

Report

OF

Royal Commission

CONCERNING THE

TRIAL OF  
BAYMIS UGLE

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JANUARY 1976

STATE OF WESTERN AUSTRALIA

ROYAL COMMISSIONS ACT, 1968

REPORT OF THE ROYAL COMMISSIONER

INTO MATTERS SURROUNDING THE TRIAL OF BAYMIS UGLE  
AND SUBSEQUENT INVESTIGATIONS RELATING THERETO

SIR JOHN EVENDEN VIRTUE, K.B.E.

COMMISSIONER

PERTH, 5th JANUARY, 1976

MR. JOHN MAHONEY

Secretary

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# ROYAL COMMISSION

## INTO MATTERS SURROUNDING THE TRIAL OF BAYMIS UGLE AND SUBSEQUENT MATTERS RELATING THERETO.

### R E P O R T

TO: HIS EXCELLENCY AIR CHIEF MARSHAL SIR WALLACE KYLE, KNIGHT GRAND CROSS OF THE MOST HONOURABLE ORDER OF THE BATH, COMMANDER OF THE MOST EXCELLENT ORDER OF THE BRITISH EMPIRE, COMPANION OF THE DISTINGUISHED SERVICE ORDER, DISTINGUISHED FLYING CROSS, GOVERNOR IN AND OVER THE STATE OF WESTERN AUSTRALIA AND ITS DEPENDENCIES IN THE COMMONWEALTH OF AUSTRALIA.

May It Please Your Excellency,

WHEREAS by Letters Patent dated 2nd day of October, 1975 under the Public Seal of the State of Western Australia, His Excellency Commodore James Maxwell Ramsay, Commander of the Most Excellent Order of the British Empire, Distinguished Service Cross, Lieutenant Governor and Administrator in and over the State of Western Australia and its Dependencies in the Commonwealth of Australia, issued a Commission appointing me to be a Commissioner to inquire into and report upon the following matters, that is to say:

- (1) the truth of otherwise of the allegations made by Mr. B. T. Burke, M.L.A. in the Legislative Assembly on the 10th September, 1975 to the effect that -
  - (a) certain police officers committed perjury during the trial of Baymis Ugle;
  - (b) subsequent police investigations into the trial were superficial and prejudiced;
  - (c) one or more police officers lied to the officers instructed to carry out such subsequent investigations;

- (d) such subsequent investigations or other inquiries failed to discover vital or material evidence then available; and
  - (e) the only result of the police inquiries was that Sergeant Fanderlinden was victimised.
- (2) To inquire and report -
- (a) whether there was any impropriety on the part of any policeman in connection with the arrest or charging of Ugle; and
  - (b) whether the official investigations subsequently made by the Police into the arrest and charging of Ugle were properly conducted.
- (3) To inquire and report whether subsequent to the hearing of the complaint against Ugle there has been any impropriety on the part of any person in any statements made or actions taken in relation to, or arising out of the arrest and charging of Ugle, or the subsequent investigations.
- (4) To inquire and report whether Sergeant Fanderlinden has been victimised and, if so, in what way.

And to make any recommendation arising out of the consideration of the above matters that is considered appropriate.

Now in pursuance of and in execution of the said Letters Patent dated the 2nd day of October, 1975, I YOUR COMMISSIONER having duly inquired into the several matters aforesaid have the honour to report to YOUR EXCELLENCY as follows:-

#### PUBLIC NOTIFICATION OF SITTINGS OF THE ROYAL COMMISSION

Public notification of the appointment of the Royal Commission and of the time and place of its formal opening and requesting any person who desired to place relevant facts before the Commission to notify the Secretary was given by notices prominently displayed in the following newspapers:

"The West Australian" newspaper -  
4th, 7th, 8th, 10th October, 1975.

"Sunday Times" newspaper -  
5th October, 1975.

"Narrogin Observer" newspaper -  
9th October, 1975.

## SITTINGS

The Commission sat in the Supreme Court, Stirling Gardens, Perth. The sittings commenced on the 15th day of October, 1975 to take appearances, adjourned to the 28th day of October and continued thereafter without significant interruption until the 20th day of November, 1975. On the 11th and 17th days of December, 1975 the Commission sat to take submissions from Mr. B. W. Rowland, Q.C. on behalf of Mr. R. H. Burton, S.M., and to rule on such submissions. In all, the Commission sat for 17 sitting days.

## PROCEDURE

The Commission was conducted pursuant to the Royal Commissions Act 1968.

## REPRESENTATION

The first public sitting of the Commission was held on the 15th day of October, 1975. On that day Mr. G. P. Miller announced that he had been briefed to assist the Commissioner. The following counsel were given leave to appear before me:

For the Commissioner of Police:

Mr. R. J. Davies with him Mr. G. M. Overman

For the Assistant Commissioner H. L. Taylor;  
Inspector Wright; Det. Sergeant L. Walker;  
3/c Sergeant M. Taylor; Senior Constable W. Pense:

Mr. N. Tolcon

For 2/c Sergeant J. L. Fanderlinden:

Mr. R. S. French

For Sergeant Ross; Senior Constable Owen;  
Constable Glew:

Mr. C. J. R. Pullen or Mr. I. D. Temby

For Baymis Ugle and part of the proceedings only: --

Mr. J. F. Higgins or Mr. P. D. Lane

On 22nd October, Mr. Tolcon advised Counsel Assisting the Commission that he was also acting for 1/c Constable Beard.

On the 29th October, Mr. Ian Temby advised he was acting for Constable S. Ashman and Constable R. Cordern.

On the 11th December, Mr. B. W. Rowland, Q.C. and Mr. T. A. Walsh were given leave to appear for Mr. R. H. Burton, S.M.

## EVIDENCE

It is not in controversy that a Royal Commission appointed under the terms of the statute (The Royal Commissions Act 1968 No 65 of 1968) is not bound by the rules of evidence. However, having regard to the



serious nature of the allegations made I have thought it proper to adhere to those rules. There have been some occasions, which are apparent on reading the transcript, where I have felt justified in relaxing their strict enforcement on matters not really the subject of controversy but this has been done only with the consent of all parties represented.

Appendix "A" contains a list of all witnesses who gave sworn oral testimony before me.

Appendix "B" contains a list of the exhibits tendered before me at the hearing.

### STANDARD OF PROOF

The subject matter of my inquiry as set out in the terms of reference involves allegations of the most serious nature against a number of officers of the Western Australian Police Force to the extent that any findings I may make against them are calculated to have serious consequences and to bring them into considerable disrepute in the opinion of right-thinking members of the community. I consider that any such finding or for that matter, any finding prejudicial to any person whose conduct comes into question in these proceedings should be based on proof to my reasonable satisfaction of the facts on which such finding is based.

As to what should be regarded as "proof to my reasonable satisfaction" I am content to be guided by the words of the late Sir Owen Dixon (then a Justice of the High Court) in *Briginshaw v. Briginshaw* (1938) 60 C.L.R. 336 at 361-362:

"an opinion that a state of facts exists may be held according to indefinite gradations of certainty. . . . reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequences of the fact or facts to be proved. The substance of an allegation made, the inherent consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters, "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences."

### THE FACTS

#### Introductory

The subject matter of this Royal Commission - as is apparent from the foregoing terms of reference - is the involvement of members of the Police Force of Western Australia in the arrest and prosecution in a Court of Petty Sessions in Narrogin of a part-aboriginal native named Baymis Ugle on charges of drunkenness and habitual drunkenness laid against him under the provisions respectively of sections 53 and 65 (6) of the Police Act.

The events under consideration occurred between August 20th, 1974, the date of Ugle's arrest on the two charges and 16th October, 1974 when, after a two-day hearing before Mr. R. H. Burton, S.M. in the Narrogin Court of Petty Sessions, the charge of drunkenness was dismissed and, on the application of the Police, the charge of habitual drunkenness was withdrawn.

The Commission is also concerned with two investigations made by police officers into the allegations of perjury by two of the arresting officers at Ugle's trial, and with allegations of impropriety in the conduct of such investigations by l/c Det. Sergeant Leedham Walker and Superintendent Lloyd Taylor, the police officers who carried them out. Superintendent Taylor has had a number of promotions since then and he is now Assistant Commissioner (Crime) but for the purpose of convenience I will refer to him throughout as Superintendent Taylor.

During the period of almost three weeks that the Commission was occupied in taking evidence, a very considerable amount of evidence was given on a variety of topics related to the terms of reference, much of which has become of little importance as the Commission has progressed and the really live issues to be decided have emerged. To clarify the relevant facts I propose, in the first instance, to give a broad picture in chronological order of the events of what I may refer to perhaps, as the Ugle affair - after which I will deal with the terms of reference, developing the facts in greater detail to the extent to which I may find it necessary in order to come to a conclusion on them.

The country town of Narrogin in which the events occurred has a substantial aboriginal and part-aboriginal population, a situation which, it is common knowledge, is calculated to create special problems in the maintenance of law and order by the Police. To illustrate this I need only to refer to the letter of the Hon. the Minister for Police to Mr. Peter Jones, M.L.A. for Narrogin, dealing with the adequacy of Police protection in the town and the statistics of crime and, in particular, the incidence of crime so far as the aboriginal population is concerned which appears as Exhibit 13 on the proceedings of the Commission.

This letter also indicates that at relevant periods the Narrogin Police Staff comprised a first-class sergeant in charge with two second-class and two third-class sergeants to assist him, one senior constable, four first-class constables and eight junior constables.

To assist in following the facts, I think that I should specify the names of the various police officers who figure in the story as well as giving a brief account of station routine:

- (a) The sergeant-in-charge prior to and up until shortly after Ugle's arrest was l/c Sergeant James who then went on leave and was relieved by l/c Sergeant Wells who was sergeant-in-charge when Ugle was tried and who conducted the prosecution.

- (b) 2/c Sergeant Fanderlinden.
- (c) 3/c Sergeants Mervyn Taylor and Ross.
- (d) Senior Constable Owen.
- (e) 1/c Constable Pense (also the lock-up keeper);  
1/c Constables Beard and Ashman; Fourth-year  
Constable Glew; Second-year Constable Cordern;  
Constable Corcoran.
- (f) Police Cadet Panting.

In addition, the office of the District Inspector of the Narrogin Police District was located at the police station. The Inspector for the District was Inspector Handmer, who was on leave for part of the time and was relieved by Inspector Wright.

All of these police officers, with the exception of the district inspector and the sergeant-in-charge, were rostered for duty in three shifts - the day shift between 8 a.m. and 4 p.m.; the afternoon shift between 4 p.m. and midnight; and the night shift between midnight and 8 a.m.

The sergeant-in-charge had no set hours but normally, I gather, was on duty during the day. Sergeant James indicated that on the day of Ugle's arrest - a date of some significance - he was on duty, he thought, up to 5 or 5.30 p.m.

It was the duty of the sergeant or other officer-in-charge of a shift to see that the occurrence book, in which were recorded all events of significance occurring during the shift, was properly kept up and that the prisoners in the lock-up were inspected at the beginning and end of the shift to ensure that they were present and correct and that there were no complaints.

It is appropriate now to say something of the natives who are involved in the story. Firstly there is Baymis Ugle, the central figure. He is a part-aboriginal about 35 years of age and single, but the possessor of a de facto wife named Elaine Hansen and eight ex nuptial children by a previous de facto wife, for the upbringing of whom he is not responsible. Formerly a contract shearer, he has for twelve months been an invalid pensioner owing, he told me, to some respiratory troubles which preclude him from gainful employment. He is a chronic alcoholic under medical treatment for his addiction. His doctor testified that he did his best to overcome his failing but it was "a poor best". He is well known to the Narrogin Police, having accumulated well over one hundred convictions during a period of seven or eight years - mostly for drunkenness and habitual drunkenness but including a number for minor acts of violence and an odd conviction or so for acts of dishonesty. During the twelve months which have elapsed since the occurrence of the events on which I am inquiring, he has had no less than 19 further convictions and has been committed to the Wyford Inebriates Homes under the Convicted Inebriates Act.

He normally lives with Elaine Hansen in a house at Narrogin on the Cuballing Road but spends some time staying with relatives at a State Housing Commission rental house rented by Max and Esme Abrahams. They have Mrs. Marie Hansen (who is Esme Abrahams' mother) staying with them and also from time to time her husband, Charlie Hansen. These two are said to be the grandparents of Elaine and claim to have brought her up from infancy.

The Abrahams house is one of two situated in an isolated position beyond the made portion of Floreat Street, Narrogin. The other house is occupied by Wilma Williams, another daughter of Marie Hansen and the mother of Elaine, and her husband, Eddie Williams. They have several other teenaged daughters who live there, while other natives stay in one or other of the houses from time to time.

