



MAKARRTA

The Caledon Bay and Woodah Island Killings 1932/33

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Abbreviations

AC	Appeals Court
ALP	Australian Labor Party
APNR	Association for the Protection of Native Races
ASOPA	Australian School of Pacific Administration
CMS	Church Missionary Society
CLR	Commonwealth Law Reports
LR (NSW)	Law Reports (New South Wales)
ML	Mitchell Library
MCA	Methodist Church of Australasia
MOM	Methodist Overseas Missions
NARU	North Australian Research Unit
NAWU	North Australian Workers Union
NTU	Northern Territory University
QBD	Queen's Bench Division
RAAF	Royal Australian Air Force
RSL	Returned Services League

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(Ted Egan) 21/12/94
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MAKARRTA

The Caledon Bay and Woodah Island Killings 1932/3

by TED EGAN

The Aboriginals of north-east Arnhem Land, in the Northern Territory of Australia, call themselves Yolngu. For countless thousands of years they have lived in their region, and, by their own account, never felt their ownership of the land threatened until recent times. Strict laws and conventions govern their lives and determine who owns and controls land, who performs ceremonies, who marries whom, and how to resolve differences and conflicts.

The principal peace-making ceremony of the Yolngu was the *Makarrrta*. Offenders were required to present themselves for trial by ordeal. The aggrieved parties then threw spears at the offenders, who usually dodged these missiles successfully. The ceremony ended when honour was restored by a ritual spear-thrust in the thigh (*makarr* = thigh) of the principal offender(s). The ceremonial life of the groups could thereby be resumed without wasteful killing.

In the 1920s and 1930s the Yolngu encountered an ever-growing number of intruders into their land. In some instances they welcomed the strangers, but if visitors violated local conventions the Yolngu quickly retaliated. It is estimated that the Yolngu killed around thirty 'outsiders' in the twenty years before 1932. In 1932 and 1933 they killed five Japanese, then two white men, then a white police constable. White settlers of north Australia demanded the type of retribution that had become established practice: it was euphemistically called 'teaching the blacks a lesson'. Concerned citizens in other parts of Australia and the world insisted that the shameful killing of Aboriginals must cease. There were violent disagreements within the Australian government, and the British government intervened.

This is an account of the killings, the protests, and the subsequent trials in Darwin in 1934, and an analysis of the motives and behaviour of the various participants. The imposition of the British system of justice on people accustomed to the predictable, consistent ritual of the *Makarrrta* created the most bizarre consequences.

INTRODUCTION

I became interested in the Caledon Bay and Woodah Island killings of 1932/3 in the early 1950s when employed in the Native Affairs Branch, Northern Territory Administration, based in Darwin as a Cadet Patrol Officer. I felt I was just so important in 1952 when I was appointed a 'Protector of Aboriginals' under the terms of the Aboriginals Ordinance. Because the Native Affairs Branch purported to be a copy of its equivalent in Papua New Guinea, I was sent on various 'patrols' by senior officers charged with the responsibility of doing New Guinea style 'colonial' things in a country nothing like Papua New Guinea.

Census after census after census was conducted, but generally these were pointless exercises. [1] I was encouraged to write in 'officialese', so I never 'went' anywhere, I always 'proceeded'. One of my duties was to attend Darwin Police Court as 'Protector and next friend' to Aboriginals charged with minor offences like 'Aboriginal drink liquor' or 'being in a prohibited area between sunset and sunrise'. Anything more serious was passed on to legal counsel. I achieved some notoriety in 1953 when I made the national ABC radio news - Darwin was always over-supplied with journalists looking for stories - after I emotionally told the Court it was 'an absolute disgrace' that a Larakia Aboriginal named Bob Secretary could be arrested for being in the town of Darwin between sunset and sunrise when in fact Darwin belonged to the Larakia. Magistrate J W (Fatty) Nichols shook his head and gave me a look that clearly said: 'You'll learn, son'. Fortunately, I never did.

I developed a style that characterised the remainder of my public service career: find something interesting to do, go and do it, and tell my superiors later. I was lucky in that I was young and fit and genuinely interested in Aboriginals, without seeing any requirement to be 'starry-eyed' about them. There was a common love of sport and music, and generally Darwin and the surrounding settlements and missions were interesting and easy-going places. An impressionable youth could learn much if he kept asking questions and became one of the crowd, instead of trying to play 'I'm a government officer'.

It was an unexpected benefit that I was working for a government agency so full of its own importance that it did not organise a

training program for a young Cadet Patrol Officer other than to send me to attend the Australian School of Pacific Administration Training Course in Sydney in 1956. In the Northern Territory, for an important few years, I was able to drift around, learn a lot from Aboriginals, particularly language and songs, and read all the files and books in the Native Affairs Branch filing cabinets. At all times I heeded the sound advice given by my mother Grace, when I left my Melbourne home, aged sixteen: 'Wherever you go in life, keep sweet with the cook and be a good listener'. Sound advice, Grace.

One of the many fascinating files I read was *The King v Tuckiar: Murder*. It did not mean much to me at the time, but when I went to Umbakumba on Groote Eylandt in 1953 and met Fred Gray, the man who brought Tuckiar - whose proper name was Dhakiyara Wirrpanda - to Darwin, my interest was established. Later I was based at places like Groote Eylandt, Yirrkala and Maningrida in Arnhem Land. In Aboriginal terms I 'sat down'. I met many of the people involved in the events of 1932/33, which culminated in the Northern Territory Supreme Court trials of Tuckiar and other Yolngu.

Most previous accounts of the events and the trials are inaccurate or fanciful or both. Three writers not of events covered here, but relevant to an understanding of what happened, have my respect and admiration. Nancy Williams has written definitively about the traditional laws, beliefs and customs of the Yolngu. [2] Mickey Dewar has provided comprehensive background to the role of Christian missionaries in eastern Arnhem Land. [3] Andrew Markus, in *Governing Savages*, investigates the roles of the agencies and individuals who have implemented the many different policies imposed on Aboriginal people.[4]

I am extremely grateful to all people who have encouraged and assisted me, but Fred Gray and Jim Dorling deserve special mention. Since 1953 when I first met him at Umbakumba, Groote Eylandt, Fred Gray has been a friend and mentor. He is anxious that the true story of the 'Caledon Bay killings' be told, and he has patiently given his time and knowledge to me and to the many other people who have shown interest. From the outset Fred made his photographs, diaries and excellent memory unstintingly available.

Over many years Jim Dorling has provided information and provided a legal overview to my findings and hypotheses. He is probably not aware just how many long and relevant letters he has written over the twenty-five years we have been waiting for me to begin to write.

The Northern Territory Government, (through the NT Archives Service) awarded me - jointly with my friend Jeremy Long - the Northern Territory History Award of 1989. This work derives from that Award.

Nanyin Maymuru, Narritjan Maymuru, Munggurawuy Yunupingu and Mau Mununggurr were happy to give me all the information available to them; as they were eye-witnesses and participants in the events of 1932/33 their opinions and statements were crucial. I had lengthy and vital interviews with Ted Morey, the leader of the police party, Stewart McColl, the brother of Constable Albert McColl, and Joe (Pumeri) McGinness, a member of Fred Gray's crew at Caledon Bay in 1932. In 1954 I met and talked briefly with Aki Kinjo, the Japanese survivor of the Caledon Bay killings.

In 1976 at Yirkala I interviewed Djaparri Bulinjan Wirrpanda, the widow of Tuckiar, and wondered why the many other people who have written around these events did not see she was the most important person of all. She was an eye-witness to the killings of Traynor, Fagan and McColl. Her statements resolve some of the doubts that have always surrounded the Tuckiar case. Djaparri died at GarnGarn on 22 April 1986, still pondering her husband's fate after he was released from Fannie Bay Gaol on the afternoon of 9 November 1934. Other people are less unsure of what happened to Tuckiar.

Ian Wilson of Canberra is the custodian of many excellent photographs taken by his father Eric, who was, in 1934, the *Melbourne Herald* correspondent in Darwin. Ian kindly gave me access to these photographs, which are now held at the Australian Institute of Aboriginal Studies, Canberra. Carol Cooper was most co-operative in organising copies of Wilson Collection photographs.

This work is undertaken as a Master of Arts thesis, and I am grateful to the University of Adelaide for enrolling me. My supervisor, Dr Bill Gammage, is first and foremost a mate, but he has at all times disciplined me mercilessly. At the same time Bill maintains an infectious enthusiasm for scholarship and research generally, stimulates a love of Australian history particularly, and has a fierce determination that I will tell this fascinating story accurately and well.

Dr David Carment, Dr Nick Petersen, and Dr Campbell MacKnight all enthused about this project, and suggested I put aside doubts about my 'academic' ability, and 'tell the story'. Former workmates in the old Native Affairs Branch, Ted Evans and Jeremy

Long, were supportive always, and Ted Evans was particularly proud that two of his 'proteges' shared the 1989 History Award.

Professor Colin Tatz first encouraged me to tertiary study, and he has for many years been a profound influence on my life as an intellectual stimulus, a vital and dear friend, and a good judge of cricket.

The State Reference Library, Darwin, and the Commonwealth and NT Archives Services in Canberra and Darwin should be proud of their staff members. They provide enthusiastic help to stumbling fools like me who know what they want but are totally inept at finding anything or using the simplest technological devices.

Speaking of technology, I once instructed my eldest son, Greg Egan, to have inscribed on my tombstone, 'Here lies Ted Egan. He knew nothing of computers'. Now, through Greg's enthusiasm and genius, I tap away on my little Powerbook Laptop, marvelling at the wonders of modern science. In the day-to-day operation of these amazing machines I constantly call on the skill of my Beloved, Nerys Evans, and she inevitably comes to my rescue. She reinforces me at all times and enthuses about the many projects in my life. At night we hold hands and she sings to me.

The families of Ted Morey, Jack Mahony and J A Carrodus gave generously of their time as I sought to understand better the period during which these events took place. Judith Stokes provided a 'Groote Eylandt overview' when she questioned old *Anintilyagwa* people exhaustively on my behalf.

Mrs Dorita Thomson gave me permission to reproduce the photograph of the young Djaparri taken by her husband, Dr Donald Thomson in 1935. What a pity my 1976 photograph of Djaparri was so amateurish. The passage of time does not necessarily bring improvement.

During his time as Administrator of the Northern Territory my mate Commodore Eric Johnston began to 'insist' that I write this account. He has hounded me ever since. Eric will be pleased to know that he will be invited to 'launch' the book when this thesis is published.

In the thesis I have elected to include the full text of several letters, reports and statements of evidence rather than try to provide summaries. Although much has been written about the important events, far too often they have been ignored in favour of speculation, causing many errors. While I do not claim that mine will be the final or definitive work on this topic, I feel that the presentation for the first time

of these unabridged accounts will give readers and future students a better chance to base their opinions soundly.

(Ted Egan)
ALICE SPRINGS.

ENDNOTES: INTRODUCTION

- 1 Except that in 1954 a reasonably comprehensive census of all Northern Territory Aboriginals 'of the full descent' was commenced. This was to enable the implementation of the Welfare Ordinance (1954) whereby the 'race' elements of discriminatory legislation were replaced by declarations that 'persons unable without assistance to manage their own affairs' stood 'in need of care and assistance'. In fact, most 'part-Aboriginals' were not declared to be 'in need of assistance', and were thereby exempted from the new legislation. With a few exceptions - notably the famous painter Albert Namatjira - around 17,000 Aboriginals of 'the full descent' were named and declared to be 'wards' within the meaning of the Welfare Ordinance. The Register of Wards came to be known, irreverently, as 'the stud book'.
- 2 Nancy Williams *The Yolngu and Their Land* Canberra, Australian Institute of Aboriginal Studies (AIAS), 1986, also *Two Laws* Canberra (AIAS), 1987.
- 3 Mickey Dewar *Strange Bedfellows: Europeans and Aborigines in Arnhem Land before World War II* MA (Hons) thesis, University of New England, Armidale, 1989.
- 4 Andrew Markus *Governing Savages* Sydney, Allen and Unwin, 1990.

ORTHOGRAPHY AND TERMINOLOGY

The campaign for an 'Aboriginal Treaty' in Australia - sometimes referred to as 'An Instrument of Reconciliation'- has been called the *Makarrata* (sic) Movement. The word *Makarrata* derives from Arnhem Land. It is the name of a ceremony of 'trial by ordeal'. The word translates into English literally as 'into the thigh', but it has come to be synonymous with 'peacemaking' or 'reconciliation'.

Unfortunately the word spelt *Makarrata* has come to be pronounced as though it was the name of an Irish/Italian gangster, Mack A'Rata, emphasis being placed on the third syllable. The emphasis should be on the second syllable. An approximately correct pronunciation is achieved by treating the name of the famous American general as being Douglas McArta, rolling the 'rr' in the best Celtic tradition. So I have settled for the compromise spelling *Makarrrta*.

