragged to the cell. His injuries included bruised ribs, headaches and a cut to the eye. He agreed at the trial of the five officers that he was willing to tell lies if it meant the police would get into trouble.

The evidence of the police officers was basically that Coppin's removal from the van was uneventful. Holl and Walker described him as intoxicated. Bordas, Holl and Walker referred to him as staggering towards the gates. Young had hold of him either by the back of the trousers or the shirt.

Mrs Howard were inside after seeing three prisoners removed from the van. She probably did not see Coppin removed. Scaddan said the last man came out awkwardly as if trying to stand. He was either pushed to the ground or just could not stand up and fell. There is no evidence of Coppin suffering the sort of injuries which his own account would imply. At medical examination five days later he had 'localised tenderness over the left lateral chest wall, but showed no evidence of external bruising'. He had significant loss of hair this related to what had happened outside the hotel. There is no reliable evidence that Coppin was assaulted outside the van; but the evidence relating to Lennis James, John Pat and Roy Smith suggests that he would not have been treated gently.

#### **11.11 SUMMARY**

I am sure that the officers were upset by what had happened in the hotel; likewise, the Aboriginal people.

One thing is clear from the evidence. There was an absolute preponderance of police power at the time the prisoners were unloaded from the vans. The police were not affected by alcohol. The police were trained (or should have been) in the expeditious and safe removal of prisoners, troublesome and otherwise, from police vans. In any event, all had had experience in this activity before this night and there was an accepted procedure. That is, the van would back up to the gate leading to the step and the prisoners would then move directly from the van through the gate and into the lockup area.

My conclusion about the unloading of the prisoners is that it was not competently nor professionally carried out. It is nothing short of disgraceful that three of the five prisoners ended up on the ground. At least two prisoners were involved in some sort of struggle with the police and I find this to have been avoidable had Holl in particular exercised some restraint and judgment.

I find that Holl was the main offender and that Bordas played a lesser role. The only finding I make against Walker is that which I made in relation to Lennis James.

I find that it is not established that Young behaved badly other than perhaps in very minor ways. He may have pushed Smith and Coppin along a little too vigorously although that is not absolutely established. But if he did, it was a matter of degree only and did not cause either of them to fall or to sustain any hurt

Young's demeanour before me demonstrated distress and non-composure. He appeared that night to Devaney to be upset. I think he was upset by something that happened at the station; whether it was the manner of the unloading, the subsequent death of John Pat, or matters associated with the finding of John Pat's body to which I later refer, I do not know. I add that Young was the officer on duty and could perhaps have done more to restrain Holl in particular by effecting the unloading.

There is no evidence that Armitt involved himself in any fighting. He nudged John Pat with his foot and probably turned him over on his back. He may have had some sort of struggle with Smith. His method of dragging John Pat to the cell was not unnecessarily rough.

As I have already said, Emmanuel removed himself from the area after unlocking the doors of the Wickham van. He was accordingly, present while Lennis James was unloaded. I cannot find but strongly suspect that his leaving the scene was much more influenced by tactical than comfort considerations.

I believe that Devaney should have stayed in the courtyard to supervise the unloading of the prisoners. Most of those officers who were to be involved in the unloading had also been involved to some extent in the fighting outside the hotel. Armitt, at least, to Devaney's knowledge, had suffered visible injuries in the fight. Devaney must have been aware of the noise coming from the Roebourne van or perhaps even of the struggle involving Lennis James when he came to the fence to speak to Young. The potential for further trouble should have been clear to him. Further, given the involvement in the fighting of most of the officers, if there was to be further trouble the temptation to be unduly rough in subduing it was a real one. However, I believe that Devaney would not have considered these matters due, partly, to his operational inexperience and partly to his shock and distress at what he had already seen.

I have made these various findings on the evidence available to me as to what happened at the hotel. I have found that the fatal injury was sustained outside the hotel. I think there are sound reasons for so finding. I have found that there is no basis for finding that the aorta injury or the rib injuries were, on the evidence, caused at the unloading. I must say that I have no real confidence in much of that evidence for reasons already given and others that appear.

## **PART TWELVE**

### **EVENTS AFTER THE PRISONERS WERE PLACED IN THE CELLS**

#### **12.1 INTRODUCTION**

The first thorough examination of these events occurred in the Commission hearing. This was due to the fact that much of what happened was known only to the five officers who were charged; they did not give evidence at the inquest and these matters were not gone into at the trial.

The events are important because they may throw light on what happened earlier. Furthermore, there are questions as to when the body was discovered, whether there was a proper checking of the prisoners, whether there was an attempt to resuscitate or whether there was a cleaning of the body. All these matters were raised at the inquest and the Coroner formed certain views on them (which he conveyed to the Attorney General in his memorandum).

Again, because of the relatively limited purpose of this report I shall not be able to deal with all of the issues which arose in the hearing about the time period under discussion in this part. However, the important issues which must be discussed by me are as outlined above. The main evidence available as to these matters is that of the officers who were at the station; but there are other strands of evidence which bear upon their evidence--the evidence of two community welfare workers who were contacted during the evening, of the doctor who was called to the cell, of other police officers who were associated

with investigation and who spoke to some of the officers that night and gave accounts of what they then said, and, very importantly, of Dr Hilton, the pathologist already referred to.

## **12.2 AN OVERVIEW OF THE POLICE EVIDENCE AS TO THE EVENTS UP TO MIDNIGHT**

In general terms the police evidence is to the effect that once the prisoners were lodged in the cells, Constable Emmanuel went back to Wickham with Adrian Delint in the Wickham van and gave Police Aide Walker a ride home on the way. Emmanuel estimated the time of his departure at 9.45pm and I have no reason to doubt this although it is not a matter of any great significance.

The other officers, Constables Armit, Holl, Bordas and Young, commenced the relevant paperwork associated with the arrests. Sergeant Devaney returned to the station on several occasions during the two hours after the arrests. He issued certain instructions concerning the prisoners to which I refer below. Devaney telephoned the Regional Officer Superintendent McGrath and advised him of what had happened at the hotel. McGrath noted the time (10.18pm) and other details of the call. On Armit's evidence he went to the hospital to have his injuries treated at about 10.30pm and returned at about 10.55pm.

Constable Puzey returned to the station after completing his patrol at 10.30pm and was met on the verandah of the station by Young who chatted with him about his patrol and generally about the events of the night. Young then requested Puzey to attend at the house of Bob Hart who was one of the DCW officers in Roebourne and advise him of Pat's arrest. Puzey left the station to do so at around 10.40 to 10.45pm. Puzey said he did not enter the station proper on this occasion; Young said that they were in the station kitchen. I prefer Puzey on this point. I found him to be a reliable witness as to the events of the night in general. He is independent of the fight and the unloading. But in particular, he is more likely to be right because he gave evidence to this effect at the Inquest shortly afterwards, while Young first gave evidence on the point of the Commission hearing. I find that this conversation was on the verandah.

Young, in his second report to the investigators said that he conducted a cell check with Bordas but he could not remember what time that was done. He said that he checked the adult cells and forgot the juvenile cell where John Pat was lodged. Bordas was unable to recall doing a cell check but did not rule out that he had done so. At his trial Young testified that he conducted this cell check at 10.45pm.

At 10.50pm Young telephoned Guy Parker who was the DCW officer on call that night. He advised him of John Pat's arrest. Details of that call will be discussed below. Puzey returned from his attendance on Hart at about 11.00pm. During this time Gilby had been in the environs of the station but had not participated in any of the administration in connection with the arrests.

At 11.30pm Young asked Gilby to check the juvenile cell saying that he had forgotten to do so. Gilby went to the cell; he saw John Pat lying on his back and thought him to be dead. He returned to the office and reported. Some of the other officers went to the cell and felt for a pulse but did not otherwise touch or interfere with the body. Armit telephoned Devaney and Dr Rigby who attended shortly thereafter. Dr Rigby certified life extinct and made a cursory examination of the body. Devaney ordered that the cell be secured and instructed Puzey to conduct the usual sudden death formalities including photographing the body. Devaney returned to his house where he again telephoned McGrath to advise him of the death. McGrath directed that all the officers were to remain at the station until the arrival of investigators from Karratha.

Despite this direction, Devaney instructed Young that he should go home at midnight. Devaney said that he did this because Young appeared to be upset. Gilby also left either at midnight or shortly thereafter when his shift ended.

There were varying accounts as to the time the prisoners were lodged in the cells. I find that it was likely to have been between 9.30pm and 9.40pm.

Munda, Pat, Smith, Coppin, and James were not taken to the charge room nor were they asked to sign the property sheet. In each case Young noted the respective property sheets 'declined' (to sign). The practice in Roebourne in 1983, was to take prisoners straight from the vans to the cells if they were drunk, argumentative or violent. Given the large number of arrests on drunk charges, the majority of prisoners in Roebourne were taken straight to the cells without them being given the opportunity to sign the Prisoners' Property Book. It would seem that the accepted practice was to endorse the property sheets 'declined'. There was no charge room prior to 1983 and the above practice was the established position and was continued after the construction of the charge room in 1983.

At about the time that the last prisoners were being taken to the lockup, Devaney and Emmanuel were in the charge room. After the last prisoner was taken out of the Wickham van, Emmanuel went to that van and closed the cage doors. When he returned to the charge room, all of the officers, including Walker, were there. At about that time it is likely that there was some discussion of the events of that night; but Devaney regarded the most vital concern of the officers at that time to be the compilation of a list of persons who had escaped arrest. Emmanuel spoke to Devaney and then left the station in the Wickham van, accompanied by Walker and Delint.

Devaney gave further instructions to Young, including a direction that any officers who were injured be taken for medical treatment. At some time Bordas, Holl and Armitt left the charge room and went to the main office or constables' room, possibly after getting forms for the briefs and a typewriter. It is likely that before he left the charge room, Holl took out cards which recorded personal and police details for the prisoners arrested that night, including a card for Phillip Coffin instead of Peter Coppin. There was also some discussion as to which officers would do what paperwork and possibly some preliminary discussion as to the charges to be preferred.

It is likely that also at about this time, that is, between 9.45pm and 10.00pm, at least Armitt and Bordas contributed to the description of the prisoners which was later recorded by Young on the property sheets.

On the property sheets for each of Coppin, James and Pat, Young noted their condition as 'bleeding'. On the property sheet for Smith, Young noted his condition as 'good/bleeding' and noted the condition of Munda on his property sheet as 'good'.

At the preliminary hearing in the case of Smith v. Young, Young testified that Devaney asked him to check the prisoners and when he checked Roy Smith he complained of a sore back, i.e. he did not then say that Smith's complaint was associated with his putting of Coppin into the cell. Young did not note Smith's complaint in the Occurrence Book as he presumed that Smith was malingering and in any event the hospital "didn't want to know" about complaints made by drunken prisoners. Neither of those explanations excuse Young's failure to follow up the complaint or to note it in the appropriate book.

The officers had sustained minor injuries as a result of the night's events which were consistent with being in a fight.

That is a general overview of the evidence. I turn to some more detailed matters.

### **12.3 ARMITT'S ATTENDANCE AT HOSPITAL**

Devaney instructed Armitt to go to the hospital for treatment This direction was part of the general instruction to Young, and was relayed to Armitt, possibly by Young. It is likely that Armitt did not go to the hospital immediately upon receiving this instruction. Gilby eventually took Armitt to Roebourne Hospital but not before a photograph was taken of his injuries. They took the F100 van. Armitt testified that he arrived at the hospital at 10.30pm. His Counsel in his written submissions to me and contrary to his client's evidence, submitted (appropriately, in my opinion) that Armitt went to the hospital at approximately 10.00pm and returned at approximately 10.20pm. This supports the submission of Counsel Assisting and is in accordance with the Patient treatment Sheet which was filled in by a nurse who noted the time of attendance as 2200 (hours). I find that Armitt did arrive at the hospital at about 10.00pm and arrived back



at the station about twenty or so minutes later. The latter time is based upon Gilby's estimate of the time he was away from the station which has not been disputed and the nurse estimated that Armitt was at the hospital for about ten or fifteen minutes.

The nurse and the nursing aid variously described Armitt's demeanour at that time as 'lively and bouncy', 'jovial' or 'jolly' and 'chatty'. After being treated by the nurse Armitt had a conversation with a sixteen year old Aboriginal girl, as he was leaving the hospital. Part of that conversation consisted of Armitt telling the girl that 'Your mate did this', and identifying Ashley James as her 'mate'. Armitt then said words to the effect that the gift should tell her mate that he was going to get him. Armitt then laughed and said that, 'I didn't mean it, darling!'. The girl replied 'Oh yeah, Spunkey'. The evidence of Armitt was that when he said he was going 'to get' James he was referring to his intention to arrest Ashley; what he 'didn't mean' was that Ashley was the girl's 'mate'.

It will be noted that the hospital workers' accounts of Armitt's attitude and behaviour lends some support to the finding I make about his behaviour at the hotel. I think he was somewhat affected by liquor although obviously not drunk.

Armitt's evidence that he completed two face sheets and the Occurrence Book entry relating to the incident at the hotel prior to going to the hospital is unlikely to be correct. In fact given the time span between the lodgment of the prisoners in the cells, the photographing of Armitt and his departure for the hospital I find it unlikely that Armitt commenced any paper work until he returned from the hospital. However, he probably participated in discussions as to the charges which were to be laid against some of those arrested.

Meanwhile, at the station, Young had started filling in the Prisoners' Property Book at 10.00pm, and recorded that time on the property sheets. It is likely that Young completed filling in the sheets, apart from the section relating to the charges, in about ten minutes. Devaney's recollection was of going into the charge room and seeing Young there by himself completing the Property Book. This would indicate that it was some time before 10.10pm, and that the other officers had left the charge room

### **12.3.1 SERGEANT DEVANEY'S INSTRUCTIONS**

Devaney was, on his own testimony, deeply distressed by the incidents of that night, and his recollection of the sequence of events at the station was confused. However, I consider it likely that the account of events which he recorded in his statement of 6 October 1983, was probably more accurate than his later evidence at the Inquest, trial and Commission hearing.

In that statement Devaney stated that he inspected the property sheets, known as the property book and the entries relating to the prisoners arrested that night were not completed, in particular the charges against the prisoners were not yet entered. However, he noticed that there were a number of entries indicating that the prisoners were bleeding. He asked Young about these entries and Young explained that the prisoners' injuries were only superficial and were consistent with their being in a melee. Devaney instructed Young to check the prisoners and to report their condition to him. He then stated that Young reported that the prisoners had superficial injuries and did not require medical attention. Devaney stated that he instructed the duty staff to keep regular checks on the prisoners. It is not clear whether this series of conversations occurred at the same time or whether Devaney has amalgamated them into one event. Even at the inquest Devaney was unclear on this point.

At about 10.10pm, it is likely that Young brought the Property Book into the station so that the Occurrence Book could be written up. As Armitt was the senior officer involved at the disturbance, it was expected that he would complete the Occurrence Book. It is likely that at about the time of his return to the station, that is 10.20pm, Armitt commenced filling out the Occurrence Book. There was also a discussion between Armitt, Bordas and Holl about the relevant charges for those arrested.

### **12.3.2 SERGEANT DEVANEY'S CALL TO SUPERINTENDENT MCGRATH**

Although Devaney could have telephoned from his office, he returned to his house in order to phone McGrath. It is of note that, at this time, Devaney was aware that a witness to the events outside the hotel (Julie Tucker) intended to lodge a complaint about the officers' behaviour that night.

He telephoned McGrath at 10.18pm to advise of the incident and involvement of the off-duty officers. McGrath made a contemporaneous note of the conversation. McGrath's note recorded, amongst other matters, that the prisoners were to be charged with unlawful assault and aggravated assault. McGrath testified that his understanding, based on the note, was that Armit had gone to the hospital at the time that the phone call was made. McGrath instructed Devaney that all officers were to remain at the station until the arrival of the investigators. Devaney did not instruct any of the officers to record his call to McGrath in the Occurrence Book.

### **12.3.3 YOUNG'S INSTRUCTION TO PUZEY**

It is likely that after speaking to McGrath, Devaney returned to the station and instructed Young to have one of the on-duty officers notify the Department of Community Welfare (DCW) of Pat's arrest. It was a requirement that DCW be notified of the arrest of a juvenile. During the day this was done by telephoning the DCW officer. Police and DCW had an arrangement for after office hours notification. DCW supplied a duty roster sheet which was exhibited in the police station office near the telephone. The arrangement was that police would ring the duty officer shown on the roster if an after hours arrest was made. Guy Parker was the duty officer that night. His house was connected to the telephone. It is not in dispute that Puzey returned to the station in the Toyota van at about 10.30pm; although this was not recorded in the Occurrence Book. Puzey said Young met him at the station doorway. He asked Puzey where he had been, and spoke to him about the events of that night for some time. Young also told Puzey to notify Hart that Pat had been arrested. He told Puzey to go to Hart's house. Young's evidence at the Commission hearing was that he spoke to Puzey in the station kitchen and that he did not check the DCW roster, which was located in the station where the off-duty officers were, before telling Puzey to notify Hart of Pat's arrest. Puzey testified that, at night, it would be usual to go in person to notify the DCW officer only if he could not be contacted by telephone, and the evidence is consistent that after hours it was normal to telephone the rostered DCW district officer from the phone inside the station.

### **12.3.4 CONSTABLE PUZEY'S VISIT TO HART**

Puzey attended the house of Robert Hart, who was also a District Officer employed by the Department of Community Welfare to advise him of John Pat's arrest and detention in the cells. Puzey had no difficulty in contacting him personally at his home at about 10.50pm or 10.55pm. When Puzey spoke to Hart, it is likely that Puzey told him that Pat was charged with aggravated assault and hindering, as Puzey had been told that by Young. There was no essential conflict between Puzey and Hart as to when Puzey's visit occurred and what transpired.

### **12.3.5 CONSTABLE YOUNG'S CELL CHECK**

In his second report to the investigators, Young stated that he conducted a cell check with Bordas but he was unable to recall the time. Subsequently at his trial he testified that he went to the cells at 10.45pm and checked the condition of the adults. He did not check the juvenile cell. Armit and Holl testified that they were unaware of any cell check prior to that conducted by Gilby at 11.30pm. Bordas could not recall if he did a cell check but said that he may have done. He said that the normal procedure would be to check the adult and juvenile cells and to note it in the Occurrence Book.

Although Gilby's evidence given on various occasions is not entirely consistent, he reported to the

investigators and later testified at the Inquest that he conducted the check of the juvenile cell at Young's request, Young having told him that he had forgotten to do so. Young has no recollection of giving Gilby that instruction but said that he probably spoke to Gilby but could not recall what he said to him. Young's counsel submitted to me that sometime prior to 11.30pm Young recalled that he had overlooked checking the juvenile cell during his check at 10.45pm and instructed Gilby to do so. He bases this submission apparently on Gilby's evidence.

It would seem on the available evidence that officers would normally conduct cell checks in pairs. However, it is odd that it should be Bordas who would accompany Young as he was not on duty, he was involved in the paper work associated with the arrests and Gilby was available to assist Young.

While Young was conducting the check of the adult cells, Roy Smith complained to him about a sore back. Young told Smith that he would tell the boss and if his back was still sore in the morning he (the boss) would take Smith to hospital. Roy Smith's evidence confirms that Young made a cell check.

It was not until his trial that Young purported to recall the time of the check. I am satisfied that a cell check was made, on the evidence of Young and Smith. For reasons that will appear I am not satisfied that it was at 10.45pm. What cells were checked is a very important question.

### **12.3.6 CONSTABLE YOUNG'S NOTIFICATION OF PARKER**

At about 10.50pm Young telephoned Guy Parker, another District Officer employed by the Community Welfare Department in Roebourne and advised him that John Pat had been detained. When Parker asked whether he would need to go to the station, Young replied that there was no need, Pat was going to plead guilty. Young also told Parker, when Parker asked, that he was unsure whether Pat was drunk. Young advised Parker that Pat had been charged with aggravated assault and hindering.

As Young already was aware that Puzey had left the station, on Young's insistence, to advise Hart of Pat's detention, it was odd that he telephoned Parker to tell him of the fact.

Young was specifically questioned at the Commission hearing about the double notification of DCW officers. He had not been asked about this issue in any of the previous proceedings nor it seems did the investigating officers consider it to be an issue worth pursuing although aware of it (Puzey's statement and the Occurrence Book). At the hearing Young testified that he telephoned Parker after Puzey had radioed to the station saying that he could not get Hart out of bed. According to Young, Puzey reported that Hart's car was in the driveway but Hart was not there. He also testified that he thought that the other officers had attempted to contact Hart by telephone before he told Puzey to drive over to Hart's house. I reject this account It is ridiculous.

- Puzey gave evidence before Young was called. Puzey said nothing about any difficulty in contacting Hart, and in fact did speak with him. He was
- not asked whether he radioed back to the station to say that there was any problem in seeing Hart. He was not asked about this by his own counsel and, more significantly, by counsel for Young. He was not asked by any other counsel because, of course, they knew nothing of the suggestion. The simple fact is that Puzey was instructed by Young to report the matter to Hart. He drove to Hart's home and encountered no difficulty in speaking with him.
- No officer said that he had earlier tried to telephone Hart. It is almost inconceivable that they had done so. The DCW roster was on the wall just above the telephone. It is agreed that it showed Parker as the duty officer. If an officer did try to report the matter he would naturally ring Parker. Hart said that there would not have been any difficulty in contacting him. He had gone to bed earlier, but two people were in the house watching a video and would have answered the telephone.

The question is why did Young invent this story of Puzey radioing to say that he could not see Hart.

It was not that he was caught by surprise since he said that in the days before he gave evidence he had conferred with his counsel and they had 'gone over it, over it and over it' (this point). If this was the explanation for ringing Parker (a very sensible one if in fact Puzey had not been able to find Hart) there was no occasion to go over it and over it. The explanation was obvious. It was also obvious that if this explanation was conveyed to his counsel, it was counsel's obvious duty to put this explanation to Puzey. However, plainly the explanation simply falls to the ground because Puzey did see Hart and Hart would have been available if he had been earlier telephoned.

In his final submission to me, Young's counsel submitted that Young telephoned Parker because at that stage he realised that Parker was the rostered DCW officer. That is true in the sense that if the rostered officer had been Mr Smith, Young would no doubt have telephoned Mr Smith. But it does not begin to explain why Puzey was told to inform Hart or why the false explanation was given for ringing Parker.

There are questions about this whole incident. Why did Young instruct Puzey to go to the home of a DCW officer (as opposed to telephoning)?; but in any event why tell him to go to the house of Bob Hart, who was not the duty officer shown on the roster?

The second question invites a simple answer; perhaps he did not know when speaking to Puzey who the DCW duty officer was. That, of course, is perfectly reasonable but it invites another question. Why not take the elementary step of looking at the roster which was there for the very purpose? That would have been a very simple thing to do but it would have involved going inside the station. Puzey says he did not get past the verandah. But checking the roster had another dimension. The roster showed the duty officer and his telephone number. Why not telephone? Why not do exactly what Young did in respect of Parker? If, on the other hand, Young did in fact know that Parker was the duty officer, why send Puzey off to Hart?

The very facts raise a question as to whether Young had a reason for wanting to get rid of Puzey for the time being. At this stage I leave the point to return to it later.

When Puzey returned from notifying Hart, Young told him that he had already entered the notification to DCW in the Occurrence Book. It was, in fact, Armitt who had noted the Occurrence Book with this entry, but I make no point of that. Further, only Young's notification of Parker was noted, not Puzey's visit to Hart. Young could give no explanation for that. Puzey agreed that when he returned to the station he 'asked no questions'; he did not go into the details of what had occurred and he did not notice anything unusual about Young's demeanour at this time.

According to the officers, from about 11.00pm onward until Gilby informed them that Pat was dead, they went about the paperwork and the on duty officers about their usual duties.

### ***12.3.7 CIDER GILBY'S DISCOVERY OF THE BODY***

It is an agreed fact that Young requested Gilby to conduct a check of the juvenile cell and this is not disputed in the submissions of his counsel who added that the request was made at some time around 11.30pm. I so find, despite some variation in Gilby's account of the time he was asked to do the check. Gilby (who usually worked the same shift as Young) said that it was usual for Young to conduct a cell check before he went off duty and that whoever does the final check usually does all the cells. However, according to Gilby, Young said that he had forgotten to check the juvenile cell. Gilby's recollection of the direction Young gave to him was to check the cell and to 'make sure he was properly locked in', and again to make sure that 'all the gates were locked and the cells were locked'. It is odd that Young did not conduct the cell check himself given that it was his usual practice, although the circumstances of the evening may have undermined usual practice.

I find it to be highly improbable that Young forgot to check the juvenile cell. He knew Pat, he saw him unloaded from the van, saw him fall to the ground, saw Armitt take him to the cell, he entered up the property book which noted that Pat was a juvenile. If the cell check conducted by Young was after 10.30pm then the possibility of him forgetting to check the juvenile cell is even smaller as he had specifically directed Puzey to tell Hart of Pat's arrest and to forget to check the juvenile cell after that is in my view inexplicable, particularly as at 10.50pm he telephoned Parker on the same topic.

Gilby went to the juvenile cell and saw John Pat lying on the floor on his back in the exercise yard. He told him to get up on to the mattress. He then noticed that Pat did not appear to be breathing. He returned to the station and advised the other officers of what he had seen. In the meantime Puzey had noted the cell check in the Occurrence Book and in anticipation of everything being in order had noted 'no complaints'. He amended the entry by crossing out the words 'no complaints' and making entries as to what actually happened. He was later charged with making a false entry in the Occurrence Book in that he noted that a cell check had been completed when it had not. Puzey was served with the initial documentation in connection with this charge, indicated that he would plead not guilty and heard nothing more about the matter. It would appear that all copies of the brief have disappeared. No explanation has been forthcoming from the police about this incident.

On being advised of Gilby's observations, Armitt, Young, Puzey and Bordas went to the cell and Armitt and Young checked for a pulse but found none. Holl did not go to the cell (according to his evidence) until the other officers returned and confirmed Gilby's account. Holl then went to the cell and he too tried in vain to locate a pulse. Both Holl and Armitt testified that the body seemed cool. Puzey and Young said it felt warm, as did Dr Rigby.

Essentially, all officers denied any attempt to resuscitate John Pat and no such attempt was made by Dr Rigby when he arrived.

Armitt telephoned Dr Rigby and Devaney and they attended the station either at the same time or in close proximity. Dr Rigby then made a cursory examination of the body, noting that there was evidence of blood on the lips and left ear with no obvious bruising around the head; there was no blood inside the mouth that Dr Rigby observed. He also noticed that there was what appeared to be fresh blood stains on the floor. Dr Rigby moved Pat's head, but not his limbs or body; he thought that the most likely cause of death was head injury. He said the body was still warm. He did not notice any dampness in the area or indication of water on the body.

Dr Rigby signed the standard Certification of Life Extinct forms and then left the station.

Devaney examined the body but did not move it. He also examined the exercise yard, the inner cell and the washroom. The inspection of the surroundings of a dead human body which has been brought to the attention of the police, is standard police procedure outlined in the Police Manual.