### The Arrest and Charging of Ugle

On the afternoon of the 20th August, Sergeant Mervyn Taylor was on duty at the Narrogin Police Station during the day shift when he took a complaint from Charlie Hansen that there was a disturbance in Floreat Street, that Eddie Williams had beaten up a number of women, and that the disturbance was proceeding. At that time Constable Beard was on van patrol and as a result of a wireless message he picked up Sergeant Taylor and Constable Pense and drove them to Williams' house.

There they found a number of natives behind Abraham's house involved in a disturbance. These persons included four women who had obviously been assaulted and had sustained minor but not insignificant injuries. Eddie Williams was not present but the Police were informed that he was responsible for the assaults and that he had taken off to the bush behind a hill in the neighbourhood of the two houses. After a short search by Sergeant Taylor and Constable Pense, Williams was located and apprehended and placed in the back of the police van. In addition and prior to the arrest of Williams, the Police had found Baymis Ugle, not with those involved in the disturbance behind Abrahams' house but somewhere in the vicinity of Williams' house, and Taylor arrested him and then he, together with Williams, was taken to the Narrogin Police Station where Williams was charged on two complaints of aggravated assault on females and Baymis Ugle was charged on one complaint of drunkenness and one of habitual drunkenness.

Records kept at police stations including a property book in which is entered anything found in the possession of an arrested person after search, and the occurrence book to which I have previously referred, show that Baymis Ugle was charged with the offences to which I have referred at about 3.10 p.m. I, however, have had uncontradicted evidence that the station clock was ten minutes slow so that the correct time was 3.20 p.m.

It is not in dispute that the two men were, at about this time, put in the station lock-up, where they remained until next morning when they were brought before a Court of Petty Sessions presided over by Mr. C. Zempilas, S.M.

who was relieving the Magistrate of the District, Mr. R. H. Burton, S.M. who was on leave.

Present in the charge room when the men were brought in were Sergeant Taylor, l/c Constable Pense, Constable Beard and Police Cadet Panting, who appears to have admitted the party at the back door of the station in response to a radio message from Constable Pense asking him to do so.

It was also testified before the Commission by Constable Glew who was on the afternoon roster that he had arrived early and had seen Ugle just before he was escorted to the cells. He says he did not think that Ugle was drunk. Later Constable Corcoran signed on in the occurrence book. He apparently inspected the lock-up as there is an entry in his handwriting that four male prisoners were present and correct and that there were no complaints. Later Sergeant Fanderlinden - the officer-in-charge of the afternoon shift - signed on in the occurrence book and made an entry that four male prisoners were correct.

Sergeant Fanderlinden has testified before this Commission that while he was checking the occurrence book, Sergeant Taylor had come to him and said that he had arrested Baymis Ugle on charges of drunkenness and habitual drunkenness and said "there is no bail for him". He had replied that if anyone had enough money for him he would let him out on bail. Fanderlinden said that on a drunk charge or an habitual drunk he couldn't see why a man should be kept in the lock-up if there was bail for him.

He said that very shortly afterwards he was approached by Constable Beard who told him that Baymis Ugle had been brought in for questioning on an assault. Beard said that he had questioned him and had reported to Sergeant Taylor that he "couldn't fit him with it", whereupon Taylor started to type a complaint for being drunk. Beard said he thought it was a bit rough and Taylor had replied: "Bugger him. We're not bringing him in for nothing.". Beard had then told Fanderlinden that he didn't think Baymis Ugle was drunk and didn't want to be listed as a witness in case there was a plea of "not guilty". Fanderlinden said that he had taken Beard into Sergeant James' office and had repeated Beard's story to him. Sergeant James had apparently accepted the story, had expressed some dissatisfaction with Taylor's behaviour and had said, "I will make him prosecute this thing himself and get out of it the best way he can.". James had gone off duty shortly afterwards, leaving Fanderlinden in charge.

That these interviews took place is categorically denied by both Constable Beard and Sergeant James.

However, that such an interview between Fanderlinden and Beard took place is supported by other police officers who testified before this Commission that Beard had also voiced his unhappiness about the circumstances of the Ugle arrest to other police officers at the station.

I must say I found that Beard's sworn denials of the interview with Fanderlinden were unconvincing and I believe that the interview did take place.

I have had much more difficulty regarding the alleged interview between Sergeant Fanderlinden and Sergeant James and Constable Beard. I can place no reliance whatsoever on the testimony of Constable Beard as to this interview so that the contest becomes one between the evidence of the two sergeants. It is suggested that there was other evidence supporting Fanderlinden's story but I cannot find any other evidence which is of substantial assistance to me. There is no room really for mistake or faulty recollection. It is a straight out issue of credibility. It is an issue I find myself unable satisfactorily to resolve without running the risk of doing an injustice to one or other of the sergeants.

Accordingly, to the extent that it becomes material to the issues which I have to decide, its effect must be governed by the question of where the onus of proof of establishing the issue lies.

Whatever may be the truth of this matter, the evidence shows that neither Sergeant James nor Sergeant Fanderlinden took any steps to test the accuracy of Beard's statement by visiting the lock-up to form an opinion on Ugle's condition. Having regard to the suggestion that he was not drunk, it would appear to have been of the utmost importance that any injustice done to Ugle should have been corrected as far as possible by his release and also that Beard's allegations should be promptly tested. It is accordingly clear - depending on James' state of knowledge - that some investigation should have been undertaken by one or other, or both of them.

Sergeant Fanderlinden testified that once he had reported the matter to his superior officer he considered that he had done everything that was required of him by standing orders and he was content to wash his hands of the whole matter.

The evidence shows that later in the evening when Sergeant Fanderlinden was in complete charge of the station he was approached by two of Ugle's female relatives inquiring about bail for him. It is suggested that he must then have realised that Ugle was still in custody and he should have taken steps to ascertain Ugle's condition and released him on bail if it appeared to him that Ugle was in wrongful custody.

The next morning Sergeant Fanderlinden appeared in Petty Sessions to prosecute Ugle and Mr. P. D. Lane, a Harrogin solicitor, appeared on Ugle's behalf and secured an adjournment of the charges until 18th September and the release of Ugle on bail in the meantime. As a result of further remands the commencement of the hearing of the charges did not take place until October 9th. The reason for the delay in hearing these very trivial charges for a period of no less than seven weeks is difficult to understand and was never explained. During this interval, having regard to the testimony of the police witnesses called to testify at this Commission in support of Sergeant Fanderlinden, I am satisfied that Constable Beard had conversations with a number of his fellow officers concerning the circumstances surrounding the charging of Ugle. I have little doubt that as a result there was a considerable amount of rumour and gossip in police circles about

these matters. It seems probable too that in a country town such as Narrogin this would have spread beyond the police station and have been the subject of talk outside. It is probably unlikely that it had not come to the notice of the Magistrate, Mr. Burton, at a fairly early stage.

It is apparent also during this period, that no real effort was made by the police officers concerned to prepare the case for hearing. No notes appear to have been taken by the officers involved in the incident until a few days before the hearing when Sergeant Taylor for the first time prepared a statement of his evidence for the benefit of the prosecuting sergeant. During the interval, l/c Sergeant James had gone on leave and l/c Sergeant Wells had taken over. Sergeant Wells had little experience in prosecuting - a part of the job which he apparently disliked intensely. He apparently sought to get one of the other sergeants to do so without success.

Sergeant Fanderlinden, who would have been the obvious choice as he did a lot of the prosecuting, was away on leave during the relevant period. Sergeant Taylor was principally an outside man and disliked prosecuting. He was also the principal witness and was apparently reluctant to prosecute. It is suggested in the evidence that the existence of these rumours contributed to the unwillingness of some of the sergeants to prosecute. In the end, Sergeant Wells had to take over the job himself.

#### The Trial of Baymis Ugle

On the first day of the hearing evidence was given by Sergeant Taylor and Constable Pense of the circumstances of the arrest of Ugle and that in their opinion he was drunk. Ugle then gave evidence. Naturally enough, he denied that he was drunk but he was never asked whether he had been drinking. It is to be assumed that if he had been asked he would have admitted that he had had a cupful of "Conto" port wine - a fact to which he deposed before the Commission. He added that a cupful of wine would not affect anyone.

Evidence was also given by Ugle's doctor, Dr. Jacobs, that Ugle was an alcoholic whom he was treating for his addiction without conspicuous success. Mr. Lane then obtained an adjournment for a week to call an eye witness, one Keith Ruttley a plumber who had been mending a tap at Williams' house at the time of the visit of the police and Ugle's apprehension.

At the adjourned hearing Ruttley's evidence was that Ugle was quite sober and didn't smell of drink. The testimony he gave was to the effect that he was stone, cold, sober. In addition he gave some evidence conflicting with that of the police concerning the circumstances of the arrest. No attempt was made by the prosecution to test Ruttley's story by cross-examination. After Mr. Lane had addressed for Ugle, the prosecuting Sergeant said no more than "that in view of the evidence of Ruttley he did not wish to say anything". In the result the Magistrate found that there was no proof beyond reasonable doubt of Ugle's guilt. He said that he had no reason to disbelieve Ruttley. Accordingly, he dismissed the drunkenness complaint with \$70 costs against the police.

After the dismissal Sergeant Wells applied to the Magistrate for leave to withdraw the charge of habitual drunkenness to which the Magistrate agreed. There was some criticism of this action as Ugle's record showed that he had sufficient convictions over the previous twelve months to support an habitual drunkenness charge. I should however have thought that, as a question of policy in a general way, a charge of habitual drunkenness should not be levelled except in association with a charge of drunkenness levelled at the same time.

The Magistrate's Reference of the Trial  
Papers to the Crown Law Department.

Mr. Burton has testified before me that at the end of the evidence he was satisfied that Sergeant Taylor and Constable Pense had committed perjury, and that when he gave his evidence before the Commission he was still so satisfied.

Mr. Burton testified that at the conclusion of the hearing he had called Sergeant Wells into his chambers and told him that he intended to refer the papers to the Crown Law Department "for investigation of perjury" by the two police officers.

This he subsequently did but before dealing with the reference I should perhaps mention that on the day following Ugle's acquittal Senior Inspector Handmer, the District Inspector at Narrogin, sent a minute to Sergeant Wells seeking an explanation of why the drunkenness charge had failed, why the costs awarded against the police were so high, and why the habitual drunkenness charge was withdrawn. Sergeant Wells' report was forwarded on 24th October to Inspector Wright who had relieved Inspector Handmer as Narrogin District Inspector during the latter's absence on leave. In his report Sergeant Wells attributed the dismissal of the case to the poor performances of the police witnesses in giving their testimony and the convincing nature of the testimony given by Ugle and Ruttle.

Paragraph 9(d) of his report states as follows:

"I am concerned that there exists a very strong inference that Ugle was only charged with 'drunkenness' and 'habitual' when it was found that he was not connected with the matter involving an assault on a person named Baggs. I believe that this opinion was also shared by the Court."

On a perusal of the Magistrate's notes on evidence at the hearing, I have some difficulty in understanding how the Magistrate could have regarded the testimony as providing the basis for a strong inference regarding the motives for laying the charge, nor does the Sergeant explain on what grounds he believed that the Magistrate had come to that opinion. I think that it is probable that the rumour and gossip resulting from Constable Beard's approaches to his fellow police officers may have contributed.

I also find it difficult to understand how on the evidence at the hearing alone the Magistrate should have come to a firm conclusion that Taylor and Pense had



committed perjury. My feeling is that it is also likely that rumour and gossip must have contributed to this conclusion.

In accordance with the intention which he had expressed to Sergeant Wells, the Magistrate sent the papers to the Crown Law Department for an investigation of the question whether the two police officers should be prosecuted for perjury. The matter was referred to the Senior Crown prosecutor and by him referred to the Commissioner of Police by letter dated 22nd November, 1974 as follows:

"I enclose herewith certified copies of two Charge Sheets and Notes of Evidence concerning charges of Drunkenness and Habitual Drunkenness preferred by Sergeant Taylor of Narrogin against one Baymis Ugle.

"The Magistrate, Mr. Burton has referred the matters for the consideration of possible Perjury proceedings against Sergeant Taylor and Constable Pense who were the sole witnesses for the prosecution. I imagine that the matters have been referred particularly because of evidence given by a Mr. Ruttley for the defence.

"I would make no comment on the Notes of Evidence and simply refer the papers herewith for such investigation and action as you may deem proper."

This brings me to an account of the first report, that of Det. Sergeant Leedham Walker, in response to this request. Before dealing with it I think that I should say something of the nature of the inquiry which was called for in answer to this request.