In presenting Aboriginal personal and place-names I use spelling which can be duplicated on the standard typewriter or word processor. Hopefully I will be reasonably accurate and capable of being followed consistently by people not familiar with 'foreign' languages. A few orthographical stances of mine require explanation:

1) *a* says *u* as in *cup* hence *Makarrrta* sounds like the General's name.

2) *u* says *u* as in *put* hence *luku* (foot) rhymes with cuckoo

3) In some already established personal or place-names *u* also says *oo*
hence the town of *Nhulunbuy* sounds like *Nooloonboy*.

4) The initial *ng* sound, with one *g* as in *ngandi* (mother) indicates a 'soft' 'g' sound. The English word *finger* would be written *fingga* to denote a 'hard' 'g', whereas a word like *singer* would be written *singa*. The initial 'ng' is difficult to many people: one way to achieve it is to practice saying the word *ngandi* by putting *sing* in front of it, hence *singandi*, then removing the 'si' to leave *ngandi*.

I use the above conventions except in the case of principals in this story, whose names have been written many times in many places. There I use the commonly accepted spellings, hence Tuckiar, Mirera, Wonggu, Mau, Natjelma, Narkaya.

Aboriginal people throughout north-east Arnhem Land call themselves *yolngu* (literally 'we who': *yol* =who) as distinct from *balanda* (white people) [1] and *batharipa* (brown people - Asians). I shall refer to Aboriginal people in this book as *Yolngu* or *Aboriginals* - capitalised as one would capitalise *New Zealanders* or *Germans*.

My preference for *Aboriginals* rather than *Aborigines* as noun plural is based on the thesis that Aboriginals are Australia's *aborigines*, whereas Inuits (Eskimos) are *aborigines* from North America; and Lapps are *aborigines* from northern Europe. Fowler recommends *Aboriginal* as noun singular, and adjective, on the grounds that *aborigine*, being a composite of the two Latin words *ab origine* (from the beginning), is 'felt to be anomalous'. [2]

Eventually some traditional word will be recognised as *the* noun to describe all of Australia's Aboriginal people. At the moment many terms are used regionally, like *Yolngu*, *Murri*, *Koori*, *Anangu*, *Nyunga*, *Wonggai*, *Marngu*, *Nanga*, *Tunuwui* and others. None of these is yet accepted nationally by Aboriginals as the name that describes them all. They will sort it out.

This work is titled *Makarrrta* because of the belief among the Yolngu that peace is restored through prescribed, understandable ritual. It is their expectation that all offenders are treated even-handedly. But they would not be unduly surprised if mayhem was the end result of attempts to restore peace, for sometimes the *Makarrrta* degenerated into confusion, treachery, and occasionally, minor warfare. Let the advocates of Aboriginal treaties think about their nomenclature and terms of reference.

ENDNOTES: ORTHOGRAPHY AND TERMINOLOGY

- 1 Probably a version of Hollander. *Balanda* is a word acquired from the Macassan seafarers who came to Arnhem Land from the (then) East Indies for hundreds of years prior to 1900 to collect trepang, pearls, turtle-shell and sandalwood. See C C Macknight *The Voyage to Marege* Melbourne University Press, 1976, p. ix
- 2 Fowler's *Modern English Usage* 2nd Edition, 1977, London, p. 4

AN INTERESTING HISTORICAL BACKGROUND.

The explorer and navigator Matthew Flinders was probably the first person to write in English about the Aboriginals of north-east Arnhem Land. [1] Flinders spent Christmas 1802 on his ship *Investigator* meticulously charting the waters around the Sir Edward Pellew Islands in the south-west corner of the Gulf of Carpentaria. During the following three months, to March 1803, he mapped the coastline in the area occupied by people of different tribes and clans who call themselves Yolngu. [2] Flinders circumnavigated Groote Eylandt, and bestowed new place-names on all the noteworthy features which had not been named by the earlier Dutch explorers. He named Woodah Island because it had a similar shape to the *waddie* or *woodah*, the 'wooden sword used by the natives of Port Jackson'. Caledon Bay and Mt Caledon were named after 'the worthy Nobleman, lately Governor of the Cape of Good Hope'; and he named Cape Grey and Grey's Bay 'in compliment to the Hon. General Grey, lately the commander of the forces of the Cape of Good Hope'. (see map 1) [3] Further north, Flinders named Melville Island (later re-named Bremer Island to avoid confusion with the other, bigger Melville Island, near Darwin), Melville Bay, Mt Saunders, Point Dundas and Mt Dundas - honouring at each place just the one man, the Right Honourable Robert Saunders Dundas, Viscount Melville, First Lord of the Admiralty.[4] Flinders described Melville Bay (today the harbour for the huge Nabalco bauxite mine and alumina plant) as 'the finest harbour in the Gulf of Carpentaria'. [5] Of his visit to Morgan's and Woodah Islands Flinders wrote:

At five o'clock Mr Whitewood was brought on board, with four spear wounds in his body. It appeared that the natives, in waiting to receive our men, kept their spears ready, as ours had their muskets. Mr Whitewood, who was foremost, put out his hand to receive a spear which he supposed was offered; but the Indian, thinking perhaps that an attempt was made to take his arms, ran the spear into the breast of his supposed enemy. [6]

Some of Flinders' men, 'forgetting the orders I had given', went after the Aboriginals who had fled in a canoe. One of the Aboriginals was shot dead, and Flinders recorded:

He was of the middle size, rather slender, had a prominent chest, small legs, and similar features to the inhabitants of other parts of the country, and he appeared to have been circumcised! [7]

Flinders wrote of the aggression of the Yolngu :

It does not accord with the usually timid character of the natives of Terra Australis, to suppose the Indians came over from Isle Woodah for the purpose of making an attack; yet the circumstance of their being without women or children...and advancing armed... all imply that they sought rather than avoided a quarrel. [8]

Flinders slowly worked northwards. He had the Port Jackson man Bongaree on board *Investigator*, and when they landed at Caledon Bay on Friday 4 February 1803:

...the natives (came) running from their night residences to meet us. There were twelve middle-aged and young men, all of whom expressed much joy, especially at seeing Bongaree, our good-natured Indian from Port Jackson. [9]

Again no women. And although the initial contact may have been cordial:

When the botanical gentlemen had entered the wood with their attendants, the greater part of the natives followed them; and one took the opportunity of snatching a hatchet. The Indians ran off, but seeing no pursuit, nor much notice taken, soon returned and became more friendly than ever. Each of our party had a native walking arm-in-arm with him, and Mr Brown's servant had two, who paid him particular attention; so much so, that whilst one held him by the arm, the other snatched the musket off his shoulder, and they all again ran off. [10]

The musket was returned, broken, and with the ramrod gone, and then an axe was stolen. Flinders ordered his men to capture two of the Yolngu, one to be held, the other to be sent for the axe, being made to understand that his companion would be taken off, should he fail to return. The Yolngu, in turn, brought a young girl and offered her to Bongaree to entice him on shore for the purpose, apparently, of seizing him 'by way of retaliation'. [11] A stalemate was reached. Flinders had his prisoner, who 'struggled much' but then settled into 'eating for the greater part of the morning and afternoon'. Eventually Flinders was sensible enough to release the youth, named Woga, who 'walked away leisurely, but then...took to his heels with all his might'. [12] Typically, Flinders observed all things accurately. He recorded around sixty *Djapu* words. And he noted:

That this bay had before received the visits of some strangers, was evinced by the knowledge which the natives had of firearms...but it would seem...that they had been accustomed to make very easy atonement for their thefts. I have some hope that those who may follow us may not be robbed, at least with so much effrontery; and at the same time, that the inhabitants of Caledon Bay will not avoid, but be desirous of further communication with Europeans. [13]

Flinders could be said to embody all that was good in the history of the British Empire. He was a cool, well-trained and disciplined man, a master navigator and sailor. His journals make fascinating reading. At Caledon Bay and Woodah Island he showed an even temper and displayed what might be called commendable humanity. The reader of his journal might conclude he let the Yolngu off lightly, for they had been treacherous, they did have a propensity to steal steel, and they did seem accustomed 'to make very easy atonement for their thefts'. The reader might think Flinders entirely within his rights to have his cannon ready to fire grapeshot and to have his men fire muskets 'to put the Indians to flight'. [14]

On the other hand the Yolngu might well ask: 'Whose land is this?' and feel they had every right to dictate the terms under which this invader was allowed to land and carry on his business. The Yolngu would be well aware they might easily have killed all the foreigners, who in the

week they spent at Caledon Bay continually got lost in the bush and received various *coups de soleil* as they chased after pesky natives. [15] That the Yolngu did not kill Flinders and his crew, when given justification, perhaps indicates that they had a higher tolerance than might have been exercised if, say, a French ship came to the English coast and its crew offended local etiquette, discharged firearms indiscriminately, abducted local citizens and shot dead a local man who may have been making peaceful overtures.

This thesis poses the questions: Who owns and controls the land? Whose law should apply? Flinders would have found the questions easy to answer. He was undoubtedly convinced that European intrusion was legitimate, and would perhaps have scoffed at any suggestion of a complex local system of land ownership and law enforcement that should be observed over and above British law.

An intricate system of land ownership and management still prevails among the Yolngu. Precise rules govern devolution of land. There are old and formal ceremonies to show respect for the land, to restore order, and to punish offences against person or land title. [16]

The *Makarrita*, for example, is a truly spectacular ceremony. It is a form of trial by ordeal, where spears are thrown at an offender by representatives of the aggrieved. The spearthrowers usually paint themselves with white ochre: the offender will often paint himself in his totemic design (see photo 6, where an offender is painted as, and in his mind has probably become, a crocodile). The offender will usually dance, and then indicate that he is ready by the supreme display of contempt, touching his buttocks as he turns his back on the throwers. They then throw their spears, aiming to hit, of course. In most cases, because of practised skills at dodging and because of the distance between throwers and target, the offender dodges the spears successfully. He then dances towards the aggrieved parties, they dance to him, and he is ritually speared in the thigh. Honour is restored.

In a demonstration of the *Makarrita* in 1957 I saw a Groote Eylandt man, Nanggamalya, call for and allow five men to throw simultaneously at him from thirty metres. He was so adept at dodging he broke spears in mid-flight as they went past his body. He also allowed spears to pass between his legs, and between his arm and body. A colleague of his, Gangubena, was not so skilful, and was knocked unconscious when a spear (shaft only, fortunately) hit him in the chest.

Flinders felt the Yolngu had experienced other visits to their shores. He was right. Macassans from Sulawesi had been coming to north-east Arnhem Land for many years, collecting trepang, pearls and pearl shell, turtle shell and sandalwood. Flinders found evidence of Macassan camps where huge tamarind trees (*djambang*) had been planted and cooking places constructed. [17] There the Macassans cleaned, dried and smoke-cured trepang, which is in abundance in Arnhem Land waters. Trepang, *Holothuria edulis*, looks like a dark-brown cucumber, and is highly prized in Asia as food and aphrodisiac. The Yolngu call trepang *dariba*, but do not eat it.

On this same voyage further north, as he charted the English Company's Islands north-west of Melville Bay, Flinders met a fleet of Macassan *perahus*, which the Yolngu called *midjianga*. The Macassan leader was Pobassoo, after whom Flinders named Pobassoo Island. [18]

There were often skirmishes between the Yolngu and Macassans, Pobassoo told Flinders. He warned the Englishman to be careful, and said he himself had once been speared in the knee. [19] With time softening their memories today's Yolngu insist that relationships with the Macassans were generally good. Maybe the Macassans were the best of a bad lot? They stayed only during each wet season and then sailed home on the south-easterly winds of the dry season. They traded rather than exploited. Many Yolngu visited the place they call Mangathara, today a region of Sulawesi. Old Yolngu insist that the Macassans obeyed the Yolngu *rom* (local law). There are sacred areas, at places like Dalywoi Bay, where the Yolngu incorporate the visits of the Macassans into their song cycles. There is still a strong Macassan influence on the Yolngu lifestyle. [20]

The Yolngu exhibit no nostalgia for other foreigners who visited north-east Arnhem Land from the 1880s, but particularly in the 1920s and 1930s. The later visitors were usually European Australians or Japanese.

Politically, Australia considered Japan a friendly nation in the 1920s and 1930s. Japan and Britain became allies under a treaty in 1902 and Japan, New Zealand and Australia shared a vigilance over the Pacific Ocean. The Japanese battleship *Ibuki* was part of the escort for the Australian and New Zealand (ANZAC) troops going to war in November 1914.