Puzey locked the cell after Devaney and Dr Rigby left. Devaney received a short account from Armitt, Holl, Bordas and Young of what had happened that night. Devaney testified that this was the first he had known of any difficulties in getting the prisoners to the cells. In addition, he recalled being advised at that time, that John Pat had needed to be assisted to the cells, and that the deceased was found by Gilby in the position in which Armitt had left him. At some stage Devaney also instructed Puzey to draw an outline around the body in the cell and take photographs. After leaving the cell, Puzey noted up the Occurrence Book from the time when Gilby had returned to the station. The Occurrence Book also records that photos were taken by Puzey at 11.50pm. At that time, Puzey took six photographs of the body in situ. The chalk outline was drawn after these photographs were taken and before two others were taken at the direction of Detective Sergeant Bartlett some time later.

Devaney telephoned McGrath and advised him of Pat's death. McGrath gave Devaney certain instructions. A contemporaneous note of the conversation, made by McGrath, is the first piece of independent evidence which shows the charges against John Pat as being the same as those which were recorded in the Property Book, Occurrence Book and other paperwork; that is aggravated assault and

disorderly conduct. During this second telephone call, Devaney also told McGrath that Pat had had to be 'assisted/half-dragged' to the cells. McGrath's instructions to Devaney included one to the effect that the officers were to remain at the station until Inspector Leslie, the regional officer, arrived from Karratha.

In normal circumstances, Puzey, Young and Gilby would have ceased duty at midnight. However, at midnight that night, only Young and Gilby ceased work. Puzey stayed on at Devaney's direction. Gilby went home and Young went home at about 12.15am. McGrath has testified that this would appear to be in breach of his direction to Devaney as he intended his Instruction to apply to all officers who were involved in the incident at the hotel and with the body.

At that time, all of the officers were distressed by the events of that night. Devaney testified that Young was sent home because he 'seemed to be affected more than anybody'. 'He was really upset about the whole incident and the others stayed on duty'. Young denied being 'unduly distressed'. However, Bordas said that he was later told that Young was upset. Puzey testified that the only time that Young appeared to be upset was when they found the body. In view of McGrath's instruction to Devaney to keep all officers at the station, it would seem unusual for him to allow Young to go home unless there was good reason. However, Gilby, who had as far as Devaney was concerned found the body, was also allowed to leave.

I am satisfied that Devaney instructed both Gilby and Young to cease duty in the ordinary way. That represented a breach of his instruction from McGrath although not necessarily an intended one. He may have interpreted McGrath's order as applying only to those engaged in the hotel incident. This, of course, would not explain Young being released and Puzey being kept back. It is difficult to see why Devaney should misinterpret McGrath's order. He had told McGrath during the second telephone conversation of the difficulties with the unloading and that the deceased had had to be 'half assisted/dragged' to the cell. Young, to Devaney's knowledge, was involved in the unload. It was during this conversation that McGrath had given his order. Furthermore, Young had been present at the arrests and the loading of the vans. I am satisfied that Devaney failed to observe McGrath's order. It may in fact have been a critical breach. The investigators were not told that night of John Pat's fall from the van. The first they knew of it was when Young told Bartlett the following morning. Had Young been kept back he may have told Bartlett that night and some facts would have been on the table. No doubt Bordas, Holl and Young would have been asked for their version of the event and Young would almost certainly have been asked when he made his check of the prisoners and perhaps about the duplication of the DCW advice. The question of whether Devaney breached McGrath's order was never taken up by the investigators.

I am, however, quite satisfied that Devaney told the truth about his reason for releasing Young---namely, that he appeared to be particularly upset. I accept that because I made exactly the same observation about Young's demeanour in the witness box before me. Among the witnesses he stood out in this respect. He was composed in giving his evidence about going to the hotel and what happened at the hotel. He was affected and upset when he spoke about what happened at the station. I have already found that his evidence was untrue, and particularly so, about the reasons for telephoning Parker, the DCW officer.

After becoming aware of Pat's death, there was some conversation between at least some of the officers that night during which possible causes of death were discussed. One of the possibilities mentioned was the manner in which Pat exited from the van. At least Armitt and Young recall there being some discussion of Pat's fall from the van. Armitt recalled that this was at around midnight and he had been told about the fall by either Young or Bordas.

### **12.3.8 WAS THE BODY OF THE DECEASED ACTUALLY DISCOVERED BEFORE 11.30PM?**

The question was raised by the Coroner, who came to the conclusion that it was. He made no public statement about this matter but set out a finding on it in his report to the Attorney-General. I myself come to that conclusion.

I refer back to my finding concerning Young's explanation for ringing Parker at about 10.50pm. For reasons already given, I am of the opinion that one of the clearest matters of fact in this whole inquiry is that that evidence was untrue.

However, it is necessary to look more widely at Young's evidence. He agrees that he was told by Devaney to check on the prisoners; he says that he did check on the adult prisoners. At his trial he put the time of the check at about 10.45pm and to the investigators in 1983 he said he was unable to remember the time. There is no record of the check in the Occurrence Book. He was prepared to accept before me the truthfulness of what he said at the trial---namely, that he had conducted a check but that he could no longer remember doing so. There is support for a cell check having been conducted from Roy Smith, who says that it was conducted by Young and that he, Smith, complained to Young of his back. At his trial, Young said that his checking of the cells was limited to the adult cells and he was not asked why that was so.

Before me, he assented to the proposition that apparently something had intervened or he had forgotten about the juvenile prisoner or that for some other reason he did not go to the juvenile cell. It is implicit in his evidence that there was no check on the deceased between the time when he was put into the cell and 11.30pm, despite Devaney's instruction and despite the fact that the deceased had fallen out of the van on to the concrete surface and had been half carried to the cell. It was also noted in the property book that the deceased was bleeding when placed in the cell. There appear to be a number of reasons why one would expect that the juvenile cell would have been checked.

Apart from the work associated with the arrest of the five people outside the hotel, no other particular duty seems to have emerged during the evening. There is nothing in the Occurrence Book nor in the evidence to suggest that other duties prevented Young from making a check of the cell. And, indeed, the uncontradicted evidence is that he had a lengthy general discussion with Puzey, in which he gave Puzey the specific instruction to go to Hart's home.

It seems to me that it is utterly impossible to suppose that the failure to check the juvenile cell could have been as a result of forgetfulness. If one accepts his evidence that the adult cell check was at 10.45pm, then, for the reasons already given, it seems incredible that he could forget the juvenile. It seems incredible that he could have forgotten the juvenile in the very course of making the check, but even if one supposes he had done so, he must inevitably have had the juvenile in mind when he made the telephone call to Parker. And, according to Parker, the latter specifically asked whether the deceased was drunk and was told that Young was not sure. Parker also said that he asked whether he should come down to the police station and was told that it was not necessary and that he, meaning the deceased, would plead guilty. At least at the end of that conversation there can be no doubt that the subject matter of John Pat and indeed, of his condition, was prominently before the mind of Young. Why did he not then check the juvenile cell, even assuming that some intervening event or lapse of memory had led him not to do so earlier on? There is simply no explanation for this. If there were nothing more to the matter than this, one might be prepared to treat it as one of those inexplicable things which happen. But there is the matter of Young's lying about the duplication of the reporting to the DCW. There must be an explanation for what was done and, even more, there must be an explanation for why Young lied about it.

I have given the matter my most careful thought. I can see no explanation other than that prior to 10.30pm there was a cell check and John Pat had been found dead. I can only suppose that the situation was being assessed and Puzey's presence was not desired. I find that he was met on the verandah and the trip to Mr Hart's premises was seen as the best diversion. Whether the decision was taken in panic or in the course of a more considered tactic I do not know. I consider it may well be the case that Young was caught off balance when he became aware of Puzey's return and was not at that stage aware as to who was the duty officer and just happened on Hart. As I have pointed out earlier, had he gone to find out Puzey would have come into the station (the result to be avoided) and more importantly the very act of looking at the roster posted on the wall above the telephone would almost inevitably have raised the suggestion, 'I'll give him a ring'.

It may be said that explains why Puzey was sent off; and it is clear that Young lied about why he rang

Parker but that leaves open the question of why Young rang Parker. I think there is a simple explanation of that. If there had been a death there would be an inquiry and things that were irregular would attract attention. It was usual to enter the notice to DCW in the Occurrence Book since the notification was obligatory. By ringing Parker, the duty officer, and then recording in the Occurrence Book (as was done) that Parker had been advised, Young made it appear that everything had been done in this respect in the most normal possible manner. Had he not done so, and had it been recorded that Puzey had gone to the house of Hart (who was not on duty) questions might have been raised. According to Puzey, when he arrived back at the station Young told him that he had entered the advising of DCW in the Occurrence Book.

I mention another matter. Puzey made it quite clear that he did not mix at all with Armitt, Holl, Young and Bordas (I should say that those names were put to him--I don't think he meant to say just that he did not mix specifically with those four); he had no 'allegiance of friendship' to them; he had a different outlook on life. It appeared that Puzey was deeply religious and his interests were religion and sport. He said that his reputation had preceded him to Roebourne. I did not understand him to mean that he disliked them so much as that they meant nothing to him. The important point, however, is that clearly the other officers could not count on his seeing things as they saw them. This may be the merest coincidence. But it entirely fits the scenario of Young not wanting Puzey about the station if a sudden catastrophe had happened with a young man who, on any view of the facts, had fallen out of a van being unloaded by police officers. When one adds to these suspicious circumstances the fact that even after speaking to Parker and thereafter having his attention yet again drawn to the juvenile by the return of Puzey, Young still did not go to the cell. It is not until 11.30pm that he sent Gilby off to the cell.

I find that Young conducted a cell check and found the body before 10.30pm. That does not enable me to say who else was told about it. I am confident that Devaney, Gilby and Puzey were not told. Whilst I think it likely that Bordas, Holl and particularly Armitt were told, the evidence does not enable me to say that this was done in any individual case. I think that the sending off of Puzey was related to a desire to have time to think what should be done and perhaps to attempt resuscitation or because resuscitation was being attempted.

The finding that the cell was checked and the body found before 11.30pm opens the way to a possible solution of another mystery.

According to the officers, John Pat was quite alive at the station. He stood up in the back of the van in order to step out; he swore at them after he fell; when being half dragged backwards by Armitt he was using his legs to half walk, bearing half of his weight; in the cell he swore again; when the light was turned on in the cell he made a purposeful movement to turn away from and shade his eyes from the light. Yet neither his fractured ribs nor torn aorta showed sign of bleeding. Dr Hilton said they appeared to be post mortem or peri mortem injuries. I have already pointed out how improbable it is, on the medical evidence, that the deceased could have sustained these injuries (and particularly both of them) when Armitt fell upon him given Armitt's account of what the deceased did immediately thereafter. And if the evidence of the officers is right about his lying on the ground thereafter, being put into the van, driven to the station, unloaded, taken to the cell and set down on the floor there is no possibility of getting his fractured ribs or torn aorta during any part of those proceedings. Unless he was set upon by another prisoner in the back of the van, which has not been suggested by anybody and which I do not regard as a possibility. If I felt confident about the evidence of the officers as to those matters I would find that following upon the finding of the body there was an attempt by one or some of the officers to carry out resuscitation and that the aorta and rib injuries were sustained in that attempt, I would make that finding on the basis that the opportunity for resuscitation was there, it is a perfectly natural thing to be attempted, it is very well capable of producing those injuries (according to the opinions of both Dr Hilton and Professor Kakulas) and there is no other reasonable explanation for the injuries.

I do not make the finding because I do not have that confidence in the evidence of the officers.

For a variety of reasons already discussed, I have no confidence in Armitt's account of the latter part of the incident with John Pat after they had gone to ground; I have no confidence in the evidence as to how



he was loaded into the van; I have no confidence in the evidence as to the unloading. Accordingly, I cannot exclude the possibility that something happened between the deceased and Armitt falling to the ground and the deceased being placed in the juvenile cell which may have caused the fracture of the ribs and the torn aorta. I have referred to the possibilities of injury when (and if) the deceased was against the side of the Toyota. Not being able to exclude that possibility, and having regard to the seriousness of the finding and the seriousness of the consequences of the finding I am not prepared to find that resuscitation was attempted or that the aorta and rib injuries were thereby caused. I add that I would not be at all surprised if resuscitation was attempted.

But I do find that either one or other of three things happened:

- the rib and aorta injuries were sustained as a result of an attempt at resuscitation which took place after the body was discovered and before it was seen by Gilby at 11.30pm - in which case, evidence has been suppressed and lies told; or
- the rib and aorta injuries were sustained when Armitt fell upon the deceased and Armitt's account of what then happened is not correct; or
- the rib and aorta injuries were sustained in an incident(s) which occurred after Armitt fell upon the deceased. This incident(s) must have involved police officers and must have occurred either immediately prior to the loading of the vans, during the loading, during the unloading or thereafter at the station. If such incident(s) occurred, it must have been known to some officer or officers and has been deliberately suppressed. In the event that this third possibility is true, such incident(s) must, given the evidence as to the fact of John Pat's condition at the relevant times, involve not only a suppression of facts but also the unlawful application of excessive force sufficient to cause those injuries. (I note that if either the second or third alternatives are the fact, death must have occurred very quickly, and blood circulation probably been gravely impaired by the time of the sustaining of the injuries. It is probable also that the sustaining of the injuries was not followed by vigorous action on the part of the deceased particularly in respect of the rib injury.)

I have indicated many of my areas of dissatisfaction with the evidence. I mention two others.

The first applies to Armitt, Holl and Bordas. The latter two knew of John Pat's exit from the van. Armitt knew of it by midnight. It was discussed. Plainly it was discussed in the light of the death. The investigators came to the station to make enquires. It is a measure of their dedication to truth, honesty and openness with their own force, that the officers did not tell the investigators of this potentially very serious incident.

The other concerns Holl. On his own evidence he went into the bottleshop and was involved in an incident with Ashley James and according to him the fight started between himself and James immediately the latter came out of the bottleshop. (I have held that he acted provocatively and aggressively but I refer only to his own account for present purposes.) According to Devaney, Holl did not tell him about going into the bottleshop that night and he did not tell the investigators. I have quoted in Part Ten the face sheet that Holl prepared in relation to the charges against John Pat. I quote again the first part:

*At about 9pm on Wednesday the 28th September 1983 an off duty police officer was attending to a disturbance outside the Top Bar of the Victoria Hotel, Roebourne. As a result of this a fight (actual fist fight) started between the off duty police officer and a person the off duty police officer was trying to arrest.*

There is no mention of Holl going into the bottleshop (that is perhaps not necessary); but there was no disturbance outside the Top Bar to which Holl was attending before the fight started. He and Ashley James were the disturbance. Holl's own written statement to Balcombe set out that before the fight started he said to James, '... You have been told to go, now go'. He said that James continued with his

challenges and then began to swing punches. The fight then started. On this account he was not trying to arrest James but to send him home when the fight started.

I add that I do not think there is evidence which permits a finding that the body was cleaned. Obviously Dr Hilton was surprised at the state of the body. It has to be borne in mind that Armitt had been on top of the body, on his evidence was brushing against the body at the Toyota, was in contact with the back of the body while taken Pat to the cells. All this could have cleaned any debris from the body. To wash the body would have been very difficult without leaving traces. I do not think there was any real evidence of trace. The body may have been slightly cleaned but I do not think it was washed.

## **PART THIRTEEN**

### **THE EARLY STAGES OF THE POLICE INVESTIGATION**

The investigators appointed by Superintendent McGrath were relieved of their duties within less than twelve hours. Accordingly, I merely set out what they did. In my opinion, this work is subject to a major criticism which I set out at the end of this Part.

#### **13.1 EVENTS AFTER MIDNIGHT**

At about 11.55pm McGrath telephoned Inspector Wallace Leslie who was attached to the Karratha Regional Office and instructed him to attend the Roebourne Police Station. Leslie arrived at the police station at about 12.50am. McGrath stated that there was a requirement that commissioned officers investigate cell deaths, that was why he contacted Leslie. He said that he would expect Leslie to get some 'insight' into the circumstances and that whether Leslie took statements was Leslie's decision, 'because he had to restore - my outlook was that he'd have to restore order to the situation and put things on an even keel, shall we say'. He expected that Leslie would speak individually to the officers directed to remain at the station. I note that Leslie had attended the Karratha union meeting earlier that night, as had McGrath.

Sergeant Devaney and Constables Armitt, Holl, Bordas and Puzey were at the station when Leslie arrived.

While they were at the station that night, and possibly just after midnight, Bordas telephoned the union. It is likely that, at that time, Bordas and/or other officers spoke to Gerard O'Hara, the lawyer who was travelling with the police union

Shortly after midnight, McGrath briefed Assistant Commissioner (Operations), John Dalton. Thereafter he telephoned Detective Sergeant Michael Bartlett who was attached to the CIB at Karratha and instructed him to attend the Roebourne Police Station. Bartlett did so. McGrath stated that he expected Bartlett to assist Leslie to carry out an investigation into the death and start taking written statements from the officers involved. Bartlett stated that he knew that Leslie had already received instructions in this matter although Leslie did not know that Bartlett was to receive instructions to attend the station. Bartlett said he had no details about the death other than that the person was arrested for fighting with police; he had no expectation at that time that officers would be detailed from Perth. Subsequently, when Bartlett was asked what he thought he was investigating he replied:

*In my mind the young bloke had been in a fight with the police. He was thrown in the van - I think the term once was used was 'like a dead kangaroo'. He fell out of the van; he was thrown out of the van; he was pulled out of the van and he was dragged down to the cells. These are the stories we were getting. Somewhere in that something killed him; something caused his death. And what we wanted to do was find out which one fitted where. Was it the police; was it [an]*

*accident. We don't know but there was something [which] went wrong and the boy was dead and he shouldn't have been.*

*...the boy died from injuries he shouldn't have received. And I don't think there was any doubt of that right from day one.*

When Leslie arrived he spoke to Devaney and possibly someone else. He inspected the Occurrence Book and the Prisoners' Property Book. His notes indicated that this occurred at 1.00am. Leslie said that the different times recorded in those books did not come to his attention.

Leslie said that the reason for recording the condition of prisoners in the Property Book was to protect the constable who made the arrest. It is significant that the notation of the condition of prisoners was not regarded as being effectively a record upon which the appropriateness of the subsequent activities of the arresting officer or lockup staff could be judged. That is, it did not appear that Leslie considered that what was recorded effectively imposed a duty on the officers to make appropriate arrangements for the welfare of those for whom they had a duty of care. Leslie did not conduct any cell check, in particular he did not check the prisoners whose condition had been recorded as 'bleeding', nor did he request any officer to do so or inquire of any officer whether a cell check had been completed. Leslie stated that if the prisoners' condition was serious, he would have expected the officers to advise him.

Bartlett arrived at the Roebourne Police Station at about 1.05am. Bartlett knew all of the officers present, although he had not attended the union meeting that night.

Bartlett had a conversation with Leslie and Devaney before inspecting the body with Leslie, Devaney and Puzey. This inspection occurred at around 1.30am. Bartlett noticed a yellow chalk line around the body. He also inspected the rest of the cells and the exercise area and to him there was nothing out of the ordinary. Although Bartlett did not recall Leslie moving the body, Leslie said that he moved the body when he first inspected it.

Bartlett and Leslie each spoke to some of the officers present at the station. After inspecting the body, Leslie spoke to Holl and Armitt. Leslie's notes indicate that Armitt told him that Pat could not walk properly and had to be assisted to the cell; also that Pat was the first placed in the van. Leslie also noted that Pat appeared to be drunk; although he did not indicate who told him this. It is likely that Armitt did tell Leslie that he had to assist Pat to the cell because Pat could not walk properly. It is also likely to have been either Armitt or Holl who told Leslie that Pat appeared to be drunk as it was only those officers who spoke to Leslie and who would also have been able to describe Pat's appearance. Later, Leslie said that he thought it was odd that Holl did not name the person who had started the fight if he knew it at that time; and that he did not mention the incident inside the bottleshop. Leslie also said that the account he had been given was not consistent with one of the face sheets (which had been completed by Armitt for a prisoner arrested outside the hotel that night.)

Bartlett also had a conversation with the Constables and was given a summary of events that evening. Holl was the principal speaker. Bartlett's notes indicated that he was told--apart from other circumstances which generally accord with other accounts of what happened that night--that,

- (i) on arrival at the Victoria Hotel, there was a disturbance amongst 10-15 Aborigines;
- (ii) about five minutes after, three of the off-duty police had them disperse: 'Holl went out to check the situation again and was set upon by about three Aborigines';
- (iii) another constable (Armitt) went to check Holl and was also set upon;
- (iv) all prisoners showed signs of minor injury and that Pat had to be assisted to the cells because of 'what appeared to be a drunken condition'. (No mention of any fall was reported.);
- (v) Pat was left lying on the floor in the lockup at 2200 hours and was found during a cell check at 2350 hours;

- (vi) there were no signs of injury to Pat. (Bartlett later explained this as meaning that there was no sign of injury that would indicate the cause of death.)

This document was a compilation in summary of what he and Leslie had been told by the officers. Bartlett then went and 'drew out the memorandum to be able to give it to the Perth office'. Neither of the investigators were told of Pat's fall from the van at the time.

Bartlett did not direct the officers to answer his question. Bartlett said that it did not cross his mind that by having the officers together at this time there might be 'contamination' of their evidence - either deliberately or unwittingly. He did not think that it would have been more prudent to have the officers' give their accounts individually at that stage.

It is noted that McGrath had expected the officers--at least Bartlett--investigating the death to speak to the Roebourne officers individually. Certainly it would seem that Bartlett had suspicions about Pat's death 'right from day one'. The propriety of the investigating officers' failure to initially interview the officers individually may therefore be subject to comment. In my opinion, there are a number of factors which should immediately have raised the question of homicide with the investigating officers. Foremost was Pat's age; a sixteen year old (or a seventeen year old as the police believed) would rarely die from natural causes. In addition, the investigators knew that very shortly before Pat's death, he had been involved in a brawl. These two factors should prima facie have cast some suspicion on the activities of others involved in that brawl. And if the brawl was regarded as being related to Pat's death, one would expect the investigators to treat the death as a potential homicide. These conclusions may fairly be drawn even without assuming that the investigators had any knowledge of the possibility of a complaint being lodged against the police for their behaviour outside the hotel.

Suspicion of Pat's death being the result of the activities of those involved in the brawl would have been significantly allayed by the appearance of Pat's body. Devaney said that Pat's body struck him as being in a natural sleeping position; Hart said that it did not appear to him that Pat had been beaten up. There was no grit or significant bleeding apparent on Pat's body. From all accounts, there was no obvious evidence that Pat's death was the result of trauma and there was little available evidence upon which to connect Pat's death with the brawl.

After his discussion with the officers, Bartlett notified the Perth CIB and made arrangements for a post mortem examination of Pat. This was done at about 2.30am.

At about 2.25am the Coroner's Clerk, Ross Bradley, was advised of the death. Puzey told Bradley that Pat had been in a fracas but he did not mention that it had involved police officers. During the conversation, Bradley asked Puzey if Pat was conscious when he was taken to the cell and Puzey said 'No'; he then paused for a while and said that Pat was conscious when he was brought in.

### **13.2 THE IDENTIFICATION OF THE BODY**

At about 2.50am Puzey went to Bob Hart's residence and advised him of Pat's death. Puzey stated that he had tried to ring Hart, but the phone rang out twice. Puzey also stated that he did not know Pat's next of kin until Hart advised him. Puzey also told Hart that Pat had been drinking that night. Hart attended the police station and identified Pat's body. He was in the station for a couple of minutes. Hart was then shown the body through the cell doors but asked to be taken closer to the body. Hart noticed that the body had a yellow chalk line around it; the arms were alongside the body and one leg was not straight. Although Hart noted the cleanliness of the body, he did not notice any water on the body or around it. Nor did he notice any blood on the cell floor but stated that the body would have obscured the stains. He said that the body was closer to wall where the bench was attached in the photographs taken earlier that night than when he saw it.

Hart then completed four copies of the 'Identification of Deceased Person' form in the charge room and

these were witnessed by Puzey. This took about ten to 15 minutes. While Hart was at the station he was advised that the off-duty officers had intervened in an argument between an Aboriginal man and woman and a fight ensued. Hart was also told that Pat may have been injured when an Aboriginal man was kicking at an officer who had fallen on top of Pat. Hart was told by the officers that Ashley and Lennis James and Geoffrey Lockyer were involved in the fight.

### **13.3 NOTIFICATION OF THE NEXT OF KIN**

At about 3.20am Puzey and Hart were to the residence of Mr Mick Lee, who was Pat's stepfather, and advised him of Pat's death. Hart told the officers that it was incautious to send Puzey by himself to notify the next of kin, given the circumstances. He suggested that another vehicle go and park a short distance away as backup in case of trouble. Hart and Puzey travelled in one car and advised Lee. Leslie and Bartlett parked a short distance away. However, there was no trouble. It is possible that at this time the three off-duty officers were left by themselves at the station.

### **13.4 THE ARRIVAL OF THE UNDERTAKER**

Bartlett again spoke to Holl before the arrival of Keith Whinnen, the undertaker. However, during this conversation, Holl was by himself. Bartlett's notes of interview indicate that he was told that Ashley James had wanted to fight and that Holl had chased James up the street. The notes also indicate that after James arrived in the bottleshop, Holl 'went outside to send him home. He had a flagon - handed it to John Pat and started to fight.' There was no reference to Holl going inside the bottleshop and speaking to James.

Bartlett concluded his interview with Holl because he was interrupted by a call from the CIB duty sergeant and when he returned Holl was dozing off. Bartlett told the off-duty officers to go home. Bartlett wrote the note of this conversation after he had spoken with Holl. He said he did this after Holl had gone. Devaney drove Holl, Armitt and Bordas home at about 3.50am. It is likely that Devaney had advised the officers to take notes of the events that night, but that the officers had not been asked to submit a report.

Prior to the arrival of the undertaker, Puzey completed the Mortuary Admission Form; including the section headed 'Circumstances Surrounding Death'. Part of the account therein, included a reference to the deceased being dragged to the cell due to his 'drunken condition', at 10.00pm. There was no indication of a fall from the van. Puzey said that the officers who had contributed to the account which was recorded in the Mortuary Admission Form were specifically Armitt, Bordas and Bartlett. Puzey said that Bartlett told him that Pat had to dragged to the cell because of his drunken condition. He obtained the time of being placed in the lockup from Armitt or Bordas.

Between 4.00 and 4.30am, Whinnen, the undertaker, attended the police station and inspected the body with Puzey, Leslie, Bartlett and Devaney . When Whinnen first saw the body, it was further from the bench than indicated by the photographs taken earlier that night; also Pat's hands were down by his sides and his feet were not crossed. The body was stripped and turned over onto a blanket. Puzey took a photo of abrasions to the right elbow and another of abrasions to the left ankle and back of Pat.

Whinnen paid particular attention to the floor as he had to check it for grit which may tear the body bag. He noticed that there was no grit or dirt on the body; and that even the hair did not appear to have any grit in it He did not notice any sign of water or wetness on or around the body. The body was then placed in a plastic body bag and removed from the station to the mortuary at the Roebourne hospital.