The crime of perjury like most other crimes and certainly all serious crimes, has not merely a physical but also a mental element. It requires that in the course of a judicial proceeding the person charged shall not only have given false testimony on a material matter, but also that he shall have done so knowingly. The false evidence must have been given deliberately, in full knowledge of its falsity. Where the evidence relates to matters peripheral to the basic issues of a trial as was the case in relation to evidence of the circumstances surrounding the arrest of Ugle, it will hardly support a prosecution for perjury, particularly where records are not kept, and where the witnesses are testifying, as in this case, after a substantial lapse of time during which their recollection may have diminished or become confused. Indeed, the Magistrate himself accepted the view that a perjury charge could not be supported on conflicting evidence relating to such surrounding circumstances.

The basis of his reference was purely on the question of the testimony of whether the accused person was drunk or not.

Now, to support a perjury charge purely on the basis of testimony as to the drunkenness or sobriety of another is extremely difficult. The reason is that testimony of drunkenness is not testimony of fact. It is testimony of a value judgment. A value judgment is an opinion

reached on observed facts by a person experienced in interpreting such facts. It is based on fact but it is nevertheless still a matter of opinion on which different people may well come to quite different conclusions.

In view of these considerations I must say I have some doubt whether I myself would have felt called upon to refer these papers for investigation. However there is undoubtedly a duty upon a judicial officer who forms what is more than a mere suspicion of perjury in relation to evidence brought before him, to have the matter investigated. Accordingly, I would in no way reflect on the action which the Magistrate took. Having come to the conclusion he did, he was in duty bound to refer it.

#### The First Investigation by Det. Sergeant Leedham Walker

After the complaint had been received by the Commissioner of Police, the officer delegated to investigate it was Det. Sergeant Leedham Walker. So far as the suitability of Det. Sergeant Walker to undertake this investigation, I need only quote the evidence of Mr. Michael Murray, the Crown Prosecutor:

"What have you found in general terms of his ability as a CIB officer investigating major matters?---In general terms I think he is a tremendously competent man with enormous attention to detail, very careful in the course of any investigation to leave no stone unturned. Also he has been directly associated with activities of the educatory type within the CIB in their detective school, which I have had the pleasure of addressing on a number of occasions, and listening to him in that regard his enthusiasm and his study of the law has been quite remarkable to me over the years.

"Would you regard him as an appropriate officer to be assigned through the hierarchy to the investigation of potential offences by other police officers?--- I could think of none better."

I can see no reason for not accepting this opinion.

The material received by Det. Sergeant Walker on which to base his investigation is indicated in Mr. Murray's letter.

After he received his assignment from Acting Superintendent Brennan the latter called him in. He said, "Today I gave you a file with regard to an alleged perjury at Narrogin. He said it is a difficult one. I want a good job done and I know you can do a good job. Naturally you will have to see the Magistrate when you are down there." He said that he was given no special instructions as to how he was to go about his investigation. That it was left entirely to his discretion.

That he should be given no special instructions would be the normal position according to the present Commissioner of Police, Mr. Leitch. He said that at the stage of getting a particular inquiry he would be expected to know

his business. Having regard to his experience he would be expected to follow the best line of inquiry without specific instructions.

Det. Sergeant Walker's account of his investigation was as follows:

Firstly he said that he did a re-study of the Elements of the Crime of Perjury as expressed in the Code and Standard Text Books on the subject. Then he rang Inspector Wright the Acting Inspector in Charge at Narrogin. He told the Inspector that he would be coming down on the investigation and asked him not to alert any members of the Police Force about his visit. He said that he thought it was preferable if he was investigating the conduct of police officers not to let them know that he was coming.

He arrived at Narrogin on 10th December, He went to Inspector Wright's office. He went through the depositions with Inspector Wright. He then inspected the station occurrence book for the relevant period and the property book relating to the arrest of Ugle and Williams.

He inspected photos which had been taken at the scene. He also perused Sergeant Wells' report to Inspector Wright to which I have previously referred. He then visited the scene with Inspector Wright who pointed out the houses and he also inspected fence posts which had been a matter of controversy at the hearing. After that he drew a rough sketch of the area.

Having thus familiarised himself with the scene, he went back to the police station. After lunch he saw Sergeant James, the officer-in-charge of the station. He was sure that Sergeant James had no idea that he was coming. He obtained permission to interview Taylor, Pense and Beard. He said to James, "I have a report from Sergeant Wells about which I am a little concerned and that was the fact that Ugle was brought in and. . . was only charged with drunkenness after he had been spoken to about an assault matter."

He asked Sergeant James if there was any foundation for Wells having said this and James said that he and Inspector Wright had made inquiries and there was no foundation for it. He did not indicate from whom he had made inquiries but Inspector Wright had said that he had spoken to Beard who had said that there was no foundation for such a statement.

At this stage, Det. Sergeant Walker said he was quite unaware of a suggestion or rumour that Constable Beard had had an interview with Sergeant Fanderlinden or with any other police officer such as have been previously mentioned and was prepared to accept Sergeant James' assurance without further inquiry.

He then interviewed Sergeant Taylor. He first checked up with him how far he accepted the Magistrate's notes of his evidence. The two men went out to the scene, where Taylor purported to tell him what happened. Det. Sergeant Walker said that there Taylor re-enacted the whole scene, after which he took a written statement which was in greater detail than the evidence which he

gave in Court. He questioned him regarding Ruttley's story and tested his evidence thoroughly. He said that the impression which Taylor gave him was of a conscientious officer - "probably a bit rough but conscientious".

He next saw Constable Pense and took his statement. He was sure that he and Taylor had had no opportunity to put their heads together. He had not given him a copy of Taylor's statement. Pense confirmed Taylor's evidence. Next he saw Police Cadet Panting from whom he also received confirmation of the two officers' story.

He had ascertained from Sergeant James and Constable Pense that all the natives at the scene had been affected by liquor except Marie Hansen. Accordingly he made arrangements for Marie Hansen to come to the station. Before she arrived he went to see the Magistrate. The only information he elicited from the Magistrate was that Sergeant James wouldn't prosecute it as there was something wrong with the brief. On seeing Sergeant James however, he confirmed that he was away at the time of the trial and as far as he was concerned there was nothing wrong with the brief. After that Det. Sergeant Walker had a private look at the scene and on his return Marie Hansen was waiting and he interviewed her. Marie Hansen said she had a clear recollection of the day - it being the day when Eddie Williams took to all the girls and punched her as well. She said that she had seen Ugle at Williams' house drinking beer and wine and that he was drunk.

He said that Marie Hansen impressed him very much and he was also influenced by the fact that she was a non-smoker and non-drinker. He said that he had understood that "in a round-a-bout way" she was a relative, but did not place much weight on this "because if you go into the native situation, nearly everyone is related to everybody". He did not consider getting a statement from the other natives because from inquiries he had ascertained that all of them were affected by liquor and he did not imagine that he could get anything accurate from them.

Next he interviewed Constable Beard and took a statement from him which accorded with the evidence of the others that Ugle was drunk. After that he went to see the Magistrate armed with all the statements. The Magistrate had read Mrs. Hansen's statement through and the Magistrate had said: "Well, that is the end of the matter.". From the comment Det. Sergeant Walker felt that the Magistrate was satisfied that Ugle was drunk.

Det. Sergeant Walker said that at this stage he was satisfied that Ugle was drunk and he told the Magistrate that in view of the statement it would be necessary for him to interview Mr. Ruttley as it appeared that perhaps he was the one who had committed perjury. He felt at this stage it would be necessary for him to test Mr. Ruttley's evidence.

It was testified by Mr. and Mrs. Ruttley that Det. Sergeant Walker had harrassed them both and that he had exercised unfair pressure upon them to change their story.

The evidence shows that Inspector Wright was present at the interview. Both men denied that undue pressure or threats had been used. Det. Sergeant Walker agreed that the interview had got off to a bad start and was never really conducted in a friendly way. Partly because of that, he took written notes immediately after the interview. These were agreed with Inspector Wright and were put in evidence, (see Exhibit 59).

I accept them as a correct version of what occurred and they certainly do not support the suggestion of harassment or of undue pressure or unfair tactics being employed.

No doubt Ruttley was nettled by the fact that his veracity was being called into question. That is a reaction frequently found in a witness in response to a vigorous cross-examination. I can believe that Walker did not behave with perfect tact or finesse but I am unable to conclude that he exceeded the bounds of propriety in the interview.

Actually I do not really believe, having regard to the terms of reference, that the facts relating to the interview are of very great importance to my inquiry. Their importance really arises from the complaint made by Ruttley to Mr. Burton regarding Det. Sergeant Walker's interview with him which, it appears, played no small part in setting in train the events which have led up to the present Commission. The interview with Ruttley was the last stage in Det. Sergeant Walker's investigation after which he returned to Perth and prepared a report. This report contained a finding that Ugle was correctly arrested for being drunk and that there was no doubt that he was drunk.

The Sergeant also concluded that neither Sergeant Taylor nor Constable Pense wilfully gave false evidence against Ugle. Regarding discrepancies in evidence, he remarked that he felt "that as the arrest was made on August 20 and they did not give evidence until October 9 (seven weeks later) and as both officers had handled several inquiries in-between those dates and the fact that it was a minor drunk charge which was being defended, they did not prepare themselves for the cross-examination which they received in Court as perhaps they should have done. They were not equipped with other witnesses, photographs etc. now revealed, which would have shown to the Magistrate that there was no reasonable doubt that Ugle was drunk".

This report came into the hands of Superintendent Lloyd Taylor, was summarised by him and forwarded to the then Assistant Commissioner (Crime) Mr. Parker. The papers were returned by him to the Crown Prosecutor with a covering letter which contains the following paragraph:

"This matter has been investigated by Sr. Inspector Wright and Det. Sergeant L. Walker and in my opinion their inquiries do not reveal any evidence which will support a charge of perjury."

In my opinion, the matter should have rested there because I conclude that the investigation of Mr. Walker, which I am satisfied was neither superficial nor prejudiced, did establish that no case for perjury could be made out against the two officers.

The paragraph in Mr. Parker's letter to which I have referred contained all the advice that the Commissioner was required to furnish to the Crown Prosecutor in response to his request for an investigation for a suspected crime and certainly the Magistrate was entitled to no more.

It is to be remembered that reports of officers investigating crimes such as the report of the investigating officers to the Commissioner in this case are departmental documents and confidential as such. It is important in the interests of the Police Force in the investigation of crime and really also the public itself, that they should so remain. They both have however, received the widest publicity in these proceedings but in considering them and their contents it is important to remember their fundamentally confidential character and that the nature and the contents of the report would be liable to be affected by this. Det. Sergeant Walker's report however, in my view, indicates a thorough investigation of the facts and supports the conclusion that the investigating officers did succeed in their aim as expressed in paragraph 9 of the report to "devoid themselves of the fact that they were both police officers investigating police crimes".

Criticism is levelled against Det. Sergeant Walker's investigation on several grounds:

The first is his failure, though he had Sergeant Wells' report available to him, to investigate more fully the reference in the report to circumstances under which Ugle was arrested and received in the station. I think that it would have been better if he had not accepted the assurance of Sergeant James that there was nothing in this rumour but had made further inquiries. On the other hand he had the evidence of a number of witnesses, including two policemen against whom no perjury charge had been levelled, and the evidence of Marie Hansen by whom he was impressed and indeed, I was impressed by it too. I think that as a result he must have come to a conclusion at that stage that a successful prosecution for perjury was not a matter of practical politics and I think that he may be forgiven under the circumstances for being content to accept the assurance of a ranking police officer of high standing in the Force that there was nothing in the complaint. In any event, a full investigation of this could not have produced anything sufficient to sustain a perjury prosecution.

The evidence of Sergeant Fanderlinden and the other police officers whom he called before the Commission to support his story was, with one exception, purely hearsay. None of them - save one - had seen Ugle at material time or could have given evidence in support of any perjury prosecution. The exception was Constable Glew who did see him at the station as he was coming on duty and expressed the opinion that he didn't look drunk but his

evidence would, in my opinion, not have been sufficient to supply the clear deficiencies in a case for perjury against the two officers.

A further criticism relates to his interview with the Ruttleys. I have mentioned that I regard the testimony of the Ruttleys as greatly exaggerated and I am quite unable to accept the view the Walker was applying pressure on Ruttley in order to assist him to a finding favourable to police officers on the perjury issue which was apparently the conclusion of the Magistrate.

Finally, there is the report that the Magistrate was satisfied not only that a perjury prosecution would not succeed but also that Ugle was in fact drunk. I do not believe that Walker was justified in reporting in such emphatic terms that this was so. Certainly the Magistrate had failed to comment when Walker indicated the evidence and where he had got it and he may have interpreted silence as consent to the proposition he was putting. But this, of course, really has no bearing on the question of perjury or no perjury and does not really detract from Walker's conclusion.