The Japanese were in north Australia in large numbers despite the White Australia Policy because of pressure from pearling

interests, and the presence of very outspoken, even aggressive, diplomatic representatives in Broome, Darwin and southern capitals. [21] The Japanese who came to exploit the north Australian waters after 1920 did not get on well with Aboriginal people, even though they often handed out liberal gifts. They rarely provided employment, and were interested in exploitation, not trade. They had a very bad record as abductors of Aboriginal women. Occasionally this incited swift and brutal retribution by Aboriginal groups and individuals.

On several occasions in the 1920s and 1930s police parties went through Arnhem Land, and they seem to have been prone to shoot indiscriminately. I heard many allegations by Aboriginals of police shooting. Munggurawuy Yunupingu, father of Galarrwuy Yunupingu, first Chairman of the Northern Land Council, and of Mandawuy Yunupingu, leader of the internationally famous band Yothu Yindi, went to his grave in 1979 with a police bullet still lodged in his shoulder from the 1930s.

It was held in Darwin that between twenty and thirty Europeans and Asians had been killed between 1920 and 1932 by the 'savages'. It is not surprising that the Aboriginals of north-east Arnhem Land came to be regarded as treacherous, cunning marauders by observers much less sensitive than Flinders; and it was a continuing source of discontent among northern white people that the blacks of north-east Arnhem Land had never been taught that the will of the white man must prevail. [22]

To this day it is a huge joke among the Yolngu that officialdom in the 1930s considered them to be one warlike tribe called the *Balamumu*. [23] It was also a great pity, for the police party which in 1933 went to north-east Arnhem Land to investigate the killings of five Japanese at Caledon Bay in 1932 felt that any Aboriginals they encountered in the country from Blue Mud Bay to Arnhem Bay would be members of the single, treacherous *Balamumu* tribe, and thus conspirators in the murders of the Japanese. They did not know that the different land-owning Yolngu clans largely kept to their own areas, usually minded their own business - and diligently protected their land and their women. This official ignorance would help cause a tragic series of incidents which have repercussions to the present day.

ENDNOTES: AN INTERESTING HISTORICAL BACKGROUND

- 1 Matthew Flinders *A Voyage to Terra Australis* Volume Two, London, 1814 pp. 183-248
- 2 Yolngu is not the name of a tribe. It is the noun (and adjective) used by the Aboriginal people of north-east Arnhem Land to describe themselves and all other Aboriginals. Lloyd Warner *A Black Civilisation: A Study of an Australian Tribe* New York, 1964, p.15, argued that the people of north-east Arnhem Land should collectively be called 'the Murngin tribe'. Nancy Williams *The Yolngu and Their Land* pp. 226-9, records the complex Yolngu methods of defining their land and language affiliations, using as criteria the local terms *mala* = group and *matha* = language, or tongue. Individual Yolngu say of themselves 'I am *Riratjingu mala*' or 'She is *Djapu matha*'. It is more correct to consider the Yolngu as members of different land-owning clans rather than one large tribe.
- 3 On modern maps of the region Gray's Bay is shown as being a smaller bay inside Caledon Bay. This is where the 1933 Peace Party discovered Fred Gray living with the Yolngu.
- 4 Mt Saunders is the hill behind the township Nhulunbuy, which serves the Nabalco mining venture on what is today called the Gove Peninsula. Peter Gove was an Australian airman killed in the region during World War II. The RAAF airstrip was named after him. The naming of the new town to serve the mining venture became part of the dispute over Aboriginal land rights in 1967 when the Yolngu were preparing to challenge the Commonwealth Government and Nabalco in the NT Supreme Court. Nabalco wanted to name the town Gove, the Yolngu wanted Nhulunbuy. The Yolngu claim that Nhulunbuy is the name given by Wuyal, the Wild Honey Man. It is one of the places where he left his sacred dilly-bags. Other *madayin warnga* (sacred places) created by Wuyal in the immediate Nhulunbuy area are Birritjimi (Wallaby Beach), Dimbukawuy (rocks near the conveyor line) and Dhanburama, the banyan tree left standing in the middle of the alumina plant at Melville Bay. Nearby Mt Dundas is named Djambuwal, created by the Thunder Man of the same name.
- 5 Matthew Flinders *A Voyage to Terra Australis* Vol 2 pp. 224-5

- 6 ibid. pp. 196-7
7 ibid. p. 198
8 ibid.
9 ibid. pp. 205-6
10 ibid. p. 206
11 ibid. p. 208
12 ibid. p. 210
13 ibid. p. 213
14 ibid. pp. 206-9
15 ibid. p. 207
16 See especially Nancy Williams *The Yolngu and Their Land*.
17 Matthew Flinders *A Voyage to Terra Australis* Vol 2 p. 213
18 ibid. p. 223
19 ibid.
20 At Dalywoi Bay there are stone drawings of Macassan boats and
 campsites. Wearing of Macassan-style beards, ritually smoking
 tobacco, flying flags after death are customs so long observed
 by Yolngu that many believe they originated the practices. Many
 Yolngu told me of visits to 'Mangathara' by members of their
 families.
21 See Sister Mary Albertus Bain *Full Fathom Five* Perth,
 Artlook, 1982, particularly Chapter 11, where she examines the
 Japanese refusal to be treated as inferiors.
22 See Department of the Interior file 47/1434, where there are many
 claims by NT Superintendent of Police, A V Stretton, and NT
 Administrator, R H Weddell, that the *Balamumu* were aggressive,
 warlike, and unrepentant about their many killings.
23 To the *Djapu* Yolngu *balamumu* means 'rough water' but it has
 considerable ceremonial significance as well. See Nancy Williams
 The Yolngu and Their Land pp. 67-9. At a meeting I attended at
 Yirrkala in 1967, the Yolngu discussed taking their land claims
 to court. An old *Galpu* man named Maunyu raised a great
 laugh when he suggested all Yolngu unite under the name
 Balamumu for legal purposes. He reminded his peers that it was
 the name the police used to depict them as one big band of
 trouble-makers. '*Indi mari djama. Balamumu*', he suggested. A
 literal, modern translation could well be 'We make big trouble.
 Let's make some waves'.

CHAPTER 1
TREPANGING: CALEDON BAY

That Caledon Bay boy him properly cheeky bugger.
Clara Dilyera, 16 September 1932

Fred Gray was in Fang Cheong Loong's store in Darwin's Chinatown when he heard the price for trepang had risen to £48 per ton.[1] It was March 1932. In among the sandalwood chests, the rolls of silk and the rich smells of salty plums, joss sticks and fragrant cigars there was much banter about the aphrodisiac qualities of trepang. Gray had no knowledge of how and where trepang was harvested. The 32 year old Englishman had been in Broome, Western Australia, for a few years, working on the pearling luggers and acting occasionally as bodyguard for T B Ellies, the famous pearl cleaner, who always liked to carry around about £10,000 worth of pearls and diamonds.

Gray had recently come to Darwin with Charlie Ellies, a son of T B. Everybody in Darwin seemed to think the new price for trepang was very attractive, so the adventurous young man began to ask a few questions. It was said the best trepang could be collected reasonably easily in the waters around north-east Arnhem Land.

Gray was told that since 1907, in keeping with the White Australia Policy, the Macassans who traditionally collected trepang for sale to Chinese merchants had been warned off by Customs officials on sporadic patrols of the northern coastline. [2] In Chinatown Gray also learnt that in recent months Japanese crews had made many lucrative visits to Arnhem Land gathering trepang. So he hired the lugger *Northam* from a Japanese pearler, Jiro Muramatsu, and engaged as crew Jim 'Pangy' Corry, Joe 'Pumeri' McGinness and Ramon Arabena. Corry claimed to have worked on trepang harvesting in Torres Strait. They sailed from Darwin in April 1932, having first obtained a permit to enter the recently-created (1931) Arnhem Land Reserve for Aborigines, an area of 31,000 square miles or 8 million hectares. (see map 2)

En route to Arnhem Land Gray called at Goulburn Island where he met officials from the Methodist mission. He then sailed east to another Methodist mission, Milingimbi, in the Crocodile Islands. The

Methodist missions were established on islands in order to conform to the 'international' aspect of that church's evangelical work. Thereby they were referred to as Methodist Overseas Missions (MOM), a branch of the Methodist Church of Australasia (MCA). Sometimes this was done to the point of creating logistical nightmares, but Methodist authorities felt they had greater control on islands than they could achieve on the mainland. Initially stern and uncompromising in their dealings with Aboriginals and Government alike, the Methodists eventually became, in my opinion, the most liberal and enlightened Christian denomination in the north. From the mid 1930s they encouraged the preservation and indeed the study of traditional languages and customs, and generally recruited staff of extremely high calibre and ability.

Milingimbi was run by Reverend Theodore Webb, assisted by Harold 'Sheppy' Shepherdson. [3] Gray recruited two Aboriginals as crew at Milingimbi, sailed on through the Wessel Islands and eventually reached the western side of Melville Bay. (See map 3). They found some small trepang which 'disappeared' when they cooked it, but it emerged in any case that the type of work Corry had done was quite different from the method of curing the Japanese had suggested to Gray. Gray decided to walk overland to Port Bradshaw where he understood the Japanese were working. He and his two Aboriginal guides got lost, and Gray lived on a diet of fish and *gauladj* (the delicious peanut-like corm from the *rakai* rush, once the staple diet of Arnhem Land). After swimming crocodile-infested tidal creeks, with Gray's Mauser pistol strapped on the head of one of his companions, the incongruous trio fortuitously finished up in the camp of Munggurawuy Yunupingu [4] at Dalywoi Bay. Thus began a lifelong friendship between the young Englishman and the *Gumatj* Yolngu (see photo 50) who eventually became one of the great patriarchs of Arnhem Land. Munggurawuy said there were no Japanese at Port Bradshaw, but assured Gray that he was experienced at gathering and curing trepang. He suggested he take Gray back to Melville Bay, board *Northam*, and harvest trepang at Galupawuy.

They had a good haul of trepang, so Gray decided to head back to Darwin, sell the trepang, get more supplies and return to rendezvous with Munggurawuy at Matamata, on the mainland opposite the English Company's Islands.(see map 3) Munggurawuy and his family went with Gray as far as Matamata, where they established that trepang was indeed plentiful. Gray sailed to Darwin, revictualled, and returned to Matamata where Munggurawuy had been busy stockpiling trepang. After

a short spell at Matamata Gray and his crew sailed *Northam* to Port Bradshaw, but although they got some trepang it was obvious that the beds there had been 'cleaned up' by the Japanese. So Gray went again to Darwin, unloaded, revictualled, and sailed back to north-east Arnhem Land. Munggurrawuy recommended Caledon Bay as a prolific source of trepang. It was late August 1932.

At Caledon Bay Gray camped ashore, to the west of Andjibuy (see map 4) at what the Yolngu called 'the old Police Camp' [5] and began working the trepang. He was introduced to Yolngu ritual when one of his Aboriginal crew members from Milingimbi was required to submit to the *Makarrta* for a previous misdemeanour. Honour was satisfied, and Gray and his party were then made most welcome by Wonggu, the *Djapu* head man, who had visited Melville Bay while Gray was there. In particular Gray's crew was befriended by two *Manggalili* Yolngu, Nanyin Maymuru, aged about twenty, and his younger brother Narritjan, aged about fourteen. [6]

Inside Caledon Bay the water is clean, the tides are gentle, and there are numerous sandbanks. Magnificent sandy beaches extend to casuarina foreshores blending into savannah forest, with woollybutts and stringybarks the predominant trees. [7] A large, permanent paperbark swamp provides plentiful water. The place named Andjibuy is *madayin* (sacred) to the Yolngu. [8] Andjibuy is *Yirritja* country but is 'looked after' by the *Djapu*, a *Dhuwa* clan.

Dhuwa and *Yirritja* are the names of the two exogamous moieties (halves) into which people and nature are divided in eastern Arnhem Land. The moieties are more than just a device to organise marriage and kinship: they govern all aspects of life. As Nancy Williams succinctly writes, 'The Yolngu conceptualise their universe in terms of a complementary opposition labelled and often expressed by the named moieties *Dhuwa* and *Yirritja*'. [9]

On 4 September 1932 two Darwin-based luggers, *Myrtle Olga* and *Raff*, arrived at Caledon Bay. The luggers were owned by a Darwin pearler, V R Kepert, and on board were six Japanese indentured to Kepert. The Japanese were in charge of crews comprising four *Tiwi* Aboriginals and four Goulburn Island Aboriginals. The leader of the Japanese was Kimishima, the others were Inamori (cook), Higashi (engineer), Tanaka, Sitasaki and Kinjo. The *Tiwi* were George Noongin, Billy Bungalorinja, Sambo Namadbarr, and Billy Bigyarumboy. The Goulburn Islanders were Yarungboo, Morggoo, Solomon and Ringgitj.