### **13.5 EVENTS AFTER 5.30AM**

Bartlett and Leslie left Roebourne police station at about 5.30am. It is likely that Leslie told Puzey to

cease duty before he left. Puzey recorded that he finished duty at 5.40am in the Occurrence Book although he did not leave the station at that time.

Two union representatives arrived at Armit's house at about 6.00 that morning and, at about that time, they at least took a photograph of the injuries to Armit's face that morning. The union representatives were already aware of Pat's death.

At about 6.00am, Devaney conducted a cell check. During the cell check, Roy Smith complained to Devaney of pain. Devaney stated that Smith claimed to have been kicked in 'a brawl'. It would seem that Smith told Devaney that he had been injured by an officer while he was in police custody. Devaney rang Leslie at about 6.10am and advised him of Smith's condition. Devaney also notified Dr Rigby about Smith.

At about 6.15am McGrath de-briefed Leslie by telephone. Between 6.30am and 7.00am Dr Rigby attended the police station, examined Smith and arranged for him to be transported by ambulance to hospital

Whinnen stated that he was called at about 7.00am and requested to go to the police lockup. When he arrived at the station and went to the adult lockup, Whinnen noticed that Smith had dry blood across his face and on his teeth. Smith did not speak to Whinnen and Whinnen thought that this was because Smith was in too much pain. Whinnen also noticed that there was a plastic bowl near Smith's head; he did not notice what was in it. Whinnen took Smith to the hospital; Smith was to spend the next five days there.

At about 7.00am, Bartlett was advised of the possibility that the internal Investigations officers may become involved in the investigation of Pat's death. Bartlett received another phone call later that day confirming that 'there was going to be a team coming up'.

On 29 September 1983, Detective Sergeant Bruce Scott was the CIB duty sergeant stationed in Perth. When Scott commenced duty at 7.00am, he was advised of the death of John Pat Scott said that he spoke to the night duty officer, who had received Bartlett's telex, and also rang Bartlett. Later Bartlett said of Scott that he would seek to do the job properly and that he supposed that both Scott and Balcombe were excellent. Bartlett also said that Scott was 'known as a bit of a politician'.

At about 7.30am, Bartlett arranged for the security of the two vans used; he did this by telephoning both stations. This may have been in response to Smith's allegations of being kicked while in police custody, as it would be relevant to ascertain whether the prisoners were bleeding prior to their arrival at the station.

Young went to Walker's home at about 8.00am and they discussed Pat's death. Walker was not rostered on duty that day, and Walker said that after he had spoken to Young, he went fishing and did not return to Roebourne until after dusk.

At 8.00am Armit, Holl and Bordas reported for duty at the Roebourne police station Armit was informed that Smith alleged that he had been kicked by an officer while in police custody. Bordas stated that during the morning he took photographs of Coppin, Munda and Lennis James. This was also likely to have been done in response to Smith's allegations.

The officers involved in the fight were told not to pursue any further arrests by Leslie and Bartlett either late in the night before they were allowed to go home or first thing next morning.

At 8.15am McGrath held a de-briefing at the Karratha police station with Leslie and Bartlett. By this time McGrath did not expect the investigation to be continued by those officers. Also at this time, McGrath was informed by Leslie that a doctor had been called to see Smith.

### **13.6 THE INVESTIGATORS RETURN TO THE ROEBOURNE STATION**

Bartlett and Leslie returned to Roebourne together at 9.30am. Bartlett said that he spoke to one person that morning, who he was told was to be a witness. He thought it was Lennis James and that it had come about by an ALS or welfare representative 'discussing it with me'. Bartlett also said that he took a written record of what James said to him. He said that he thought he had taken a handwritten copy of a statement from Lennis James which was later typed up and witnessed by Detective Tucker.

The Court of Petty Sessions was convened in Roebourne between 10.00am to 12.05pm. Armitt was the Clerk of Courts. Lennis James, Munda and Coppin appeared in Court that morning and were released to bail. Roy Smith was released to bail without appearing. No complaint was made to the Justice of Peace by any of the prisoners. This is significant, particularly given Armitt's presence and his position as a clerk of the court.

At about 11.00am, Bartlett had a discussion with Armitt, during which, Armitt's estimation of how drunk Pat had been was discussed. Bartlett also received an account from Armitt that Pat had sworn at him when he had left Pat in the cell. During this discussion, Bartlett queried with Armitt whether Pat was dragged to the cell; Bartlett's reason for so doing was that there was no evidence of dragging apparent on Pat's body. Armitt said that he picked Pat up and Pat had walked backwards. It would appear that Armitt made no mention of Pat's fall from the van during this conversation. After speaking to Armitt and prior to going to Karratha, Bartlett spoke to Young. Young told Bartlett that Pat had fallen from the van onto his face or head and he had appeared to be attempting to step onto a step that was not there. I make the point that this was before the cause of death was known. Bartlett had not heard of any mention of a fall prior to this. Indeed, neither of the investigators were told anything about the alleged fall by Pat from the van until Young spoke to Bartlett. When he was later examined on his response to Young's account of the fall from the van, Barrier said:

*Course I had to consider that although they said he fell on his head or on his face, there was nothing to indicate that when we looked at the body.*

### **13.7 NOTIFICATION OF THE CAUSE OF DEATH**

Prior to catching the 1.00pm flight to Karratha, Scott telephoned an officer who was present at John Pat's postmortem, and was told that John Pat had died of head injuries. Scott and Balcombe caught a flight to Karratha at about the same time as Commissioner Porter and Dalton who were attending a Kangaroo '83 exercise. It is likely that a call to Roebourne station to advise Bartlett of the postmortem results was made at approximately the same time as a call was put through to McGrath; that is immediately after the postmortem at about 2.00pm. However, Bartlett had left Roebourne a short while before 2.00pm and Armitt received the call. Bartlett received a radio message from Armitt while en route to Karratha, telephoned Armitt when he arrived, was advised of the postmortem result by Armitt and then telephoned CIB in Perth some time around 2.30pm to confirm them. Having received the telephone call, Armitt was at least aware that Pat had died of a head injury which was likely to have been caused by his falling backwards; it is also likely that Armitt knew that Pat's injuries were consistent with him first being punched in the face. It is regrettable that one of the officers involved in the circumstances surrounding the death of Pat received details of the cause of death and some of the injuries Pat suffered before any of the officers had been properly interviewed or had made formal reports about their involvement.

At about 3.20pm, Bartlett went out to the airport where he met McGrath who was there to meet Dalton and Porter. McGrath was also in possession of the postmortem results and there was some discussion of these results between these officers. Bartlett was already aware that the cause of death was a closed head injury; and amongst other things, Bartlett told McGrath of Pat having spoken to the officer when he was left in the cell.

In my opinion, the investigation was defective in one crucial respect. The plain fact was that the deceased had been in a fight with police officers shortly before his death; three of those officers were in the station. From the end of the fight the deceased had been in police hands at all times. It was obvious that his death might be in some way due to an act of a police officer, whether lawful, unlawful, negligent

or otherwise. Nowadays it is recognised that a death in custody should be treated as a potential homicide investigation. That was not the normally accepted rule in 1983. But the facts of this case, as known in their barest bones to the investigators, required that the investigation be treated with great care and as potentially very serious. In my view the only appropriate course was to ask the officers to prepare statements individually and while separated from each other; or, alternatively, for the officers to be individually interviewed. Gilby, Walker and Young should have been recalled or at least contacted first thing in the morning and interviewed. Leslie might have been obliged to call for some further help. The courtyard should have been examined at first light.

## **PART FOURTEEN**

### **LATER STAGES OF THE POLICE INVESTIGATION AND OTHER POST DEATH ACTION**

#### **14.1 THE POLICE INVESTIGATION**

##### **14.1.1 PRELIMINARY COMMENTS**

Before I examine the police investigation of the death in any detail, I shall address several submissions of a general nature made by Counsel for the Commissioner of Police, Mr McKerracher.

Mr McKerracher emphasised the view that as the investigators acted in good faith and, given their seniority, any criticisms of decisions they took in the investigation could amount to nothing more than the expression of a different opinion (provided with the benefit of hindsight). I do not agree. Seniority of investigators and their bona fides do not necessarily provide a shield against criticism or adverse findings. However, seven years after the event and without the pressures which were undoubtedly experienced by the investigating officers at the time, I am mindful of the fact that it is easy to be wise after the event.

I am required to inquire into:

*...any subsequent action taken in respect of each of those deaths including, but without limiting the generality of the foregoing, the conduct of coronial, police and other inquiries and any other things that were not done but ought to have been done...*

I have done so and will make my findings bearing in mind all the circumstances.

I add one other matter. Mr McKerracher submitted that the investigation should not be judged to be faulty unless it is found that another approach would have resulted in a different outcome; and that criticisms cannot be made unless 'it can be clearly demonstrated that the very likely effect of the alleged deficiency was that someone who should have been charged or convicted in respect of some offence was not charged or convicted'. The outcome of a particular investigation is only one of the factors by which the efficacy of the investigation can be assessed and quite often it is not the most important factor. In particular, the question of whether any person is charged, and if so when and with what, involves the judgment and discretion of persons other than the investigators.

##### **14.1.2 AN OVERVIEW**

The evidence concerning what happened immediately after Devaney was notified of the death is uncontentious and generally speaking, the action taken by the officers involved in this phase of the



investigation was satisfactory subject to the important criticism that I have made. In this chapter I shall concentrate on the investigation conducted by the investigators from Perth and issues associated with that and other post-death action.

It was early on 29 September that Detective Sergeant Bruce Scott who was the duty officer at the Criminal Investigations Branch (CIB) in Perth when he became aware of Pat's death. He spoke very early to Detective Sergeant Bartlett who gave him some details of the death and he read the CIB running sheet which was in effect Bartlett's report to the CIB sent some hours beforehand.

Later in the morning Inspector Alan Balcombe, who was the officer in charge of the Internal Affairs branch, was instructed to travel to Roebourne that day with Scott to investigate the death. Basically the two men were to work as a team but Balcombe had the primary responsibility of looking into any breaches of police rules and regulations and Scott was to concentrate on investigating any criminal behaviour.

I pause at this stage to give a brief outline of the relative experience of the two main investigating police officers. Detective Sergeant Scott and Inspector Balcombe.

Scott has been in the police force since 1954 when he joined as a police cadet. From 1964, he was generally occupied in the Criminal Investigations Branch of the force, becoming Detective Superintendent in 1987, Chief Superintendent (Discipline) in 1988 and Assistant Commission (Crime) in January 1990. In a statement which he provided to the Commission, he claimed to have had extensive dealings with Aboriginal people both in a professional and personal capacity and I have no reason to doubt this.

Inspector Balcombe retired from the police force in July 1984 after more than thirty-four years service. He joined the Criminal Investigations Branch (CIB) in 1953/54 and held various postings in that branch of the police force until 1981 when he was appointed Officer-in-Charge of the Internal Affairs Section.

It is clear that both Scott and Balcombe were very experienced investigators and the appointment of each to conduct the investigation into John Pat's death indicated the importance with which the police force viewed the investigation. I add that I found Balcombe to be an honest and forthright man who impressed me as a man of integrity. I do not mean that Scott did not so impress me. But Balcombe was in charge of the investigation. I had a better chance to judge him and I found him very open.

Apart from some early assistance from officers from Karratha, Scott and Balcombe virtually conducted the investigation themselves.

Mr Quigley whose firm had a retainer to act for the Union had been instructed to travel to Roebourne to look after the interests of the officers concerned. He arrived on the flight before the investigating officers. Mr Quigley told the investigators that the five officers would report in accordance with their obligations under the regulations but would not answer any questions until they were advised of the allegations against them. I find that as it turned out, this advice had a profound effect on the police investigation. As far as the investigators were concerned they believed that the officers would not answer questions and that any investigation in the form of interviews with the officers would be futile. I shall return to this point later.

Balcombe interviewed the five officers on 1 October when each of them (with the possible exception of Walker) read a prepared statement to him. Balcombe asked a few questions of each officer and requested each to deliver their typed reports to him at a later time. Balcombe's interview of the officers was quite perfunctory and of no significance. He spoke to the officers again on 6 October in an attempt to ascertain who had assisted Armit to place Pat in the police van and on 21 October when he posed several questions about the events at the police station when the vans were unloaded. This latter interview was in response to allegations of ill treatment made by Mrs Howard and her son Billy Scaddan. Balcombe handed each officer a list of questions which he wished to ask and each declined to answer them.

The investigators remained in Roebourne until Friday 7 October 1983 when they were directed to return to Perth. By then they had collected dozens of statements.

By mid October it was clear that the Coroner was going to commence the inquest before the police considered that they had completed their inquiries. The investigators cited this decision as fundamentally undermining their investigation and blamed the Coroner's decision to start the inquest on 30 October for their inability to complete their inquiries.

Further, Balcombe had formed the view that the Coroner had been subjected to some political pressure in fixing the commencement of the Inquest. This was a result of a conversation he said he had with the Coroner in his chambers prior to the Inquest commencing. I have no doubt that Balcombe honestly held that view. However, the Coroner has strenuously denied that he was subjected to any political pressure. Indeed, in his report to the Attorney General after the Inquest he said that on the information available to him on 20 October 1983 'the investigators might not have, been as zealous as they could have expected to have been and it was decided to commence the Inquest rather than allow any unreasonable delay which could well present problems arising from the location of witnesses and from loss of recollection of witnesses due to lapse of time'.

I do not consider that it is necessary for me to make a finding on this issue save that I consider that Balcombe's belief would have further exacerbated the frustration the investigators felt in not being able, in their view, to complete their inquiries. There appears to have been a degree of mutual distrust between Counsel Assisting the Coroner and Balcombe and Scott although this was not developed as an issue at the hearing. However, there is no evidence to indicate that this had any detrimental effect on the Inquest. Balcombe's belief about pressure on the Coroner probably increased the tensions which undoubtedly existed between Counsel Assisting the Coroner and the police investigators.

At the conclusion of the Inquest, the five officers were committed for trial on a charge of manslaughter. They were then suspended without pay. However, following submissions to the Minister, the Commissioner of Police varied the suspension to allow the officers to retain full pay and allowances. With the exception of Bordas, who was transferred to Geraldton at the end of 1983, the officers all left Roebourne for other postings shortly after their trial in 1984.

The officers stood trial in the Supreme Court in Karratha in May 1984 before a Judge and jury. The trial lasted for just over three weeks with the jury acquitting each officer by a unanimous verdict. I discussed earlier in this report the basis on which the prosecution ran its case at the trial.

Following the acquittal, the Crown prosecutor recommended against other charges being laid against the five officers because of the difficulties in proof which he considered emerged from the manslaughter trial. However, he did mention in advice to the Solicitor General that there was ample evidence for internal police action.

The then Commissioner of Police had instructed Mr Brian Bull to attend and 'independently review' the trial. One reason for this direction was to make any recommendations to the Commissioner as to further action should the five officers be acquitted. Mr Bull had by then been appointed to the new position of Chief Superintendent (Discipline) and specialised in internal investigations, discipline, corruption and associated matters.

In his report to the Commissioner following the trial, Mr Bull stated that he was satisfied that as far as incidents involving the police and the Aboriginal men outside the hotel, the actions of the police were either justified in the circumstances of a fight wherein the police were 'attacked by a mob' or were 'not worthy of credibility'. He considered that the allegation of an assault on Roy Smith might fall into a different category but that the evidence concerning this incident was 'particularly contradictory' and accordingly recommended that no further action should be taken in that matter.

As to the allegations of assaults on the prisoners when the vans were unloaded, Bull considered that the two independent witnesses, Mrs Howard and her son gave their evidence in an 'impressive manner'. He

observed that there was a degree of corroboration for the view that all or at least some of the prisoners were assaulted by the officers involved. However, in his view, it was necessary to support specific charges of assault with the precise identity of the offender and the evidence on this point was conflicting and accordingly charges of assaults would, in his view, 'most certainly be dismissed'. In this regard he had consulted with the Crown Prosecutor, Mr Davies, QC, who had come to the same conclusion.

Mr Bull also concluded that there should be no disciplinary charges laid against the officers as a result of what occurred at the hotel or at the police station apart from the charge against Constable Puzey for falsely noting the Occurrence Book.

The five officers were reinstated to duty on the very day that Mr Bull reported to the Commissioner.

Whether or not charges would have succeeded in court against one or more of the five officers, I consider it to be a most unsatisfactory state of affairs. There was evidence tending to establish that assaults had taken place at the station; the officers, or some of them, were clearly suspected by their superior officer of having been involved in assaulting prisoners. Yet they were reinstated to duty without further investigation and no doubt under the impression (as would all their colleagues be) that they had nothing to account for. I accept Counsel Assisting's submission that this had the potential for undermining the integrity of the police force and the confidence which members of the public are entitled to have in the police force. It seems important to me that the police force has a procedure in place to cope with that sort of situation.

It is beyond the scope of this report to analyse this dilemma in any detail. In my final report I deal with the very important question of the investigation of complaints about members of the police services.

After committing the five officers for trial, the Coroner wrote to the Attorney-General outlining the factual and legal reasons which caused him to commit the police and also outlining what he considered to be deficiencies in the police investigation. The latter comments were referred to the Commissioner of Police by the Minister of Police for his attention. The Commissioner briefed Mr Bull with the task of investigating the Coroner's comments. However, such investigation was postponed on the advice of Mr Michael Murray, QC, as he then was, who had appeared for the Commissioner at the Inquest, until the trial of the five officers had been completed. This is a question on which reasonable minds might differ but it certainly is not to be criticised.

Bull's investigation took the form of him inviting interested parties to respond to the Coroner's comments. Reports were received from Balcombe, Scott and Mr Dalton (the then Assistant Commissioner (Operations)). Further, at the request of the Commissioner himself, Mr Murray and Mr Quigley also provided comments.

Generally, it can be said that all those who reported to Mr Bull and the Commissioner found no substance in the Coroner's criticisms. Mr Bull reported to the Commissioner in August 1984 concluding that the police investigation into Pat's death was conducted properly and without impropriety. He made several recommendations which I would endorse as sound common sense, they being -

1. Further investigations of a similar type should be conducted by a considerably larger team, including administrative support, irrespective of the location of the investigation;
2. Wherever possible, the investigations team should operate from a location other than the local police station;
3. Irrespective of the location of the investigations team, police directly involved in any similar incident should be stood down but not suspended from normal duty during the critical part of the investigation (although I would add that in some cases suspension may be appropriate).

The Commissioner duly reported to the Minister of Police who recommended that the Coroner be invited to inspect the police file. It is unclear whether the Coroner was issued with that invitation. In any event,

he does not recall inspecting the file.

## **14.2 PARTICULAR ISSUES**

It will not be possible within the limits of this report to examine all aspects of the police investigation into Pat's death and the associated matters. I have chosen what I consider to be the more important issues which arose in the course of the evidence, some of which had already been identified by the Coroner as in his view warranting criticism.

### **14.2.1 THE INTERROGATION OF THE FIVE OFFICERS**

Balcombe conducted that part of the investigation which dealt with the questioning of the five officers. It would seem that Scott pursued other lines of inquiry such as interviewing witnesses to the events on the night of 28 September. Indeed, Scott said he did not receive any account from the five officers concerned as to what had happened on 28 September 1983.

Scott considered the question of requiring the officers to report at an early stage but decided not to pursue the matter. Balcombe considered that once Mr Quigley had advised his clients, there was no point in hurrying.

The approach that Balcombe took to the questioning of the five officers was basically in accordance with the Guidelines laid down in a document entitled Investigating Complaints Against Police Officers, the substance of which applied to police investigations in 1983. Two areas in those guidelines impacted on Balcombe's approach. The first is that an officer investigating a disciplinary offence can order the suspect officer to answer any question put by the investigator notwithstanding that the answer might tend to incriminate the suspect. The compulsion to answer such a question is to be found in the Police Regulations which impose a duty on all officers to obey a lawful order and to report on any matter on which it is the officer's duty to report. The second area is that the investigating officer cannot compel the suspect to answer any question concerning the alleged commission of a criminal offence. In an investigation of a criminal offence, according to the established procedure, a police officer has the same rights as does an ordinary citizen.

The Guidelines provide that as to the investigation of a disciplinary offence, an investigating officer is not authorised to instruct a member to answer a question which in itself is outside the defined ambit of a duty required of the member by the law or departmental instructions made or issued for his guidance in the performance of his duties. For example, in an allegation against a member using excessive force when dealing with a member of the public the Guidelines provide that it would be correct to instruct the member to answer such questions as:

*Were you on duty that day ?*

*Did you go to the address in question?*

*Did you speak to the complainant?*

*Did he accompany you to the station?*

*Did you interview him there?*

*What did you interview him about?*

However, it would be incorrect to instruct the member to answer the question:

*Did you use excessive force when dealing with this person?*

or any other question of this nature which is clearly beyond the requirement of a duty.

However, there is no prohibition on the investigating officer asking questions which relate to the alleged commission of a criminal offence, but that officer cannot instruct the officer being questioned to answer such a question. This is clearly appropriate as the duty of an officer investigating a criminal offence is to inquire and part of the process of inquiry is to attempt to elicit relevant information from potential suspects by questioning the suspect.

I make it clear at this stage that I do not criticise Balcombe for complying with the procedure laid down above and which is now incorporated into documented guidelines (although I say something about the guidelines). However, I do find that Balcombe's approach to the task of questioning the potential suspects was inadequate.

As I said earlier, on the day of their arrival in Roebourne the investigators were told by Mr Quigley that he would advise his clients not to answer any questions unless they were told what the allegations were against them. Mr Quigley told Balcombe that the officers would submit a report in accordance with their obligations under the police regulations. In effect, this meant that the officers would report, but only on those matters which touched on their duty. On Balcombe's understanding of what he could direct the officers to answer, this would mean that any questions directed towards ascertaining whether a criminal offence had been committed, and if so by whom, and any question relating thereto (unless perhaps the question related to whether the officer did something which was clearly the duty of the officer to do) would not be answered.

The Police Department's view was (and is) that a police officer suspected of a criminal offence is entitled to the same rights as 'an ordinary citizen'. In effect, that means that that the officer has an absolute right to silence (subject to any statutory exceptions). This right is not based upon any privilege against self-incrimination, as a citizen has the right to decline to answer any question put by a police officer whether or not the answer may tend to incriminate him or her.

It would be a difficult and indeed an artificial manner of questioning a suspect if the investigating officer had to frame his questions in terms of the officers' duty without touching on the alleged criminal conduct of which the officer was suspected. I think that was the difficulty the investigators were attempting to explain in their evidence before me.

If the above mentioned procedure is adopted, in a situation where an officer is suspected of criminal conduct committed in the course of his duty, it may result in a situation where no criminal charges are laid, as the investigation would certainly be incomplete. Moreover, the question of the suitability of the officer to continue in the police force cannot be properly considered as the questions which the officer could be instructed to answer would stop short of getting at the real issue.

*I find that Balcombe quickly formed the view that there was little or no prospect of obtaining any information from the officers other than what they were prepared to put in their reports. This view was formed partly on the basis of what Mr Quigley had told him the officers' attitude would be and partly through his own knowledge and experience of dealing with police officers under investigation. His attitude in this regard is illustrated by the following extracts from evidence to the Commission.*

*.. I believe if you want a policeman to make any admissions you've got to be fully armed with everything you can get. And bear in mind they had a solicitor there sitting on their shoulder while you were talking to them and if you think that you are going to get anything out of these officers, you are entirely wrong. I've been there and done that. I've had Mr Quigley on many occasion[s]; you don't get much out of him.*

*...You'd get nothing out of Mr Quigley' s - when he's there, you get nothing. I didn't expect*

*anything. I've been interviewing policemen for a long, long time. In that situation there with their solicitor sitting down with 'em, I wouldn't expect to get anything whatsoever of any importance. I didn't expect they would admit - any one of them would admit kicking him in the head. I didn't expect they would admit that they'd used excessive force. I wasn't really expecting much at all ...They're not babes in the wood, type of thing. I mean, some offenders you can sit down and talk to them and they will tell you things, but these policemen they don't rally - they don't cough too much, I can tell you, unless you really got the wood on them. And the only way you have even half a chance of getting anything out of these blokes is to get some pretty solid evidence against them and that's what we were trying to do: to get something concrete from all of these witnesses.*

*...Well, these fellows, there- they're just not the ordinary run of the mill that you can go there and con. They're people that you might not really expect to [get] confessions from. They were advised what to do by their solicitor. Now, any number of questions that I may put to them, there is no value in the question, the value is in the answer received, and the most I could give in evidence is I ask them a series of questions which they decline to answer.*

The above also explains why Balcombe did not wish to start by interviewing the officers. His view was that it was better to get some solid evidence (if there was any) and then speak to them with the backing of that evidence.

So it was with this expectation that Balcombe approached the interview with the officers on 1 October 1983. At this interview, each officer with the possible exception of Walker read a draft report to Balcombe who then asked some questions which were answered by the officers. Following the interview each officer provided Balcombe with a typed report which contained the following preamble.

*In accordance with the obligations placed upon me by the Police Regulations, I have to report as follows; but the following report is not provided of my own free will, but pursuant to an obligation placed upon me and the report is tendered and the questions I answered on the basis that it and they will not be used in evidence in any action brought against me.*

Apart from there being a question put to Bordas about the manner in which Pat exited from the police van, all Balcombe's questions were directed to the incident outside the hotel. Despite Balcombe's testimony at the inquest and the notes he said that he made of the conversations with the officers later in the night which would indicate that only a few general questions were put to the officers, it transpired from the evidence both from Balcombe and from the five officers that he must have put questions to them of a more particular nature.

At the time of the interviews on 1 October, Balcombe was aware of the allegations made by Cathy Park concerning the behaviour of the officers in the hotel; he had interviewed Roy Smith at the hospital who had alleged ill treatment by the officers at the station; and Lennis James had been photographed at the station indicating the position of the parked police vans and the point where he claimed to have been assaulted. Apart from Bordas' denial of pulling Pat from the van, there was no other denial of any ill treatment at the station in the officer's reports nor was there any mention of such a line of questions in any of Balcombe's notes. I would expect that had such questions been asked there would have been some reference to them in both cases. As there was not, I find it unlikely that such questions were asked. That is extraordinary, especially in the light of Smith's statement that he had been assaulted at the station and that Pat had been pulled from the van. Despite Balcombe's expectation that the officers would not answer any questions, his duty was to put whatever questions were relevant to the officer's conduct not only in relation to Pat, but to others who complained of ill treatment. As it turned out, the questions asked were few and not very straight forward.

Subject to what I have already said it would appear that no questions were asked about the allegations of ill treatment at the station until statements were taken from Mrs Howard and her son. By then it was quite certain that the officers were not prepared to speak to the investigators. Indeed, each handed Balcombe a memorandum in identical terms which had been prepared by their legal advisers outlining the reasons why the officer was not prepared to participate in a record of interview or to provide a full statement

relating to the death of John Pat. The reasons outlined in the memorandum in summary were:

- (1) the commencement of the Inquest before the investigating officers had adequate time to carry out an adequate investigation;
- (2) the unfairness of requiring answers to questions 'without first knowing the specific details of the allegations';
- (3) the failure to supply specific detail of allegations contained in 'various statements' and the request that they be supplied;
- (4) the apparent intention to call the officers to give evidence first at the inquest;
- (5) the reported comments of Peter Dowding in the course of an incident in Roebourne on 7 October.