#### The Facts Leading Up to Superintendent Taylor's Inquiry

As I have said in my view the report of Det. Sergeant Walker should have been the end of the matter. That it was not was something for which the Magistrate was primarily and predominantly responsible. Mr. Burton testified before me that after Det. Sergeant Walker had advised him of the result of his inquiry he would, but for one thing, have let the matter die and nothing further would have happened. This was the complaint of Ruttley regarding the manner in which Det. Sergeant Walker had interviewed him. He said that he believed Ruttley's complaint implicitly and having regard to it and also to rumours which he had heard about the matter, he felt that he should - as a judicial officer - see if the matter could be taken any further.

His method of doing this was not to re-approach the Crown Law Department to whom he had originally referred the matter, and to voice his concern as to the nature of the investigation and its result. His method was to approach Mr. Peter Jones, M.L.A., the Member for Narrogin and, through him the Minister for Police, to voice his concern.

The nature of his approach is shown by a draft letter composed by him and addressed to Mr. Jones but never sent to him, the contents of which appear in the transcript at page 88 and the following pages. Though this letter was not sent, the whole of its contents were communicated to the Minister and Mr. Jones at an interview in Narrogin which Mr. Jones arranged. Later, it was given by Mr. Burton to Sergeant Fanderlinden's solicitor and by him handed to Mr. Brian Burke, M.L.A. and used by him in his speech to the House which provoked this Commission.

Regarding the contents of the letter, beyond saying that many of the statements in it are quite unsupportable and the comments contain matter quite unjustifiable reflecting on the conduct of police officers, I only say that it is unfortunate that it was written and that the contents of it were introduced into the political sphere.

It is unfortunate because the allegations in it were given added weight by the fact that they emanated from a judicial officer and I have little doubt that it was principally this which swayed the Minister into ordering a fresh inquiry into perjury which, as I have indicated, I regard as an exercise in futility.

The other factor influencing the Minister was apparently information given to him by Sergeant Fanderlinden whom Mr. Burton had recommended that the Minister should see regarding his discussions with Beard at the police station on August 20th to which I have already referred. Sergeant Fanderlinden apparently was quite well known to the Minister who was prepared to give some weight to what he said.

The reaction of the Minister under the circumstances is an understandable one and it is not surprising that he ordered a fresh inquiry.

It is perhaps unfortunate that he did not take legal advice in the matter from the legal officers of the Crown. If he had, I have little doubt that he would have been advised of the futility of any further perjury inquiry. On the other hand there were undoubtedly disturbing features about the affair and some investigation into the rumours which had been rife at the Narrogin Police Station, how they had been started and had given rise to the Magistrate's dissatisfaction, and the apparent disaffection between police officers at the station may well have been justified. I should have thought however that this investigation should have appropriately been a departmental one.

However, it is quite apparent that the second inquiry was simply ordered on the same terms as the first - namely it was a further inquiry into the allegation of perjury - so that no inquiry was called for in regard to other matters except to the extent that they were relevant to this main issue.

#### The Inquiry by Superintendent Lloyd Taylor

This was ordered by the Minister as is evidenced by his minute to the Commissioner of Police dated 9th March, 1975 as follows:

"I have talked with the Magistrate and others and I am not completely convinced on this issue. I feel you should have another look at the matter."

The terms of the minute showed that it was confined to the perjury allegations.



The file was minuted to Superintendent Taylor by Mr. Parker, the Assistant Commissioner (Crime) on March 24. Thereafter, Mr. Parker called him in and told him that he was to re-assess the file, re-investigate it, and come to a conclusion as to whether or not the result of the report by Det. Sergeant Walker was justified on the evidence available to him. He was "to in effect re-check the evidence and endeavour to find whether there was any additional evidence that would prove: (a) that Ugle was drunk; or (b) whether the two police officers had committed perjury".

At the outset, some question was raised as to suitability of choosing Superintendent Taylor, having regard to a written memorandum he had forwarded to the Commissioner of Police supporting Walker's report. I however accept the statement by Superintendent Taylor that it was his responsibility as senior officer in the Department, to do the job having regard to the fact that it had been raised by the Minister.

Superintendent Taylor said that at the time he had not heard of Sergeant Fanderlinden's alleged report to Sergeant James regarding Beard, though he said that he had heard "though the grapevine" that Fanderlinden had been in touch with the Magistrate and the Minister, which led him to suspect that Sergeant Fanderlinden was to a large extent responsible for a second investigation being called for. Subsequently, he went down to Narrogin and carried out further inquiries.

I do not believe I need to go into these, having regard to the conclusion I have reached that as the result of Det. Sergeant Walker's investigation and report no prima facie case of perjury against members of the Police Force would be supported. Suffice to say that the Superintendent appears to have checked the investigations from which Det. Sergeant Walker drew his conclusions with some thoroughness, and reported that he agreed with Walker's findings. I can find no justification for concluding that his investigations into the perjury allegations were either superficial or prejudiced.

I believe at this stage the real issue to be resolved regarding the second report is the alleged victimisation of Fanderlinden. When he went down to Narrogin, Superintendent Taylor - among other things - made inquiries concerning the relative efficiency of Sergeant Fanderlinden and Sergeant Taylor. He explained his motive for doing so as being that he was satisfied that there was something wrong somewhere, as an inquiry had been carried out by Det. Sergeant Walker which didn't appear to him to support a prima facie case of perjury by the two officers, yet the matter had been raised by the Minister and there was an indication that there were rumours and there was something wrong. He felt that his inquiry, apart from the possible criminal offence, was to "get to the source of the problem as a Departmental investigation apart from the comparison between the efficiency of Sergeant Fanderlinden and of Sergeant Taylor". Superintendent Taylor also made inquiries concerning the efficiency of Sergeant Wells. On his return from Narrogin, Superintendent Taylor was present at a discussion between the then Assistant Commissioner Mr. Leitch, the Assistant

Commissioner (Traffic) Mr. Straughan, and Sergeant Fanderlinden. The discussion concerned an incident at Boddington when Sergeant Fanderlinden was officer-in-charge and where an adverse report was made against him which went on his personal file. It had been arranged that at the same time Superintendent Taylor should interview him regarding any knowledge he had of the Ugle affair.

When questioned as to this, Fanderlinden for the first time gave an account of the events at the police station on the afternoon of the 20th August as he has recounted them to the Commission.

There was some discussion between Mr. Leitch and Sergeant Fanderlinden as to why he had not done something about it, such as to go and see Ugle and satisfy himself as to his condition and let him out on bail if he appears to be sober; make some entry in the occurrence book, or report it to the inspector in charge.

He said that he had told Sergeant James and having done so he did not think that it was his responsibility to do any of these things.

Subsequently Superintendent Taylor had a conversation with Sergeant James who categorically denied Sergeant Fanderlinden's story. He also communicated with Constable Beard who was by then a Commonwealth policeman, stationed at Canberra and he also denied it. Subsequently, he got a written statement from Beard confirming his denial. Thereafter he sought information from Sergeant Fanderlinden as to the statement alleged to have been made to him by Constable Beard and the action he took.

Thereafter, on May 22nd, Sergeant Fanderlinden made a report which accords with his evidence previously given. He stated that he did not visit Ugle to ascertain whether he was drunk or not. On 21st August he had prosecuted at the Court of Petty Sessions when Ugle was still in custody. Mr. Lane had appeared for Ugle and obtained a remand. He had discussed the matter only with Sergeant James and Constable Beard and had taken the matter no further.

A few days later he had taken six weeks' leave, then carried out relief duty and had returned to duty at Narrogin Police Station in February, 1975.

#### Superintendent Taylor's Report of the 28th May

On 28th May, 1975 Superintendent Taylor who by then had become Acting Assistant Commissioner (Crime) - forwarded a written report of his investigation to the Commissioner of Police and on June 6th, he sent a minute to the Minister reporting inter alia that he was satisfied that Ugle was drunk at the date of the arrest.

He continued: "However arising out of the inquiry the inefficiency of two police officers - not those involved in the arrest - has come under notice. This will become a matter for internal departmental consideration. I am satisfied no further inquiries are necessary."

A perusal of Superintendent Taylor's report of the 28th May makes it apparent that the two officers referred to were Sergeant Fanderlinden and Sergeant Wells.

Dealing with Fanderlinden he says at page 4 of his report:

"Hansen indicated that both Sergeant Taylor and Sergeant Fanderlinden are well respected at Narrogin. However, a perusal of records at Narrogin indicates a vastly different approach by these two officers to the discharge of their respective duties.

"During 1975, Sergeant Taylor made some 150 arrests for various offences, whereas Sergeant Fanderlinden made a total of five arrests.

"From my discussion with Sergeant James and some of the younger members on the station, I am satisfied that Sergeant Taylor acts in a positive manner when attending to complaints of misconduct, whether it is by Aborigines or whites, whereas Sergeant Fanderlinden acts in a negative way and rarely makes arrests, but merely orders or advises people to go home."

At page 6 he said:

"I made further inquiries at Narrogin into the performances and abilities of the two sergeants - Sergeant Taylor and Sergeant Fanderlinden.

"Statistics alone prove that the former is an active fearless police officer and although perhaps lacking finesse in his speech and written expression, he is an excellent worker."

(He then refers to a specific instance where he concluded from advice he had received from Sergeant Taylor, that Sergeant Fanderlinden's failure to make an arrest during a street brawl had resulted in the trouble subsequently flaring up again.)

The report continued:

"I interviewed l/c Sergeant James and obtained a statement from him in which he indicates that he has complete confidence and faith in Sergeant Taylor's integrity. Sergeant Fanderlinden, he found to be lazy and rarely stirred himself to set an example to the younger men on the staff of the Narrogin Police Station to carrying out their duties in a positive manner. Sergeant James informed me that it was quite clear that Sergeant Fanderlinden's main interest appeared to lie in traffic matters and that he was always willing to carry out traffic prosecutions, which as far as Sergeant James was concerned, he did quite efficiently."

Mr. Taylor then referred to the interview of 15th April, 1975 when Sergeant Fanderlinden first made known to the senior officer his alleged conversation with Constable Beard and Sergeant James. In commenting on this interview he stated as follows:

"On being pressed further as to whether he made any attempt to visit Ugle to determine his condition in order to verify ex-Constable Beard's concern, he admitted that he had not done so, that he had not seen Ugle in the cells at all during his tour of duty between 4 p.m. and 12 midnight, nor could he say whether Ugle had eaten his tea that night or, because of going to sleep soon after being placed in the cell, he had slept through the meal period until the next morning.

"Sergeant Fanderlinden admitted that he had made no entry in the occurrence book of what should have been an important complaint to him about the conduct of Sergeant Taylor and Constable Pense.

"Should Sergeant Fanderlinden be believed then he failed to take any action other than to allegedly report ex-Constable Beard's conversation to Sergeant James and he made no attempt to raise bail for Ugle, who was then under his control as the officer-in-charge of the afternoon shift, as he should have done should he have believed ex-Constable Beard. He was certainly remiss in allowing a person who was allegedly wrongfully arrested to remain in custody without making any attempt to have him freed on bail. . ."

Mr. Taylor then discussed his inquiries made from Sergeant James and ex-Constable Beard and stated that both of these officers emphatically denied that any such interviews had taken place and he made it clear that he accepted these denials in preference to Sergeant Fanderlinden's account.

He continues:

"However, in view of Sergeant Fanderlinden's general comments in respect to this matter, should a rumour have circulated at the Narrogin Police Station that Ugle had been wrongfully arrested for being drunk, then there is a strong presumption that Sergeant Fanderlinden was the author of that rumour. It would appear that as far as Sergeant Fanderlinden is concerned, he either wilfully created the situation which developed later for a reason best known to himself or, alternatively, imagined a situation existed which in fact did not. This would indicate that should his actions have been wilful, he made a false report to yourself as Senior Assistant Commissioner, the Assistant Commissioner for Traffic - Mr. Straughan - and myself as the Superintendent in charge of the Criminal Investigation Branch and should be charged with creating a situation which did not in fact exist; or alternatively, he is suffering from imagination, which would indicate that he is not suitable for further promotion as his reliability and leadership must be open to serious question."

After some discussion on the efficiency of Sergeant Wells, Superintendent Taylor states:

"...it is disturbing to note that their personal files do not show a true reflection of the lack of ability on both their parts which this inquiry has disclosed."

Actions of Sergeant Fanderlinden in Relation  
to Adverse Comments on him in Report

Some time in June, Sergeant Fanderlinden was summoned by Superintendent Read to see him and was asked by him to read this report, which he did. The Sergeant said that he was greatly surprised and concerned. After reading the file he put a notation on it in writing, asking to be informed whether he was going to be charged, whether he was going to be reprimanded and whether the adverse comments on him which appeared in the report were to be placed on his personal file.