Kimishima announced that he was going to Groote Eylandt, but asked if he might return eventually to Caledon Bay. Gray told Kimishima to seek permission from Wonggu if and when they did return. After only three days the Japanese came back. Kimishima said his Aboriginal employees refused to work at Groote Eylandt, so he asked Wonggu if he could harvest trepang at Caledon Bay. This permission was readily given after the Japanese laid out on the beach a lavish array of tempting presents, including cloth, tobacco and mirrors. The Japanese announced that they would anchor their two luggers near the trepang and sleep on board their ships. This gave them an advantage in access to the trepang beds over Gray and his crew, so Gray elected to shift his camp across the Nganjiwuy Creek (see map 4) to a spot named Biyigbuy, notwithstanding the fact that he had built a smokehouse at his original camp. This put him closer to the trepang beds.

The Japanese and their Aboriginal workmen began to harvest trepang. They established a store camp at Andjibuy, consisting of a kitchen and smokehouse, built from bush timber. They were very apprehensive about the local Yolngu. They always stayed close together and returned to their luggers immediately they finished work each day. Each morning they came ashore in their dinghies.

Gray careened *Northam*, waiting to resume trepanging on the spring tides. From 6 to 16 September the Japanese and their workers gathered trepang. As there were fourteen men in their party, they did not seek any contribution from the Yolngu, unlike Gray, who had been buying any trepang collected by Wonggu's people.

There has been considerable speculation about how and why relationships between the Japanese and the Yolngu deteriorated, but deteriorate they did. Late afternoon on 16 September Gray walked around the beach to check some trepang at his original camp. He encountered scenes of high agitation. First, he was accosted by a woman named Clara Dilyera, who said to Gray: 'That Caledon Bay boy him properly cheeky bugger'. Gray merely laughed, knowing Clara to be 'a foreigner with a grudge'. She was a *Mara* woman from the Roper River region, captured and taken into the *Djapu* group some years before, and not averse to saying how 'uncivilised' the Yolngu were. Then, after leaving Wonggu's camp, Gray suddenly found himself accompanied by Nanyin Maymuru. Nanyin took Gray's arm. '*Kapu* (water). Mr Gray' said Nanyin, and steered Gray towards the paperbark swamp behind the beach. Nanyin fashioned a cone from paperbark and filled it with water

for Gray. Gray thought it a little irregular, but as Nanyin was a friend, Gray drank the water. Nanyin then escorted him to the Japanese camp, but by a new track through the bush.

The Japanese told Gray they were very worried and sought his assurance he was not leaving the area. Gray said he had no intention of leaving until he had a full load of trepang, and then went further along the beach to his old camp to check his stockpile of trepang. It was dark when he returned to the Japanese camp and only two men, Kimishima and Inamori, were still on shore. Inamori had cooked a meal for Gray.

Nanyin had claimed the Japanese had been firing shots at the Yolngu, and Gray raised this with Kimishima, who agreed they had fired shots, but over the heads of the Yolngu, of whom they were very frightened. Kimishima said they wanted no contact with the Yolngu, apart from the initial bestowal of presents, but that the Yolngu kept coming to them, asking for work and more presents. The Japanese felt it ominous the Yolngu were always 'above them' sitting behind the beach, watching.

After leaving the Japanese that night Gray had to pass through the Aboriginal camp. Gray mentioned to Wonggu that the Japanese seemed very frightened, but apart from being solicitous towards Gray to the point of sending two young men across Nganjiwuy Creek to get Gray's dinghy and ferry him across the creek rather than having to swim, Wonggu offered no reaction to Gray's comment about the Japanese. But preparations were already in hand to kill them. Nanyin took Gray to 'drink water' so he would not see the spears already hidden above the Japanese camp, ready for the planned slaughter.

Over the years it has been alleged the Japanese were interfering with the local women. On 1 October 1968 I walked over the area at Caledon Bay with Mau Mununggurr, a son of Wonggu. Mau was about 18 years old in 1932, and was subsequently convicted of the killing of the Japanese. He said the Japanese were killed because they had insulted his father. According to Mau the Japanese had been 'looking at' some women and Wonggu went to talk to the Japanese about this. Given the strict rules of avoidance common to most Aboriginal groups, 'looking at' women may have been interpreted as 'seducing' them. The Japanese interpreted Wonggu's visit as another request for presents, and they sought to chase the old man away. When Wonggu stood his ground the Japanese grabbed him and, according to Mau, ducked his head in a bucket of 'trepang shit' (offal). The Japanese then fired shots, Mau said.

Mau said his father came back to the Yolngu camp, and after talking with Nikunu - the father of Munggurawuy - they agreed the Japanese should be killed. In 1968 Mau seemed anxious to stress that it was Nikunu and another man, Gunguyuma, who 'pushed' Wonggu into directing his own sons to do the killing. In 1968 an ongoing vendetta between the *Djapu* and the *Gumatj* clans may have influenced Mau's recollections. [10] He relished recounting his own part in killing the Japanese. By my count he had ten bodies on the beach, but perhaps the old man was telling me of more than one incident involving clashes with Japanese and other foreigners. [11]

In 1969 I talked again about the events with Mau, Nanyin Maymuru, Narritjan Maymuru and Gunguyuma Marika, all eye-witnesses to the killing of the Japanese. They agreed that the following is an accurate account of what happened on Saturday 17 September 1932.

Early that morning the Japanese and their workers came ashore. Soon they were hard at work, and did not see that two young boys were sent from the Aboriginal camp to steal the oars from the Japanese dinghies and remove their firearms from near the cookhouse. Then, according to Mau: 'We walk down the beach for *Makarrita* business'. It was probably an absolute rationalisation on Mau's part that what was intended would in any way resemble a *Makarrita*, but he nonetheless made the point that the silliest thing one can do is run from an intending spearthrower: the best tactic is to stand, wait for the throw, and then dodge. Simple, said Mau. 'You run. You dead'. Mau patted his chest as he told me this.

The Yolngu had no grievance with the Aboriginal employees of the Japanese, and no spears were thrown at them. They ran in two directions, the *Tiwi* to the west (homewards) and the Goulburn Island men towards Gray's camp, east. The Japanese moved in various directions. Kinjo, and probably Higashi, ran with the *Tiwi*, but Higashi was speared as he ran. My 1969 informants said the Japanese were merely speared, but Gray gave evidence in 1934 that Kimishima seemed also to have been tomahawked. [12] The Japanese who ran to get the dinghies or the firearms were thwarted in both cases. And so they died. Inamori and Sitasaki were both speared at the camp, by the kitchen, and Tanaka was dead on the water's edge. (see photo 10) Kimishima was killed near the smokehouse and was stripped of his clothes after his death. Kinjo overtook the running *Tiwi* and the group of five, several weeks later.

reached the mainland opposite the Crocodile Islands, and were taken by local Aborigines to Milingimbi mission. [13]

As the Japanese were being killed, Ramon Arabena was paddling a canoe from Gray's camp to the Yolngu camp to advise that Gray would start work on the spring tides, and was anxious to purchase trepang. Arabena saw what was happening on the beach. He hurried back to Gray's camp and shouted that 'a fight' was taking place. By the time Arabena reached Gray's camp he had been joined by the Goulburn Island Aborigines, running from the conflict. Gray, Corry, McGinness and four Aborigines then went by dinghy towards the two Japanese luggers, only to see that the Yolngu were looting them. As they approached Gunguyuma fired one of the Japanese shotguns, and told Gray to keep away, that this was none of his business. Gray returned by dinghy to his own camp, and shortly afterwards walked with his men around the beach to the scene of the killings. By then the Yolngu had gone.

Once the Yolngu had assembled in the bush a few miles away, Nanyin insisted Gunguyuma be subjected to the *Makarria* because he 'had fired the gun at our friend Mr Gray'. In 1969 Gunguyuma showed me the scar on his thigh where Nanyin speared him in 1932. The two old Yolngu had a good laugh as they recalled the incident.

Gray took photographs of the bodies on the beach, and the party buried Tanaka, Inamori and Sitasaki in one large grave, and Kimishima in a grave on his own. On Sunday 18 September they found the body of the engineer Higashi and buried him in another grave. On 20 September Gray's party headed for Darwin, Corry sailing *Northam*, McGinness in charge of *Raff*, and Gray in charge of *Myrtle Olga*. They arrived at Milingimbi mission on 26 September 1932, where a telegram was sent to the Darwin police to advise of the killings.

On 28 September the Administrator of the Northern Territory; Colonel R H Weddell, sent this telegram to the Minister for the Interior, Mr J A Perkins, in Canberra.

RADIO FROM MILINGIMBI (sic) MISSION STATES TREPANGER
GRAY ARRIVED THERE TWENTY-SIXTH REPORTING FIVE
JAPANESE MURDERED BY NATIVES CALEDON BAY
SEVENTEENTH STOP ONE JAPANESE ESCAPED TRAVELLING
INLANDS (sic) STOP POLICE ARRANGING INVESTIGATE [14]

From 1911 the Northern Territory of Australia had been a Commonwealth Government responsibility, and the Minister for the Interior was also Minister in Charge of Northern Territory Affairs. Harold Nelson represented the Northern Territory in the House of Representatives, but only spoke or voted in Parliament if the matter under debate directly concerned the Northern Territory.

The Administrator of the Northern Territory is a political appointee. Today the occupant is largely a figure-head, but in the 1930s the Administrator carried out duties similar to early colonial governors in Australia. Day-to-day administration was conducted by officers of the Northern Territory Administration, under the Administrator, but Canberra closely scrutinised and controlled all action. Perkins was a fairly astute Minister, and the two principal officers of his department in Canberra were wily public servants, H C Brown, Secretary, and J A Carrodus, Chief Clerk and Assistant Secretary. The initials JAC are on the above telegram to indicate that its contents were noted, and Carrodus was to become one of the principal players in the drama of the next two years.

On 5 October 1932 Gray's party reached Darwin with the three luggers. They claimed £500 for salvage from Kepert, the owner of *Myrtle Olga* and *Raff*. Kepert counter-claimed that Gray had organised the killings, and demanded an official inquiry into Gray's presence in Arnhem Land. He wrote to Canberra, complaining 'My boats were looted, my men murdered, and I have to fight a £500 salvage claim.... Gray and his companions certainly stood to win over the actions of the Caledon Bay natives. He (Gray) is now reported to be living with them on very friendly terms. Labour agitation is certainly not a native custom; it is definitely a Darwin one'. [15] In August 1934 Gray and his crew shared £250 compensation. [16]

On 25 October 1932 the Sub-Collector of Customs, Darwin, gave the Minister the names of the five Japanese 'indenters' (labourers indentured to Kepert) who had been killed, and also said that 'Kinjo has since arrived back in Darwin and is stationed at Mr V R Kepert's pearling fleet'. [17]

The killings were reported in the local and interstate press. Almost immediately it was suggested that the Japanese were killed because they had interfered with Aboriginal women. Japanese had sexually exploited many Aboriginal women in the north, and quite a few Japanese

had been killed in different places in the preceding twenty years for abduction and rape. [18]

Only four years before there had been an international outcry after the Coniston massacre in Central Australia, also a part of the Northern Territory.(see map 2) A police party was exonerated in 1928 for the acknowledged killing of thirty-one Aboriginals as a reprisal for the murder of a white man, Fred Brooks. Missionaries estimate that the number shot was probably between seventy and one hundred. [19] From that date the Northern Territory police were under intense scrutiny by groups in Australia and overseas who were demanding a better deal for Aboriginals.

Not surprisingly, and in respect of the Caledon Bay killings, representations were immediately made to Perkins by bodies such as the Association for the Protection of Native Races (APNR), telegraphically urging 'legal aid and qualified interpreters at trial Caledon Bay natives for alleged murder of Japanese and full investigation of provoking (sic) cause of alleged attack'. [20] Assuming that arrests of Aboriginals had already been made, the Reverend W Morley, who had never been near Arnhem Land, wrote a 'testimony as to the general character of the tribe to which these prisoners belong.... They are a peace-loving and kindly people.... Possessed of a high moral standard, they expect to find the same in those with whom they come in contact.... Any interference with their domestic life rouses in them a fierce resentment which they know no way to express other than to kill. It is their law (and) in their own mind they are fully justified'. [21]

The Minister told Morley no arrests had yet been made, and added, 'the Administrator advises that all natives charged before the Supreme Court are represented by learned Counsel, and those incapable of making themselves understood are provided with interpreters'. [22]

Constables Ted Morey and Jack Mahony were sent from Darwin on the ketch *Maree* to north-east Arnhem Land. They left Darwin on 2 November 1932, disembarked at Arnhem Bay, and walked, with twelve Aboriginal 'carriers' recruited from Milingimbi, south-east to Caledon Bay. (see photo 11) They did not see a single Aboriginal, but according to Mau Mununggurr in 1968, 'We look them alright'. Morey and Mahony returned to Darwin on 6 December 1932, and it was decided, because of the impending wet season, that 'further patrols will proceed from Roper Bar next dry season'. In 1993 Mrs Kath Mahony, (widow of Jack Mahony) said that her husband and Morey 'knew they wouldn't

achieve anything at that time of year, but Mr Stretton had to appease the Japanese authorities'. [23]

On 28 November 1932 A V Stretton, Darwin's Superintendent of Police, wrote the following injudicious (but perhaps not unsolicited) letter:

The President
Japanese Club
DARWIN.