Balcombe clearly understood that he was interviewing potential suspects in respect of the death of John Pat and must have believed that given the allegations of ill treatment at the station it was at least possible that other criminal offences may have been committed. However, he did not take contemporaneous notes of the interviews. The notes that he did take were on his own admission incomplete. The questions which he asked of the officers were superficial in the sense that there was no subtlety or probing in the questions which he recorded as asking.

I find that on each occasion Balcombe interviewed the officers in a formal sense, he believed the exercise would be futile from the point of view of any useful information and that, accordingly, he simply went through the motions. I am unable to find that, had he adopted another approach, the outcome would have been different. However, the interviews with the officers were not of the standard I would expect had they been approached as a potential homicide investigation.

Balcombe appeared to regard the advice of Mr Quigley to his clients as being a significant impediment to the investigation. But he believed that the officers would not answer any questions, even without that advice. Given the Guidelines, Balcombe would not have ordered that the officers answer any questions as they would have had the same rights as any ordinary citizen, namely an absolute right to silence.

I make mention briefly three particular aspects of the investigators' interrogation of the five officers. Balcombe's specific brief was to ascertain whether there had been any disciplinary breaches. On Young's own account, he had been instructed by Devaney to check on the welfare of the prisoners and to report back. He admitted that he did not check the juvenile cell which contained John Pat. This meant that Pat, on Young's story, was left in the cell for about two hours without being checked despite his being a juvenile (to whom a special obligation was owed), and despite Young having seen him fall heavily from the van and then having noted his condition in the Prisoners' Property Book as 'bleeding'. Whether or not Young's account was true, it warranted a particular and careful investigation by Balcombe. On the face of it Young disobeyed a lawful order which in the context of Pat's injured condition could potentially have meant a difference between life and death. Balcombe knew that Devaney had given the order to Young (at the latest when Devaney made his written report on 6 October) and knew, at least when Gilby gave evidence at the Inquest which was confirmed implicitly by Young (in his second written report about the night's events), that Young had not complied with the order. That this was not investigated is inexcusable. Incidentally, this related to a matter on which Balcombe could, in accordance with the guidelines, required an answer.

The officers were never questioned as to why no-one mentioned Pat falling out of the van to either Bartlett or Leslie during the period they were at the police station in the early hours of the morning of 29 September and despite them being asked on more than one occasion for their version of events. The first any investigator heard of the fall was when Young told Bartlett at about 11.00am on 29 September. This is notwithstanding that the officers (according to at least Armitt) had discussed the fall among themselves at around midnight. The discussion was clearly in the context of finding an explanation for

Pat's death. Such an inquiry on the part of the investigators could potentially have shed some light on the cause of Pat's fatal injury and provided some clue to the state of mind of the officers on the night - for example, were they attempting to cover up something or was the story of the fall invented? In my view this sort of inquiry was fundamental.

One other particular matter calls for some comment. The investigating officers did not pay any attention to the origins of the fight. Scott admitted as much in his evidence before me. No officer, and in particular Holl, made any mention of him being in the bottleshop before the fight broke out to the initial investigators. Even on Holl's account, what happened in the bottleshop was important, at least to set the background as to what happened shortly thereafter. The matter was largely ignored by Scott and Balcombe despite the taking of an early statement from Cathy Park. It will be seen from this report that the events in the bottleshop were significant in setting the scene for what was to occur later.

I raise the question, however, of whether Balcombe's view of the guidelines was correct. Some things are clear. Each of the officers claimed to be on duty during the fight and after. They brought themselves back on duty. They could be asked questions about their duty. Their duty must have included watching what was going on in order that they could act appropriately.

Whatever might be the limitations on what they might be asked about what they were doing, I cannot see any basis upon which any one of them could refuse to answer any question about what they observed others to be doing - whether police officers, Aboriginal people or otherwise. I think that very searching questions could have been asked and answers compelled. I do not mean to imply that the answers would have been unfavourable to any officer. I am speaking only of methodology. I think that Balcombe may have greatly underestimated his capacity to question under the guidelines. To take a case. He could clearly ask Young if he instructed Puzey to advise the DCW officer, Hart; and whether he telephoned Patter and why. Assuming he was given the reasons given to me, he could clearly ask all the officers whether they had telephoned Hart since, if they did, it would be pursuant to a duty. If they said 'yes' he could put Hart's denial of a call before the and rely upon Puzey for evidence that Hart was at home at least at about 10.45pm. If they said, 'no', he could confront Young.

## **14.3 DOCUMENTATION**

### **14.3.1 'COMPILATION' STATEMENTS**

It became clear as the Commission hearing progressed that it was a practice of the police who were involved in the investigation to make compilation statements. It would work in this way. A statement would be taken and sometimes dated. If further information was later obtained and it was desired that it should be incorporated into a statement, those unamended pages of the original statement would be retained and the additional or amended pages added or substituted. If the statement was dated (and they often were not), it would not necessarily reflect what the maker of the statement had told the police on the date of the statement. Sometimes the replacement or additional pages would bear the date they were made and so the statement would hear two dates - the date of the original statement and the date of the amendments or additions. At least then one could follow what had transpired. However, I consider it to be an imprecise and misleading manner (albeit a time saving one) of obtaining a final statement. In my view, when further interviews are conducted an entirely fresh statement should be prepared. Further, all statements should be dated.

### **14.3.2 THE ADEQUACY OF STATEMENTS TAKEN**

There was little in the witness statements taken by the various investigators to indicate that they were asked for descriptions of those involved in the fight either by reference to their physical characteristics or their clothing. If they were asked about these matters nothing is recorded in the statements to that effect,



Further, there seemed to be insufficient attempt to obtain a sequence of events from the witnesses. It may be that some witnesses were unable to be specific and this is understandable given the nature of the incidents they were describing. However, many witnesses gave supplementary statements and even then, there appeared little attempt to relate what was contained in those statements with what had been told to the investigators earlier.

For example, the statement of Ashley James did not address in any detail what had occurred in the bottleshop even though the statement was signed on 1 October. This was the day after Cathy Park had been interviewed and had made some serious allegations about the behaviour of the police, in particular that of Holl.

On my analysis of the statements which were taken by the officers there appeared to be little attempt to correlate the statements, to compare what each witness said, to follow up allegations made by one witness with another interviewed subsequently or to identify police or other participants in the fight. In short the police investigation insofar as it concerned the collection of information from witnesses was done in a rather mechanical manner without any real attempt to collate and analyse the material as it was collected. Although Scott and Balcombe disavowed any suggestion that they were understaffed, I consider that they were and that had they had more assistance, the task of critical analysis and organisation of the inquiry as it progressed could have been undertaken by either of those senior officers.

All the investigators who were asked disputed the need for a running sheet (which I understand to be a contemporaneous record of investigations undertaken and information received) for reasons which are not necessary to recite. It may be that in the particular circumstances a running sheet in that sense was not necessary. However, it is clear from the discrepancies in the evidence of Scott, for example, that he did not keep a chronological list of the investigations he and the others conducted. This is apparent from the conflicting evidence he gave at the inquest about certain issues which again conflicted with his evidence at the commission hearing. The latter conflict may be explained by the effluxion of time since the investigation. The conflicts in his evidence before the Coroner arose from inadequate notes. In my view, investigators should keep legible, comprehensive notes of their inquiries, if only for the purpose of properly and accurately recalling them if required to give evidence in any proceedings.

#### **14.4 INQUIRIES AS TO RESUSCITATION AND INTERFERENCE WITH THE BODY**

If the investigators were alerted to a real suspicion on the part of Dr Hilton that the body had been interfered with and/or there had been an attempt at resuscitation, then it was incumbent on them to carry out detailed inquiries as to the movements of the officers after the prisoners had been placed in the cells. Part of this investigation would have involved interviewing all those who had contact with the officers before 11.30pm when Gilby found the body. The nurses at the hospital who treated Armit were clearly able to give some information as to the time of his visit to the hospital which could be used to test Armit's account of his movements or at least provide part of the chronology of events. As it turned out, the evidence of the nurses was in conflict with that of Armit concerning the time he went to the hospital. Such an investigation would also involve inquiries as to who had access to the body after Gilby's discovery of it and whether there was any opportunity for interference with it. This was not done and given the expressed concerns of Dr Hilton, which I have no doubt were drawn to the attention of the investigators, it ought to have been done.

#### **14.5 PROVISION OF INFORMATION TO THE FIVE OFFICERS**

As to the supply of information to the suspects, Mr McKerracher argued that if the officers were guilty of some offence then they would know what happened and would gain no advantage; if they were innocent then they should be advised of the allegations against them and have the opportunity to rebut them. I do not think there can be any absolute rule about this. In the context of preparation for a criminal trial all the evidence both for and against the accused is presented prior to trial. However, in this case the fault lies

not so much with advising the officers of the allegations against them, but enabling them to be in a position which was indisputably unique for a suspect - working in the same physical environment with the investigators, daily contact with the investigators, potential access to confidential information either through inadvertence or improper means, potential contact with witnesses who may come to the station with the attendant potential of intimidation deliberate or otherwise.

Further, that the five officers continued on duty would do little to instil confidence in the local community that an independent police team was investigating the death of one of that community where there were grounds for believing that the community would suspect police culpability in the death.

One aspect concerning the provision of confidential information to the five suspects arose when, in a week or so prior to the commencement of the inquest, Sgt Couzens (who it will be remembered was the President of the Union) received a plain envelope on his desk addressed to him in which there were a number of statements. It was Couzen's understanding on looking at them that these statements were from witnesses in the John Pat matter and had been taken by both police investigators and the Aboriginal Legal Service (ALS) lawyers. Couzens believed that the Coroner had directed that Mr Quigley was not to be provided with witness statements which had been provided to other Counsel appearing at the inquest. At the time Couzens was not aware that the investigating officers had made a deliberate decision not to provide witness statements to Mr Quigley.

Couzens considered that the statements were of some importance to the preparation of the officers' representation at the inquest and promptly handed the envelope to Mr Quigley without advising him of the circumstances in which he received them. Mr Quigley said that he 'presumed' that Couzens had authority to hand him the statements.

Couzens agreed that the probable explanation for the provision of the documents [to him] was that they had been 'leaked' and it did cross his mind that they may have been unlawfully obtained. However, he considered that it was his duty as President of the Union to be supportive of his members and that the documents should be handed to Mr Quigley. He considered that his role as President of the Union was distinct from his role and duty as a serving police officer and saw no duty on him to advise Balcombe that he had received the documents. I have no doubt as to the bona fides of Couzens in this regard - he was and no doubt still is a strong Union man.

Several factors affected Couzen's decision to hand the documents to Mr Quigley, apart from his belief that his duty was to support and be protective of the members of the Union. A conversation had been reported to him which had allegedly been overheard in a city coffee shop between the Coroner and a couple of Government advisers prior to the start of the Inquest to the effect that the Coroner intended to commit the five officers for trial on charges of murder. I dismiss this very serious allegation as hearsay, completely unsubstantiated and as not worthy of credit. I add that the first hint of this allegation was heard when Couzens gave evidence at the hearing (in fact on the last day of the hearing) when there was no opportunity to investigate it. I observe that had there been the slightest indication that there was any substance in the allegation, Counsel for the officers at the Inquest was under a positive duty to ask the Coroner to disqualify himself. He did not do so and none of the vast number of documents provided to the Commission revealed any mention of this allegation, which I have no doubt is false.

As to Couzen's belief that the Coroner had given a direction that Mr Quigley was not to be provided with statements, it is not clear from the material placed before the Commission whether this direction was given or whether the Coroner simply acquiesced in the position adopted by Balcombe. At the very least, Couzens was not fully informed of the situation. At worst he was misled. What is clear is that until he gave evidence at the Commission he was unaware of Balcombe's position with regard to the provision of statements to Mr Quigley. There were other factors which persuaded Couzens to give the documents he received to Mr Quigley but I do not propose to canvass all of those. Suffice to say that Couzens firmly believed that the five officers were not being treated fairly and that their interests could be prejudiced if he did not take the action which he did.

The situation is very sensitive and difficult. As a police officer Couzens had a clear duty to inform

Balcombe (or some senior officer) if he believed the documents had been unlawfully obtained by someone (which he clearly suspected). As President of the Union he had a duty to his members. Couzens believed (and believes) that it is possible to make a clear cut distinction between the two roles. I do not think it is as simple as that. Where does it stop. My suggestion is that a protocol should be arrived at between the Commissioner and the Union covering the question of what action is to be expected of any member or official who comes into possession of information thought to have been unlawfully obtained but thought to be of advantage to the members or some of them, or the Union itself. The terms of the protocol should be public. That is essential. The public should know where the Department and the Union stand on this matter.

#### **14.6 THE CIRCUMSTANCES SURROUNDING CATHY PARK'S STATEMENT**

Cathy Park was interviewed by Balcombe on 30 September and signed a statement wherein she made allegations about the behaviour of the off duty Roebourne police in the hotel. At the time of the interview she told Balcombe that if she made a statement that she would be dismissed from her employment. Indeed, as soon as she returned to the hotel or very shortly thereafter, she was dismissed. However, Ron King, the licensee of the hotel and Terry West, the bar manager, each testified 'that about a week before her dismissal she was warned that her work was not up to standard and King testified that a firm decision was made to sack her about three or four days before she was.

Cathy Park was adamant that the reason for her dismissal was because she had spoken to the police. Indeed, Balcombe attempted to intercede on her behalf with King and told her that he would do so. He was told by King that her dismissal had nothing to do with her statement to the police. There was evidence before me that another person had been approached to take her position before the night of the fight.

After her initial interview with Balcombe Cathy Park felt totally disillusioned and that it had all been a waste of time. In short, she believed that the police attempted to downplay her account and that it was of no concern to them.

It is clear from her evidence that she believed the Roebourne police and the hotel management had a close relationship so that if she had spoken badly of the police she would be repaid by dismissal. She was distressed and angered by what she had seen at the hotel and felt that the police had behaved wrongly. She was not prepared to speak to the Roebourne police because they were friends with one another, the clear implication being that nothing would result from a complaint to them. She had the initial conference with the Perth police and, according to her, was prepared to risk her job in order to tell them what she had witnessed. She was not, however, impressed with the way the interview was handled and at some point believed that the police had not taken her seriously and were unconcerned with what she had told them.

I find that Cathy Park was spoken to about her work sometime before she was sacked. It may be that she was not specifically warned that dismissal was imminent if she did not improve her performance. However, I find that in light of the matters mentioned above, her belief as to the reason for her dismissal was understandable in the circumstances. However, I do not find that she was dismissed because she gave a statement to the police.

She made some complaints before me about the way the interview was handled. It is unnecessary to recount those complaints. I am satisfied that the interview was conducted properly but that her assessment of it was coloured by subsequent events and in particular her dismissal. Her view has been coloured by the events to which I earlier referred.

#### **14.7 THE INVESTIGATION INTO THE ALLEGATIONS MADE BY THOMAS MCPHEE**

A significant amount of hearing time was taken up with examining the manner in which the allegations made by Thomas McPhee were investigated. In light of the findings which I have made concerning those allegations, I do not propose to deal with the police investigation in any detail although Counsel Assisting and Counsel for the investigators made substantial submissions to me concerning it. There were, however, some aspects of the investigation which call for some comment and I shall do so briefly.

McPhee first made the allegations to a police officer who was holidaying in Shark Bay in Western Australia in 1985. The next day they were brought to the attention of an officer from the Internal Investigation Branch who was investigating a murder in Carnarvon some distance away from Shark Bay. Nothing more was heard of the matter until 1987 when the Officer in Charge of the Roebourne Police Station had it brought to his attention that McPhee had something of importance to tell him. The reason for the delay was investigated thoroughly by Commission staff and when Scott came to give evidence he testified that the officer in Carnarvon who had been told about the matter was at the time very ill suffering from cancer and a few months later retired on sick leave. It cannot be assumed that it was the state of that officer's health which explains why he did not follow the matter nor can it be assumed that he was in neglect of his duty for not doing so. Accordingly, I make no finding on this issue.

Eventually, McPhee was interviewed by the then officer in charge of the Roebourne Station, Sergeant Court. The interview was in the presence of a Justice of the Peace and (at the request of McPhee) Cider Gilby. I thought that the interview was well conducted. I add that it became apparent that this officer had tried to improve relations with Aboriginal people during his period at Roebourne and with some success.

The investigation conducted by the Sergeant was very intelligently done, in my view. It is true that Court assumed that McPhee knew John Pat. But I think he was led to believe so. There was one curious blemish which is hard to understand, possible due to the fact that Court was led to believe that he was conducting only a preliminary inquiry. Court knew none of the facts about the John Pat matter. Accordingly when McPhee told him that he had seen Pat join in a fight outside the hotel at 6.00pm or before, and when Dawson told him of the arrests early in the evening, he did not recognise that their stories were either invented, badly wrong, or related to another occasion.

When Scott became involved in the investigation in March 1988 he took a statement from McPhee, who was at that time living in Kambalda. He approached that inquiry on the basis that there was a fight outside McPhee's house on the night of Pat's death, that Pat was involved, that he had been assaulted and that it was Ashley James who was Pat's assailant. My impression is that Scott approached his interview with McPhee on the basis of what McPhee had said, and would probably say again, and that he was there to clear up a few points. Further, he assumed that McPhee knew Pat and Ashley James. McPhee told Scott that he did not know James but Scott did not take steps to ascertain whether McPhee did in fact know Pat. I think however that Scott was led to think that McPhee knew Pat well.

I shall say something of Scott's methods of interviewing McPhee and the circumstance in which the statement was taken. At the time, McPhee was employed in the district and living at a hotel in Kambalda. Scott arranged with the local police to see McPhee in the hotel at night. He knew that McPhee had been drinking and indeed bought him some further drinks during the course of the interview. (I do not believe that Scott had any ulterior motive.) He testified that he was, however, certain that McPhee was not drunk (which McPhee claimed to be, although I am by no means clear that he was). Scott took notes during the interview although they were not verbatim. The next day he composed a statement on the basis of what McPhee had told him and approached McPhee who was then in the hotel laundry and asked him to sign the statement, which he did.

Those notes were part of the material which was subpoenaed by the Commission. In many respects they contain material which is significantly different from what eventually ended up in McPhee's final statement and his evidence. I do not propose to document those differences save to say that Scott testified that he used some of his own expression rather than McPhee's, he omitted certain facts about which McPhee had informed him and he put his own interpretation on some of what McPhee had told him. In those circumstances the so-called 'adoption' by McPhee of the statement was quite unsatisfactory. I add that I do not think that Scott is necessarily responsible for the variations between the statement and McPhee's

evidence before me. However, it is an unprofessional way in which to take a statement about any matter; given the importance of this matter it was more so.

## 14.8 THE INQUEST

The Inquest commenced in Roebourne on 30 October 1983. A Queens Counsel and an experienced junior counsel who took silk during the course of the Inquest were appointed Counsel Assisting the Coroner. Police officers were represented by Mr Quigley with the Commissioner being represented by Mr Murray, QC, who was the Crown Counsel. Mr Lloyd Davies appeared for the Pat family, and the Department of Community Welfare was represented by Mr T. Schwass. The Coroner heard evidence for about five weeks in Roebourne and then adjourned to Perth. In all, nearly ninety witnesses gave evidence. The Inquest appears to have been very thorough apart from the significant fact that the five officers did not give evidence. This appears to have been left to the election of the officers even though each was summonsed to attend the inquest and to testify.

Pursuant to the Coroners Act, the Coroner had (and has) power to subpoena witnesses and compel them to testify. The witness has a statutory privilege against self incrimination. Section 11 of the Evidence Act 1906 then provided (it has now been amended) that where a witness declines to answer a question on the grounds that his answer will incriminate or tend to incriminate him, the judge may, if it appears to him expedient for the ends of justice that the witness be compelled to answer, tell the person that if he answers in a satisfactory manner, he will grant him a certificate. Thereupon, the witness is no longer entitled to refuse to answer the questions (s.11(2)). The certificate frees the witness from all potential criminal prosecutions and penal actions and from all penalties, forfeiture's and punishments to which he would have been liable for anything done before that time in respect of the matters touching on those about which he is so examined with the exception of perjury committed in those proceedings (s. 13). I understand that to avoid this happening a practice developed in Western Australia for the Coroner to allow witnesses in that situation simply to decline to give evidence. This severely curtails the effectiveness of the inquest as those who may have very important evidence to give are permitted not to give it. The Coronerial system Australia wide will be addressed in detail in the National Report of the Commission and certain recommendations made.

However, leaving aside all questions of amendments to the Act, I believe that the practice of allowing witnesses not to give evidence is wholly wrong, and was, with respect to the Coroner, totally wrong in this case. The suggested dilemma is no dilemma at all. There is no obligation to have regard to s. 11. It is for the Coroner to decide in each case. He can permit the witness to stand on his right not to answer on the ground that the answer may tend to incriminate him/her. The effect of that, of course, is that the Coroner does not get the answer to the question (of course, he does not get the answer to that or any other question if the witness is simply allowed to decline to give evidence). The witness should be called, bound to the truth and questioned. If the witness takes the objection it is taken on the ground that the answer may tend to incriminate; that is a very important matter. Of course, the Coroner does not have to accept the objection; he can rule on whether the question can possibly lead to an answer tending to incriminate. Much evidence may be given before the objection can legitimately be taken. But if and when it is taken it may be a significant piece of evidence - the witness, bound to the truth, has stated that the answer may tend to incriminate him/her.

I should add that practices die hard. If this was the practice (and I have been told it was) and if it was long established then any Coroner is simply in the position of carrying it forward. But in my opinion, it is simply a wrong practice. Here it was applied to police officers who were merely to be asked as to what they did in the admitted course of their duty. I enter my protest against their being simply permitted not to give evidence.

At the conclusion of the Inquest on 6 February 1984, the Coroner, Mr McCann, committed the five officers for trial in the Supreme Court on a charge of unlawful killing.

I have already mentioned that there was a degree of hostility towards the Coroner on the part of the

police investigators who considered that their inquiries were curtailed because the Coroner started the Inquest too early. It is natural for people (such as police officers) who pursue common occupations and share common experiences in life to have feelings of solidarity and generally these feelings should be encouraged. Where allegations of misconduct, or even merely misjudgment, are made against an officer there should be no occasion for hostility towards any inquiry into that allegation, although there may be a legitimate concern in matters which affect all, such as what constitutes misconduct or lack of judgment.

The Coroner was clearly of the view that the police investigating the death of Pat were not as zealous as they might have been and this played a part in his decision to start the inquest when he did. I agree with the submission made by Counsel Assisting the Commission that it is difficult to see what else the investigators could have done by way of other inquiries before the inquest commenced. It is clear that they did not consider that inquiries along the lines of a list of questions prepared by Counsel Assisting the Coroner were relevant. Suggestions that the body had been cleaned or that resuscitation had been attempted appeared to have been rejected without investigation. The task of critically analysing the statements as they came to hand should have been done (although I find that it was not). No compelling reason has been advanced to support a finding that the police investigation would have been more effective had the commencement of the inquest been postponed.

All too often during the inquiries conducted by this Commission, it has been found that there has been an absence of constructive criticism on the part of coroners arising from inquests. In this case the Coroner, Mr McCann, prepared carefully considered reasons for his finding which he sent to the Attorney General together with an outline of his concerns about the police investigation. He was plainly interested in attempting to rectify what he perceived to be shortcomings in the police investigation and the method in which it was carried out. I commend his diligence in this regard.

#### **14.9 THE TRIAL**

The trial was conducted by a Judge of the Supreme Court and a jury of twelve non-Aboriginal persons. I mention this fact not in any way at all to question the integrity or the responsibility of the twelve members of the jury. I raise the point because it should be asked, 'How does it come about in the Pilbara that a very important trial was conducted before a jury without Aboriginal representation, given the number of Aboriginal people in that region?'. I do not pretend to know the answer but I do suggest that it should be identified and steps taken to change that situation if it has not already changed. It may be that the Aboriginal people do not wish to participate. If that is the case then it says a great deal about the changes that need to be made.

Counsel for the ALS (who also represented Mavis Pat at the hearing) made some very useful observations about the conduct of proceedings in which Aboriginal witnesses are involved.

I do not think that the particular matters are covered by the terms of my Letters Patent but some of the matters are raised in general in my final report.

#### **14.10 OTHER LEGAL PROCEEDINGS**

Of the Aboriginal men charged in connection with the incident outside the hotel on 28 September 1983, Peter Coppin, Roy Smith and Geoffrey Lockyer were acquitted of the charges against them. Brian Munda was convicted and fined. Lennis James pleaded guilty and was also fined.

After the trial of the officers, the ALS wrote to the Crown Prosecutor and the Attorney General requesting that the five officers be charged with other offences. When this application was declined, the ALS, on behalf of Roy Smith, privately charged Young with assault occasioning bodily harm. This charge was to proceed on indictment. Young elected a preliminary hearing during the course of which Bordas, Holl and Armitt were called to give evidence on behalf of Young. At the commencement of their testimony, each of

those officers declined to answer questions on the ground that the answers might tend to incriminate them. The Magistrate granted each a certificate under the Evidence Act which effectively compelled them to answer the questions but operated as a bar against further criminal proceedings against them (apart from perjury).

Young was found to have no case to answer and because of the certificates granted to the other officers, the contemplated charges against them were abandoned.

#### **14.11 SUMMARY**

The post death investigation was somewhat ineffectual, mainly through no fault of the investigators who were honest and hardworking. This was due to the reasons which I set out at Point 18 of my findings in Part One and which I will not repeat.

### **PART FIFTEEN**

## **SOME HISTORICAL FACTS ABOUT THE ROEBOURNE AREA**

### **15.1 INTRODUCTION**

I should first acknowledge that I am indebted to Dr Mary Edmunds for most of the historical material in this Part and for much of the drafting although I must take responsibility. Dr Edmunds is an acknowledged expert on the history of this part of Australia.

As I said earlier, the position of the Roebourne Aboriginal people can only be understood in the light of the comparatively recent history of the area.. Brief though this account is, it illustrates the virtual devastation of the Aboriginal culture in the area by the advent of the non-Aboriginal Australian. However, the spirit of determination of the Aboriginal people to revive their traditional ways, to undo some of the damage brought about by dispossession of their lands, destruction of their life style and abuse of alcohol is strong and I am impressed by the very significant steps that have been initiated by the Aboriginal people themselves in this regard.

Roebourne is a small, sleepy town located about 1500 kilometres north of Perth. The Aboriginal name for the town is Ieramugadu. The surrounding countryside has a subtle beauty peculiar to the Pilbara region in Western Australia and geologically is one of the oldest formations in the world.