Soon afterwards he confirmed these requests by memo to Superintendent Read, dated 14th July. As well as repeating his requests, he complained of remarks on the file which were untrue and detrimental to his character and career in the Police Force. Shortly afterwards, he got a file containing a "notation" to the effect that he would not be charged, and he would not be reprimanded, but the matter would be placed on his personal file. On receipt of this, he sent a further memo, this time to Superintendent Purkiss, in which he said he wished to lodge an objection to the papers being placed on his personal file. He asked that before any papers of any description were placed on his file he should be paraded before the Commissioner of Police (then Mr. Wedd), to place before him certain information he had on the matter. There is no doubt that the information he sought to place before the Commissioner concerned his interviews with Beard and Sergeant James to which I have previously referred.

It appears also that Sergeant Fanderlinden had set about collecting statutory declarations from the police officers who gave testimony on his behalf before the Commission and it would appear that he was also desirous of putting these before the Commissioner. He did not succeed in getting an interview with the Commissioner at that stage. He was called to see Superintendent Blackman in respect of the request which he had made and the Superintendent told him that the Commissioner was not going to see him but was going to request Mr. Leitch to see him in the matter. At that stage Mr. Leitch was away and he wrote to Superintendent Blackman asking that the matter be held in abeyance until Mr. Leitch returned when arrangements could be made for an interview with him. Subsequently he saw Superintendent Blackman who told him that he thought the Sergeant was hitting his head against a brick wall and if the Department made up their minds to put a matter on an officer's personal file, it would stay there.

At that point, Sergeant Fanderlinden said he thought he would have to seek the services of a solicitor to discuss the matter with him with regard to his position in the Police Force. However, before he did so, he rang the Minister for Police. It appears that he was well and favourably known to the Minister and he had actually been in touch with him previously in connection with matters arising out of the Ugle affair. The Minister himself confirmed Sergeant Fanderlinden's story. He said that Sergeant Fanderlinden had contacted him by phone after the second investigation had been carried out. He was obviously extremely upset and he claimed he was being victimised. Subsequently, the Sergeant again contacted him and advised that he had further evidence and information (no doubt the declarations to which I have referred), and he would like to see the Minister. Sergeant Fanderlinden called at the Minister for Police's office with the declarations. Mr. O'Connor then suggested that he should take them to the Commissioner of Police, show them to him and have the matter aired if necessary. He also advised him that if after that he was still dissatisfied the Minister would be prepared to have a further look at the matter. The Sergeant left him after indicating that he would either take the matter to the Commissioner or come back to the Minister in due course. He never did so and the next the Minister knew of it was when the affair was aired in Parliament.

Sergeant Fanderlinden also contacted Mr. Burton, S.M. asking him whether there was any advice he could give him in the matter and Mr. Burton told him the best thing he could do was to consult a solicitor. When he consulted Mr. Burton, Sergeant Fanderlinden told the Magistrate that his job "was on the line".

Thereafter he consulted his present solicitor, Mr. French. In addition to oral instructions, he gave his solicitor extracts from the relevant reports and other material documents. In addition, Mr. French was supplied by Mr. Burton with a copy of his draft letter to Mr. Peter Jones, M.L.A. Mr. French advised him that the only thing he could do was either to make the matter public or drop the whole thing. He suggested that if the Sergeant was prepared to make it public he would talk to a Member of Parliament. With the Sergeant's approval, Mr. French put him in touch with Mr. Brian Burke, M.L.A. The three men had a discussion as a result of which the matter was ventilated in Parliament. There is no doubt that the contents of Mr. Burton's letter were accepted as factual by Mr. Burke and they, to a substantial extent, provided the basis for the subsequent speech.

Following on a newspaper report on 9th September concerning Mr. Burke's proposed speech, Sergeant Fanderlinden was summoned for an interview with the Commissioner so that he at last achieved what he had been seeking ever since he had read Mr. Taylor's report.

The conversation between them which is of some importance on the question of victimisation is testified to by the Commissioner Mr. Leitch as follows:

"I said 'Sgt. Baker of the staff office has informed me that you wanted to see me personally with respect to your personal file when I returned from my northern trip'. (I had been doing a tour of about five weeks in the north, of all the police stations.)

"I said 'I was not aware that it was anything important like affidavits and until I read in the newspaper about Mr. Burke's oration in Parliament I wasn't aware what it was all about but now I'm beginning to understand, much to my disappointment. Did you give any affidavits to Mr. Burke?' He said 'No. I gave the affidavits to Mr. French. He must have given them to Mr. Burke'.

"I said 'Did you tell Mr. French to give them to Mr. Burke?' He said 'Mr. French told me that he's see a friend of his and give him all the information. He later told me that he'd seen Brian Burke and that he'd fix it all up with a little fuss. I don't know Brian Burke. I have never met him'.

"I said 'As a police officer it is your duty to give this type of information to the Commissioner of Police or his senior officers. Don't you trust any of us - -'. He said: 'I do trust you, sir. I believe you are a fair man. I wanted to see you when you were in the north. I know that you would tell someone if they were wrong on a point, and that's why I'm concerned it's gone as far as it has.'

"I said: 'Will you give me something in writing to that effect and tell me what it's all about?'. He said: 'I would like to but I would prefer to see my solicitor first.'

"I said: 'Why? You have not been charged with anything. He seems to be pretty quick with what he does and not telling you of the possible consequences. I have known you for over 20 years. How long have you known him?'. He said: 'Will you let me see my solicitor?' and I said: 'Yes, if that's the way you want it.' He said: 'Before I see Mr. Woods can I speak to you about a couple of things off the record?' and I said: 'Yes, but I would like to know some facts first-hand. I have never known anyone other than a police officer to successfully charge someone with perjury.'

MR. MILLER

" 'I think you also made some mention to him about his present position as prosecutor, didn't you?---Yes. I said: 'You gained the position of prosecutor which you applied for. How could anyone say you are victimised?' He said: 'I know that, and that's why I'm worried.'

"Did he add something about being unhappy about the fact that the matters were on his personal file?---Yes. He said: 'But I don't agree with what was put on my personal file.'

"I think you saw him again the next day?---That's correct, or the day after. Yes - I think the next day.

"And there was a short conversation about affidavits?-- Yes. He said: 'My solicitor has given you a copy of the affidavits but I don't want to say anything else.' I said: 'I'm not interested in the affidavits now. They are public knowledge and I hope somebody can clear up the mess that's been started.'

"When you told him you weren't interested in the affidavits, why weren't you interested - because there was no Royal Commission announced at that stage, was there? ---No, but Mr. Burke of course was asking for a select committee.

#### COMMISSIONER:

"By the way, getting back to victimisation, you say you said to him: 'Well, how have you been victimised, having got this particular job as prosecutor?'---Which he applied for.

"Yes. The only way he could suggest in which he was victimised was that certain things had been put on his personal file which he did not think should be on his personal file. Is that right?---That's about all I could feel that he would honestly have a complaint about.

"But did he suggest anything else?---No, he didn't; not that specifically."

Sergeant Fanderlinden has given an account of this interview which does not differ in any very material respect from the Commissioner.

He did say that the Commissioner advised him to go to the Police Union and discuss it with them. He said that he had told the Commissioner he would have to see his solicitor about the matter. That ended Sergeant Fanderlinden's contact with the Commissioner and Superintendent Taylor. Soon afterwards this Commission was appointed and pending its investigation no further action has been taken in the matter.

During this discussion of the facts relating to the Ugle affair, I have had little to say about Mr. Burke's speech which triggered off the Commission, beyond dealing with the particular aspects of it which have been incorporated in the terms of reference with which I am called upon to deal. In my view little advantage can be derived from any further detailed comment on it.

It is apparent from this report that I disagree profoundly with many matters of fact and opinion therein contained. May I add that in my view, Mr. Burke is not altogether to be blamed for this.

The opinions were clearly based on faulty and, in many cases, false premises which invalidated the deductions and expressions of opinion which he drew from these. Having regard to the apparently unimpeachable source from which he derived the basic facts, it is perhaps not surprising that he was led astray in many respects.



I have now dealt in broad outline with the more important facts connected with the Ugle affair and with the questions with which I am required to deal in my report on this matter.

Sergeant Fanderlinden's Position and Standing in the Police Force at the Time of Inspector Taylor's Report

Before discussing the terms of reference however, I think that I should deal with the above heading.

Sergeant Fanderlinden was born in India in 1927. He came to Australia in 1947 at the age of 20. After being employed for some years as an automotive electrician with Winterbottoms and General Motors, he joined the Police Force in 1952 and has been with the Force ever since. In view of his previous occupation, he possibly naturally gravitated to the Traffic Branch where he spent about 17½ years and indeed until he was appointed a third class sergeant in 1970. He was engaged in all types of work - patrol work, heavy haulage, motor vehicle examining, motor driver testing in the police driving school and in the accident section. On two occasions he received the award of best patrolman of the year and also commendation for devotion to duty. Other examples of the useful work in which he was engaged appear in the transcript at pages 426 and 428. This seems to indicate that he was very suited to traffic work and had performed a good job in the traffic branch over the period that he was attached to it.

He got his promotion to the rank of Sergeant in about June, 1970 and was transferred to Narrogin Police Station. The evidence indicates that it is normal practice to give a newly-appointed n.c.o. a country posting, so that he can get the experience and responsibility in command which he must have if he is to get further promotion.

He spent between 4½ and 5 years in Narrogin leaving on the 9th April, 1975. After a short period of service with Sergeant Watts, Sergeant Fanderlinden then served with Sergeant Sweeney who succeeded Sergeant Watts as officer-in-charge of the Narrogin Police Station and who remained there for 2½ to 3 years. Fanderlinden was employed mainly as relief sergeant and went out on patrols. He began to take an interest in Court matters and prosecuting and Sergeant Sweeney helped him quite a bit on prosecution matters. He prosecuted in traffic cases, as well as ordinary Police Court matters and inquests and, in fact, did most of the prosecuting at Narrogin.

He spent much time teaching junior officers Court proceedings, held mock Courts, instructed the juniors in the giving of evidence, the preparation of briefs and documentation. Sergeant (now Inspector) Sweeney was to have given evidence and he expressed complete satisfaction with his work. In his letter he states:

"I was Officer-in-Charge of the Narrogin Police Station from September 1971 until June 1974, and during that time Sergeant Fanderlinden was attached to the Station as a Relief Sergeant.

"The conduct and efficiency of Sergeant Fanderlinden was always good. His office work was efficient as was his patrol work, both by van and on foot.

"On numerous occasions he assisted me of an evening on instructing constables in Court Procedure, giving evidence and also on points of law.

"On numerous occasions he gave advice and training to Traffic Inspectors, particularly in prosecution matters. He was an efficient prosecutor.

"His personal appearance and demeanour towards the Public was good and during my period in Narrogin, no complaints were made against him."

Despite the terms of this letter, I have come to the conclusion on the totality of the evidence that having regard to his lack of aggressiveness, to the conciliatory nature of his approach to his field work and his reluctance to make arrests, he was probably less suited to field work in a town which no doubt had substantial problems in the maintenance of law and order such as Narrogin. I am satisfied that field work was not congenial to him and that he was much more at home with traffic and prosecutions which were in fact his preference. This is supported by the applications which he made for a posting with the new Traffic Authority and as a police prosecutor in the Traffic Court..

It is also, perhaps, supported by an incident which occurred during the period of his stay at Narrogin. On one occasion he was temporarily posted to Boddington, a small two-man station not far from Narrogin. While there, he was the subject of a complaint by a farmer in relation to an investigation into breaking and entering. The details are unimportant but it is agreed that an adverse report on him was placed on his personal file and that this was justified.

I must now bring the history of the Sergeant's service up-to-date. In April 1975 he was transferred back to Perth Central. As I have indicated, at some time which does not clearly appear from the transcript, he had applied for a transfer to traffic work or to the Police Prosecuting Section. According to Superintendent Taylor, whose evidence in this matter I accept, when traffic control was transferred from the Police to the Road Traffic Authority, the Sergeant was not considered suitable by those in charge of this Authority for transfer to Road Traffic. However, Superintendent Taylor says that he recommended Sergeant Fanderlinden for a position in the prosecuting section which carries with it a special allowance, and on Superintendent Taylor's recommendation he was appointed to this section, taking up his duties in the first week in September. There is no suggestion that he is not happy in his present appointment or that he could have expected to have been in any better position in the Force at the present time. It is, I think, worthy of note that Superintendent Lloyd Taylor's recommendation for this appointment came after he had made his adverse report on the Sergeant and this is something which I think should be taken into account when consider-

ing the question of victimisation in Superintendent Taylor's report.