Re Murder of Japanese on Luggers *Raf* (sic) and *Myrtle Olga*.

I desire to inform you, regarding the murder of five Japanese trepang fishermen at Caledon Bay on 17th September last, that from the information available, it appears that the men were attacked about 8 or 9 o'clock in the morning, at their curing camp in Caledon Bay, by about 20 aboriginals. The man Enamori (sic) was first killed, he being a little distance from the rest of the party. The attack was so sudden that the murdered men were unable to secure their firearms to repel it and were struck down without being able to strike a blow in their own defence.

One of the party, Kinjo, made good his escape and from his description of the affair and from information received from Mr Frederick Harold Gray and his party it appears that the murderous attack was made with the object of gaining possession of the stores carried by the two luggers.

So far there is no evidence that the murders were done in retaliation for any wrongs perpetrated by the murdered Japanese.

A police party was despatched to Caledon Bay at the beginning of this month and are (sic) returning about the 8th December, not having succeeded in apprehending any of the offenders. A further expedition will be organised immediately after the wet season ends and the offenders located and brought to justice.

A V Stretton
Superintendent of Police. [24]

Stretton's biased and judgmental letter was useful to Japanese officials. Almost a year later, on 6 November 1933, when speculation about the Caledon Bay killings was quite intense, Mr K Murai, the Japanese Consul-General, wrote to the Australian Prime Minister complaining that 'the general impression among the Australian public is that the Japanese in question were murdered by the Aborigines by way of revenge for alleged interference.....with the women of the tribe concerned'. Murai quoted Dr S Davies (Bishop of Carpentaria) as saying 'I have no sympathy for the Japanese who suffered injury from these natives'. Murai referred to Stretton's letter and intimated that 'such insinuations as made by the Bishop of Carpentaria are to be deprecated'. He concluded: 'Being much concerned about the reputation of my countrymen I should be much obliged if you would be good enough to furnish me with any authentic account of the case in your possession'. [25]

Instead of telling the Consul-General the matter was under investigation and thus best not discussed, Prime Minister Lyons replied on 14 November that neither the Department of the Interior, nor the Administration of the Northern Territory 'has any evidence that the killing of the Japanese in question was in retaliation for ill-treatment of aborigines'. [26]

As Stretton's letter foreshadowed, it was planned in Darwin to send a 'combined horse and sea patrol' to the Caledon Bay region in June 1933 to arrest the killers of the Japanese. In the meantime Fred Gray had returned to Arnhem Land and resumed trepanning, his cordial relationships with the 'treacherous *Balanumu*' unimpaired.

ENDNOTES: CHAPTER 1 TREPANGING CALEDON BAY

- 1 Interview with Fred Gray. As I have had many talks with Fred Gray between 1953 and the present, his influence on this work is constant, and will not be footnoted except for specific quotations, e.g., evidence in court hearings.
- 2 See Alfred Searcy (Sub-Collector of Customs, Darwin), *In Australian Tropics* London, G Robertson & Co, 1909; and *By Flood and Field* London, G Robertson & Co, 1911.
- 3 Surely two of the most influential people ever to work among Aboriginals in Australia, and an excellent combination. Webb was a blacksmith, later an ordained clergyman, and also an austere scholar. He set the pattern whereby all staff on Methodist missions were required to learn languages and study anthropology. Shepherdson eventually became an ordained minister, but in his earlier years achieved wonders with machinery. In the 1930s he began to construct airstrips and fly by aeroplane to serve the outstations that Methodist missions always supported, unlike other mission bodies which sought to attract entire Aboriginal populations, in order to proselytise and have access to children for education.
- 4 Eventually one of the plaintiffs, for the Gumatj clan, in *Milirrpum v Commonwealth of Australia and Nabalco*, the Yirrkala Land Rights Case, heard in the NT Supreme Court 1969-71.
- 5 The Morey police patrol of 1933 was sometimes referred to as the 5th Arnhem Land patrol. Sergeant Bridgland and Constable Heathcock had camped at Caledon Bay in previous years, and Constable Hall had been to Caledon Bay with Heathcock in 1924. See endnote 23
- 6 Narritjan Maymuru became one of the better-known bark painters of Australia, and his works are in major world galleries. (see photos 54-57)
- 7 Stringybark (*Eucalyptus myrtaceae*) is used for bark paintings. The trees are excellent for short-term bush timber constructions, the poles for uprights and rafters, the bark for walls and roof. Almost certainly the smokehouses at Caledon Bay would have been made thus. But see endnote 8.

- 8 In 1967 the senior *Djapu* man, and thus the principal custodian for the Andjibuy area, was Djiring. In his day Djiring was a great fighter. He became friend and mentor to Wilbur Chaseling, founder of Yirrkala Mission in 1935. As an old man Djiring was a gentle, very softly-spoken patriarch. On a visit to Caledon Bay I thought I was doing Djiring a favour when I offered to get him some firewood with my truck. I began to cut up a dead tree with an axe. I thought the old man was going to die. He had an incredulous, how-could-you look on his face, as he said to me: '*Wawa! Dhuwala madayin warnga!*' (Brother! This is a sacred place!). Ah, the crazy white man.
- 9 Nancy Williams *The Yolngu and Their Land* p.21
- 10 The 1968 feud between the *Djapu* and the *Gumatj* developed after a grandson of Wonggu killed a grandson of Nikunu. This may or may not have influenced Mau on the day he spoke to me, but he was certainly embroiled in the arguments at that time.
- 11 There had been other killings and skirmishes probably involving Mau. In 1929 Sergeant Bridgland went to Caledon Bay investigating the killing of Koshimoto. It is also significant that Dr. Kirkland of Darwin reported that Mau had a bullet wound in his leg when he went to Darwin in 1934. Mau never mentioned this to me, and I had no knowledge of Kirkland's report until after Mau's death.
- 12 F H Gray evidence, Darwin Police Court, 1 June 1934.
- 13 The Tiwi and Kinjo were taken to Darwin by Willy Walaliba on the M.V. *Maree*. Willy Walaliba told me in 1968 that Kinjo had been 'almost scalped' and had his 'fingers' chopped off in the Caledon Bay incident, and that one of the *Tiwi*, Sambo Namadbarr, had been 'cut by a tomahawk'. I had talked with Kinjo in 1954. He showed me his left hand where his index finger was missing. He said: 'This from Caledon Bay'. Yet, when he gave evidence in court in 1934 Kinjo simply said, 'I tried to swim to the lugger, and while I was swimming towards the lugger the blackfellow got hold of the dinghy and tried to chase. I dodged away from him'. Neither Kinjo nor Sambo Namadbarr mentioned being injured in any of the court hearings.
- 14 Department of the Interior, Canberra, file 47/1434

- 15 Letter, V R Kepert to Secretary, Department of Home Affairs. Carrodus investigated the matter, and reported to the Minister that, while it would have been to Gray's advantage to organise the massacre of the Japanese, he was sure Gray was innocent. Department of the Interior file 34/911
- 16 Confirmed by Joe McGinness and Fred Gray. Interview with Joe McGinness, Cairns, 1974.
- 17 Department of the Interior file 47/1434. Kinjo went back to Japan in the late 1930s. He returned to Darwin after the war in the 1950s, and worked for Jim Gonzales, pearler, until 1956, when he finally went home to Japan.
- 18 Mary Albertus Bain *Full Fathom Five* pp. 211-213
- 19 Findings of Board of Inquiry, 18 January 1929, A 431, 50/2768 and F W Albrecht 'Hermannsburg from 1926 to 1962' in E Leske *Hermannsburg: A Vision and A Mission* Adelaide, Lutheran Publishing House 1977 p. 49
- 20 The APNR was a powerful force in the 1930s. Professor A P Elkin was Chairman, and Reverend W Morley was Secretary. See Tigger Wise *The Self-Made Anthropologist* Sydney, Allen & Unwin, 1985, pp. 77, 105-6, 125
- 21 Department of the Interior file 32/9499, 17 November 1932
Morley wore two hats. Letters from him as Secretary of APNR bore a Sydney letterhead. He was also Secretary of the Aborigines Amelioration Association, based in Nedlands, Western Australia.
- 22 NT Administration file 32/229, 28 November 1932
- 23 Interview, Kath Mahony, Perth, October 1993. Mickey Dewar *Black War in Arnhem Land* Darwin, North Australia Research Unit, 1992, p. 51, wrote that this patrol was done by Constables Heathcock and Hales. There was no Constable Hales. In the 1960s Vic Hall used to write regularly for the NT Police Magazine *Citation* and fictionalised many events involving members of the NT Police Force. He called himself 'Hales' for this purpose. In a story titled *Police Handicap*, in the June 1967 issue of *Citation*, Hall fictionalised a patrol he had undertaken with Heathcock to Caledon Bay in 1924, and referred to himself as Hales.
- 24 Department of the Interior file 47/1434, 28 November 1932
- 25 *ibid.* 6 November 1933
- 26 *ibid.* 14 November 1933

CHAPTER 2 ON PATROL WITH THE MOUNTED.

Mac's pannikin was upended on the canvas tablecloth in accord with Mounted tradition: his name was not mentioned again.

Vic Hall *Dreamtime Justice* p.103.

On 7 June 1933 a police patrol left Darwin to investigate the killings of the Japanese at Caledon Bay. They travelled to Mataranka by train, then on horseback to Roper Bar Police Station. Horses and mules were prepared for the patrol 200 kilometres north-east into the Blue Mud Bay region, thence Caledon Bay.

Constable Ted Morey, the leader of the police party, had a reputation as an experienced, cool, intelligent leader. He was a renowned rider, and represented Australia at Wembley, London, in 1924 in a display of bush horsemanship. He had served in some of the more remote Northern Territory police stations.(see photo 23)

He was accompanied by two Darwin-based constables. Jack Mahony (pronounced Marney) and Morey had hunted (but not captured) Namarluk, a *Murinbata* man who organised the killing of another Japanese lugger crew south-west of Darwin in 1931. Mahony was a happy-go-lucky young man, totally devoted to Morey.

Vic Hall had been a member of the NT Police Force since 1924, after illustrious service in the British army in World War 1. He was wounded five times and awarded the Military Medal. He was an extrovert, a flash man given to showmanship like trick-shooting and revolver-twirling, cowboy style, and he prided himself on being 'quick on the draw'. He was inclined to 'draw the long bow' in relating his experiences.[1] (see photo 24)

Constable Albert Stewart McColl, stationed at Roper Bar, was to join the party, along with Aboriginal trackers from the same station. McColl, born at Longford, Victoria, in 1902, had been a Northern Territory policeman for five years, based in Central Australia from 1927 to the end of 1931. (see photo 16) He was a single man, aged 30, when transferred to Darwin in November 1932, then to Roper Bar in January 1933. [2]

Morey described McColl to me as 'quiet, moody, a loner'.
[3] Albert McColl's letters to his brother Stewart seem to confirm Morey's assessment. On 11 November 1932, just arrived in Darwin, Albert McColl wrote:

I am not too keen on Darwin. I would rather be out bush but expect to be kept in this place for some time....The niggers have been cleaning up a few Japs around these coasts, we have a few nigs in gaol waiting trial for the murder of a lugger's crew, which occurred a couple of months ago [4] also a couple of our chaps are out Caledon Bay way looking for some nigs who murdered the crews of two trepang fishing luggers.
[5]

From Roper Bar, McColl wrote again to his brother on 11 April 1933:

I had a decent trip down the coast in a lugger from Roper River. Was away about two weeks, had a great time with the fish. Of course I was after a prisoner, but it was more of a picnic trip. The weather is still very warm the nights are a bit cooler.

As a postscript he added

I am going out with the party to Arnhem Land next month to look for the niggers who murdered the Japs some time ago.
[6]

Stewart McColl described his brother as 'spiritual, no, highly spiritual, a revolutionary. He was a quiet man who would never kill anything'. [7] The description does not match the man who wrote from Roper Bar:

There is not too much game about. A few duck, kangaroos, emu and a few buffalo. I have not had a crack at the buffalo yet. I have not made any inquiries re crocodile skins, but will when I find an opportunity. [8]

At Roper Bar on 4 July 1933, after organising their horse patrol, shoeing the 24 horses and 'packing' the 7 mules, the police party

split up. The 'land party' prepared to ride 200 kilometres north to Blue Mud Bay. Hall, McColl and tracker Dick travelled by CMS lugger *Holly* to Groote Eylandt to collect the chartered CMS launch *Hope*. They planned to sail *Hope* north-west to the mainland to meet up with the others. (see map 3) Thus the police party could 'patrol' both by land and sea. An Aboriginal crewman named Reuben joined the police party at Groote Eylandt.