Roebourne has some older buildings of historical interest but apart from the Community hall it has very few new buildings. The Community Hall which looms large as one drives along the road into Roebourne was built after the death of John Pat which focussed national and international publicity on the paucity of amenities in Roebourne and the conditions in the town generally. When the John Pat hearing was being planned, thought was given to holding the hearing in this hall; but enquiries appeared to reveal that the Aboriginal people of Roebourne would not think well of that arrangement. In discussions after the death, they had suggested, so I understood, a swimming pool. The new hall did not really meet their needs. In the town itself trees and green spaces are scarce, although one is struck by the green of the town oval which is obviously frequently watered at some cost.

In the blazing heat of summer even a short walk in Roebourne can be exhausting. The bed of the Harding River runs through the town parallel with the main road. The river bed is protected by magnificent trees and is probably the coolest place in the town, a natural attraction for those seeking relief from the heat.

A tour through Roebourne will see Aboriginal people in the streets, the shops, sitting in the river bed and in and around the Victoria Hotel which is the only hotel in the town and the centre of social activity for most of the town's residents. Aboriginal people comprise about fifty percent of the town's population of approximately 1,600 people. For the most part they have no work and few recreational facilities to occupy their time so they gravitate to the centre of town where they have a very visible presence. In 1983, the police van was equally conspicuous.

The town of Roebourne can be, and has been, described in many ways. Its central importance to this Royal Commission, as well as to Aboriginal people of the West Pilbara, has perhaps been best stated by one of its Yindjibarndi elders:

*Roebourne is a very significant place for Aboriginal people. This is a place where Aboriginal Law has been made for all Aboriginal people. The Aboriginal people are now suffering. They are hurt in the heart. We need assistance to overcome the problems that have come since Europeans came here. We want the Royal Commission to help us with our ideas. (Yilpie Warrie)*

The Aboriginal Law to which the speaker refers has been the basis of social life for the various socio-linguistic groups of the West Pilbara region for countless generations - for Ngarluma, Yindjibarndi, Panyjima, Kurrama peoples and their neighbours. Ngarluma country covers much of the coastal region, the land of Roebourne, Wickham, Point Samson, Cossack and their surrounding areas. Yindjibarndi country is the tableland area leading into the Hamersley Range Plateau, along the Fortescue River, and east to the Yule River - land that now includes the Millstream National Park. Yindjibarndi people share to the north a common border with the Ngarluma and to the southeast with the Panyjima people. Panyjima country is further inland and covers what is now the Hamersley Range National Park and the towns of Wittenoom, Tom Price and Paraburdoo. The northern area of Kurrama country joins Yindjibarndi land and its southeastern limits lead into Panyjima land. These are the areas where, before the arrival of the first European settlers, the Law was undisputed in its ordering of the lives and movements of the people, giving meaning and coherence to social relations and relations with the land, regulating conflict, providing a seasonal and ceremonial framework for action, and clearly defining for each group - men and women, young and old - an accepted and useful place within their society.

The first challenge to this order occurred after pastoral expansion in Western Australia brought colonisers to the area. This happened in 1864 and the town of Roebourne itself was founded two years later, in 1866, beside the permanent pools of the renamed Harding River. The site was chosen by the new non-Aboriginal settlers for two reasons: first, it was the only place in the area with a secure fresh water supply--clearly therefore a place of considerable importance to its Ngarluma guardians--and, secondly, it was reasonably close to a suitable harbour at Cossack. In the name, under the auspices, and with the inevitable consequences of colonisation, the first dispossession of local Aboriginal people had begun.

The processes of this dispossession fall into two quite clear periods. The first relates to the development of the pastoral industry in the hundred years from 1864. The second succeeds this with the arrival of large-scale iron ore mining in the 1960s.

## **15.2 IMPACT OF THE PASTORAL INDUSTRY**

The decades of expanding pastoral appropriation of land that followed the arrival of pastoralists had their impact on all the Aboriginal groups in the region, but this impact was initially more severe for some than for others. The Ngarluma, like other coastal peoples in the region, suffered the main force of early settlement and the consequent disruption when the town was built. On the neighbouring Burrup Peninsula the Yaburara people, a northern division of the Ngarluma, were effectively wiped out. The Yindjibarndi people, on the other hand, while they suffered significant displacement, tended to remain at least generally on their own lands as workers on pastoral stations until the late 1960s and early 1970s. This was also true of Panyjima and Kurrama peoples. What happened to all groups, however, was ultimately the same - in the name of progress, they were incorporated into the legal, political, social, and economic structures of a colonising society, but not as full members and not on their own terms. They



were incorporated on terms determined by the members of the non-Aboriginal society.

This incorporation, as elsewhere in Australia, was not a gentle or benign process. As the pastoral industry spread and pearling at Cossack became established, Aboriginal labour, like their land, was appropriated. Newly introduced diseases speedily ravaged the population, as Sir Paul Hasluck indicated in his history of native policy in Western Australia:

*In the northern parts of the colony, one of the earliest reports of the first Resident Magistrate at Roebourne, in 1866 (only two years after settlement there) described how numbers of natives were dying from a disease and that their bodies were to be seen lying about the countryside. Another account declared that this 'smallpox' 'carried them off in hundreds if not thousands' and an early settler in the district, speaking in retrospect in after years, said, 'We lost one half of them through it'. 1*

Direct violence was also part of this frontier contact, what Hasluck calls the 'policy of direct action on the frontier':

*In 1867 at Roebourne a memorial was prepared asking for the 'withdrawal of all Government authority from the district' so that settlers might work out their own salvation. 2*

I think we should remember that quotation and think about what it means.

The right of Europeans to take land and to subjugate, and if necessary eliminate, the rightful owners was the very foundation of the pastoral industry in the West Pilbara (as elsewhere). Non-Aboriginal settlers clearly saw their acquisition of land as conquest.

There are a number of important outcomes of this history for people living in Roebourne today. One is the extent to which vast tracts of land in the region were alienated from Aboriginal use by being carved up in pastoral leases. This meant the displacement of groups from full use of their traditional lands. Another outcome was the extent to which those Aboriginal people who were able to maintain a presence in their country by employment in the industry--notably Yindjibarndi and Panyjima peoples shaped their involvement in the industry to suit their own social and economic ends. A further outcome is that, while not all pastoralists, even at the beginning, engaged in direct violence, what developed from these intrusions of the European frontier were the foundations of a pastoralist culture that still exists. The very centre of that culture is the supremacy of the ideas and institutions of the new settlers.

The pastoral industry in the Roebourne region, then, established fundamental and continuing inequalities between the colonisers and colonised. Nevertheless, despite their incorporation as a source of cheap labour, Aboriginal people themselves made use of the conditions created by the pastoral industry to maintain their own alternative and non-independent sets of social relations. For many of today's Roebourne Aboriginal people, including even some Ngarluma people, being on the stations at least meant remaining on their own land. An important indication of this is the way in which these people have redefined their places of belonging in terms of the stations. People talk about their country as 'Mardie' or 'Rocklea' or 'Millstream'. The names of stations have become categories that are used to designate home country, and the technicalities of legal tenure are irrelevant to this categorisation.

The significance of this appropriation of European categories lies in the fact that station life to some extent allowed the continuation of traditional social relations and a certain maintenance of autonomy. This of course was not absolute. The lives of Aboriginal people had been redefined within a system of government and employment regulations that limited their movements and intruded in fundamental ways. Nevertheless, in the West Pilbara, where most stations were family rather than company owned, conditions appear to have been less harsh than in other parts of Australia. There is a certain nostalgia in the way that Aboriginal people in Roebourne today talk about their life on the stations:

*[On the station it was] really good. Yeah, when you on the station you can do what you want to do. If you want to work, you know, you can work. If you want a day off, your day off you go down*

*the river or wherever you want to go, hunting. Here you can't do anything no more, you can't do anything because you got next door neighbours everywhere. You can't go anywhere. When on the station, we can go where we want to go.*

What radically changed this situation were two major events: the lifting of the federal government's embargo on the export of iron ore in 1960, and the implementation of the equal pay award in the pastoral industry from 1968. The former brought rapid and massive mining development to the region. The latter, coming at a time of economic downturn in the pastoral industry, removed from station owners the availability of underpaid labour and signalled a large-scale movement of Aboriginal people from the stations into the towns. The impact on Roebourne of these joint developments was devastating.

### **15.3 IMPACT OF THE DEVELOPMENT OF LARGE SCALE MINING**

The most observable and dramatic effect of developments in the iron ore industry was a rapid increase in both numbers and concentration of population. In 1960, Roebourne was, apart from a small fishing settlement at Point Samson, the only town in its area, its main role an administrative and service one for the surrounding pastoralists. Despite its size, it played an important role in the general economic and social life of the region. In 1961, according to Census figures, the town had a population of 568 persons. This was not in fact the total population of the town even then, as it did not include the Aboriginal families who lived on the Reserve on the other side of the Harding River. It was not until after the Referendum of 1967 that Aboriginal people were counted as part of the general Australian population, a fact of exclusion that speaks for itself. At the time of the 1961 Census, the numbers living on the Reserve have been estimated as varying between one and two hundred. The Pilbara as a whole was also defined in the same Census by its non-Aboriginal population, despite the majority of its inhabitants being Aboriginal. In the whole region, this non-Aboriginal population numbered only 3243.

The opening up of the iron ore industry changed this profile significantly. In the first five years of iron ore development in the Pilbara, from 1961 to 1966, the population increased by 300 per cent, to 9815. In the ten years, from 1961 to 1971, the increase was of some 1000 per cent, to 32,979. In twenty years from 1961 to 1981, the population grew to 47,284, an increase of some 1400 per cent. The figures for 1971 are of course skewed in relation to a total increase in population, since this census, unlike earlier ones, did include Aboriginal people. Most of the change between that year and 1981 however is related to further non-Aboriginal presence in new mining towns in the region and does indicate the extent of continuing growth and change.

In the Roebourne area, these developments occurred in three main waves. (A possible fourth, the development of the Northwest Shelf Natural Gas Development Project from 1980, has had a big impact on the region, but, because of the already established isolation of Aboriginal people from the 'benefits' of local development, less on Roebourne than on the other towns.) The first of these waves was from 1965, when Hamersley Iron, the first major company to take advantage of the permits offered by the Western Australian government, began construction of the port and town of Dampier. This was to service its mine at Mount Tom Price - developed in Panyjima country on the site of, and hence destroying, an important red ochre deposit. It involved the import of gangs of construction workers who were also involved in building the railway line that was to join the mine to the port. The second wave occurred from 1968, when construction of the town of Karratha began. The third dates from 1970 when another mining company, Cliffs Robe River, started development of its company town of Wickham, associated with the building of a second railway line to join the mine at Pannawonica with the port at Cape Lambert. A non-Aboriginal woman who grew up in Roebourne described what the first impact was like:

*All of a sudden we were invaded by about five thousand men. It was just men everywhere, because they were flying them in here for the Hamersley Iron railway line by the DC4 load, straight from Queensland. We never saw a TI [Thursday Islander] in our life before till all these black people started jumping off the aeroplane. And you know there was just TIs everywhere. They just flew them straight in because they're the best railway builders. And they built that Hamersley Iron one in record time... Hamersley Iron...went to the eastern States - it was a great*

*thing to go to the eastern States and get your labour in those days. So all of a sudden you had these thousands of bloody curly-headed people, blacker than our Aboriginals you know, that we'd never seen before.*

The outcome of these developments, consequent upon this major increase in first imported casual labour and then the numbers of non-Aboriginal people settling in a relatively small geographic area, has been to alter significantly the social, environmental, and demographic face of the West Pilbara. It has changed the position of Roebourne from the administrative and commercial centre for the region--surrounding pastoralists used to talk about a trip to Roebourne as 'going to town'--into a neglected backwater.

From being a 'white' town, Roebourne has also altered its profile to that of an Aboriginal town, a situation not unrelated to its neglect. In 1983, the year of John Pat's death, the general population of the town was estimated by the Shire at 1670, of whom some 860 were Aboriginal people. This significant increase from earlier recorded numbers of one to two hundred in the early 1960s was consequent upon the changes in the pastoral industry after 1968 and the movement of Aboriginal people from the stations into the towns. The movement was sometimes voluntary, often related to the recent opportunity for children to go to school. More often it occurred as a result of decisions by pastoralists to withdraw employment.

The increasing numbers of Aboriginal people living in Roebourne after 1968, therefore, were there as a result of having lost their central role as labour force for the pastoral industry. At the same time, and while employment opportunities should have been expanding in the developing mining industry, the policy of mining companies of bringing in external labour effectively excluded local Aboriginal people from taking any advantage of the new circumstances. The result has been a shift from a situation in which Aboriginal labour was essential (the pastoral industry) to one where it is irrelevant or even hostile to the requirements of the mining industry. Although the basis for employment relations had been established on the stations, the changes did not transform Aboriginal people into the new workers of the mining industry. A major outcome of large-scale mining involvement in the region then has been the marginalisation of local Aboriginal people in terms of population, employment, and services and of Roebourne as a town.

Relations between Aboriginal and non-Aboriginal people in the region have changed as a result of the advent of large-scale mining, as have those between the different Aboriginal socio-linguistic groups themselves. These changes are to some extent reflected in the changes that have occurred in Roebourne itself in the process of its becoming an Aboriginal town.

#### **15.4 ROEBOURNE - AN ABORIGINAL TOWN**

Before its displacement as administrative and economic centre for the region, the main population in the town of Roebourne was non-Aboriginal. Although some Aboriginal people did have houses in town (70 in 1968, 144 in 1973), <sup>3</sup> most lived on the Reserve, an area about a mile out of the town on the other side of the Harding River. The Reserve was legislatively as well as spatially separated from the town, with non-residents (Aboriginal as well as non-Aboriginal) forbidden to enter it without the permission, not of residents but of the Department of Native Welfare. For many years, a curfew also operated, by which Reserve people had to be out of the town precincts between 6.00pm and 6.00am. Not only did very clear distinctions therefore operate between Aboriginal people from the Reserve and non-Aboriginal people. These conditions also created invidious differences between Reserve people and those Aboriginal families who lived in town, opposing, in the terminology then in use, Reserve natives to town natives. In this context, to be a town native was a step up, at least on the assimilationist social ladder. With the movement of people from the stations after 1968, housing on the Reserve, indifferent at the best of times, was put under even greater pressure. Numbers swiftly passed the 300 mark, making the Roebourne Reserve for a time the biggest Aboriginal reserve in Western Australia.

The bases of other significant differences between the various socio-linguistic groups were also developed over the period of the Reserve's existence and within the context of continuing non-Aboriginal domination. Residents included both Ngarluma and Yindjibarndi people, but the numbers of the latter

swelled as people came in from the stations. Although there has been a lot of linking of these two groups through marriages, Ngarluma people, already reduced in numbers through the impact of earlier non-Aboriginal settlement, have gradually become less powerful in relation to the Yindjibarndi group. The growing dominance manifests itself not just numerically but also linguistically and culturally. What this artificial bringing together of different peoples has meant in the longer term therefore is a shift in the social and political balance between these groups, with Panyjima and some Kurruma people now also involved in these sometimes tense and difficult relationships.

The increase in the Aboriginal population of the Reserve, with its own consequences for local political relations, occurred over the same period as Karratha and then Wickham were becoming new centres for a non-Aboriginal population. The decision by Cliffs Robe River to build its own company town, a mere twelve kilometres away, rather than develop housing facilities in Roebourne was crucial here. There is little doubt in the minds of the local people that the hidden agenda in this decision was the presence of the Aboriginal population in Roebourne, and the belief held by the company that new residents would be loath to live there. What has gradually come to pass, therefore, has been a division in social, economic and other terms. Roebourne, as the 'black' town, now exists in contrast to its immediate neighbours, Wickham and Karratha, which are 'white' towns.

Two further developments have exacerbated this distinction and served to perpetuate a negative image of Roebourne: firstly, the excessive use of alcohol by all sectors of the population in the region including, after 1968-69, many Aboriginal people and, secondly, the socially destructive departmental decision, announced to local Aboriginal people in January 1973, to move people willy-nilly from the Reserve into an area of the town known as the Village.

## 15.5 THE IMPACT OF ALCOHOL

The pattern of abstinence followed by binge drinking associated with the pastoral industry in all parts of Australia is one that was established also in the West Pilbara. What is of perhaps greater significance when addressing the question of drinking in Roebourne, however, is the historical association for Aboriginal people that was developed by non-Aboriginal policies between access to alcohol and access to full citizenship rights. In practical terms, as the granting to selected Aboriginal people of citizenship before 1967 also carried with it the right to consume alcohol, the two were made synonymous. Such an association clearly bore within itself the seeds of terrible devastation for people already marginalised in relation to the society in general.

In Roebourne, this broader set of relationships was realised within the specific events that followed the initiation of large-scale mining. Further, until the building of the new towns, the Victoria Hotel in Roebourne was the only hotel within a hundred mile radius. With the arrival of the construction workers associated with the building of the Hamersley Iron railway after 1965, the Victoria became for them the focus of major drinking, socialising, and soliciting (or forcing) of sexual favours. The situation and its connections with other developments is vividly described by one of the older Aboriginal women in a statement to the Royal Commission.

*In 1969 Roebourne was just starting to get worse because of alcohol. The new towns started from 1960 up to now. The first was Dampier, the bad one for the Aborigine people. All the working people from Dampier used to come and drink here at this pub, Thursday Islander people, Yugoslav people and whatever. And the Aboriginal people started more and more to make friends with them, drinking with them, going in their cars, getting killed, all that started. All the Aboriginal people thought that was good, being with those people, drinking, going around in cars with them, girls especially. It was especially bad for the girls, more than the men. But the men got really drunk here, would go staggering away along the road and get hit by cars and pick fights with each other, things like that. Alcohol is the problem we've got.*

*That's when it started in the 60s, all through the 70s right up until now. Never changes. All the Aborigine people spoiled. Even the new generation coming on. When they finish school they've*

*got nothing to do because they haven't got work to go for... All they do is go drinking with their Mum and Dad down the street, getting drunk and some of them getting killed. It's the young people we are losing; alcohol is bad for the Aboriginal people. There are fights, people kill each other - not fighting with the white people, fighting amongst themselves, wives and husbands fighting, killing one another. 4*

The worst of this situation in relation to drinking by young people, as recalled in testimony to the Royal Commission hearing in Roebourne, was reached around 1975:

*[The pattern of youth drunkenness], to my recollection, hit a peak in 1975, there was children as young as eight years being seen drunk in the street and as I recall, with the youth activities programme, the age threshold - the minimum age of alcohol affecting children or teenagers - gradually rose and then sort of levelled out at about 14 years with exceptions being say a younger child operating with a 14 or 15 year old peer group. 5*

The same witness, in another statement made to the Royal Commission, also described the earlier situation:

*The construction phase [for Wickham] lasted 1970-1972. The young Aboriginal men became quite bitter in this period. The girls were going with the white blokes and had no time for the Aboriginals. There was resentment against Europeans.*

*During this time of pub bands, along with the crowd of adults, there was a team of teenagers attracted, most of them school kids. It would be nothing to have 100 odd children mingling with the crowd, trying to get on the dance floor, etc. The police would patrol through and the kids would all bolt down into the river. The police would sometimes follow them and run into a hail of stones. The police had a hard job during that time... 6*

It is no accident that that time--the peak in 1975--while clearly related to the more general factors already outlined, also coincided with the further major dislocation caused to people by a forced move from the Reserve to the Village.

## **15.6 THE VILLAGE**

The Village is a State Housing Commission (Homeswest) project located behind the cemetery at the furthest point in the town from the shops and most other services. The move from the Reserve was a decision made by the Department of Community Welfare in consultation with the State Housing Commission, the Aboriginal Affairs Planning Authority, and the Main Roads Department (involved because of their plan to relocate the North West Highway and bridge the Harding River close to the Reserve). There is no doubt that the decision was to some extent a response to concerns by the residents of the Reserve and others about their poor housing conditions, and some consultations were carried out over two years. In the end, however, the expressed wishes of the residents were effectively ignored, and the move rushed through after a cyclone damaged housing on the Reserve at the beginning of 1975. A study carried out some six months after the move is very critical of the role of Community Services in the whole process

*There was... pressure on the reserve residents to leave. All but the most urgent maintenance on the reserve ceased. Sewerage systems became overloaded, water and electricity supplies erratic. The Roebourne Reserve was at best a depressing site. It literally became a 'cess-pool' by December 1974.*

*The Roebourne Reserve was not closed because of the construction of a bridge over the Harding River. (Construction still had not commenced in June 1975). It was closed because it was no longer maintained by the Community Welfare Department. 7*

The 1975 cyclone, therefore, became simply the excuse used by the Department to abolish the Reserve. The result was an intensification of the processes of social dislocation already established over the previous decade. One indication of this was that, in the first six months after the move, police court figures increased by 86 per cent and children's court figures by 76 per cent <sup>8</sup> Of the 94 juveniles living mainly in the Village, 70--or nearly 73 per cent--had appeared in court by the end of July on at least one occasion, and most of them on two or more occasions. <sup>9</sup> Amongst these, two noticeable peaks of activity were noted, <sup>10</sup> one in the 13-year-old group, associated with property offences, and the other, related to drunk, disorderly, and assault type offences, among 17-year-olds.

The increases recorded were related mainly to three things: drinking and violence on the one hand, but also--and significantly--the increased visibility after the move to the Village of these behaviours to both police and other non-Aboriginal residents of the town. It is important to remember that this is the situation in which John Pat was growing up.

There is another factor in relation to the position of young people in Roebourne over this period, and that is the question of schooling, and its failure, as well as the failure of the resident non-Aboriginal community, in relation to Aboriginal people.

## 15.7 SCHOOLING

There is evidence from Aboriginal people in Roebourne today of the extent to which parents have valued and continue to value the possibility of formal European education for their children. Until 1954, however, there was virtually no opportunity for the children of station families to go to school, and schooling was not compulsory for those defined as natives under the Act. This included those living on the Reserve. The few Aboriginal families living in town were allowed to send their children to the local primary school, although even these were subject under Education Department rules to exclusion from the school if the parents of non-Aboriginal children raised objections to their presence. In 1954, however, the Education Department indicated its intention to enrol Reserve children there as well. The move was aborted by local non-Aboriginal parents who objected vociferously, publicly, and officially. The result was the establishment, till 1951, of a separate Aboriginal school in the old Roebourne court-house, where enrolments rose rapidly: 22 children in 1954, 45 in 1957, and 145 in 1959. <sup>11</sup> The first integrated primary school for Aboriginal and non-Aboriginal children began in Roebourne only in 1962. A local high school became available after the building of Karratha.

Few Aboriginal students however lasted more than a short time at the Karratha High School. Donovan <sup>12</sup> reported that 'overawed by high school, [they] leave without exemption usually at age 14; barely able to do much more than write their own name'. John Pat left early in his second year there, partly at least because there were no other Aboriginal students in his class. <sup>13</sup> This situation, as well as high rates of absenteeism in primary school, clearly contributed to the development of the 'juvenile sub-cult' identified by Donovan in 1975. The extent to which this situation, common for Aboriginal children across Australia, is a result of the failure of the education system rather than of Aboriginal families will be dealt with in the National Report. In relation to Roebourne, its impact in terms of juvenile behaviour has already been indicated.

There were, however - and continue to be - other forms of education that attempted to develop the knowledge of young people about their own culture. A schoolmate of John Pat talked about the times when they both went out with the elders to learn the Law. <sup>14</sup> The comment about John Pat was that 'He loved the bush. He loved drawing things. I never saw him have a fight, never saw him get upset. He used to joke about things.' What emerges from comments such as this was the conflict set up for young Aboriginal people between what was offered by the institutions of non-Aboriginal society, including school, and what was offered by their own traditions. The tragedy for many of those young people is that no way of resolving this conflict was offered to them. Worse, an opposition was created for them between the offerings of non-Aboriginal society, including alcohol, and those of their own society - the same opposition that was set up by the whole colonising process between themselves as Aboriginal people and the non-Aboriginal people who now constitute the majority of the population in their region. Moreover,

central to this opposition have been issues of value, status, and exclusion. As we saw earlier, the development of Roebourne from an essentially non-Aboriginal to an Aboriginal town has been accompanied by a process of neglect that amounts, in identifiable forms, to discrimination. This is reflected, as a recent report by the Western Australian Equal Opportunity Commission indicates, in the provision of services available to people in Roebourne.

## 15.8 PROVISION OF SERVICES

In 1989 the report by the Equal Opportunity Commission on local government services in Western Australia looked specifically at the Shire of Roebourne. <sup>15</sup> The report identified and highlighted areas of concern that have been apparent in the Shire's allocation of resources to the town of Roebourne since the Shire was reconstituted in Karratha in 1976. This was after a five-year period of suspension, in which a commissioner was appointed by government to impose the changes consequent upon the development of the mining towns.

The principal areas of concern for the Equal Opportunity Commission related to significant inequalities in the distribution of funds and services among, on the one hand, Karratha, Dampier, Hearson Village (associated with the Northwest Gas development), and Wickham and, on the other, Roebourne. Even accepting that much of the infrastructure of the new towns had been provided by the mining companies, and therefore not at cost to the Shire, the report still noted the lack of many services, including especially recreational services, to Roebourne. These included, most notably, a lack of footpaths in the Village and of pedestrian crossings in general, inadequate street lighting, no public toilets, problems with adequate drains in the Village, and, most contentious of all, the absence of a swimming pool. All of these problems have existed since 1975 and before.

The most telling finding of the report, however, was in relation to the average expenditure per resident of the Shire. In 1988/89, the average expenditure per resident of the Shire (including those living in Roebourne) was \$575.34. The figure for Roebourne residents, worked out on the Council's own estimates of money to be spent in the town, was \$294.80 per resident. <sup>16</sup> Moreover, on a number of items of expenditure relating to Roebourne, actual expenditure was less than half of even the Shire's own estimated expenditure. <sup>17</sup>

The report in its conclusions, comments that:

*The amount of revenue generated by the Shire of Roebourne makes it one of the richest Councils in the State outside the metropolitan area. In addition, the Shire has benefited from the money spent on capital works by companies like Woodside, Hamersley Iron and Robe River. However .....the contrast between the town of Roebourne and other towns in the municipality is extreme... 'Roebourne has been relegated to little more than a backwater suburb, primarily for Aborigines' where residents acknowledge 'Karratha' s domination and their present peripheral status'. <sup>18</sup>*

The report goes on to conclude that:

In the opinion of this reviewer, the Council of the Shire of Roebourne may well have a case to answer over discrimination on the grounds of race in the provision of facilities and services in the town of Roebourne under Section 46 of the Equal Opportunity Act 1984. <sup>19</sup>

The Council has argued on other occasions in its own defence that it would be criticised by other residents 'if it was to spend funds on a specific group of people, rather than provide a service to the whole of the community' <sup>20</sup> What this position ignores is the extent to which the Aboriginal people of Roebourne have been already disadvantaged by the provision of services, especially in the sporting and recreational area, to the other new towns.

The Shire's approach to Roebourne and its Aboriginal residents is demonstrated in other, less apparently direct, ways. One of these dates back to 1978, when the Shire gazetted as 'recreation and parkland' the

land running between the Harding River and the town's main street (also the Northwest Highway).