The Sergeant himself agrees that his only complaint of victimisation relates to the adverse criticism of him in Superintendent Taylor's report which he submits was unjustified, and to the placing of the report on his personal file which he maintains affects his chance of promotion in the Force and his prospects in the Force generally. It is to be noted that his complaint relates solely to Mr. Taylor's report, there being nothing in Det. Sergeant Walker's report to which he could have reasonable grounds of complaint. This brings me to the next heading which is:

The Extent to which the Criticisms of Sergeant Fanderlinden in Inspector Taylor's Report were Justified

I would point out at the outset that as a part of his inquiry and investigation into perjury, it was Superintendent Taylor's right and his duty to inquire into and report on the actions of any police officer involved in the subject matter of his investigation including a report on any shortcomings on the part of such a police officer as he might discover. This would be part of the duty of any senior police officer who had responsibility regarding the disciplining of members of the Force. After all, the report would be a confidential document, intended for the information of senior police officers only and any reflections on the performance of a police officer in the report would be intended to be so confined. I believe that my views in this matter were accepted at the Bar.

Insofar as the report might contain reflections on a police officer, such reflections might be on questions of fact or might be on matters of opinion. This Commission is in some difficulty in reviewing the findings in such a report on such matters. If the report is factually incorrect, there is no doubt justification for the Commission making a finding to this effect. But where a senior officer expresses an opinion on an officer's efficiency or in a broad way on how he is performing his duties, it is not so easy - there may be many factors on which such an opinion is based, some of which do not emerge in the proceedings so that it is difficult for the Commission to condemn it out of hand, even though it is felt that the factors which emerge during the evidence on the inquiry would not support it.

Coming to the terms of the report, I am satisfied that there was no justification for Superintendent Taylor's statement that Sergeant Fanderlinden had made a false report regarding the circumstances of the charging of Ugle or that he should, as Superintendent Taylor suggested:

"be charged with creating a situation which did not in fact exist"

or alternatively be regarded as:

"suffering from imagination which would indicate that he is not suitable for further promotion as his reliability and leadership must be open to question."

The validity of Superintendent Taylor's conclusion is based on the premise that Sergeant Fanderlinden did not have the interview with Constable Beard that he said he had and that his conversation with Constable Beard and Sergeant James did not take place. If this premise is not true then the conclusion cannot be supported. I have indicated in my statement of facts that I am satisfied that the conversation between Sergeant Fanderlinden and Constable Beard did take place. So far as concerns the alleged further conversation with Sergeant James - I have indicated that I am not able to come to a conclusion between the diametrically opposed testimony of Sergeant Fanderlinden on the one hand and Sergeant James and Constable Beard on the other. Accordingly, it is necessary for me to rely on the burden of proof to resolve any matters arising in the inquiry which are dependent on whether this conversation did, in fact, take place.

In deciding whether Sergeant Fanderlinden should be censured or charged for falsely reporting such a conversation, the onus is on the police officer concerned to establish that the conversation did not take place. In my view, this onus is not satisfied and accordingly, Sergeant Fanderlinden must be judged on the basis that the conversation did, in fact, take place.

In the result, I must find that to the extent that Superintendent Taylor made the finding previously indicated, it cannot be supported and should not have been the subject of an adverse criticism of Sergeant Fanderlinden in the report.

The next passage in the report with which I am concerned is really based on an acceptance of Sergeant Fanderlinden's story and infers that on that assumption Sergeant Fanderlinden had been guilty of neglect of his duty.

This can be related to evidence given by Commissioner Leitch to the effect that with regard to the evidence of Sergeant Fanderlinden as to the events of the 20th August, he was really in a cleft stick - either that he had made a false report if he had not, in fact, had the conversation with Constable Beard which he said he had had, or if such a conversation had taken place he had been guilty of neglect of his duty - having regard to the fact that he was in charge of the station for nearly eight hours up to midnight on the 20/21 August in -

- (a) not attempting to visit Ugle to determine his condition during his term of duty;
- (b) making no entry in the occurrence book of what would have been an important complaint about the conduct of Sergeant Taylor and Constable Pense; and
- (c) failing to make any attempt to obtain bail for Ugle when, if he accepted Beard's story, he was unlawfully under arrest.

It was submitted before me on Sergeant Fanderlinden's behalf that he was not guilty of a neglect of duty, and that having regard to standing orders he had done all that was required of him by reporting the matter to Sergeant James the officer-in-charge of the station before the latter finished his tour of duty, and there was no duty upon him while he was in charge at the station to ascertain whether Sergeant James had done what it was broadly necessary for him to do in view of the complaint made, viz. to check by observation the validity of the complaint and, if necessary, discharge Ugle on bail.

Both Superintendent Taylor and Commissioner Leitch were emphatic that the report he made to Sergeant James, if he had in fact made one, did not relieve him from this responsibility, in the first place to enter the incident in the occurrence book and also to make some check of the story during his eight-hour tour of duty, and to ascertain to his own satisfaction that Ugle was not in wrongful custody, and if he were to make sure that he was released on bail. I accept this opinion of Sergeant Fanderlinden's responsibility as expressed by these two senior officers. Indeed it accords with my own view. I think it is a mere matter of common sense that a senior police officer under such circumstances should make some check.

Sergeant James was, at the moment, on the point of departure, but I should have thought that the natural reaction of any person placed as Sergeant Fanderlinden would have been would be to immediately check up on Ugle's condition for himself. This would have required a few yards' walk from his office to the lock-up and then, if his inspection supported Constable Beard's view - to think about going to his superior officer about the matter. In any event, I would have regarded it as unreasonable for the Sergeant to have done nothing for the next seven or so hours of his tour of duty to ensure that something was not being done in regard to a prisoner who was in his charge over the period and who, it is suggested, was in wrongful custody.

Accordingly, I take the view that these particular reflections on Sergeant Fanderlinden in this report were justified.

It is submitted on the Sergeant's behalf that his conduct on this occasion was no more than an error of judgment but I think it was. I think also that Superintendent Taylor would have been entitled to regard it as an instance of his generally negative approach to his duties and responsibilities as a fairly senior n.c.o. in the police service.

The next matter for consideration is the passage in the report relating to a comparison between the performance and abilities of Sergeant Taylor and Sergeant Fanderlinden. I need not go into Superintendent Taylor's remarks on the performance of Sergeant Taylor which are available on perusal of the report. What I am concerned with is the statement which I have mentioned that Sergeant James had made to him, namely that he found

Sergeant Fanderlinden to be lazy and rarely stirred himself to set an example to the younger men in the staff of the Narrogin Police Station to carry out their duties in a positive manner. I do not consider that this criticism was supported by any evidence given by Sergeant James or anyone else in the inquiry. In that regard I might mention the testimony of Sergeant Mervyn Taylor himself. It is to his credit that he was unwilling to offer any criticism of Sergeant Fanderlinden's performances in the field at Narrogin, save in one particular instance of his failure to make an arrest. He gave evidence recognising that the two officers had different techniques in carrying out their duties and apart from that offered no particular criticism of Sergeant Fanderlinden.

It is apparent that Superintendent Taylor's criticisms were not fully supported by the evidence which I heard. Nor were they supported by Inspector Sweeney's experience of his performance. As a matter of fact, Superintendent Taylor qualifies his criticism in the following paragraph by repeating Sergeant James' comment that Sergeant Fanderlinden's main interest was in traffic matters and that he was always willing to carry out traffic prosecutions which, as far as the Sergeant was concerned - he did quite efficiently.

However, on reading the whole report it is apparent that in making his assessment of Sergeant Fanderlinden's performance he did not rely exclusively on evidence which has been the subject of testimony before me. It is for this reason I do not feel qualified or called upon to condemn Superintendent Taylor's assessment of his performance.

All I can say is that my conclusion on the evidence is that Sergeant Fanderlinden is a police officer who, on traffic matters, is an efficient officer and one who has shown a liking for and efficiency in police prosecutions. These are the types of work which he prefers and I feel that his work in the field is something for which he has less liking and his dislike for it may well result in a performance which does not equal that in his favourite aspects of police work.

In relation to my criticism of Superintendent Taylor's report, I am unable to conclude that his assessment of the Sergeant's conduct and capabilities were other than a genuine, though probably not sympathetic, assessment based on conclusions he had reached on various matters which had been brought before him which included matters other than those brought to the attention of the Commission.

At the same time, I have no doubt that he was by no means happy with the Sergeant's performance over the relevant period and was not disposed to be charitable in his conclusions regarding his part in the Ugle affair.

May I add that I find it difficult to excuse the obstructive tactics adopted by senior police officers in relation to the attempts by Sergeant Fanderlinden to clear

himself from the imputations made against him in the report. They were imputations which reflected seriously upon him and which were profoundly disturbing to him and I have no doubt that he felt, with some justification, that they were likely to have an adverse effect on his future career in the Police Force. What happened to him in his attempts to clear himself no doubt led him to believe that he was up against a brick wall. If senior officers had been more receptive to his complaints and had given him an opportunity to be heard in his own defence - which I believe was his right - there is no doubt that the evidence of police officers supporting the Sergeant's account would have been brought to light - evidence which would clearly have cast serious doubts on Constable Beard's denial of having discussed the circumstances of Ugle's arrest and charging with Sergeant Fanderlinden.

It is not conceivable if such evidence had been forthcoming that Superintendent Taylor would have come to the conclusion which he did regarding the Sergeant having made a false report.

It is apparent that the endeavour by Sergeant Fanderlinden to vindicate himself, in fact sparked off this Commission. One can only regret in retrospect that a more sensible approach was not adopted in the matter, as a result of which I have no doubt that the necessity for this Commission - which I also regard as a somewhat futile exercise - could have been avoided.

To sum up, I regard the Police as having acted obstructively whereby the truth regarding Sergeant Fanderlinden's connection with the Ugle affair was not immediately established and he was constrained to take what I regard as a wrongheaded action to vindicate his character, because I consider his resort to the political arena with his complaint was, under the circumstances, quite inexcusable.

However, I am unable to conclude that Superintendent Taylor's report was other than an honest report, representing opinions genuinely held and by no means inspired by and improper motive, such as the motive of intending to punish the Sergeant for his association with the Ugle affair.

#### THE TERMS OF REFERENCE

I now come to consider the terms of reference in detail. They are:

1. THE TRUTH OR OTHERWISE OF THE ALLEGATIONS MADE BY MR. B. T. BURKE, M.L.A. IN THE LEGISLATIVE ASSEMBLY ON THE 10TH SEPTEMBER, 1975 TO THE EFFECT THAT:

- (a) certain police officers committed perjury during the trial of Baymis Ugle

As is apparent from the foregoing recital of facts, I find that the evidence submitted to this Commission is not sufficient to establish that any police officer committed perjury during the trial of Baymis Ugle.

- (b) subsequent Police investigations into the trial were superficial and prejudiced

In my opinion this allegation is not established by the evidence.

- (c) one or more police officers lied to the officers instructed to carry out such subsequent investigations

This term of reference causes me some concern in that it requires me to report adversely on persons who are not named in the inquiry.

In the course of the evidence there were three police officers who, according to the view I take of the evidence, might come within this particular term. They are Sergeant Fanderlinden, Constable Beard and Sergeant James. Of these, Sergeant Fanderlinden and Constable Beard were represented by counsel to whom it must have been apparent that their clients' veracity in communication with the investigating officers was a direct issue before the Commission and who had the opportunity of making submissions on their behalf. Accordingly, I feel at liberty to report concerning at least these two under this heading.

My finding is that Constable Beard lied to Superintendent Taylor when he denied that he had approached Sergeant Fanderlinden on the day of Ugle's arrest and made the statements to him which are referred to in page 8 of the report.

So far as all three officers are concerned there is an issue as to whether on the one hand Sergeant Fanderlinden, and on the other hand Sergeant James and Constable Beard, were lying on the question of whether they had the interview referred to in page 8 of this report.

Now Sergeant James was not represented at the hearing so that I might have some difficulty in reporting adversely regarding him under this term without giving him a further opportunity to be heard. However, I have already indicated that I do not feel that I am able to resolve the issue of credibility as between him and Sergeant Fanderlinden.

In the result I am unable to conclude to the required standard of proof that any of them lied to investigating officers in respect of this interview.

Further than this, it has not been established to my satisfaction that any police officers lied to the investigating officers on any material matter.