Hall and McColl had to make *Hope* seaworthy before they could leave Groote Eylandt, so while awaiting their arrival Morey scouted northwards to 'within sight of Mt Caledon', near Caledon Bay (see map 3). Once reunited, the entire party organised a mainland camp, then travelled by sea to Woodah Island where they saw 'smokes' (bushfires).

Three weeks later Morey officially reported to the Superintendent of Police, A V Stretton:

August 21st 1933.

Sir,

I have to submit this my report regarding operations of the Caledon Bay patrol.

LAND PARTY M.C's Morey and Mahoney (sic) with trackers Tommy, Paddy, Lock and Dick [9] twenty-four horses and seven mules left Roper River on July 4th 1933 en route for Blue Mud Bay to meet the Boat Party at an arranged point in that locality on the 20th of July. Between the Walker and Koolontong (sic) River natives were encountered: From these blacks the information was gleaned that a number of the Caledon Bay (*Balumoona's*) (sic) natives had been there about six weeks previously, and attacked them at night when they were sleeping. One native that was questioned had a deep spear wound one side of his chest and on left upper arm. They did not know where the *Balumoona's* (sic) then were. The party then crossed the Koolontong (sic) River & patrolled as far north as the Wyonga River but no fresh tracks were discovered. Mount Caledon could be seen in the distance. The boat party was met at a point about seven or eight miles north of the Koolontong (sic) River. Smokes had been observed for some days on Round Hill Island & Woodah Island. A camp was established and the horses, saddlery etc together with a large quantity of stores were left and owing to the small party and launch already overloaded, and no men to be

spared, these were of necessity left unguarded. The land party then joined the boat party.

BOAT PARTY M.Cs. Hall & McColl and Aborigines Dick & Rueben (sic) left Roper River on A.K. *Holly* for Groote Eylandt to procure Launch *Hope* and meet Land Party in Blue Mud Bay. The Boat Party met the Land Party north of Koolontong (sic) River on 26th July. Ten days were required to put the boat in order: and only ten cases of kerosene were available.

COMBINED PARTIES. The combined parties left Blue Mud Bay on 27th July at 3.30 a.m. for Round Hill Island. This island was explored and signs of blacks who had inhabited it several days previously were discovered. The party then proceeded on to Woodah Island. Two natives saw the boat and warned the rest of the tribe. The island was footwalked until dark and although natives were seen in the distance none were captured. The Party returned to the boat and M.Cs Hall & McColl with abo's (sic) Tommy: Dick & Reuben dispatched back to Round Hill Island to keep watch and prevent any natives from making back to the mainland. One canoe was found and taken possession of & an extensive search made for others but without success. This is not surprising as the natives often conceal their canoes by sinking them.

On the arranged date (29th) for the return of the boat it did not put in an appearance and did not arrive until two days later. The heavy seas prevailing made it impossible for this open river launch to venture away from the lee of the island. On the 31st the boat arrived at sundown. The following morning abo's (sic) Lorry and Rueben (sic) were left with the boat to guard it. M.Cs Morey, Hall, McColl & Mahoney (sic) with trackers Tommy, Paddy, Lock and Dick left with three days supplies to search the island. At a point on the eastern side four lubra's (sic) were located. These lubras were being questioned with regards to the members of the Tribe but before questioning was completed the two trackers who had been stationed as outposts to keep watch some distance from the camp, gave warning that bush blacks were approaching. Omitted from here are the instructions given to interpreter Paddy. These were that he was to tell the four lubras that when we arrived at the natives camp they were to call out that we were police & they were not to run away but to sit down: that we were not going to harm them but only wished to speak to them. Paddy was to call out likewise - and did so. These blacks saw us before we could conceal ourselves and raced away. We gave chase and ran for a distance of about 150 yards

when the blacks vanished into the dense jungle. M.C. McColl was bringing up the rear with the lubras. The reason why these lubras were detained was that if we failed to apprehend any other members of the tribe they would show us where the canoes were. The canoes would then be seized & so effectively maroon them on the island with no means of getting to the mainland. The jungle was so dense that it was only possible to proceed on hands and knees. Thick tangled masses of stout rope like vines impeded progress, and oft times we would be almost bound by hands and feet. We became more or less separated and finally after breaking through the jungle we came out near the coast on the Eastern side of the island. We scouted around searching for the natives & saw three running out on to a rocky point. A canoe was rounding this point with four natives aboard. The first three natives evidently called the other four from the canoe: joined the others ashore & raced around the point. At this stage M.Cs Hall & Mahoney (sic) & abo's (sic) Paddy & Lock were in my view. Abo (sic) Lock was asked where was M.C. McColl who was with him. Lock replied that M.C. McColl was coming behind, and Tommy & Dick were with him. M.Cs Hall & Mahoney (sic); abo' (sic) Paddy & Lock & myself then gave chase after the natives and cut across the point to intercept them. Three tracks were seen going to a long salt-pan, but no sign of these or remaining four were seen. We searched along the rocks: boulders & mangroves & in our individual efforts became separated. M.C.Hall & myself went up the bank and began to search through the scrub. M.C.Mahony who had been searching along the foreshore saw us disappear in the scrub and came along to assist. As he came up the bank he perceived four or five natives working round the scrub & stalking M.C. Hall & myself. We had then passed these natives and had our backs to them. M.C.Mahony for the moment did not realize these were bush blacks & thought they were our boys. The dense scrub gave concealment and only portions of the natives could be seen. These natives saw M.C. Mahony and one rose with a spear in his hand. M.C.Mahony acting in accordance with the Superintendent's instructions refrained from shooting. The natives (sic) threw the spear and it passed, owing to M.C.Mahony side stepping, close to his body. M.C.Mahony then fired over the natives heads but this did not frighten, or deter them, and the same native slipped another spear in the woomera while the other native (sic) tried to circle around. M.C.Mahony fired another shot which did not take effect and he made for the open space in the saltpan realising that this was his only chance before the natives surrounded him. The native with the spear in the woomera threw and the spear grazed M.C.Mahony's hat, he

felt the impact of the spear on his head as it wizzed past, cutting through the puggaree & felt of his hat. He tried to fire again & his revolver misfired three times: the third shot going off and evidently narrowly missing the native as he desitated (sic) coming forward. M.C.Mahony was now forced to empty his revolver and was in a perilous position. It was at this critical point that M.C. Hall: abo's (sic) Lock: Paddy and myself raced back after hearing the shots and call of M.C. Mahony. The natives disappeared in the dense bush & undergrowth & could not be found.

After such open hostility and aggressiveness we hurried back to meet M.C.McColl. It was now sundown. Abo's (sic) Tommy & Dick were found close to jungle which we had previously come through. They were asked where M.C.McColl was. They said that they had not seen him and added that after we had run to the point to intercept natives they had followed behind. We returned to the place where we had interrogated lubra's (sic) thinking that M.C. McColl had returned there awaiting our return. He was not there and leaving a note informing him - should he happen to return during our absence - to await our return. It was now dark & we searched diligently firing shots & calling but got no response. About 9 or 10 p.m. we were too weary & exhausted & could go no further. We camped near the abandoned canoe which had drifted about half a mile north of jungle camp and kept relays of watching. Early the following morning we set out and M.C.McColl's tracks were followed through the jungle. It took about two hours to follow these tracks over a matting of leaves and debris. M.C.McColl either evidently could not force his way through the jungle, or lost sense of direction for the tracks led out onto the same side as they led in and only a few chains from the entrance. On the fringe of the jungle in a small clearing M.C.McColl was found dead, speared through the heart. The body was lying with the face to the ground: the left leg was straight & the right leg was drawn up with the knee pointing outwards. The left arm was alongside and almost parallel with the body. The right arm was outflung & a few inches from the hand was the revolver. An inspection of the revolver showed that two shots had been fired off while one bullet had misfired. Several paces from the body a blood stained shovel spear was found lying (sic). Rigor Mortis had set in: the face was blackish purple & a quantity of earth was in the mouth, ants had already started eating the flesh off the face. We were unable to definitely determine whether deceased was speared first and in his dying moments discharged his revolver, or whether he saw the natives in aggressive attitudes and fired twice, and then the misfire possibly cost him his life. For an ambush this

spot could not be bettered. The natives would be able to follow M.C.McColl's progress through the jungle by sound and wait until he emerged from the jungle, probably on hands and knees, and throw their spears. It was found to be impossible to read by tracks how it really happened as all the tracks were cluttered up and leading everywhere through the bush owing to the natives rushing about when we were after them, and our tracks where we had passed & repassed this tragic spot when searching for our comrade the previous night. It is considered that the time M.C.McColl was murdered coincided with the time of the attack on M.C. Mahony, otherwise we would have heard M.C.McColl's two shots. The only doubt to this is that the jungle has a very deadening effect on the reports and we -although in earshot of the spot- did not hear them when noisily going through the scrub. The body of the late M.C.McColl was temporarily buried close to the spot where he was found, and the grave covered and protected by timber. After such determined attacks by these natives we felt uneasy with regard to the boat and the two boys we had left to guard it. If the boat had been seized (I have no doubt of their ability to handle the boat with sail) it meant that we would be marooned. We had two of their canoes one left with the boat and one left north of jungle camp. This was an exceptionally large canoe and we endeavoured to get this around the north eastern point, but forced to abandon it on account of the heavy seas prevailing. With all speed we walked the twenty miles to the boat and found all well. We then made an effort to get around to where we had abandoned the big canoe, and towed the one already in our position (sic) behind the boat. The seas were too big for the *Hope* and we were in imminent danger of being swamped. The towed canoe filled & was such a dead weight behind & made the *Hope* behave so crazily that her nose could not be kept into the seas. If the faulty clutch had slipped at this point we had not the faintest possibility of preventing the *Hope* being dashed to pieces on the rocks. It was now dark and we were forced to anchor for the night as seas were still running high. At daylight next morning we set out for Round Hill Island. This island is so situated and has such a high look-out that even with the naked eye blacks may be seen on the western end of Woodah Island. The facts of the Natives having regained possession of their canoes they were now able to get away to the mainland. From Round Hill Island we could keep watch & when they left to cross over our plan was to give chase in the *Hope*. Three nights later - just before sundown- their canoes were sighted leaving Woodah Island for the mainland. We started in pursuit and as soon as we left the lee of Round Hill Island clouds came up and a misty drizzling rain set in. This made

visibility so dense that we were in danger of running on to any of the numerous reefs and sand bars that are dotted about this locality. One reef was actually brushed in the darkness & a catastrophe was narrowly averted. At daylight the next morning we left for the horse camp on the mainland and on arrival found that our stores had been pillaged. Twelve of the horses were in a very weak condition. Something is obviously lacking in the herbage here that is vital to the well-being of the horses: they were plentifully supplied with salt from our stores. We were now getting short of stores, and as there was not sufficient fuel on the *Hope* to continue the patrol M.C.Hall returned to Groote Eylandt for further supplies and to dispatch telegrams to Head Quarters re murder of M.C.McColl & hostility of natives. Allowing M.C. Hall two days to get to Groote Eylandt & from three to four days there to, communicate with Hd. Qrs. overhaul engine and boat & two days return - totalling a period of seven or eight days - it was reasoned that the horses could be got to the Roper in nine or ten days. This would save a number of them dying or being speared by the blacks or if they happened to survive to get them out before rain fell, as very little rain would make this bottomless country hopelessly impassable. Valuing (sic) the horses: saddlery etc at between £300 & £350 it was considered a good saving for the three or four days lost. M.C. Hall therefore left for Groote Eylandt to communicate with Headquarters - obtain stores and fuel & to proceed to Roper River and pick up land party & continue on with the patrol.

The Land Party arrived at Roper River on Saturday 19th August. Four horses were dropped en route owing to weakness.

The Mission boat *Holly* arrived on the 18th August and copies of telegrams from M.C.Hall (who remained at Groote Eylandt) were received on our arrival on the 19th instant. M.C.Sheridan handed me a copy of telegram relating a statement (sic) that I was to proceed to Darwin immediately, and M.C. Mahony was to remain at Roper.

Yours faithfully,

E H Morey

Mounted Constable. [10]

With the wisdom of hindsight, some obvious questions arise:
1) Why would an experienced officer like Morey leave his horses, saddlery and stores unguarded on the mainland, while his entire party crowded onto what had already been established as an unsatisfactory boat?

The police had only recently been in contact with Aboriginals who said they had 'been attacked by the *Balamoonas*'. Since the police always insisted Arnhem Land was peopled by marauding savages, to leave them animals to spear, saddlery to burn or otherwise render useless, and stores to eat (which they did) [11] was absolute folly.