This area, known after the Shire's action as the Harding River reserve, has always been an important one for Roebourne Aboriginal people who regard it as belonging to them. This sense of its being 'our land' continues, despite removal of the area from the general category of vacant Crown land to reserved land under the direct control of the Shire. The result is that the Aboriginal people who use of the land, usually for purposes associated with drinking, become liable to be arrested or at least to come to the attention of the police. The observable outcome is that day after day, people drink there. And day after day, the police arrest them for drinking in a public place. That was the position in 1983.

At the same time, and despite the many and heavy pressures brought to bear on them, the Aboriginal people of Roebourne have not been just passive in their response to recent developments. The decade 1965 to 1975 was certainly one of major shock to the community, as the police statistics for 1975 indicated, and as is evidenced by the deaths in custody that have been associated with the town. The will to recovery is however there and is demonstrated by other quieter developments in the town from 1974 onwards.

### 15.9 THE ABORIGINAL RESPONSE

In 1974 the first official Aboriginal organisation was incorporated. This was lemmugadu, the first of the present Aboriginal organisations to be set up, the first organised response to the joblessness of local Aboriginal people within the booming employment conditions created by the mining companies, and the first organisation to actively seek employment for local Aboriginal people. From its inception, the organisation has had two main roles. One is to develop employment opportunities. To date, this has been mainly through gardening contracts with the mining companies. The organisation is also the principal shareholder in the Mount Welcome Pastoral Company which purchased, also in 1974, two stations: Mount Welcome and Chirritha. A third station, Woodbrook, was later added to these two.

The ownership of these stations has added some element of choice to where people can live. Indeed, part of the problem with the hasty move to the Village in 1975 was that a number of people wished not to live in the town but on the stations in suitable housing. At the time of the move, some of these groups chose to continue in substandard housing at the Woolshed, the old Mt Welcome shearers' quarters, rather than expose their children to the rapidly increasing social problems in the town. This group subsequently developed into Cheeditha Village, a residential group associated with the Pilbara Aboriginal Church who wished to maintain their area as a dry one. Although proximity to the town has made this a difficult goal to achieve, it remains as a major objective for the community.

Another important initiative to provide an environment free of the impact of alcohol was the establishment of a camp some 90 kilometres from Roebourne on Yindjibarndi land. This was incorporated in 1981 as the Ngurawaana Group. Its leader, Woodley King, stated the reason underlying his fight to gain access to this land.:

*I didn't want my people being killed off by the grog. I wanted em to have a safe place to come when they wanted to give kurri [grog] away. I wanted em to come back to their own people's country. 21*

Between 1981 and 1985 there were as many as thirty people living at the camp, and this number, as well as appropriate infrastructure for the camp, has slowly improved. Moreover, because of the difficulty of access, Ngurawaana has been more successful than Cheeditha in excluding alcohol. Central also to this success, and to the continuing existence of the camp, has been the fact for many (not all) of those involved of their return to country.

Other organisations have also been initiated, including the Ngurin Resource Centre, Mawarnkarra Aboriginal Health Service, Yaandina Family Centre, and, most recently, the Gurra Bunjya cultural camp for young people. The pride and optimism associated with these and other developments has been



graphically expressed by one of the older women in the town:

*What we got, we started in Roebourne. When I first come to Roebourne [in 1968-69], nothing was here, nothing belonged to the Aborigines. Aborigines had nothing, really nothing, no stations. Then we got Chirritha, Mount Welcome and Woodbrook, that's the first one, and Ieramugadu, that's the first one, alright? We started, and I started now, Aborigines started to work for Welfare, work for my people in the Village [in the Homemaker Service]...*

*You see this big centre [the Village Hall]? We brought that there, we bring it up there. That's where the kindergarten used to be down at the river. Because we wanted that hall for the meetings for the people, you know, all the Village people...*

*And after, Cheeditha started, that one there. Aborigine people got that now. From that, we put in for this Mawarnkarra now. We had a meeting, in December, we tell all the people we want that Mawarnkarra Medical Service, so they got to come up here. And then Woodley King got some place up at Ngurawaana. And we got Ngurin now. Lotta changes come after that... Everything change now, that's really good. Aborigine... know they got their place for themselves.*

The key to the changes indicated here, what was generally lacking in 1975 and barely beginning to be felt in 1983, is a sense among the Aboriginal people of Roebourne that they have regained some control over their own situation. It is significant that two of the elements central to this process have been a desire to re-establish access to land and, at the same time, a recognition of the need to develop strategies and programs, including the extension of employment opportunities, to deal with alcohol abuse. The fight to achieve these objectives has been long and hard, there have been, and continue to be, too many casualties along the way, and control remains at best partial and fragmentary. Nonetheless gains have been made, and the will to change is strong among many people.

This has been a thumbnail sketch of Roebourne, the Pilbara and its people - this report does not allow for more. However, Roebourne's history and its present social dynamics have been well documented in recent years. Commissioner Dodson conducted oral hearings in Roebourne and the surrounding areas and deals more fully with the Pilbara region in his report.

I spent some time in Roebourne. I observed some winds of change blowing. A group of Aboriginal people setting up a building company; a splendid Aboriginal children's centre that is setting up a programme for children to come there after school, Aboriginal and non-Aboriginal, playing together; changes in the school. I was invited (as were all the people working in the Commission and all the counsel) to a corroboree performed mainly by young people, under the leadership of elders, and a little later the young people went down to Perth to perform in schools there.

I was told and I sensed that there was a more relaxed atmosphere. I met the Sergeant of Police - a quiet, thinking man who wants to see improvements. The Uniting Church Frontier Service, in close collaboration with Aboriginal people, is organising a pre-school.

The grog is still a problem--young people are still dying--but it is said to be not as bad as it was. People want jobs and they want country and they want some amenities in the town. They want a swimming pool. With a properly organised CDEP scheme they might be able to build their own swimming pool. That is, of course, a matter for them and for ATSIC. But another positive project would be a great help.

The non-Aboriginal society has made Roebourne what it is - it ought to help to remake it, taking into account the wishes and aspirations of the Aboriginal people and negotiating with them on a basis of equality and mutual respect.



## **PARTIES GIVEN LEAVE TO APPEAR**

<b>Party</b>	<b>Represented by</b>
Government of Western Australia	Mr M. Muller
Mr Brian Bull, Commissioner of Police Mr John Porter, Former Commissioner Mr Bruce Scott, Assistant Commissioner of Crime Mr Allan Balcombe, retired Police Officer	Mr N. McKerracher and Ms D.Wokey
Mr Eric Walter Couzens, Superintendent of Police	Mr G. Miller, QC
Police Officers: T.J. Holl, S.A. Bordas, I.F. Armitt, J. Young, and Police Aide M. Walker	Mr B. Singleton, QC and Mr P. Price
Western Australian Police Union of Workers	Mr J. Quigley
Mrs Mavis Pat and the Aboriginal Legal Service	Mr M. King and  Mr S. Adam
Committee to Defend Black Rights (limited to underlying issues)	Mr N. Olive

## SCHEDULE 2: LIST OF WITNESSES

Name	Occupation	Transcript No.
ARMITT Ian Frank	Police Officer	3757-4335
BALCOMBE Alan Russell	Former Police Officer	4803-5102
BARTLETT Michael John	Police Officer	2497-2620
BORDAS Steven Alan	Police Officer	3364-3755
COPPIN Peter		218-221
COURT Ronald Harvey		620-862
COUZENS Eric Walter	Police Officer	5138-5183
DAWSON William Henry		319-456
DELINT Adrian		1335-1482
DEVANEY John Patrick	Police Officer	2031-2184 2282-2366
EMMANUEL Michael	Police Officer	1642-1719
GILBY Cider	Police Aide	1724-1865
HART Robert William	Community Services Officer	2620-2640
HICKS Joan Cheryl		495-517
HICKS Laurence Frederick		517-547
HOLL Terence James	Police Officer	4443-4798
HOWARD Cecelia		2642-2668
JAMES Ashley Brendon	56-84	
KING Ronald Henry	Licensee Victoria Hotel, Roebourne	5103-5138
LAND Catherine M.E. (nee PARK)	Former Employee Victoria Hotel Roebourne	909-1081
LESLIE Wallace William	Police Officer	2458-2496
McGRATH Raymond	Police Officer	2405-2458
McPHEE Thomas Albert		102-217
MUNDA Brian		222-227
PARKER Guy		2366-2383
PETHICK Barry Francis	Police Officer	1202-1334
PUZEY Stephen R.P.	Police Officer	1874-203
RICHARDS Kevin John		572-616
SANDY John		551-572
SCADDEN William Charles	Mechanic	2675-2690
SCOTT Bruce Alan	Police Officer	1494-1642 3191-3361 4337-4441
STOREY Coralie June		249-317
WALKER Michael	Police Aide	2696-2996
WATT David Charles	Police Officer	1107-1147
WEIR Mark Alexander	Police Officer	1150-1199
WEST Annette Cheryl		2186-2214
WEST Terry	Bar Manager, Victoria Hotel Roebourne	2214-2280
YOUNG James	Police Officer	2997-3187

### SCHEDULE 3: LIST OF EXHIBITS

- W/19/1 Transcript of Coronial Inquest Vol. 1 to 8, PP. 1-3163, 10331-10719
- W/19/2 Coroner's File, PP.2334-3163 & 12768-12803  
(a) Letter from Counsel Assisting to the Coroner 12.6.90 and response from Crown Solicitor, 25.7.90
- W/19/3 Transcript of trial of five officers - held in Supreme Court Karratha, 30.4.84 to 23.5.84 Vol. 1-5 PP. 3164-4972
- W/19/4 Court File Smith v. Young No. 1829/84 13.5.85, PP.9916-10086
- W/19/5 Court File Coppin v. Bordas No. 1828/84 12.6.85, PP. 10087-10121
- W/19/6 Court File R. v. Roy Smith No. 1598/88 19.7.84, PP. 10122-10173
- W/19/7 Court File Smith v Holl 1826/84 12.6.85, PP. 10174-10212
- W/19/8 Court file R. v. Lockyer 6.9.84, PP. 10213-10330
- W/19/9 Police file (remainder of)  
(a) Photocopy of all documents supplied by Commissioner of Police on subpoena
- W/19/10 Department of Health file
- W/19/11 Department of Community Services file, PP.9821-9884
- W/19/12 Crown Law Department file, PP. 11238-11572
- W/19/13 Aboriginal Legal Service (WA) file, PP. 11890-12186
- W/19/14 Department of Aboriginal Affairs file, PP. 12187-12767 (3 Vols.)
- W/19/15 Attorney General's file, PP. 12804-891
- W/19/16 (a) Bundle of copy photographs (copies of those tendered at trial)  
(b) Photographs re McPhee incident  
(c) Book of photographs with index
- W/19/17 (A-I) Plans with Index  
(J) (Only to indicate layout of station in 1983)
- W/19/18 Copy Video Tapes of demonstrations conducted by Detective Sergeant Scott at QE II Medical Centre on 2.12.83.
- W/19/19 (a) Roebourne Police Station Occurrence Book  
(b) Occurrence Book original folios 7244-7249
- W/19/20 Roebourne Police Station Orders with Index
- W/19/21 (a) Copy Routine Orders as tendered at Inquest with Index  
(b) Routine Orders (Current) with Index
- W/19/22 (a) Extracts of Police Manual 1977 with Index  
(b) Extracts of police Manual 1987 with Index
- W/19/23 Birth Certificate/Death Certificate of John Peter Pat
- W/19/24 Statement of Agreed Facts
- W/19/25 Ashley JAMES  
(a) Statement to Senior Inspector Balcombe 1.10.83, PP.09363-09368  
(b) Proof of evidence copy 30.9.83, PP.0181-83  
(c) Deposition taken at Inquest 1.11.83  
(d) Blood Sample Document taken 26.10.83, PP.06719  
(e) Transcript of evidence at trial of five officers 7.5.84, PP.03894-03941  
(f) Statement to Royal Commission 9.2.90  
(g) Statement to Detective Sergeant Scott 19.3.88, PP.09185
- W/19/26 Brian ADAM  
(a) Statement to Detective Sergeant Scott 5.10.83, PP.5758-62  
(b) Undated statement witnessed by David Daniel, PP.10119-21  
(c) Deposition taken at Inquest on 2.11.83, PP.266-290  
(d) Transcript of evidence at trial of five officers 7.5.84, PP. 3941-70  
(e) Transcript of evidence at Munda/Coppin trial 16.8.84, PP.5293-5300
- W/19/27 Geoffrey ADAMS  
Statement to Senior Inspector Balcombe, PP.7504-6
- W/19/28 Arthur William ARMSTRONG  
(a) Statement to Detective Sergeant Bartlett 1.10.83, PP.7034-7036

- (b) Deposition taken at Inquest 4.11.83, PP.650-663  
(c) Transcript of evidence at trial of five officers 9.5.84, PP.4229-4238
- W/19/29 Cyril AYRIS  
(a) Deposition taken at Inquest on 20.12.83, PP. 10572-10584  
(b) 3.10.83 Newspaper Article West Australian P.9680
- W/19/30 Mary Margaret BELL  
Deposition taken at Inquest on 6.12.83 PP. 10331 - 10337
- W/19/31 Maureen BOBBY  
(a) Statement to Detective Sergeant Bartlett 1.10.83, PP.9567-70  
(b) Deposition taken at Inquest on 8.11.83, PP.861-891  
(c) Transcript of evidence at trial of five officers dated 8.5.84, PP.4059-67
- W/19/32 Ross William BRADLEY  
(a) Statement undated, PP.6181-6179  
(b) Statement undated with -attachment, PP.3110-3111  
(c) Deposition taken at Inquest 7.12.83, PP. 10385
- W/19/33 Michael Harry BROWN  
(a) Statement to Detective Sergeant Bartlett dated 2.10.83, PP 5691-95  
(b) Statement to Senior Inspector Balcombe 21.10.83, PP.5690-86  
(c) Deposition taken at Inquest on 4.11.83, PP.638-648
- W/19/34 Robert Keith BROWN  
Statement to Detective Von Poleske, PP.6274-72
- W/19/35 Doreen Lilian Jean BULLEN  
Statement to Detective Sergeant Bartlett 2.10.83, PP.7559-60
- W/19/36 Susie CHURNSIDE  
(a) Statement to Senior Inspector Balcombe 20.10.83, PP.7561-69  
(b) Deposition taken at Inquest on 16.11.83, PP. 1987-2033  
(c) Transcript of evidence at trial of five officers 4.5.84, PP.3853-3892  
(d) Undated unsigned statement exhibited at Inquest, (Ex. DF)  
PP.3025-3032
- W/19/37 David COX  
Statement to Detective Von Poleske dated 2.10.83, PP.7590-7591
- W/19/38 John CRESSEY  
(a) Copy of statement to Detective Sergeant Ford 5.10.83 PP. 7099-7101  
(b) Statement to Senior Inspector Balcombe 21.10.83, PP.2574-2576  
(c) Deposition taken at Inquest on 8.11.83, PP.905-914
- W/19/39 Dennis DALE  
(a) Statement dated 6.10.83, PP.6260-6263  
(b) Statement to Senior Inspector Balcombe 21.10.83, PP.7108 -7122
- W/19/40 Margaret DALE  
Statement to Detective Sergeant Bartlett 31.10.83, PP.6265-6266
- W/19/41 Robbie DALE  
(a) Statement to Detective Sergeant Bartlett 1.10.83, PP.7116-7118  
(b) Statement to Detective Sergeant Bartlett 18.10.83 PP.7113-7115  
(c) Deposition taken at Inquest 8.11.83, PP.942 - 960  
(d) Transcript of evidence at trial of five officers 9.5.84, PP.4181-4199
- W/19/42 Aileen DOUGLAS  
(a) Statement to Detective Sergeant Bartlett 29.10.83, PP.5595-5597  
(b) Deposition taken at Inquest on 8.11.83 PP.962-995  
(c) Deposition taken at Inquest 9.11.83. P.997  
(d) Deposition taken at Inquest (Recall)12.11.83, PP. 1477-1479  
(e) Transcript of evidence at trial of five officers 9.5.84, PP.4172-4180
- W/19/43 Wennus DOWTON  
(a) Statement to Det. Sgt Scott 4.10.83, PP.5699-5700  
(b) Statement to Det. Sgt Scott 20.10.83, PP.7126-7128

- (c) Deposition taken at Inquest on 4.11.83, PP.628-636  
 (d) Transcript of evidence at trial of five officers 8.5.84, PP.4010-4012
- W/19/44 Christopher EDWARDS  
 (a) Statement to Det. Sgt Bartlett 31.10.83, PP.2821-2822  
 (b) Complaint by PC Young 28.9.83
- W/19/45 Richard Edmund FENNY  
 (a) Statement to Det. Sgt Scott 1.11.83  
 (b) Deposition taken at the Inquest 9.11.83
- W/19/46 Douglas John GOLDING  
 Statement to Snr Inspector Balcombe 3.10.83
- W/19/47 Billy GUINNESS  
 (a) Statement to Det. Sgt Bartlett dated 5.10.83, PP.7174-7176  
 (b) Statement to Det. Sgt Scott 21.10.83, PP.7170-7173  
 (c) Deposition taken at Inquest 9.11.83, PP. 1046-1070  
 (d) Transcript of evidence at trial of five officers 7.5.84, PP.3988-3993  
 (e) Transcript of evidence at Munda/Coppin trial 15.8.84, PP.5241-5253
- W/19/48 Nicholas GUINNESS  
 (a) Statement to Detective Sergeant Ford 4.10.83, PP.7177, 7178, 7180  
 (b) Statement to Snr Inspector Balcombe 21.10.83, P.7179  
 (c) Deposition taken at Inquest 2.11.83, PP.245-264  
 (d) Transcript of evidence at trial of five officers 7.5.84, PP.3971-3987
- W/19/49 Jonathon Phillip HANCOX  
 (a) Statement to PC Tucker 30.9.83, PP7707-7709  
 (b) Statement to Det. Sgt Bartlett PP.7181-7183  
 (c) Deposition taken at Inquest 7.11.83, PP.700-729  
 (d) Transcript of evidence at trial of five officers 9.5.84, PP.4200-4224
- W/19/50 Robert James HARRIS  
 (a) Statement to Det. Sgt Bartlett with addendum 5.10.83, PP.9375 - 9382  
 (b) Statement to Det Sgt Scott (1 page only) 21.10.83, P.9376  
 (c) Deposition taken at Inquest 1.11.83 ,PP. 187 - 243  
 (d) Transcript taken at trial of five officers 3.5.84, PP.3645-3686
- W/19/51 Anthony HARROLD  
 (a) Statement to PC Bullen dated 5.10.83, PP.5774-5775  
 (b) Statement to Det. Sgt Bartlett 21.10.83, PP.5776-5777  
 (c) Deposition taken at Inquest 1.11.83, PP. 163-184
- W/19/52 John Charles HART  
 (a) Statement to Det Sgt Scott 14.11.83, PP.7724  
 (b) Affidavit re Union Meeting Times 5.12.83, PP.6174-6173
- W/19/53 Bronco HERBERT  
 (a) Statement to Det. Von Poleske 3.11.83, PP.2914-2917  
 (b) Statement to Snr Inspector Balcombe 11.11.83, pages 2,3,4,5 only (page 1 missing) PP.2918-2921  
 (c) Deposition at Inquest 12.11.83, PP. 1492-1515  
 (d) Transcript of evidence at trial 5 police officers 8.5.84, PP.4138-4156
- W/19/54 Judith HUGHES  
 (a) Statement to Det. Sgt Bartlett with addendum 1.10.83, PP.2831-34  
 (b) Statement to Det. Sgt Bartlett 21.10.83, P.2832
- W/19/55 Thomas Albert McPHEE  
 (a) Statement to Snr Sgt Court 25.11.87, PP 9254-50  
 (b) Statement to Det. Sgt Scott 22.3.88, PP.9163-68  
 (c) Statement to Royal Commission 5.2.90 and Annexures: A. Statement to Snr Sgt Court 25.11.87 B. Statement to Bet. Sgt Scott 22.3.88
- W/19/56 Peter COPPIN  
 (a) Authority for blood sample 26.10.83, P.6720

- (b) Statement to Det. Sgt Scott 2.10.83, PP.2897-2904
  - (c) Statement to Det. Sgt Scott 18.10.83, PP 2905-2908
  - (d) Undated Statement to ALS (witnessed by Mr Davies), PP.5527-5531
  - (e) Deposition taken at Inquest 11.11.83, PP. 1383-1463
  - (f) Transcript of evidence at trial of five officers 2.5.84, PP.3510-3558
  - (g) Statement to Police Officers Bewley & Tucker 3.5.84
  - (h) Transcript of evidence Munda/Coppin trial 16.8.84, PP.5270-5288
  - (i) Statement to Det. Sgt Scott 19.3.88, PP.9180
  - (j) Undated statement to Mr Daniel, PP. 10053-10057
- W/19/57 Brian MUNDA
- (a) Statement to Mr Davies 18.10.83, PP.2922-2926
  - (b) Deposition taken at Inquest 12.11.83, PP. 1517-1535
  - (c) Copy of undated ALS Proof of evidence witnessed by Mr Davies, PP.8195-8196
  - (d) Transcript of evidence at trial of five officers 2.5.84, PP.3481-3509
  - (e) Transcript of evidence Munda trial 16.8.84, PP.5258-5270
  - (f) Notes of Interview between Det. Von Poleske & Munda PP.7882-7883
  - (g) Statement of Mr Munda dated 19.3.88 to Det. Sgt Scott PP.9188
- W/19/58 Maisie INGIE
- Statement to Snr Det. Von Poleske 1.10.83, PP.6223-6224
- W/19/59 Lennis JAMES
- (a) ALS Proof of evidence 14.10.83, PP.2889-2890
  - (b) Statement to Snr Insp. Balcombe 19.10.83, PP.7238-7241
  - (c) Undated statement to Police Officer Tucker, PP.7794-96
  - (d) Authority for blood sample 26.10.83, PP.6720
  - (e) Deposition taken at Inquest 11.11.83, PP 1308-1373
  - (f) Transcript of evidence at trial of five officers 1.5.84, PP.3362-3410
- W/19/60 Bill William KING
- Statement to Det. Sgt Bartlett 31.10.83, PP.6239-6238
- W/19/61 Peter LIMERICK
- (a) Statement dated 5.10.83, PP.7246-7252
  - (b) Statement to Det. Sgt Scott (with addendum) 21.10.83, PP.7249-7250 2 pages (4 & 5) dated 21.10.83 to replace pages 4 & 5 of statement 5.10.83
- W/19/62 Marie LOCKYER
- (a) Pages 2-4 statement to Det. Sgt Bartlett 1.10.83 (with addendum)
  - (b) Statement to Det. Sgt Bartlett (page 1 dated 1.10.83), PP.7256-7258
  - (c) Deposition taken at Inquest 9.11.83, PP. 1021-1044
  - (d) Transcript of evidence at trial of five officers 8.5.84, PP.4046-4050
- W/19/63 Marjorie LOCKYER
- (a) Statement to Det. Sgt Bartlett 2.10.83, PP.7267-7270
  - (b) Statement to Snr Insp. Balcombe 20.10.83, PP.5587-5590
  - (c) Deposition taken at Inquest 9.11.83, PP 1136-1164
  - (d) Transcript of evidence at trial of five officers 9.5.84, PP.4159-4171
- W/19/64 Sharon Corrinar LOCKYER
- Statement dated 4.10.83, PP.7848-7849
- W/19/65 Shirley LOCKYER
- Statement to Sgt A W Mott 25.10.83, PP.7850-7851
- W/19/66 John Peter LORANTAS
- (a) Statement to Det. Sgt Scott 20.10.83, PP.5973-5972
  - (b) Deposition taken at Inquest 16.11.83, PP. 1983-1985
  - (c) Transcript of evidence at trial of five officers 9.5.84, PP.4270-4278
- W/19/67 Coralie STOREY
- (a) Statement to Sgt Court 25.11.87, PP.9170
  - (b) Statement to Det Supt Scott 16.3.88, PP.9171-72



(c) Statement to Royal Commission 13.2.90  
(d) Handwritten copy of statement 16.3.88

W/19/68 William DAWSON  
(a) Statement to Det. Supt Scott 18.3.88, PP.9177/78  
(b) Statement to Royal Commission with Exhibit A (copy of statement)

W/19/69 Plan of Padbury and Roe Streets area marked by Mr W Dawson

W/19/70 Judith Beverley NICOLSON  
(a) Statement to Snr Insp. Balcombe 30.9.83, PP.5645-5646  
(b) Statement to Det. Sgt Scott 22.10.83, PP.7300-7301  
(c) Deposition taken at Inquest 8.11.83, PP.893-903  
(d) Transcript of evidence at trial of five officers 8.5.84, PP.4012-4020

W/19/71 Peter Angus NICOLSON  
(a) Statement to Snr Insp. Balcombe 30.9.83, PP.5935-5936  
(b) Deposition taken at Inquest 16.11.83, PP.2035-2043  
(c) Statement 29.11.83, PP.6778-6779  
(d) Undated statement (same as 29.11.83), PP.3104-3105  
(e) Telex 6.12.83, PP.6780  
(f) Transcript of evidence at trial of five officers 8.5.84, PP.4021-4024

W/19/72 Steven John O'DONNELL  
(a) Statement to Det. Sgt Bartlett 19.10.83, PP.9502-9503  
(b) Deposition taken at Inquest 4.11.83, PP.615-626  
(c) Deposition taken at Inquest 7.12.83, PP. 10403-10409

W/19/73 Sandra PATERSON  
(a) Outpatient Treatment Record 28.9.83, PP.5922  
(b) Undated statement unsigned (inquest exhibit DS), PP.5918-5921  
(c) Deposition taken at Inquest 21.11.83, PP.2111-2124

W/19/74 David Robert PECK  
(a) Statement to Snr Insp. Balcombe 1.10.83, PP 7331-7335  
(b) Statement to Det. Sgt Bartlett 18.10.83, PP.2531-2536  
(c) Deposition taken at Inquest 4.11.83, PP.665-696  
(d) Transcript of evidence at trial of five officers 9.5.84, PP.4239-4259  
(e) Transcript of evidence at trial Munda/Coppin 15.8.84, PP.5232-5240

W/19/75 Eric Thomas PRIDDETH  
Statement to Det. Sgt Scott 14.11.83, PP.8573

W/19/76 Susan Pamela SAMSON  
Statement to Det. Sgt Bartlett 28.11.83, PP.6226-6225

W/19/77 Kelvin SAUNDERS  
(a) Statement to Det. Sgt Bartlett 2.10.83, PP.5579-5581  
(b) Statement to Snr Insp. Balcombe 19.10.83, PP.5575-5578  
(c) Deposition taken at Inquest 10.11.83, PP. 1196-1214A  
(d) Transcript of evidence at trial of five officers 8.5.84, PP.4093-4101  
(e) Statement to Mr Daniel 5.12.84, PP. 12037-12039

W/19/78 Gary Raymond SHUGG  
(a) Notes of Interview with Det. Sgt Scott 15.11.83, PP.3139-3140  
(b) Typed copy of notes of interview with Det. Sgt Scott PP.3138  
(c) Statement 11.12.83, PP.3160-3161  
(d) Deposition taken at Inquest 21.12.83, PP. 10585-10593