- (d) that such subsequent investigation or other inquiries failed to discover vital or material evidence then available

As appears from the statement of facts, Det. Sergeant Walker's investigations did not disclose the conversation between Sergeant Fanderlinden and Constable Beard



regarding alleged improprieties in the charging of Ugle at the police station which I am satisfied took place. Nor did they disclose the alleged conversation between Sergeant Fanderlinden, Sergeant James and Constable Beard which I am not satisfied took place. They did not discover the evidence of the police officers called at the instance of Fanderlinden to support his story. Superintendent Taylor's investigation did reveal the interview between Sergeant Fanderlinden and Constable Beard and the alleged interview between them and Sergeant James. However, it did not disclose the evidence of other police officers previously referred to.

Whether this evidence was vital or material is to be determined in relation to the object of the inquiry viz. as to whether Sergeant Taylor or Constable Pense had committed perjury. Viewed in that light, the evidence was neither vital nor material to any substantial extent.

The evidence of the interview between Sergeant Fanderlinden and Constable Beard was only hearsay. In respect of perjury proceedings its only value with regard to such proceedings would be to discredit the evidence of Constable Beard if he were to give evidence in support of the defence. The same applies to the evidence of the Constables who gave accounts of statements made by Constable Beard to a similar effect.

Constable Glew did give evidence that Ugle did not look drunk to him when he saw him when he was on the way to the cells after he had been charged. But in my view this evidence would not have been of sufficient weight to affect the result of the particular inquiry.

I conclude therefore that to the extent stated, Det. Sergeant Walker's inquiries did not disclose material evidence. I further conclude that the evidence was not vital in that after it had been discovered and investigated it would not have affected the validity of the conclusion reached in Det. Sergeant Walker's report that no case for perjury could be made out against the two police officers.

(e) the only result of the inquiry was that Sergeant Fanderlinden was victimised

I am faced with some difficulty in dealing with this term of reference. This arises from the imprecision of the term "victimised". This was discussed at the hearing and some definitions were offered including one by myself - but by none of which am I fully satisfied. I feel that it would be preferable for me rather than attempting any logical definition, to indicate on what I consider I am to inquire and report in this term of reference.

I consider that I am required to inquire and report, not only on whether as the result of the inquiry Sergeant Fanderlinden was prejudiced in his position as a police officer, but also whether he was so prejudiced not for any reasons which were proper and justifiable, but to punish him for his conduct in relation to the Ugle affair.

Now, as has been pointed out, Sergeant Fanderlinden has not immediately been prejudiced. He has been given a position in the Traffic Prosecution Branch for which he applied this year and he is doing work which is congenial to him and for which he is well fitted.

The only possible ground of prejudice - as his counsel, Mr. French conceded and was agreed at the Bar - was that the report of Superintendent Taylor was to be attached to his personal file and that it contained unfair and unjustifiable reflections on him, the nature of which were calculated to affect his prospect of promotion in the Force.

I have indicated previously in this report that I am satisfied that some of the comments concerning the Sergeant in Superintendent Taylor's report are not justified (see pages 22, 23, and 24 of this report) and I will be making recommendations later in my report as to what I consider is proper to be done to ensure that Sergeant Fanderlinden is not unfairly prejudiced thereby.

I believe, however, the comments made by Superintendent Taylor in his report were made in good faith and without any improper motive and accordingly that Sergeant Fanderlinden was not victimised.

## 2. TO INQUIRE AND REPORT:

- (a) Whether there was any impropriety on the part of any policeman in connection with the arrest or charging of Ugle

The evidence adduced at the inquiry (which I believe was all the evidence which could reasonably be made available), fell short of establishing to the required degree of proof, that there was any impropriety on the part of any policeman in connection with the arrest and charging of Ugle.

- (b) Whether the official investigations subsequently made by the Police into the arrest and charging of Ugle were properly conducted

I do not quite follow this term of reference. The only official investigations into the Ugle affair were expressed as having no other object than to ascertain whether perjury had been committed. There was no official investigation into the arrest and charging of Ugle. I am satisfied that the official investigations insofar as they related to perjury were, in fact, properly conducted.

## 3. TO INQUIRE AND REPORT WHETHER SUBSEQUENT TO THE HEARING OF THE COMPLAINT AGAINST UGLE THERE HAS BEEN ANY IMPROPRIETY ON THE PART OF ANY PERSON IN ANY STATEMENTS MADE OR ACTION TAKEN IN RELATION TO OR ARISING OUT OF THE ARREST AND CHARGING OF UGLE OR THE SUBSEQUENT INVESTIGATION.

This is a term of reference the answering of which has caused me some concern. A person acting in a judicial capacity must always shrink from making adverse findings on the conduct of another person in respect of an inquiry in which that person has not been named and no specific charges of acts of impropriety have been levelled against him.

It appeared to me at the conclusion of the hearing that the conduct and statements of Mr. Burton, S.M. in relation to the Ugle affair could well be the subject of criticism under this term of reference. For this reason I thought it proper through Counsel Assisting the Commission to invite Mr. Burton to appear by counsel before the Commission to make such submissions on the propriety of his conduct as it was disclosed in the evidence adduced during the hearing.

Mr. Burton accepted this invitation and Mr. B. W. Rowland, Q.C. and Mr. T. A. Walsh appeared on his behalf at an additional sitting of the Commission convened for the purpose of hearing his submissions on the 11th of December.

Mr. Rowland submitted to me that the actions and statements of Mr. Burton did not come within this term of reference. While I was not in full accord with the submissions, I came to the conclusion that in respect of any action or statement made by the Magistrate which might have been the subject of criticism, the terms of reference properly construed did not give me power to do so. My reasons for coming to such a conclusion appear in the transcript at pages 1269 to 1272 which are included as Appendix "C" to this report.

I would like to add that I am completely satisfied as to the Magistrate's bona fides in all he said and all he did. I would accept his belief expressed in his letters to the Hon. the Minister - the text of which is included in Appendix "C" - that his only interest was to see that justice was done, and that he had acted properly in accordance with his judicial oath throughout the whole affair.

I would add that in my opinion the evidence does not support any conclusion of impropriety on the part of any other persons.

4. TO INQUIRE AND REPORT WHETHER SERGEANT FANDERLINDEN HAS BEEN VICTIMISED AND, IF SO, IN WHAT WAY:

I have already dealt with this term of reference when dealing with term of reference 1(e).

I repeat that I have no doubt that Sergeant Fanderlinden has been unfairly prejudiced in his position of police officer by the placing on his personal file of Superintendent Taylor's report of his investigation into perjury allegations against Sergeant Taylor and Constable Pense in relation to the trial of Baymis Ugle which report is dated 28th May, 1975.

I am of that opinion because of the incorrect statements of fact in the report to which I have previously referred in dealing with term of reference 1(e).

However, because I believe that the comments made by Superintendent Taylor were made in good faith and without any improper motive, I am of the opinion that Sergeant Fanderlinden was not victimised.

### RECOMMENDATIONS

Under the terms of reference, I am required to make any recommendation arising out of my consideration of the matters raised in the inquiry as I think fit.

Upon reflection I feel that the only recommendations which I feel called upon to make relate to Sergeant Fanderlinden and also to the police officers who gave evidence on his behalf. Regarding Sergeant Fanderlinden I do not consider as was suggested to me, that Superintendent Taylor's report should be removed from the Sergeant's personal file. I do consider, however, that a copy of this Commission's report should be included on his file, so that this Commission's comments on and criticisms of the report of Superintendent Taylor in respect of Sergeant Fanderlinden, may be available to any person called upon to consider the file. To further ensure this, I recommend that a notation be put on the file that the Superintendent's report should be read subject to comments on it by this Commission.

Regarding the police officers who gave testimony in support of Sergeant Fanderlinden and also previously gave him statutory declarations and statements, it was suggested during the hearing that they had behaved incorrectly in not acquainting their superior officers with the contents of these documents.

In my view these declarations and statements were given in good faith to support the case of an officer who then believed that he was to be subjected to a charge of misconduct. I believe the officers were quite justified in failing to report them and I recommend that none of these officers should be prejudiced in any way in their positions as police officers by reason of their failure to do so.

### APPRECIATION

I would like to express to Mr. G. P. Miller, Counsel assisting the Commission, my appreciation of the work which he did in relation to the inquiry in the obtaining of evidence, the marshalling of witnesses in such a way that the Commission was fully occupied but at the same time the minimum of inconvenience was caused to persons involved, and the manner in which he led the evidence and presented his case generally.

One of the difficulties in conducting the Commission was that while the allegations made which were the subject of my inquiry principally concerned the conduct of officers of the Police Force and they were fully represented before me, and while Sergeant Fanderlinden and the police officers who supported him were also represented, there was no counsel at the inquiry with the specific role of presenting the case against the Police so far as the allegations made against them were concerned. I felt that Mr. Miller accepted the resulting responsibility of collecting all the evidence and presenting it to the Commission with impartiality, objectivity and fairness in an exemplary manner and this was of considerable assistance to me in performing my task.

I am also grateful to other counsel appearing, particularly those who played a more active role for their assistance, and for the pleasant atmosphere which prevailed at the hearing.

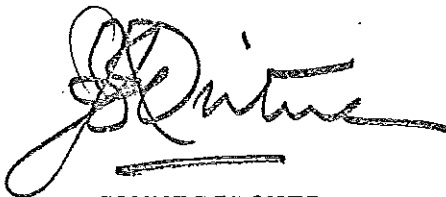
I would also like to thank my Clerk - Mr. John Mahoney, who carried out his duties with the diligence, tact and efficiency which, over many years, I have become accustomed to expect and receive from him.

I should like also to mention the part played by Mrs. C. McDavitt in performing secretarial work for the Commission and in carrying out the exacting task of typing this report from the somewhat confused manuscript which was presented to her by the Commissioner. For the excellent result I am very grateful.

I have the honour to be,

Sir,

Your Excellency's most obedient servant,

A handwritten signature in dark ink, appearing to read 'J. R. Miller', written in a cursive style. Below the signature is a horizontal line.

COMMISSIONER

LIST OF WITNESSES

ASHMAN,	Stanley
BEARD,	Ian Thomas
BURKE,	Brian Thomas
BURTON,	Robert Huck
DEN-RIDDER,	Terrence John
EDWARDES,	Colin Geoffrey
FANDERLINDEN,	John Leonard
GLEW,	David William
HANSEN,	Marie
HANSEN,	Charles Lawrence
JAMES,	Leslie Jack
LEITCH,	George Owen
MURRAY,	Michael John
OWEN,	Robert Elliott
O'CONNOR,	Raymond James
PANTING,	Michael John
PENSE,	William George
ROSS,	George Charles
RUTTLEY,	Faye Anne
RUTTLEY,	Keith
TAYLOR,	Mervyn William
TAYLOR,	Henry Lloyd
UGLE,	Baymis
VAN-DIJKEN,	Jacobus Roelof
WALKER,	Leedham
WEDD,	Athol Logan
WELLS,	Ivor Valentine
WRIGHT,	Michael Leo Thomas

## APPENDIX "B"

E X H I B I T L I S T

1. HANSARD, Wednesday 10th September, 1975  
pages 2737-2759
2. COMPLAINT against Ugle No. 419
3.           "           "           "           No. 420
- 4 A and 4 B: RECOGNIZANCES re above charges.
- 5 A       MAGISTRATE'S NOTES OF EVIDENCE.
- B       - including typed copy.
- NFI 6.       Marked for identification. Not tendered  
as an exhibit.
7.       OCCURRENCE BOOK Narrogin Police Station,  
with Extracts.
8.       Letter Burton to Under-Secretary dated  
22/10/1974.
9.       Letter Crown Prosecutor to Commissioner of  
Police dated 22/11/1974.
10.       Letter Commissioner to Crown Prosecutor  
dated 24/12/1974.
11.       Draft letter Mr. Burton, S.M. to Mr. Jones,  
M.L.A. dated 16/1/1974.
12.       Copy letter Mr. Burton, S.M. to Mr. Jones,  
M.L.A. dated 28/1/1975.
13.       Photocopy letter dated 9/1/1975 Minister to  
Mr. Jones, M.L.A., referred to in Exhibit 11.

## APPENDIX "B"

EXHIBIT LIST continued

- 14 A Copy letter Mr. Burton, S.M. to Minister  
of Police dated 12/3/1975.
- B Letter Minister of Police to Mr. Burton, S.M.  
dated 26/3/1975.
15. Photographs of scene.
16. Statutory Declaration of Mr. K. Ruttley,  
dated 8/9/1975.
17. Sketch purporting to be position of vehicles  
in front of Williams' house.
18. Record of Convictions of Baymis UGLE.
19. Statement of Marie HANSEN, dated 11/12/1974.
20. Statement of Charles HANSEN, dated 10/4/1975
21. Photocopy of Property Sheet relating  
to Eddie WILLIAMS.
22. Statement of PANTING to WALKER dated  
11/12/1974.
23. Narrogin Prisoners Property Book,  
16/8/74 - 5/10/74.
- 24 A Statement of Sergeant James (with addendum)  
dated 10/4/1975.
- B Statement of Sergeant James, dated 18/4/1975.
25. Roster of Narrogin Police Station, 9/9/74 -  
22/9/74.
26. Record of Arrests prepared by Sergeant James  
for Superintendent Taylor.