2) Morey was renowned as a horseman and handler of horses. Why did he neglect his valuable stock, apart from the fact that they were left unguarded? Presumably the animals were in a temporary stockyard, hobbled, with 'plenty of salt' and obviously some water, but seemingly with only the 'herbage' as feed. It would appear that Morey had no idea he would be away from his horse plant for so long.

3) Why would four experienced policemen, and four expert blacktrackers go blundering around 'on hands and knees' in 'impenetrable jungle'? They seemed to invite disaster.

4) Why was not Big Pat used to greater advantage? In ceremonial terms Big Pat was a very important man, a *bunggawa*, a custodian of ritual objects. According to his grandson Dawson Daniels Kamarawara, Big Pat spoke several Arnhem Land languages, including '*Balamumu*', and had travelled extensively in north-east Arnhem Land as a young man going through various stages of initiation. His first language was Nalakan. He was of the *Yirritja* moiety and *Guyal* subsection. He was known to Aboriginals at Roper Bar as Marlu, but his correct name was Djupainma . [14]

Big Pat had accompanied Sergeant Bridgland to Woodah Island on a similar police patrol in 1929 after an attack on Groote Eylandt Aboriginals by 'the *Balamumu*' was reported. In most respects Bridgland's earlier experience resembled Morey's. Bridgland and Constable Wally Langdon rode overland from Roper Bar to Blue Mud Bay, where they met Constables Heathcock and Abbott, who had brought the *Hope* from Groote Eylandt. They went on to Woodah Island. On that occasion Big Pat was sent by Bridgland 'to get into communication with these myalls'. The tracker obviously did his job superbly. According to Bridgland: 'When we went around with the launch all Aboriginals, male and female, were waiting on the beach'. [12]

To be chosen as trackers, the five Aboriginal men accompanying Morey's party must have been better-than-average bushmen, in an age when all Aboriginals were 'good in the bush'. Any of the trackers on his own could not have made a worse fist of things than did the total party. My experience among Aboriginals leads me to

conjecture that Morey and Big Pat would have been a bit aloof to one another, on the grounds that Pat was 'Bridgland's boy', and that this might have accounted for Morey's reluctance to 'hand over the reins' to this particular tracker.[13] At the same time, it was Morey's first visit to the region, and he would have been aware, even if he did not acknowledge it, that Big Pat's knowledge was important. To add to Morey's dilemma, Hall, too, had been to the region before. Hall, in his writings, never sought to present himself as more experienced than Morey, but perhaps the leader was embarrassed by his lack of knowledge of the country and people.

As we shall see, there were factors present during Morey's patrol, some of these involving Big Pat, which would have made contact with 'the myalls' less likely than in Bridgland's time.

5) Why did Morey not mention that the Aboriginal women were handcuffed? He did not specifically say they were not handcuffed: he simply said they were 'detained'. In subsequent court cases Hall gave evidence that the women were 'handcuffed for about twenty minutes'. Big Pat confirmed this. [15] It is highly likely that the women would have run away if not physically restrained at all times. It was common practice for police to handcuff, or chain 'prisoners'. In 1976 Djaparri Wirrpanda told me that she was sitting quietly alongside McColl at the moment her husband Tuckiar speared McColl. She said that the handcuffs had been 'opened' but she and three other women were still chained to one another.[16]

There are other puzzling aspects of the report. A day-by-day reconstruction of the events Morey describes might aid discussion of these. The reader is referred to map 3, and aerial photographs of Woodah Island, 1 and 2.

27 July

Depart Blue Mud Bay 3.30 a.m. Explore Roundhill Island, then to Woodah Island. Woodah Island 'footwalked'. Back to boat. Presumably Morey, Mahony, Big Pat, Lock and Dick camp on Woodah Island, while Hall, McColl, Tommy, Reuben and Dick (Menikman) travel to Roundhill Island with *Hope*. Morey does not specifically say that he and others camped on Woodah Island. I presumed at first that Morey would have returned to their camp at Blue Mud Bay, to check on the horses and supplies. But, as they had 'only ten cases of

kerosene' they would not seek to use fuel unnecessarily. Morey says that 'one canoe was found and taken possession of and an extensive search made for others but without success'. One can assume, then, that this search was undertaken during four days, 28-31 July, while Morey was camped on the northernmost end of Woodah Island. But, as we shall see later, there was a very important discovery which should have been made on the beach where the police professed to make an 'extensive search'. Once again, the police would miss vital clues.

28 July

Presumably Morey & Co. camped on Woodah Island. Hall & Co. at Roundhill Island with *Hope*.

29 July

Ditto. Heavy seas prevent rendezvous of two police parties.

30 July

Ditto.

31 July

Presumably *Hope* arrives back at Woodah Island sundown.

1 August

Lorry and Reuben guard *Hope*. Woodah Island searched. McColl killed. Others camp on beach, Woodah Island.

2 August

McColl found. Buried. Others return to boat. Police party anchors off-shore, Woodah Island.

3 August

Entire party camped with boat at Roundhill Island.

4 August

Ditto.

5 August

Ditto. Canoes chased at sundown. Rain. Party camped on Roundhill Island

6 August

Back to Blue Mud Bay. Morey and Mahony, with Big Pat, Tommy, Lock and Dick, travel overland to Roper River with horses. Hall, presumably with Menikman(Dick) and Reuben, returns to Groote Eylandt by boat.

To ask further questions:

6) Is it reasonable to accept that the seas on the leeward side of Roundhill Island were so rough that for three days and nights Hall and McColl were unable to travel the short distance (4 km) to Woodah Island? The *Hope* was a 24 ft. powered launch. The sea may have been too rough: in the 'dry' season strong south-easterly winds blow off-shore in north-east Arnhem Land. But the winds usually slacken considerably at night: it will be recalled that Morey departed at 3.30 am on 27 July.

7) Is it true that the women were only captured on 1 August? Historian Keith Cole claimed that Reverend H E Warren, who interviewed the Yolngu in 1934, recorded that 'the lubras were out hunting, and the police managed to capture Japparri (sic), Tarkiera's (sic) young lubra and several others. They were handcuffed and detained *for two days* apparently for questioning'. [17] That claim was never refuted. Significantly, Warren did not give evidence in the subsequent trials, and Reverend Alf Dyer's attempt to give evidence along similar lines was ruled inadmissible. Djapparri told me in 1976 she could not remember how long she was chained to McColl, only that it was 'a long time' and that she was still chained to the policeman when he was speared. [18]

Only Hall and tracker, Big Pat, gave evidence at the trial of Tuckiar for the murder of McColl. By the time the trials eventuated Morey was at Lake Nash, about as remote a posting from the Darwin Courthouse as one could imagine, 1300 kilometres south-east of Darwin, in the days before bitumen roads. In the absence of refuting evidence we are left to wonder what actually happened during the period 28-31 July.

8) Why did it take so long to find McColl's body? Morey said that by the time they returned to the point where they had left McColl on 1 August it was 'sundown'. In his evidence in court Hall said they arrived back at 'about half past two' having left McColl at 'half past one', and that Mahony's incident was 'at about two o'clock'. Both Hall and Morey stated that the entire party searched for McColl until late that night - Morey said 'about 9 or 10 p.m.' and Hall said 'about midnight'. [19] Anybody who has spent five minutes with expert Aboriginal trackers must ask why, in perhaps five hours of daylight in the afternoon, and two more hours next morning, it took so long to find McColl, given that he was wearing sandshoes - an easy track to follow- and, by Morey's admission, had not moved far. Morey acknowledged that at all times the entire party was 'within earshot' of the spot where McColl was found. We are told of the

'impenetrable jungle'. If anything, Woodah Island is quite sparsely timbered by savannah forest. It has never been occupied on a permanent basis, even by Aboriginals, so the terrain probably has not changed in the last thousand years. I have camped on Woodah Island several times, first in 1957, when I was taken by Malkari Amagula to 'the exact spot' where McColl was speared. Malkari claimed to have been one of the Aboriginals chased by Morey's party on 1 August 1933. Malkari claimed that McColl was killed in a clearing among some low tangled vines, about head-height and no more than one hundred metres long and fifty metres wide. Vision is admittedly limited, a spear thrower could certainly conceal himself effectively, and a dead body might be hard to locate. But not for long, one would think, with seven experienced bushmen conducting a search, for it is hardly 'impenetrable jungle' and the area is quite small. Aerial photographs confirm that the entire island is very lightly timbered, except for mangroves on a few beaches. (see aerial photos 1 and 2, and photos 19-21)

9) Why did the police not burn or sink the canoes they found, if they really wanted to make it difficult for the Aboriginals to escape to the mainland? To tow a canoe is very dangerous, as they discovered.

10) We are told of the police plan to 'cut them off'. But the *Hope* had proved so inadequate they could not have been sanguine about their chances. Why not wait for the Aboriginals on the mainland, only 2 kilometres away? They would have been able to chase them on horseback if necessary. When they did chase canoes in the *Hope*, it rained - in August - the middle of the dry season! It is fair to state that light showers in August are not unknown in north-east Arnhem Land.

11) Reference is made to the '20 mile' walk back to the boat. The longest route possible, that is, along the beach all the way from McColl's grave to the northern end of Woodah Island where *Hope* was anchored, is only 10 miles (16 kilometres). Again, this could be excused as an irrelevant error of calculation - it probably seemed like 20 miles. It seems more likely, given the circumstances, that they would go 'straight' to the boat, in which case it was about 8 miles (13 kilometres).

The 'jungle', the 'rough seas' the unseasonal rain in the middle of the dry season just as they sought to intercept the canoe, are they not all part of an attempt, for some reason, to portray the experience as much more hazardous than it was? The Northern Territory Police, and Morey in particular, insisted on referring to the police force as 'The Mounted', and to one another as 'Mounted Constable', with capital letters.

Comparisons were often invited with the 'Canadian Mounties' on the basis that 'The NT Mounted' also 'always got their man'. The 'Boys Own Adventure' tone of this report, and the subsequent evidence and correspondence seem to seek to explain away the fact that 'The Mounted' was ignominiously put to flight by 'a few savages'.

The Federal Government and Northern Territory authorities obviously had no idea what was required to provide effective administration of Arnhem Land. The police were dependent on Christian missions in Arnhem Land to provide transport. Bridgland had had similar problems with the CMS launch *Hope* in 1929. In 1932 Morey and Mahony had to travel to Caledon Bay on the Methodist ketch *Maree*. Police patrols were always armed, indicating that 'control' over Aboriginals was seen as achievable only via coercion and the imposition of the superior 'white authority'.

Paradoxically, because Morey's report shows the police to have been ill-equipped, ill-prepared, inept, out-manoeuvred and just plain unlucky, it is open to the reader to accept the account as an honest, frank, human outline of what happened. But is it? There are 'time gaps' that invite speculation. What did the police do between 28 and 31 July? How long did they hold the women in custody? And why did they spend such an inordinate period of time on and around Woodah Island when the specific purpose of the patrol was to investigate the killing of five Japanese at Caledon Bay, 100 kilometres north? Had they been 'told something' in respect of the Aboriginals on Woodah Island? Did anybody in the police party have a 'hidden agenda'?

Nobody from the NT Police ever spoke to Gray. Had they kept in touch with him they would have known that, on the day McColl was killed at Woodah Island, Gray was north of them, at Caledon Bay, on peaceful terms with the men the police sought, the killers of the Japanese, and already talking to the Yolngu about how to avert another Coniston-style massacre. Morey had ridden almost to Caledon Bay while waiting for the *Hope* to arrive. If only he had ridden a few miles further.

ENDNOTES: CHAPTER 2 ON PATROL WITH THE MOUNTED

- 1 I knew the three men quite well. I met Ted Morey as the very capable manager of Coolibah and Beswick stations in the Northern Territory, and later when he was in charge of the South Australian Mounted Police stables. Jack Mahony was the genial and gregarious 'Mine Host' of the Larrimah Hotel after he retired from the NT Police in 1953. Vic Hall, who was partially blinded in the 1942 bombing of Darwin, lived at Peewit Camp, East Point, Darwin in the 1950s. He wrote books and articles, mainly about his police force activities. Hall was also a talented artist. For further details see *Northern Territory Dictionary of Biography* Volume One, NTU Press, 1990 pp. 195-8 (Mahony) and pp. 213-6 (Morey) and Volume Two, 1992 pp. 79-80 (Hall).
- 2 Interview with Stewart McColl, Sydney 1976. Mickey Dewar *Black War in Arnhem Land* p. 54 wrote that Albert McColl 'had arrived in Darwin from Melbourne a little over a year before and was a married man'. Her sources were probably the *Melbourne Herald* which erroneously reported on 14 August 1933 that 'McColl had been in the Territory for about a year. Before that he had been in the Melbourne police force for about seven years', and a *Bulletin* article, quoted in the *Northern Standard* of 28 December 1934, which falsely speculated that 'the pity lavished on Tuckiar, who seems well able to look after himself, might be spared for the young widow whose life he blighted when he speared her husband'.
- 3 Interview with Ted Morey, Adelaide, 1975.
- 4 This refers to Namarluk and other Aboriginals who killed the Japanese crew of the lugger *Ouida* in the Fitzmaurice River region, south-west of Darwin, in 1931.
- 5 This refers to Morey and Mahony's fruitless patrol to Caledon Bay in November 1932. Letter, Albert Stewart McColl to Walter Stewart McColl, 11 November 1932, Stewart McColl Collection. Copies of these letters held by Ted Egan. The McColls claim descent from Finn McCool. Stewart was a middle name for all members of this family, but Walter Stewart McColl, as oldest son, was called 'Stewart'.