W/19/79 Julie SLOOT  
(a) Undated/unsigned statement (EXDC at Inquest), PP.3003-3013  
(b) Deposition taken at Inquest 15.11.83, PP. 1959-1980  
(c) Transcript of evidence at trial of five officers 9.5.84, PP.4259-4270

W/19/80 Irma SMITH  
(a) Statement to Det. Sgt Bartlett 19.10.83, PP.2420-24  
(b) Undated ALS Proof PP.5736-5739  
(c) Deposition taken at Inquest 3.11.83, PP.416-460  
(d) Transcript of evidence at trial of five officers 4.5.84, PP.3809-3852

W/19/81 Joan Cheryl HICKS  
Statement to Royal Commission 9.3.90

W/19/82 Laurence Frederick HICKS  
(a) Handwritten statement to Det. Sgt Bartlett 7.4.88, PP.9196-98  
(b) Typed copy statement of 7.4.88, PP.9194-95

W/19/83 Birth Certificate Jolleen Regina Hicks 4.4.83

W/19/84 John SANDY  
(a) Statement to Det. Sgt Scott 5.10.83, PP.5660-5665  
(b) Statement to Det. Bartlett (P.4,5) 21.10.83, PP.9552-9553  
(c) Deposition taken at Inquest 7.11.83, PP.731-784  
(d) Transcript of evidence taken at trial of five officers 8.5.84, PP.4025-4046  
(e) Transcript of evidence taken at Munda/Coppin trial 16.8.84, PP.5292-5293  
(f) Statement to Detective Supt Scott 19.3.88, PP.9186

W/19/85 Kevin John RICHARDS  
Statement to Royal Commission 26.2.90 with annexure  
Thomas McPhee statement 25.11.87, (PP.9254-9250)

W/19/86 Ronald Harvey COURT  
(a) Report Snr Sgt Court to Acting Supt Harris 14.12.87  
(b) Report Snr Sgt Court to Officer in Charge, CIB Katherine 17.12.87  
(c) Report from Det. Polychrone to Snr Sgt Court 23.12.87  
(d) Telex from Chief Supt Kjellgren to Snr Sgt Court 17.3.88  
(e) Report Snr Sgt Court to Supt Scott  
(f) Report Sen Sgt Court to Chief Supt Kjellgren 18.3.88

W/19/87 Leonard AUBREY  
(a) Statement to Snr Insp. Balcombe, 3.10.83 P.2795  
(b) Handwritten statement to Det. Bartlett re McPhee incident, 9.4.88, PP.9183-9184  
(c) Typed copy of statement, 9.4.88 PP.9182

W/19/88 April BOONGA  
(a) Statement to Snr Det. Tucker, 1.10.83, PP.2578-80  
(b) Deposition taken at Inquest, 8.11.83, PP.916-940  
(c) Transcript of evidence taken at trial of five officers 8.5.84, PP.4097-84  
(d) Statement to Det. Supt Scott re McPhee incident 19.3.88, P.9189  
(e) Statement to Royal Commission with attachment 8.3.90

W/19/89 Edward John DAWSON  
(a) Statement to Det. Bartlett, 19.10.83 PP.7119-7120  
(b) Statutory Declaration to Det. Polychrone, 23.12.87 PP.9152-9153

W/19/90 Ricky DOOGABIE  
Statement dated 19.3.88, PP.9190

W/19/91 Amy FREDERICKS  
(a) Statement to Det. Sgt Scott & Det. Sgt Ford 4.10.83, PP.7161-7163  
(b) Statement to Det. Supt Scott 18.3.88, P.9181

W/19/92 Shirley WALLEY  
(a) Statement to Det. Sgt Ford 4.10.83, PP.2622-2623  
(b) Statement to Snr Insp. Balcombe 21.10.83, PP.2618-2621  
(c) Deposition taken at Inquest 9.11.83, PP. 1091-1121  
(d) Transcript of evidence at trial of five officers 8.5.84, PP.4117-4138  
(e) Statement (witness Mr M. Daniel) 6.12.84, PP. 10211-10212  
(f) Statement dated 3924 19.3.88, P.9187

W/19/93 Kevin STEWART  
(a) Statement to PC Bullen and Det. Sgt Ford 5.10.83, PP.7415-16  
(b) Handwritten statement to Det. Bartlett 10.4.88, PP.9192-93  
(c) Typed copy of statement 10.4.88, P.9191

- W/19/94 Anne Debbie STOCK  
 (a) Statement to Det. Bartlett 2.10.83, PP.5652-5656  
 (b) Amended page 4 of statement 2.10.83, P.9565  
 (c) Deposition taken at Inquest 8.11.83, PP. 837-858  
 (d) Transcript of evidence taken at trial of five officers 8.5.84, PP.4067-4078  
 (e) Copy of RC. statement 22.2.90  
 (f) Undated ALS statement witnessed by Mr L Davies PP.8242-8243
- W/19/95 Mervyn James SMITH  
 (a) Statement to Det. Sgt Ford 5.10.83, PP.7991-7992  
 (b) Statement to Royal Commission 25.1.90
- W/19/96 Mairilyn BLANKET  
 Statement to Royal Commission re Ieramugadu Employment Records
- W/19/97 Catherine Mary Elizabeth LAND (nee PARK) Statement to Royal Commission 16.3.90 with annexures:  
 (a) Statement to Snr Insp. Balcombe 30.9.83,  
 (b) Statement to Snr Insp. Balcombe 18.10.83, PP.9474-9479  
 (c) Statement to Mr Davies, PP.9481-9484  
 (d) Deposition taken at Inquest 3.11.83 and deposition taken at Inquest 4.11.83, PP.519-559  
 (e) Transcript of evidence at trial of five officers 3.5.84 and transcript of evidence at trial of five officers 4.5.84, PP.3686-3776  
 (f) Transcript of trial evidence Munda/Coppin 16.8.84, PP.5301-5303  
 (g) Statement (for Smith v Holl) 2.1.85, PP.12005-12007
- W/19/98 David WATT  
 (a) 6.10.83 statement PP.2, 4, 5, 7 and 8 with addendum, PP.9351-9341  
 (b) 21.10.83 statement PP.9343-9350  
 (c) 1.11.83 deposition taken at Inquest PP.76-161  
 (d) 16.12.83 copy Report Snr Cont. Watts to Det. Sgt Scott re times, PP.8114  
 (e) 10.5.84 transcript of evidence taken at trial of five officers, PP.4336-4345
- W/19/99 Alexander WEIR  
 (a) Undated statement, PP.9356-9361  
 (b) 1.11.83 deposition taken at Inquest, PP. 110-123  
 (c) 10.5.84 transcript of evidence taken at trial of five officers PP.4345-4350
- W19/100 Barry Francis PETHICK  
 (a) Photocopy undated statement pp.4,5 and 6, PP.7336-7338  
 (b) 6.10.83 photocopy of statement PP.7339-7346  
 (c) 6.10.83 statement tendered at Inquest Exhibit M, PP.9332-9339  
 (d) 31.10.83 deposition taken at Inquest, PP.35-66  
 (e) 9.5.84 transcript of evidence taken at trial of five officers PP.4282-4294
- W/19/101 Adrian DELINT  
 1.3.90 Statement to Royal Commission with annexures:  
 (a) Undated statement, PP.9642-9646  
 (b) 10.11.83 deposition taken at Inquest, PP. 1166-1194
- W/19/102 Bruce A. SCOTT  
 (a) 17.3.88 report to Supt Putland  
 (b) 28.3.88 copy of report to Det. Chief Insp. Skehan  
 (c) 13.4.88 report to Det. Chief Supt Skehan (plus 25 attachments)  
 (d) Undated bundle of handwritten notes (5 pages)  
 (e) Undated handwritten notes apparently from interview of T.McPhee 21.3.88

- (f) Undated handwritten unsigned statement of T. McPhee formulated after interview
- (g) 27.3.90 Statement to Royal Commission (plus 2 attachments)
- (h) Memo from Mr Scott to Assistant Commissioner (Traffic) for attention Sergeant Ford 13.3.90
- (l) A. Memo March 14, 1990 from Sgt Ford to Mr Scott in reply to W/19/102(h)
- B. Death Certificate Inspector R.T. Christenen
- (j) Copy Det. Sgt Scott's report to Acting Asst Cmr (Ops), PP.6794-6795
- (k) Undated statement of Det. Sgt Scott (prepared for Inquest)
- (l) Undated original of Det. Sgt Scott's statement tendered at Inquest (Exhibit FQ), PP 6201-6186
- (m) Undated, unsigned statement of Det. Sgt Scott concerning experiment with clothes
- W/19/102 (n) 27.10.83 request for analysis of blood sample of five officers and other witnesses signed by Supt Goodwin, PP.8638-8639
- (o) 28.10.83 request for analysis of clothing and footwear of five officers, PP. 8643-8644
- (p) 31.10.83 deposition taken at Inquest, PP.31-33 & 6.12.83 deposition taken at Inquest, PP.2253-2333 & 10338-10366
- (q) 3.11.83 photocopy of memo Det. Sgt Scott to Mr Murray re Mr Lloyd Davies, PP.6726
- (r) 8.11.83 memo Det. Sgt Scott with attachment to Mr Wallwork re Mr O'Kenny's article (Exhibit W/19/119(b)), PP.6725
- (s) 29.9.83 to 6.2.84 & 12.3.84 to 27.5.84 Certified copies of pages CIB diaries, PP.5347-5491
- (t) Photocopy of memo from Det. Sgt Scott to Chief Supt Walker dated 21.6.84, PP. 11655-11659
- (u) Statement of Mr Scott to Royal Commission of 8.5.90
- (v) 4.10.83 request for Analysis of Blood Sample Wickham Van, Juvenile Cell and Footwear of 4 officers
- (w) Statement of Mr Scott 8.8.90 with annexure (List of Questions 8.12.83)
- (x) Affidavit of Mr Scott 10.9.90 with exhibits
- W/19/103 G.R. FREEMAN
- (a) 28.7.89 report to Chief Superintendent Scott
- (b) Undated statement (copy of statement Exhibit 103(a))
- W/19/104 Michael EMMANUEL
- (a) 6.10.83 statement by Police Constable Emmanuel, PP.8505-8511
- (b) 20.10.83 statement to Det. Sgt Scott, PP.9666-9673
- (c) 10.11.83 deposition taken at Inquest, PP. 1225-1270
- (d) 16.12.83 copy PC Emmanuel's Report to Snr Const. Watt, PP.7665
- (e) 10.5.84 transcript of evidence at trial of five officers, PP.4366-4373
- W/19/105 (a) 12.3.90 letter of Mr. M P Candy to M Jordan of Royal Commission
- (b) 14.3.90 statement of W R Kininmouth
- W/19/106 GEOFFREY LOCKYER
- (a) Statement to Det. Sgt Ford 5.10.83, PP.2553-2555
- (b) Handwritten statement to PC Rickson 9.10.83, PP.6808-11
- (c) Authority for blood sample 26.10.83, PP.6719
- (d) Deposition taken at Inquest 7.11.83, PP.786-834
- (e) Transcript of evidence taken at trial of five officers 7.5.84, PP.3394-4008
- (f) Transcript of evidence taken at trial of Lockyer 6.9.84, PP. 10245-10255
- (g) Statement to Royal Commission 21.3.90
- W/19/107 Colin Peter MATHESON

- 13.3.90 statement to Royal Commission  
W/19/108 Melanie Helen Sandra PERRY  
20.3.90 statement to Royal Commission
- W/19/109 Cider GILBY  
(a) 3.10.83 Police Aide Gilby's statement to Snr Insp. Balcombe, PP.7164-7167  
(b) Undated copy of Police Aide Gilby's statement P.2, PP.7168  
(c) 11.11.83 Police Aide Gilby's statement to Det. Sgt Scott, PP.7687-7689  
(d) 14.11.83 deposition taken at Inquest, PP. 1792-1818  
(e) 14.12.83 copy of Police Aide Gilby's report, PP.7676  
(f) 2.5.84 transcript of evidence at trial of five officers, PP.3558-3567
- W/19/110 Certificate of Life Extinct - Dr G Rigby 28.9.83, PP.2698
- W/19/111 Identification of Deceased Person - Hart R. 29.9.83, PP.5932
- W/19/112 Stephen Ronald Philip PUZEY  
(a) Mortuary Admission Form (Form P.98) 29.9.83, PP.8381  
(b) Undated Report of Death (Form P. 100), PP.2688  
(c) Copy of PC Puzey's statement 11.10.83, PP. 8579  
(d) Statement 19.10.83, PP.5930  
(e) Statement 30.10.83, PP.5929-5928  
(f) Statement 3.11.83, PP. 3041-3044  
(g) Deposition taken at Inquest 16.11.83, PP.2045-2109  
(h) Copy of PC Puzey's Report 14.12.83, PP.7937-7939  
(i) Copy of Defaulter's Sheet 23.3.84  
(j) Transcript of evidence at trial of five officers 10.5.84, PP.43734376
- W/19/113 John Patrick DEVANEY  
(a) Statement 6.10.83, PP. 8481-8490  
(b) Statement 22.10.83, PP.8491-8496  
(c) Deposition taken at Inquest 15.11.83, PP. 1827-1957 and Deposition taken at Inquest 7.12.83, PP. 10395-10402  
(d) Statement re Smith's Meal Allowance 9.12.83, PP.8980-8979  
(e) Copy of Sergeant Devaney's Report 15.12.83, PP.7639  
(f) Minute of Supt McGrath to Sergeant Devaney 30.12.83, PP.11578  
(g) Minute of Sgt Devaney to Supt McGrath 5.1.84, PP. 11577  
(h) Transcript of evidence at trial of five officers 10.5.84, PP.4351-4366
- W/19/114 Annette WEST  
Statement to Royal Commission 6.4.90
- W/19/115 Terry WEST  
(a) Undated statement to Det. Sgt Bartlett, PP.2879-2881  
(b) 15.11.83 deposition taken at Inquest, PP. 1821-1824  
(c) Transcript of evidence at trial of five officers 9.5.84, PP.4224-4228
- W/19/116 Guy PARKER  
(a) 25.10.83 statement to Det. Sgt Scott, PP. 6030-6028  
(b) 14.11.83 deposition of evidence taken at Inquest, PP. 1730-1738
- W/19/117 Rosie BOBBY  
Statement to Det. Bartlett 2.10.83, PP.2798-2799
- W/19/118 Mark Freeman CUNNINGHAM  
(a) Photocopy of affidavit 29.9.83 with exhibit, PP.7102-7103  
(b) Affidavit 27.10.83, PP.7598-7599
- W/19/119 John Keith GIBSON  
(a) Statement concerning enquiries made as to article in Kimberley Echo 24.10.83, PP.8512-8513  
(b) Photocopy of newspaper clipping Kimberley Echo 24.10.83, PP.6980
- W/19/120 Donald Wm GRIFFITHS  
(a) Affidavit 13.10.83 with exhibit, PP.7691-7692  
(b) 6.6.90 statement to Royal Commission re autopsy notes with notes

- of autopsy results annexed
- W/19/121 David John LAMPARD  
Photocopy of statement 22.10.83, PP.7802
- W/19/122 Kay Frances SAUNDERS  
Statement to PC Bullen 4.10.83, PP.7364-7366
- W/19/123 Peter William THOMAS  
(a) Affidavit pursuant to Section 11 (2)(a) Coroner's Act with Annexure, PP.9760-9762  
(b) Certified copy of extracts from Police Notebook 29.9.83 to 2.12.83, PP.5523  
(c) Undated statement to Royal Commission (not taken by Royal Commission staff)
- W/19/124 Raymond McGRATH  
(a) Supt McGrath's handwritten notes of Sgt Devaney's calls, PP.9679 (and copy)  
(b) Statement 31.10.83, PP.6016-6017  
(c) Deposition taken at Inquest 14.11.83, PP. 1760-1769  
(d) Photocopy of Supt McGrath's report to Det. Sgt Scott 15.12.83, PP.7861-7863  
(e) Report of Supt McGrath to Det. Sgt Scott 16.12.83, PP.6714-6716  
(f) Bundle of 24 telexes from Supt McGrath to Commissioner of Police, 12.10.83 to 3.11.83, PP.4975-4997  
(g) 3.11.83 to 5.11.83 Situation Reports from Supt McGrath to Commissioner of Police re situation at Roebourne, PP.5005-5007
- W/19/125 Raymond McGRATH  
Undated statistical data as to charges laid at Roebourne Station September and October 1983, PP.4999-5002
- W/19/126 Wallace William LESLIE  
(a) Copy of statement Inspector Leslie 4.11.83, PP.7817-7820  
(b) Copy of statement Inspector Leslie 10.11.83, PP.7811-7816  
(c) Depositions taken at Inquest 10.11.83 and 6.12.83, PP. 1272-1301 and 10367-10381  
(d) Copy of Inspector Leslie's report to Supt McGrath 9.12.83, PP.7821-7822  
(e) Copy of Inspector Leslie's Running Sheet variously dated, PP.8543-8550
- W/19/127 Michael John BARTLETT  
(a) 29.9.83 to 16.12.83 Certified copy of 31 pages Det. Sgt Bartlett's CIB diaries, PP.5494-5522  
(b) Undated notes from conversations with officers 29.9.83 and typed copy, PP.6010-6006  
(c) 29.9.83 Photocopy of extract from CIB Running Sheet, PP.5848  
(d) Undated notes of interview with PC Holl and typed copy, PP.9438-9440  
(e) 29.9.83 Photocopy of telex from Det. Sgt Bartlett to CIB Duty Sgt Perth re arrival of body, PP. 3162  
(f) 30.9.83 Telex to Det. Sgt Bartlett with postmortem results, PP.9696  
(g) Undated statement, PP.6015-6011  
(h) 14.11.83 and 7.12.83 Depositions taken at Inquest, PP. 1771-1790 and 10413-10448  
(i) 19.12.83 copy of Report of Det. Sgt Bartlett to Det. Sgt Scott, PP.7526-7528  
(j) 22.12.83 copy of letter from Coroner to Det. Sgt Bartlett, PP.9003  
(k) 6.1.84 Det. Sgt Bartlett to Snr Insp. Balcombe re Coroners letter, PP.8997  
(l) 1.2.84 letter from Coroner to Det. Sgt Bartlett requesting reply to

- letter 22.12.83, PP.9002  
 (m) 9.2.84 letter to Det. Sgt Bartlett to Det. Sgt Scott, PP.8996  
 (n) Undated statement Det. Sgt Bartlett re G Lockyer, PP. 11953-1955  
 (o) Undated statement Det. Sgt Bartlett re L James attaching statement of L James 26.10.83, PP. 11968-19973  
 (p) Undated copy of report from Det. Sgt Bartlett to Chief Supt Skehan  
 (q) Affidavit with copy of statement Insp. Bartlett 25.7.90, and original statement
- W/19/128 Michael John BARTLETT  
 (a) 2.3.84 Det. Sgt Scott to Snr Inspector Goodman, PP. 8995  
 (b) 12.3.84 Cb. Supt Walker to A/Cmr (Crime), PP.8993  
 (c) 12.3.84 Commissioner of Police to Coroner re Det. Sgt Bartlett's reply, PP.8994
- W/19/129 Robert William HART  
 16.2.90 Statement to Royal Commission with annexures:  
 (a) 29.9.83 handwritten notes, PP.2585  
 (b) 29.9.83 Identification of Deceased Person Form  
 (c) 29.9.83 copy of Special Report, PP.8172-74  
 (d) 26.10.83 copy of statement to Det. Sgt Bartlett, PP.2589-2560  
 (e) 09.11.83 deposition taken at Inquest, PP. 100 4-1020  
 (f) 10.11.83 statement re position of body, PP.9656  
 (g) 10.11.83 deposition taken at Inquest, PP. 1215-1223  
 (h) Sept/Oct '83 DCW Duty Officer List, PP.2587
- W/19/130 Terence Charles SIMS  
 21.3.90 statement
- W/19/131 Cecelia HOWARD  
 (a) Statement to Senior Inspector Balcombe dated 18.10.83  
 (b) Undated photocopy of handwritten statement to Mr Lloyd Davies and Mr John Hedges  
 (c) 12.11.83 deposition evidence at the inquest  
 (d) 30.4.84 transcript of evidence at trial of five officers  
 (e) Statement dated 5 December 1984  
 (f) 13.5.85 deposition at preliminary hearing Smith v. Young
- W/19/132 Roy SMITH  
 (a) 1.10.83 statement to Snr Det. Tucker, PP. 1938-2943  
 (b) 19.10.83 statement to Det. Sgt Bartlett  
 (c) 26.10.83 Authority for blood sample, P.6722  
 (d) 12.11.83 deposition taken at Inquest, PP.1615-1666  
 (e) 1-2.5.84 transcript of evidence taken at trial of five officers, PP.3410-3480  
 (f) 5.12.84 statement for preliminary hearing (Smith v Young), PP.9977-9980  
 (g) 13.5.85 Deposition at preliminary hearing (Smith v Young), PP.9926-9930
- W/19/133 Julie TUCKER  
 (a) 30.9.83 statement to Det. Sgt Scott, PP.9399-9407  
 (b) 14.10.83 ALS statement (witnessed Mr Davies), PP.9396-9397  
 (c) 2.11.83 and 3.11.83 depositions taken at Inquest, PP.292-414  
 (d) 3.5.84 transcript of evidence at trial of five officers, PP.3569-3644
- W/19/134 Lorraine TURNER  
 (a) Undated statement to Police Constable C.M. Bullen  
 (b) 24.10.84 statement to PC Puzey, PP.9753-9758
- W/19/135 Doreen WARRIE  
 (a) 1.10.83 statement to Det Bartlett-(pp. 1,2 dated 6.10.83; pp.3,4 dated 21.10.83; p.3 dated 6.10.83), PP.2612-2615  
 (b) 9.11.83 deposition taken at Inquest, PP. 1072-1098

- (c) 8.5.84 transcript of evidence taken at trial of five officers, PP.4084-4093
- W/19/136 Sheila WARRIE  
 (a) 2.10.83 statement to Det. Bartlett  
 (b) 21.10.83 statement to Det. Bartlett
- W/19/137 Dennis WHALEBONE  
 (a) 6.10.83 statement (pp.2, 3) to Det. Sgt Ford, PP.8127-8128;  
 21.10.83 statement to Det. Sgt Scott, PP.8124-8126  
 (b) 11.11.83 deposition taken at Inquest, PP. 1304-1378  
 (c) 8.5.84 transcript of evidence at trial of five officers, PP.4102-4117
- W/19/138 William Charles SCADDAN  
 23.4.90 Statement to Royal Commission with annexures:  
 (a) 14.11.83 statement to Mr Davies and Mr Hedges, PP.9780-9796  
 (b) 17.10.83 statement to Det. Sgt Scott, PP.6057-6048  
 (c) 14.11.83 deposition taken at Inquest, PP. 1669-1728  
 (d) Undated statement to Mr Daniels, PP. 10050-10052  
 (e) 1.5.84 transcript of evidence at trial of five officers, PP.3284~3364  
 (f) 14.5.85 deposition taken at committal of Smith v. Young, PP.9936-9940
- W/19/139 Russell John WILLIAMS  
 12.12.83 copy of statement, P.7488
- W/19/140 Nora JAMES  
 5.4.90 statement to Royal Commission, Nora James
- W/19/141 Julie JENKINS  
 (a) 23.4.90 statement to Royal Commission, Julie Jenkins  
 (b) 6.6.90 statement to Royal Commission
- W/19/142 Michael WALKER  
 (a) 2.10.83 P. Aide Walkers report  
 (b) 21.10.83 P. Aide Walker to Sen Insp Balcombe  
 (c) 26.10.83 Authority for blood sample  
 (d) 14.12.83 P. Aide Walker report  
 (e) undated copy memo Com. to P. Aide Walker re possible suspension  
 (f) 6.2.84 copy of Notice of Suspension without pay  
 (g) 6.2.84 copy of statement of P. Aide Walker to Commissioner  
 (h) 8.2.84 copy of Notice of Suspension with pay  
 (i) 17.5.84 transcript of evidence taken at trial of five officers  
 (j) 19.6.84 copy of notice to resume duty  
 (k) Plan which is smaller version of Plan 17(A), being copy of 17(A) marked by witness Walker.
- W/19/143 Michael WALKER  
 Rough map of hotel in Padbury Street marked by witness Walker to indicate positions of PCs Armitt, Bordas, Holl and the witness in relation to the landrover.
- W/19/144 James YOUNG  
 (a) 28.9.83 Inventory of Property - John PAT P. 8671  
 (b) 28.9.83 Inventory of Property - Roy SMITH P.8669  
 (c) 28.9.83 Inventory of Property - Peter COPPIN P. 8667  
 (d) 28.9.83 Inventory of Property - Lennis JAMES P.8670  
 (e) 28.9.83 Inventory of Property - Brian MUNDA P. 8678  
 (f) 3.10.83 PC Young's report PP.8629-8627  
 (g) Undated memo PC Young to Snr Insp. Balcombe PP.8631-8630  
 (h) 14.12.83 PC Young's report PP.8142-8143  
 (i) Undated copy of notice from Cmr of Police re suspension P.6353  
 (j) Undated copy of Notice of Suspension Without Pay P.6352  
 (k) 6.2.84 copy of PC Young's memo to Commissioner re suspension



- PP.6355-6354.
- (1) 8.2.84 copy of Notice of Suspension With Pay
- (m) 16.5.84 transcript of evidence taken at trial of five officers PP.4628-4657
- (n) 19.6.84 copy of Notice to Resume Duty
- (o) 15.5.85 PC Young's Deposition at preliminary hearing Smith v Young PP.9941-9959
- (p) Copy of 17A marked by the witness Young, as indicating position where Lennis James went to the ground.
- W/19/145 A.W. MOTT  
10.12.83 copy of memo to Det. Sgt Scott PP.6713
- W/19/146 Brace Allan SCOTT  
Investigating Complaints Against Police Officers
- W/19/147 Steven Alan BORDAS
- (a) Certified copy of signed complaint of Steven Bordas against O'Brien Lennis James. Unlawful assault on Armit Lennis James. Hinder Holl.
- (c) 29.9.83 copy of complaint sworn by Steven A. Bordas, against John Pat for Disorderly Conduct, PP.6835
- (d) 29.9.83 copy of complaint sworn by Steven A Bordas against John Pat - Aggravated Assault Armit, PP.6834
- (e) 29.9.83 copy of unsigned complaint of Steven A Bordas against Roy Smith - Hinder Holl, PP, 5861
- (f) 29.9.83 copy of unsigned complaint of Steven A Bordas against Peter Coppin - Hinder Armit, PP.5832
- (g) 29.9.83 copy of unsigned complaint of Steven A Bordas against Brian Munda - Hinder Armit, PP.5855
- (h) 6.10.83 report of PC Bordas, PP.5908-5903
- (l) 21.10.83 P/C Bordas to Snr Insp. Balcombe, PP.8471-8472
- (j) 26.10.83 photocopy of authority for blood sample, PP.6721
- (k) 26.10.83 facesheet: Lennis James (Agg. Assault Bordas), PP.9742.
- (1) 26.10.83 copy of P. 18 Lennis James (Agg. Assault Bordas) PP.9744
- (m) 26.10.83 copy of P.49 Offence Report Lennis James (Agg. Assault Bordas), PP.6853.
- (n) 26.10.83 certified copy of complaint of Michael Kirkby against Lennis James (Agg Assault Bordas)
- (o) 14.12.83 report of PC Bordas
- (p) Undated copy of Notice from Commissioner of Police to Bordas re Suspension
- (q) 6.2.84 copy of memo from Bordas to Commissioner advising reasons why he ought not be suspended, PP.6343-6342
- (r) Undated copy of Notice of Suspension without Pay, PP.6340
- (s) 8.2.84 copy of Notice of Suspension with Pay
- (t) 15.5.84 transcript of evidence at trial of five officers, PP.4531-4564
- (u) 12.6.84 copy of Notice to Resume Duty
- (v) 15.8.84 transcript of evidence at trial of Munda/Coppin, PP.5220-5231
- (w) Undated statement of PC Bordas (Police v. L James)
- (x) Undated deposition at Smith v.Young preliminary, PP.9950-9953
- (y) Photocopy Brief Backing Sheet re arrest Lennis James by PC Kirkby for Agg. Assault (Police)
- W/19/148 Ian Frank ARMITT
- (a) Outpatient Treatment Card dated 28.9.83, PP.9688
- (a) 29.9.83 polaroid photo of Ian Armit's facial injury
- (b) 28.9.83 Facesheet for charge of B Munda hindering police, completed by Armit, PP.5856