## APPENDIX "B"

EXHIBIT LIST continued

27. Police Brief relating to prosecution of UGLE.
28. Memorandum Handmer to Wells, dated 17/10/1974.
29. Report Wells to Wright, dated 24/10/1974.
30. Report of Wells dated 8/4/1975.
31. Report of Sergeant Wells to Superintendent Coen, dated 8/7/1975.
32. Memorandum Acting Assist. Commissioner (Crime) to Assistant Commissioner, dated 22/7/1975.
33. Report Fanderlinden to Pages-Oliver dated 22/5/1975.
34. Duplicate Report Fanderlinden to Reed, dated 14/7/1975.
35. Duplicate Report Fanderlinden to Purkiss, dated 30/7/1975.
36. Duplicate Report Fanderlinden to Blackman, dated 6/8/1975.
37. Letter Warren, McDonald, French & Co. to Chief Superintendent Woods, dated 11/9/1975.
38. Letter Warren, McDonald, French & Co. to Commissioner, dated 12/9/1975.
- 39 A ) Déclaration - George Charles Ross, 26/7/75.  
 B ) Declaration - Stanley Ashman, 1/7/75.  
 C ) Declaration - Robert Elliott Owen - undated.  
 D ) Declaration - Keith Ruttley, 8/9/1975.
40. Report Fanderlinden to Inspector Wright, dated 10/12/1974.

## APPENDIX "B"

E X H I B I T L I S T continued

- 41. The Boddington File.
- 42 A Questionnaire from Woods to Fanderlinden,  
dated 11/9/1975.
- B Answers of Fanderlinden, dated 11/9/1975.
- 43 A ) Report re jam sticks, by Sergeant Fander-  
linden, dated 15/3/1975.  
)  
B ) Photograph of jam sticks.
- 44. Page 73 Police File: Extract from  
Occurrence Book, dated 8/3/1975.
- MFI 45. MFI but not tendered in evidence.
- 46. Proof of Evidence, John Leonard Fanderlinden.
- 47. Police Regs. and Standing Orders.
- 48. Declaration of Stanley Ashman, dated 1/7/75.
- 49. Statement of Constable Owen, undated.
- 50. Statement of Sergeant Ross, dated 26/7/75.
- 51. Statement of Constable Beard, dated 11/12/74.
- 52. Letter Constable Beard to Superintendent  
Taylor, dated 8/5/1975.
- 53. Statement of Sergeant Taylor to Det. Sergeant  
Walker, dated 11/12/1974.
- 54. Statement of Sergeant Taylor to Superinten-  
dent Taylor, dated 16/4/1975.

## APPENDIX "B"

EXHIBIT LIST continued

- 55 A Complaint against Williams, charge 422/1974,  
dated 20/8/1974.
- B Complaint against Williams, charge 421/1974  
dated 20/8/1974.
56. Statement of Constable Pense to Det.  
Sergeant Walker, dated 11/12/1974.
- 57 A Statement of Constable Pense to Superinten-  
dent Taylor, dated 10/4/1975.
- B Typewritten copy of statement.
58. Plan of Floreat Street.
59. Statement of Det. Sergeant Walker, dated  
12/12/1974.
60. Report of Det. Sergeant Walker dated  
23/12/1974.
61. Minute of Chief Superintendent to Minister  
for Police, dated 7/3/1975.
62. Memorandum Superintendent Taylor to  
Commissioner, dated 20/12/1974.
63. Memorandum Superintendent Taylor to Assist-  
ant Commissioner (Crime) dated 21/3/1975.
64. Memorandum Assistant Commissioner Parker to  
Superintendent Taylor dated 24/3/1975.
65. File submitted to Superintendent Taylor for  
his investigation, pages 1 - 60, less  
57 a & b.
66. Memorandum Assistant Commissioner Taylor to  
Superintendent Blackman, dated 21/5/1975.

## APPENDIX "B"

E X H I B I T L I S T continued

- 67. Report Assistant Commissioner Lloyd Taylor dated 28/5/1975.
- 68. Memorandum Assistant Commissioner Taylor to Acting Chief Superintendent dated 3/6/1975.
- 69. Memorandum Assistant Commissioner Taylor to Minister of Police, dated 6/6/1975.
- 70. Letter Inspector Sweeney to Royal Commission.
- 71. "Daily News" report in newspaper, dated 9/9/1975.
- 72. Plan of Narrogin Police Station.
- 73 A to Z )  
and ) Photographs Narrogin Police Station.  
Aa to Dd )

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## APPENDIX "C"

COMMISSIONER'S RULING REGARDING APPLICABILITY OF  
TERM OF REFERENCE (3) TO MR. R. H. BURTON, S.M.

COMMISSIONER: I have now had an opportunity of giving further consideration to matters raised by me in connection with term (3) of the Terms of Reference and the extent to which any statements made or actions taken by Mr. R. H. Burton, Stipendiary Magistrate, could properly come under scrutiny and properly be commented on under this particular term.

The position is that Mr. Burton was of course a necessary witness before the Commission. The necessity for him to testify arose out of circumstances which are indicated in a letter written to him by Counsel Assisting the Commission which was dated 8th October; namely:

- "(a) to testify as to the accuracy of notes of evidence taken by him at the trial of Baymis Ugle, and
- (b) to testify as to a discussion between him and Det. Sergeant Leedham Walker, the first officer assigned to investigate the question of perjury by the two police officers who gave evidence at Ugle's trial."

There is, of course, no express indication in the Terms of Reference that any statements made or actions taken by the Magistrate would come within its terms. However, it is a fact that even before Mr. Burton was informed that he was required to give evidence, though after the publication of the Terms of Reference, he wrote to the Hon. the Minister for Justice seeking legal representation before the Commission at the expense of the Crown. The precise terms of his letter which is dated 7th October, 1975 are as follows:

"I will no doubt be called to give evidence before the Royal Commission and in that event I wish to be represented by counsel at the expense of the Government.

"The reason I apply for counsel from the Government is that at the time of the case I was acting as a judicial officer and since then I have acted, firstly on the unofficial advice of the Solicitor General and secondly on the unofficial advice of the Chief Justice.

"My only part in the case after initially referring the case for an investigation of perjury was firstly because of the complaint about the investigating officer, and secondly because it appeared that an innocent officer of the Police Force was going to be, at best, victimised.

"In both cases my only interest was to see that justice was done. I have acted properly in accord-

## APPENDIX "C"

ance with my judicial oath throughout the whole irregular affair."

To that letter the Hon. the Minister replied on 22nd October, 1975 as follows:

"Consideration has been given to your letter dated 7th October in which you seek legal representation at the Government's expense at the Royal Commission into alleged perjury at Narrogin.

"The general rule with regard to servants of the Crown against whom some allegation of wrongdoing has been made and who, as a consequence, find themselves in a situation where they are in need of legal representation is that they must arrange and pay for such representation themselves. Depending on the outcome, they may be reimbursed.

"However, in your circumstance this particular situation does not apply and I regret I am unable to accede to your request."

With regard to the Magistrate's letter and by way of explanation, I have no doubt that "the complaint about the investigating officer" refers to the complaint by the man Ruttley regarding the conduct of Det. Sergeant Leedham Walker in interviewing him.

Now, there is a clear inference to be drawn from the correspondence and in particular from the Minister's reply (which was by a Member of the Executive Council which had approved the Terms of Reference) that no allegations of wrongdoing on the part of the Magistrate were to be made the subject of investigation in the Terms of Reference and the Magistrate was accordingly entitled to conclude that it was not necessary for him to be represented.

In the opening by Counsel Assisting the Commission it was in no way suggested that any allegation against the Magistrate was contemplated. However, when Mr. Burton gave evidence he was cross-examined by counsel for the Commissioner of Police in a way which reflected adversely on his part in the affair. In the first place, he was cross-examined as to the way in which he conducted his Court, there being some suggestion that he should have disqualified himself from hearing the Ugle case because of some previous association in the way of business with the witness Ruttley, and also that he should not have granted defence counsel a week's adjournment midway through the hearing of the defence evidence. I find that any criticism of the Magistrate in relation to these matters was not justified and in any event, of course, this cross-examination would have no relevance to the particular term of reference which expressly applies only to events subsequent to the trial.

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The cross-examination was also directed to the question of whether this was a proper case for referring the matter for investigation as to perjury against the two police officers. My clear conclusion is that there can be no reflection whatsoever on the Magistrate for referring the matter for investigation of perjury in the first place, having come to the conclusion which he clearly did regarding the testimony of the police officers concerned.

Finally, the cross-examination related to statements and actions of the Magistrate subsequent to the first inquiry by Det. Sergeant Leedham Walker. Some of which were designed to influence the authorities into holding a further inquiry into perjury. The others related to statements made and information given by the Magistrate to the solicitor for Sergeant Fanderlinden to support the latter's endeavours to clear his name from reflections on him in the report of Superintendent Taylor.

It was shown that this material was handed by Sergeant Fanderlinden's solicitor to Mr. Brian Burke M.L.C. and was used by Mr. Burke substantially as a factual basis for his speech on the Ugle affair which he made in the Legislative Assembly.

As a result of this cross-examination which took place on the first day on which the Commission heard evidence, it did occur to me that the Magistrate's conduct might properly be the subject of comment under the term of reference in question. The suggestion that it might be my duty to comment on it under the term of reference was emphasised in the addresses by Mr. Davies and to some extent by Counsel Assisting, Mr. Miller.

However, at no stage of the hearing before the Commission were any charges formulated against the Magistrate and it was really suggested that even in the absence of any charges I might, in my discretion, make some adverse report in respect of the Magistrate under the Terms of Reference. This, however, was something which in my view it would not be proper for me to do without informing Mr. Burton in express terms what was alleged against him and giving him an opportunity of being heard. I accordingly arranged for Counsel Assisting to invite Mr. Burton to be represented and to be heard by counsel in the matter. On his accepting the invitation, a special sitting of the Commission was held on 11th December, 1975 at which Mr. B. W. Rowland, Q.C. and Mr. T. A. Walsh appeared for him. On that occasion Mr. Rowland submitted as a preliminary proposition that Mr. Burton's statements and activities did not come within the Terms of Reference at all, and indeed he went further and submitted that it was not open to me on the Terms of Reference, apart from Term (3), to reflect adversely on the Magistrate.

After hearing argument I indicated that I was of the opinion that Mr. Burton must, to some extent, come within Term (3) of the Terms of Reference, and it was left to

## APPENDIX "C"

Counsel Assisting to supply Mr. Rowland with the particulars of alleged actions taken or statements made by him which might properly be the subject of an adverse finding against him under this term.

Since then I have given further consideration to the matter and have come to the conclusion that on a proper construction of the particular term nothing has been established which would justify an adverse report against him under it. It is clear in the first place that the term only covers events which have occurred subsequent to the trial of Ugle. I can find no evidence which would justify me in concluding that since then there has been any impropriety on behalf of the Magistrate in relation to statements made or actions taken arising out of the arrest and charging of Ugle.

All that remains for consideration are statements or actions of the Magistrate made with regard to investigations (which I would take to mean "investigations as to perjury") and these on the facts would be confined to statements or actions after the conclusion of Det. Sergeant Leedham Walker's investigation.

Viewing the Terms of Reference as a whole, it is apparent that they substantially relate to accusations concerning activities of the Police relating to the Ugle affair and including investigations by police officers into perjury. Viewing Term (3) in that light I do not believe it was intended that statements and actions directed to the undertaking by the Police of further investigations into the activities of police officers with regard to the Ugle affair or statements in support of steps which Sergeant Fanderlinden was taking in relation to the adverse comment on him in the second police report should be regarded as within the purview of my inquiry under this term.

As I have mentioned, this is strongly supported by the terms of the letter of the Hon. the Minister for Justice to the Magistrate which I have previously quoted. It is clear that at that stage the activities of the Magistrate in pursuance of these ends were well known and well publicised. I believe that they should properly be made the subject of a reference in the report in that they form to a large extent the factual basis on which Mr. Brian Burke, M.L.A. relied in making his speech to the House. It is clear, therefore, that they are in the highest degree material to the primary aim of the Commission; namely, to report on the truth and accuracy of that speech. However, beyond that I am in agreement with Mr. Rowland that I have no charter in the Terms of Reference to comment under Term (3) on the statements and actions of the Magistrate in relation to the matters to which I have referred.