- (c) Undated Brief Jacket: B Munda hindering police, PP.5851
  - (d) 28.9.83 P. 18 for charge of B Munda hindering police, PP.5854-5852
  - (e) 28.9.83 Facesheet for charge of P Coppin hindering police, completed by Armitt, PP.5874
  - (f) Undated Brief Jacket: P Coppin hindering police, PP.5870
  - (g) 29.9.83 P. 18 for charge of P Coppin hindering police, PP.5872, 6831-6830
  - (h) 7.10.83 Report of Police Constable Armitt, PP.5913-5909
  - (l) Undated memo to Snr Inspector Balcombe from PC Armitt, PP.8459-8460
  - (j) 26.10.83 authority for blood sample, PP.6724
  - (k) Undated Facesheet for charge of G Lockyer aggravated assault police (Armitt), PP.6798
  - (1) 27.10.83 P.18 for charge of G Lockyer, aggravated assault PC Armitt, PP.6802~6805
  - (m) 27.10.83 P.49 Offence Report: Aggravated Assault PC Armitt PP.6803
  - (n) 28.10.83 complaint sworn by PC Kirkby against G Lockyer for aggravated assault on PC Armitt, PP.10213
  - (o) 14.12.83 report PC Armitt, PP.2444-2445
  - (p) Undated photocopy of notice from Commissioner of Police to PC Armitt re suspension, PP.6337
  - (q) Undated photocopy of Notice of Suspension without Pay, PP.6336
  - (r) 6.2.84 Photocopy of PC Armitt's memo to Commissioner of Police re suspension, PP.6339-6338
  - (s) Photocopy of Notice of Suspension on full pay
  - (t) 16.5.84 transcript taken at trial of five officers, PP.4565-4627
  - (u) 15.6.84 photocopy of Notice to Resume Duty
  - (v) 15.6.84 statement for charge of aggravated assault by L James, PP. 11976-11977
  - (w) 15.8.84 transcript of evidence of Munda/Coppin trial PP.5201-5219
  - (x) Transcript of evidence at Lockyer trial, PP.10225-10244
  - (y) 15.5.85 deposition taken at committal Smith v. Young, PP.9960-9961
  - (z) Sketch prepared by PC Armitt to show position of boy (Pat) following the arrival of the Wickham police van
- W/19/149 Robert Charles HANSSON  
14.10.83 affidavit with annexure, PP.7710-7712
- W/19/150 Dr John M.N. Hilton  
(a) Undated Curriculum Vitae  
(b) 29.9.83 Postmortem Report, PP.9763-9766  
(c) 12.10.83 copy Histopathology Report, PP.8861  
(d) Undated letter Dr Hilton to J. Dalton, Assistant Commissioner (Operations), PP.8429  
(e) 19.12.83 deposition at Inquest, PP. 10452-10532  
(f) 10.5.84 transcript of evidence at the trial of the five PP.4307-4336  
(g) 12.12.89 copy letter Royal Commission to Dr Hilton with accompanying documents:  
(i) List of relevant documents  
(ii) Statement of relevant facts  
(iii) List of Questions  
(h) 9.1.90 Report of Dr J M N Hilton
- W/19/151 Terrence James HOLL  
(a) 28.9.83 Face sheet: Lennis James Aggravated Assault on police & Resist Arrest - signed PC Holl  
(b) 28.9.83 Face sheet: Roy Smith Hinder Police -signed PC Holl, PP.9908

- (c) 28.9.83 photocopy Face sheet: John Pat Disorderly Conduct & Agg. Assault Police
  - (d) Undated handwritten note by Holl to the day relief directing the questioning of Lockyer concerning an aggrav. assault on Michael Walker, PP.6806
  - (e) 7.10.83 report by PC Holl, PP. 8522-8531
  - (f) 21.10.83 memo PC Holl to Snr Insp. Balcombe, PP.6382-6381
  - (g) 26.10.83 photocopy of Authority for Blood Sample, PP.6721
  - (h) 9.12.83 report by PC Holl, PP.2452-2454
  - (l) Undated photocopy of notice from Commissioner of Police to PC Boll re suspension, PP.6345
  - (j) 6.2.84 copy of Notice of Suspension from Acting Assistant Commissioner (Operation(s) to PC Holl, PP. 6344
  - (k) 6.2.84 copy of memo PC Holl to Commissioner of Police requesting details of allegations, etc. PP.6347-6346
  - (1) 8.2.84 copy of Notice of Suspension with Pay
  - (m) Transcript of evidence at trial of five officers PP.4439-4531
  - (n) 19.6.84 photocopy of Notice to Resume Duty
  - (o) Undated statement (for Police v. L. James 18.7.84) PP. 11978-11979
  - (p) Undated statement (for Police v. R. Smith 18.7.84) PP.9902-9964
  - (q) 18.7.84 Magistrate's notes Police v. R. Smith - PC Holl's evidence, PP. 10125-10138. Attached typed copy of Magistrate's notes agreed to by all counsel (tendered 30.5.90)
  - (r) 15.5.85 deposition of PC Holl at committal of Young v. Smith, PP.9954-9959
- W/19/152 Terrence James HOLL
- (a) Undated Brief Jacket: Lennis James Agg. Assault on Police & Resist Arrest, PP.5863
  - (b) Undated Brief Jacket: Roy Smith Hinder Police, PP.5857
  - (c) Undated Brief Jacket: John Pat Disorderly Conduct & Agg. Assault, PP.6837
  - (d) 29.9.83 P18: Lennis James Agg. Assault Police & Resist Arrest signed PC Holl, PP.5865-5864
  - (e) 29.9.83 P18: Roy Smith Hinder Police signed PC Holl PP.9906, 5858
- W/19/153 John QUIGLEY
- (a) Undated statement delivered to Royal Commission on 31.5.90
  - (b) Undated statement delivered to Royal Commission 8.5.90
  - (c) Statement of Mr John Quigley dated 29.5.90
- W/19/154 Lester Lloyd DAVIES
- Statement to Royal Commission dated 28.2.90
- W/19/155 F.A. PHILLIPS
- Memorandum from Snr Insp. Phillips to Acting Assistant Commissioner (Admin) re steps on vans, PP.6310-6309
- W/19/156 Allan Russell BALCOMBE
- (a) 29.9.83 telex to Snr Insp. Balcombe from Det. Sgt Skehan, PP.2725
  - (b) 30.9.83 telex from Snr Insp. Balcombe to Chief Supt Mulvey, PP.2729
  - (c) Undated handwritten introduction to discussion with officers, PP.6299
  - (d) Undated handwritten notes of discussions with PC Armitt, PP.6292-4
  - (e) Undated handwritten notes of discussions with PC Bordas, PP.5289-91
  - (f) Undated handwritten notes of discussions with PC Young, PP.6286-8
  - (g) Undated handwritten notes of discussions with PC Holl, PP.6295-8
  - (h) Undated list of 42 Questions, PP. 8672-82
  - (l) Undated bundle of handwritten notes concerning Investigation,

- PP.6733-8
- (j) 3.11.83 List of Arrests, PP.8370
- (k) 12.11.83 and 5.12.83 deposition of evidence taken at Inquest, PP. 1459-1490 and 2126-2251
- (l) 25. 11.83 Snr Insp. Balcombe's memorandum to Asst Cmr (Ops), PP.6320 with annexures:
1. Comments as to deficiencies Roebourne Occurrence Book, PP.6321-6323
  2. Property Sheets - comments as to deficiencies, PP.6324
  3. Extracts from Occurrence Book, PP.6325-6330
  4. Property Sheets, PP. 6331-5335
- (m) 18.11.83 Wireless Message re requests from C/Ass. Coroner to Snr Insp. Balcombe, PP. 6788 & 18.11.83 Telex (as above) request from C/Ass. Coroner to Snr Insp. Balcombe, PP.6789
- (n) 29.11.83 draft of Snr Insp. Balcombe's statement, PP.6739-5769
- (o) 5.12.83 statement of Snr Insp. Balcombe tendered at Inquest, PP.9700-9727
- (p) 21.5.84 report of Snr Insp. Balcombe to Chief Supt Bull, PP.8855-8789
- (q) 28.5.84 photocopy of memo Chief Supt Bull to Snr Insp. Balcombe re Coroner's comments, PP. 11786
- (r) 27.6.84 photocopy of Report Snr Insp. Balcombe to Chief Supt Bull, PP. 11541-652
- (s) Statement of Snr Insp. Balcombe with annexures a-f.
- W/19/157 Aleksander BAGDONAVICIUS  
14.12.83 affidavit with annexure A statement 28.11.83
- W/19/158 L. BASTIAN  
(a) 24.11.83 request for specimen analysis  
(b) 5.12.83 report to Superintendent CIB
- W/19/159 A.M. FEENEY 6.3.90 report
- W/19/160 Dr Byron A. KAKULAS  
(a) 10.10.83 Neuropathology Macroscopic Report  
(b) 25.10.83 Neuropathology Microscopic Report  
(c) 21.12.83 deposition at Inquest  
(d) 14.5.84 evidence at the trial of the five officers  
(e) 6.12.89 copy letter Royal Commission to Prof. Kakulas with enclosures:  
i) Statement of relevant facts  
ii) List of relevant documents  
iii) List of questions  
(f) 1.12.89 letter Dr. Kakulas to Royal Commission  
(g) Undated photographs:  
(i) x83-672 John Pat (smaller contusions left temporal pole and adjoining frontal cortex)  
(ii) x83-672 John Pat (showing contusions of the right frontal cortex inferiorly of the brain arrow)  
(iii) x86-672 John Pat (showing contusion of right frontal cortex laterally and thin overlying subarachnoid haemorrhage arrow)
- W/19/161 William LAURIE  
(a) 6.10.83 copy of Postmortem Report  
(b) 13.10.83 copy Microscopic Histopathology Report  
(c) 24.11.83 copy report to Senior Inspector Balcombe  
(d) 19.12.83 deposition at Inquest
- W/19/162 Donald SIMPSON  
(a) 6.12.89 copy letter Royal Commission to Prof. Simpson with enclosures:

- (i) Statement of Relevant Facts
  - (ii) List of Relevant Documents
  - (iii) List of Questions
  - (b) 11.1.90 report
  - (c) Undated Curriculum Vitae
  - (d) 27.7.88 copy Position Paper: Effects of Ethanol Consumption On Injuries of the Brain
  - (e) Undated Article: Blood Alcohol and Injury in Traffic Crashes House, Waller, Stewart: 26th Annual Proceedings, American Association for Automobile Medicine, October 4-6 1982 Ottawa, Ontario, Canada
  - (f) Undated Article: Acute Subdural Haematomas: Aetology, Pathology and Outcome Jones, Blumbergs and North Aust NZ J Surg. 1986 56, PP.907-913
- W/19/163 Bryant A.R. STOKES
- (a) 21.12.83 deposition at Inquest
  - (b) 14.5.84 evidence at trial of five officers
  - (c) 6.12.89 copy letter Royal Commission to Mr Stokes with enclosures:
    - (i) statement of relevant facts
    - (ii) list of relevant documents
    - (iii) list of questions
  - (d) 9.4.90 Report
- W/19/164 Frank VLATKO-RULO
- (a) 11.10.83 copy statement with attached report to Supt CIB
  - (b) 31.10.83 statement with attached report to Supt CIB
  - (c) 28.11.83 statement with attached report to Supt CIB
  - (d) 20.12.83 deposition at Inquest
- W/19/165 Brian BULL
- (a) 7.6.84 report to Commissioner of Police re officers' trial PP.5071-5079
  - Documents re Coroner's letter of Concern 6.2.84
  - (b) 24.2.84 copy of memo from Attorney General to Minister for Police, P. 11609
  - (c) Undated copy of memo from Minister for Police to Commissioner of Police requesting advice on Coroner's letter with Commissioner's Notation to Chief Supt Bull dated 29.2.84, P. 11608
  - (d) 28.5.84 copy of memo from Chief Supt Bull to Asst Cmr (Crime) requesting Det. Sgt Scott's comments on Coroner's letter, P. 11779
  - (e) 29.5.84 copy of memo from Asst Cmr (Crime) to Chief Supt Walker requesting attention of Det. Sgt Scott, P. 11778
  - (f) 9.7.84 copy of memo from Chief Supt Bull to Asst Cmr (Personnel) re Coroner's letter, P. 11777
  - (g) 28.8.84 copy of report Chief Supt Bull to Commissioner, PP.11600-11607, annexures:
    - A) Letter of concern from Coroner to Attorney General 6.2.84 PP.11610
    - B) Report by Chief Supt Bull on Karratha trial 7.6.84, PP. 11616-24
    - C) Response by Crown Counsel Murray, QC 29.6.84 PP. 1625-29
    - D) Report by Asst Cmr Dalton 11.7.84, 11630-31
    - E) Correspondence seeking deferment of Inquest, PP. 11633-37
    - F) Report by Mr Balcombe on Coroner's letter of concern 27.6.84 (not annexed; this report is Exhibit W/19/156R), PP. 11641-11652
    - G) Report by Scott on Coroner's letter of concern 21.6.84 (not annexed: this report is Exhibit W/19/102T), PP. 11655-59
    - H) Response by Mr Quigley 21.8.84, PP. 11660-62
    - I) Report by Mr Balcombe on investigations undertaken (not annexed; this report is Ex. W/19/156P), PP. 11672-11738
  - (h) 13.9.84 copy of memo from Minister to Commissioner re Coroner PP.

11765

(i) 14.9.84 copy of memo Commissioner's Secretariat to Chief Supt Bull, P.5320

(j) 19.9.84 copy of memo from Acting Commissioner of Police Wilson to Minister of police, P.5319

W/19/165 Documents re Assault Charges Against Officers

(k) Copy of Chief Supt Bull's notes of conversation with Mr. Davies P. 11889

(l) 31.5.84 copy of Memorandum of Advice from Mr Davies to Solicitor General

(m) 1.6.84 copy of memo of Solicitor General's advice to Attorney General concerning ex officio indictments against the five officers, P. 11837

(n) 5.6.84 copy of memo from Attorney General to Minister for Police re advice of Mr Davies to Solicitor General with notation dated 7.6.84 re further advice from Attorney General, P. 11836

(o) 7.6.84 copy of memo from Minister of Police to Attorney General re Mr Davies' advice, P.11835

(p) 8.6.84 copy of memo from Attorney General to Minister for Police, P. 11831

(q) Undated copy of memo from Minister to Commissioner, P. 11830

(r) 30.7.84 unsigned Aboriginal Legal Service letter to Crown Prosecutor requesting prosecution of Holl and Young, PP.5084-5085

(s) 21.8.84 ALS letter to Minister for Police requesting prosecution of Holl, Young & Bordas, PP.5082-5083

(t) 23.8.84 memo Minister for Police to Commissioner re ALS letter 21.8.84, P.5081

(u) 24.8.84 memo from Chief Supt Bull to Minister for Police re charging officers with AOBH, P.5080

(v) 2.10. 84 memo from Chief Supt Bull to Minister for Police, PP.5068-5069

Documents Concerning MCPhee Investigation

(w) 14.3.88 copy memo from Supt P J King to Chief Executive Illingworth encl. McPhee's stmt

(x) 14.3.88 copy of memo from Supt P J King to Chief Supt Kjellgren enclosing. McPhee's statement

(y) 15.3.88 Note by Acting Dep. Cmr (Ops) Marshall re investigations

(z) 16.3.88 copy of memo from Chief Supt Illingworth to Acting Dep. Cmr (Ops) re McPhee's statement

(aa) 16.3.88 copy of memo from Supt P C Wilkinson to Chief Supt Kjellgren re McPhee inquiry

(bb) 16.3.88 copy of memo from Acting Dep. Cmr (Ops) Marshall to Asst Cmr (Ops) re the McPhee inquiry.

(cc) 17.3.88 copy of report Supt P C Wilkinson to Chief Supt Kjellgren re McPhee inquiry

(dd) 25.3.88 copy of memo from Chief Supt Kjellgren to Assistant Cmr. (Ops)

(ee) 28.3.88 copy of memo from Chief Supt Kjellgren to Asst Cmr (Ops) re McPhee inquiry

(ff) 31.3.88 copy of memo from Asst Cmr (Ops) Clews to Dep. Cmr (Ops) re delay in inquiry

(gg) 20.5.88 copy of report of Acting Dep. Cmr (Ops) Mr Marshall, to Commissioner on delay

(hh) 20.5.88 copy of memo from Acting Dep. Cmr (Ops) Mr Marshall, to Commissioners Executive Officer

(ii) 16.6.88 letter from Crown Law to Chief Supt Illingworth

- (jj) Undated copy Chief Supt Bull's notes re trial of five officers, PP. 11847-88; 2 notebooks of Chief Supt Bull re trial of five officers
- (kk) 7.6.84 copy of Commissioner's press release re lifting of suspension of five officers, P. 11832
- (ll) 7.6.84 copy of memo from Minister for Police to Commissioner requesting Chief Supt Bull's report, P. 11834
- (mm) 15.6.84 memo from Minister of Police to Commissioner re Chief Supt Bull's report re charges v. Aborigines, P. 11827
- (nn) 20.6.84 memo from Commissioner to Minister for Police re memo 15.6.84, P. 11829
- (oo) Undated statement to Royal Commission with annexures:
  - (a) Curriculum Vitae
  - (b) Report to Commissioner of Police 28.8.84
  - (c) Report to Commissioner of Police 7.6.84
- W/19/166 Kevin RICKSON
  - (a) 9.10.83 photocopy of PC Rickson's note to Supt Devaney, P.6907
  - (b) 9.10.83 copy of handwritten statement of G Lockyer taken by PC Rickson, PP.6808-6811
  - (c) 5.12.83 affidavit for Inquest with Exhibits: P.6148 Statement 31.10.83, PP.8588-8592; Airfreight Vouchers, PP.3135-3136
  - (d) 9.11.83 statement (page 5 only)
  - (e) Undated statement PC Rickson, PP. 11947-11949
  - (f) 8.4.88 PC Rickson's statement, P.9199
- W/19/167 6.9.89 letter to M. Jordan re Social Security Benefit Backpayments
- W/19/168 Malcolm John EVANS
  - (a) 29.9.83 notes relating to media release inquest exhibit: CU
  - (b) 29.9.83 copy press release from Evans, P.2728
  - (c) 20.12.83 deposition of evidence taken at Inquest, PP. 10628-10632
- W/19/169 David A. McCANN
  - (a) 25.10.83 Asst Cmr (Ops) JJ Dalton to Commissioner of Police re inquest date, PP.6305A-6305B
  - (b) 26.10.83 Mr M Murray to Coroner re inquest date, PP.6303-6302
  - (c) 11.1.84 Coroner to Commissioner of Police re: Dr Rigby's times P.9977
  - (d) 13.1.84 Commissioner of Police to Coroner, P.9676
  - (e) 6.2.84 Coroner's findings on inquiry, PP.9674-9675
  - (f) 7.2.90 Ms K. O'Brien, Counsel Assisting Royal Commission to Mr M. Muller re timing of the inquest
  - (g) 16.2.90 Coroner to Ms K. O'Brien
- W/19/170 Grant Leo RIGBY
  - (a) 20.10.83 statement, PP.7957-59
  - (b) 22.10.83 affidavit, annexures:
    - A. 4.10.83 report to Snr Insp. Balcombe re Pat, P.942
    - B. 5.10.83 report to Snr Insp. Balcombe re Smith, P.5815
    - C. 4.10.83 report to Snr Insp. Balcombe re Holl, P.9426
    - D. 4.10.83 report to Snr Insp. Balcombe re Armitt, P.9427
    - E. 5.10.83 report to Snr Insp. Balcombe re Coppin, P.8526
  - (c) 31.10.83 deposition of evidence given at Inquest, PP.6-29
  - (d) 16.12.83 handwritten statement to Supt McGrath plus typedcopy, PP. 8976-75
  - (e) 27.1.84 letter from Dr Rigby to Coroner, PP.6112-6111
  - (f) 10.5.84 transcript of evidence at trial of five officers, PP.4295-4307
  - (g) 16.8.84 transcript of evidence at Munda/Coppin trial, PP.5288-5292
  - (h) Undated statement, P. 11960
  - (i) 10.12.84 statement, P. 10097
  - (j) 10.12.84 statement, PP. 12032-12033

- (k) 13.5.85 deposition at Young committal, PP.9921-25
- (l) 22.5.90 statement to Royal Commission
- (m) 1.6.90 supplementary statement to Royal Commission
- W/19/171 Occurrence Book Statistics 21.6.83 to 31.12.83, and Roebourne Population Statistics
- W/19/172 Extracts from Police News
  - (a) May/June 1983 P. 15, letter to editor from Mr Dalton, Assistant Commissioner (Operations) re Internal Investigation Section
  - (b) May/June 1983 P.26 'What to do when you are under Investigation'
  - (c) May/June 1984, P.20/26 'Report on North-West/Kimberly
  - (d) January/February 1985 P.6/7, copy letter to Attorney General, Crown Law, Minister for Police and Commissioner for Police re Peter Coppin and their replies
  - (e) July/August 1985 P38/39, article on implication of decision in Police Board v. Martin on the right to silence
  - (f) September/October 1985 P.22/24, legal opinion on requirement to answer questions when under investigation for breaches of Standing Orders or the general law
- W/19/173 John PORTER
  - 6.6.90 statement prepared for Royal Commission
- W/19/174 Anthony P. HEWETT
  - Undated letter to Ms M. Jordan of the Royal Commission
- W/19/175 5.6.81 to 8.9.83 15 police complaints against John Pat obtained from Roebourne Court
- W/19/176 Mavis PAT
  - 4.5.90 statement prepared for Royal Commission
- W/19/177 Tracey Ann MOULDS (nee BELL)
  - (a) Affidavit with copy of statement 22.6.90 exhibited, and original statement
  - (b) Death Certificate Mr A.L. Armstrong
- W/19/178 John Joseph DALTON
  - Statement dated 7.6.90
- W/19/179 Police Routine Orders
  - (a) 19-17.1 to 19-17.2 as amended 5.3.81 re statements, supply of copies
  - (b) 19-17.1 to 19-17.4 as amended 2.3.88 re statements, supply of copies
- W/I 9/180 File of correspondence between Liquor Licensing Division and proprietors of the Victoria Hotel Roebourne between 10.10.83 and 12.3.84 with index
- W/19/181 Kenneth George NICOLSON
  - (a) Undated statement, PP.6149-6154
  - (b) 14.11.83 deposition of evidence taken at Inquest, PP.587-613
  - (c) 14.5.84 transcript of evidence at trial of five officers, PP.4434-4438
- W/19/182 Dawn MAKEHAM
  - (a) 1.3.90 statement to Royal Commission with annexures:
    - (a) 3.10.83 statement, PP.7275-7279
    - (b) 14.10.83 ALS proof (witnessed J Hedges), PP.8192-94
    - (c) 4.11.83 deposition of evidence taken at Inquest, PP.561-85
    - (d) 4.5.84 transcript of evidence at trial of five officers, PP.3777-3808
  - (b) 22.3.90 supplementary statement to Royal Commission with annexure
- W/19/183 Deidre Anne MORRIS
  - 8.5.90 statement to Royal Commission with annexures:
    - (a) 30.9.83 statement to Snr Insp. Balcombe, PP.9451-9455
    - (b) 21.10.83 statement to Detective Bartlett, PP.9457-9462



- W/19/184 (c) 3.11.83 deposition of evidence taken at Inquest  
Michael Donald KIRKBY  
5.7.84 statement (re Police v. L. James), P. 11974
- W/19/185 Phillip Raymond THATCHER  
19.3.90 statement to Royal Commission with annexures:  
(a) 30.9.83 statement to Snr Insp. Balcombe, PP.9464-9466  
(b) 3.11.83 deposition taken at Inquest, PP.510-518  
(c) 8.5.84 transcript of evidence at trial of five officers, PP.405 1-4059
- W/19/186 Keith Robert WHINNEN  
(a) 29.9.83 Ambulance Call Out Sheet, P.8368  
(b) 14.10.83 copy ALS proof of evidence (witnessed Mr Hedges)  
PP.8265-8266  
(c) 31.10.83 statement, PP.2966-2970  
(d) 14.11.83 deposition taken at Inquest, PP. 1740-1755  
(e) 16.12.83 handwritten statement to Supt McGrath and typed copy,  
PP.8974-8972  
(f) 9.5.84 transcript of evidence taken at trial of five officers, PP.4279-  
4282  
(g) 8.5.90 statement to Royal Commission with annexures A-D

#### **SCHEDULE 4: LIST OF GENERAL EXHIBITS**

- W/19/187 Statements (written or oral)
- (a) Charmain Adams
  - (b) Llsie Adams
  - (c) Robert Boona
  - (d) Cherry Cheedy
  - (e) Marion Cheedy
  - (f) Alan Connors
  - (g) David Daniels
  - (h) Tootsie Daniels
  - (i) Martin Duyker
  - (j) John Howie
  - (k) Lorna Howie
  - (1) Silvia Jacobs
  - (m) Ken Jerrold
  - (n) Woodley King
  - (o) Kath Kohler
  - (p) Violet Samson
  - (q) Alice Smith
  - (r) Angus Smith
  - (s) Marshal Smith
  - (t) Roger Soloman
  - (u) Roger Turvey
  - (v) David Walker
  - (w) Gladys Walker
  - (x) Brigett Warri
  - (y) Yulbi Warri
  - (z) (1) Jeannette Armstrong
  - (2) Eva Black
  - (3) Audrey Cosmos
  - (4) Greg Tucker
  - (5) Beth Smith
  - (6) Allery Sandy