- 6 Letter, Albert McColl to Stewart McColl, 11 April 1933. Stewart McColl Collection
- 7 Interviews (4) with Stewart McColl, Sydney, 1976
- 8 Letter, Albert McColl to Stewart McColl, 2 March 1933, Stewart McColl Collection
- 9 Vic Hall referred to this tracker, Dick, as Menikman.
Dreamtime Justice Adelaide, Rigby, 1962, p. 32
- 10 Department of the Interior file 47/1434
- 11 Morey submitted a claim for £18-10-10 to cover the cost of stores pillaged by Aborigines at Blue Mud Bay when he was away with the *Hope* at Woodah Island. After lengthy correspondence between Darwin and Canberra the government agreed to recompense £17-0-4. A diligent clerk checked Morey's prices and was able to effect savings for the government of £1-10-6. NT Administration file 47/1434, 5 September 1933
- 12 Sergeant R Bridgland, report to Inspector Stretton, Darwin, 25 August 1929. Bridgland's patrol was in response to a letter from Reverend HE Warren, at that time Superintendent of the Groote Eylandt mission, advising that on 8 January 1929 the 'Balamumin (sic) tribe had come to Groote Eylandt and attacked the Yetibah (sic) tribe'. Warren said the attackers 'hacked one of the men to pieces and succeeded in spearing two others before the remainder made their escape. They then took possession of the camp and collected all the property and took the women and girls prisoners'. Loose papers held by the author.
- 13 Despite the 'fictional' nature of Vic Hall's book *Dreamtime Justice* there are indications, on pp. 75, 86 and 87 that all was not well between Morey and Big Pat.
- 14 Interview with Dawson Daniels Kambarawara, Ngukurr, 6 July 1994
- 15 V C Hall and Big Pat, evidence Darwin Coroner's court, 25 July 1934. Deputy Commonwealth Crown Solicitor's file DL 894
- 16 Interview with Djaparri Wirrpanda, Yirrkala, 1976
- 17 Keith Cole *Groote Eylandt Pioneer* Church Missionary Historical Publications 1971 p. 94. My italics. Cole is quoting from Warren's 'Journal'. Warren's 'Diary' is microfiched in the Mitchell Library, MSS 872 Item 3 CY Reel 482. The entries there approximate those quoted by Cole from Warren's 'Journal'. but page 85 of the 'Diary' seems to have

been amended by someone to delete what Tuckiar told Warren about 'the capture of his young lubra'.

18 Interview with Djarri Wirrpanda, Yirrkala, 1976

19 V C Hall, evidence Darwin Coroner's court 25 July 1934, repeated in NT Supreme Court 3 August 1934

CHAPTER 3
'TEACH THE BLACKS A LESSON'

Strong demonstrative force imperative, as natives numerous, hostile and cunning, many murders by them during the last sixteen years remaining unpunished.

Lt-Colonel R H Weddell, 27 August 1933 [1]

When Constable Hall reached Groote Eylandt he tried to contact Darwin police headquarters by radio from the CMS mission station at Emerald River. On 11 August 1933 Weddell sent this telegram to the Department of the Interior, Canberra:

UNSIGNED INCOMPLETE RADIO FROM GROOTE EYLANDT PRESUMABLY FROM MOREY LEADER CALEDON BAY PATROL STATES CONSTABLE McCOLL SPEARED TO DEATH WOODAH ISLAND NATIVES INVISIBLE IN THICK JUNGLE THROUGH WHICH PROGRESS ONLY POSSIBLE ON HANDS AND KNEES STOP CONSTABLE MAHONY HAD MIRACULOUS ESCAPE SPEARED THROUGH HAT BUT RESCUED UNHARMED ALTHOUGH AMMUNITION EXHAUSTED STOP OPERATIONS PATROL DEVELOPING SERIOUS NATURE NATIVES AGGRESSIVELY HOSTILE THEIR CASUALTIES UNKNOWN STOP CLONCURRY INLAND MISSION WIRELESS THROUGH WHICH ABOVE WAS SENT STATES TRANSMITTER CEASED FUNCTIONING BUT BELIEVE RECEIVER MAY STILL BE WORKING STOP ENDEAVOURING ESTABLISH CONTACT WITH GROOTE EYLANDT. [2]

J A Carrodus replied on behalf of the Minister. He told Weddell to try to establish contact with Groote Eylandt, to advise the address of McColl's next-of-kin, and suggested 'meantime, no publicity'. [3]

Weddell asked that the lighthouse ship *Cape Otway* assist in establishing contact with the police patrol, and Carrodus replied that 'the master of ship has been instructed get in touch with you and co-operate if necessary'. [4] On 12 August Weddell wired:

CONTACT WITH MISSION NOT ESTABLISHED AND AS THE NATIVES PREVIOUSLY MADE THREAT TO ANNIHILATE ANY POLICE PARTY ALSO THE

MISSION I AM SENDING FIVE ADDITIONAL CONSTABLES WITH SIX TRACKERS BY THE MAROUBRA TODAY TO JOIN LIGHTHOUSE SHIP WHICH WILL PROCEED TO THE SCENE OF OPERATIONS IMMEDIATELY AND KEEP IN TOUCH WITH ME BY WIRELESS. [5]

Later that day he advised that he had established contact with Hall at Groote Eylandt, and that the above arrangements were cancelled, pending Morey's return to Darwin. [6]

When Morey arrived at Roper River he was given a telegram that instructed him to travel immediately to Darwin, leaving Mahony at Roper Bar police station.

The Minister for the Interior, J A Perkins, issued a press statement on 14 August 1933, announcing the death of McColl and the 'miraculous' escape of Constable Mahony. Immediately there were demands that the *Balamumu* be 'taught a lesson'. Typical of those advocating such action was 'Urapunga Jim' Gibbs, a pastoralist. He sent this telegram to Harold Nelson, MP, Federal member for the Northern Territory:

REQUESTED BY ALL PIONEERS WIRE YOU INSTRUCT CANBERRA ABORIGINALS THIS CORNER MUST BE ADVISED GOVERNMENT POWER OTHERWISE FORCED TO ABANDON LEASES. [7]

Much more numerous were letters and telegrams sent by bodies like the Australian Aborigines Amelioration Association to the Prime Minister, 'noticing Darwin suggestion special patrol party against Arnhem natives' and respectfully urging 'that proposal be disallowed and precautions taken against possibility of repetition of shootings accompanying similar expeditions in the past'. [8] Reverend Jennison, formerly a Methodist missionary in Arnhem Land, wired the Minister:

STRONGLY OPPOSE PUNITIVE EXPEDITION CAN SETTLE TROUBLE WITHOUT FORCE SPENT TWO YEARS EAST ARNHEM JAPANESE SURVIVORS 1923 REFUGED MY STATION URGE SEND NO POLICE GLAD PLACE MY KNOWLEDGE YOUR SERVICE [9]

There were more novel suggestions. Mr George F Clifford, a gentleman 'with colonial experience' said the way to handle this situation was to send

aeroplanes to drop leaflets with messages in the local language, urging the savages to surrender. He felt this had worked admirably in India. [10]

Weddell sent this telegram to the Department of the Interior on 27 August 1933:

MOREY ARRIVED DARWIN TWENTYSIXTH AND FURNISHED FULL REPORT COPY OF WHICH WILL BE FORWARDED NEXT AIRMAIL STOP CALEDON BAY ABORIGINALS OF JAPANESE AND MACASSAR STRAIN OF SUPERIOR MENTALITY CAPABLE OF FORMULATING PLANS OF ATTACK BY MEANS OF STALKING PARTIES STOP VERY NUMEROUS AND AGGRESSIVELY HOSTILE CLEVERLY AMBUSHED McCOLL WHO BECAME DETACHED FROM REMAINDER OF PARTY IN DENSE JUNGLE WHOLE PARTY NARROWLY ESCAPING FIRST AUGUST STOP McCOLL NOT DISCOVERED TILL EARLY MORNING SECOND SPEARED THROUGH HEART BY IRON SHOVEL SPEAR DEATH NO DOUBT BEING INSTANTANEOUS BODY BEING TEMPORARILY BURIED ON ISLAND STOP AS MISSION DID NOT PROVIDE BOAT ORIGINALLY ARRANGED FOR BUT SUBSTITUTED RIVER LAUNCH HOPE WHICH WAS TOO SMALL AND GENERALLY UNSUITABLE FOR OPEN SEA AND AS PARTY OBVIOUSLY TOO SMALL. MOREY RIGHTLY DECIDED RETURN WITH HORSES AND CONTINUE OPERATIONS WITH BOAT ONLY IF PERMITTED. [11]

Again the 'Boys Own' language! The McColl family was notified, and McColl's mother wrote on 28 August 1933 from Sale, Victoria, to thank Mr Perkins for his sympathy 'in the loss of my much loved and faithful son killed by the Aborigines in Central (sic) Australia'. Generously, for her son's body was still in a shallow temporary grave at Woodah Island, she thanked the Minister for 'his burrie (sic) and all that has been done for him after his death'. She said she hoped 'to receive his belongings later from Darwin and all particulars as I am heartbroken over him as he was such good (sic) son to me all his life and loved by all who knew him'. [12] A letter from Constable Hall to Stewart McColl started a 'best chums' exchange in this vein:

The exasperating thing was that at no time could we see our assailants for the jungle, out of which spears came whizzing, thrown by unseen hands...We are going back - with a larger force - and everything possible will be done to bring these murderous devils to justice...The country in which these tribes live comprises hundreds of miles of swamp and

jungle, and is the worst and riskiest country in the world to work. The natives know every foot of it, and in the thick stuff, with it's (sic) little partial spaces here and there the spear is deadly, being silent and sure up to about forty yards. [13]

They were kindred spirits. Stewart McColl replied:

No doubt it was a terrific blow to you chaps to have found my brother speared, and it is fairly safe to assume that effective retaliation will be carried out by his comrades. Mac and I were always best of pals as well as brothers and have lived for long periods together...There is one thing I would like you to do for me and that is attend to Mac's things up there. I would like to have his several guns, and permission will be sought from General Blamey, Chief of Police here, for me to hold these. I understand that Mac got slain with a steel shafted spear. I have never seen these but have heard of them. I have a fair collection of weapons and should you be able to secure a few specimens of these I would be glad to arrange to get them... I would like to have a first hand chat on your exploit with Mac. I am aware that little can be said in a letter. Lastly, I know that I can absolutely rely on you and your friends to carry out the hunt for my brother's slayers in the same manner I would do so myself. [14]

Superintendent Stretton also wrote to Stewart McColl outlining the details of Albert's death. He concluded by 'regretting keenly the loss of a very promising officer, but that sense of loss is in some degree alleviated by the knowledge that your brother met his death facing heavy odds and maintaining the high tradition of the Service'. [15]

Mrs Port of Groote Eylandt Mission sent condolences:

On Sunday last we had a service in memory of Mr McColl. The Communion table was draped with the Union Jack and in recognition of his life given in service to his country the National Anthem was sung. The burial service was read and

the hymns 'Peace Perfect Peace' and 'On the Resurrection Morning' were sung. An address was given which was very impressive, the whole service being one of beauty and reverence. [16]

By my judgment after four interviews with him in 1976, Stewart McColl derived considerable reflected glory from his brother's death. In 1933 he thanked everybody for their condolences and asked Stretton to send him copies of any photographs, for 'a lady novelist is here from London and wishes to write a story around his life'. [17]

In Darwin Weddell had a long meeting with Stretton and Morey and then sent a coded telegram to Canberra:

YOUR TELEGRAM OF 14TH AUGUST AFTER CONFERENCE WITH SUPERINTENDENT OF POLICE AND MOREY CONSIDER IT ESSENTIAL STRONG PARTY OF TWELVE WHITES TWELVE ABORIGINALS AND ONE COOK BE DESPATCHED END OF SEPTEMBER BY MAROUBRA STOP ABOUT WHITES, WILL BE CIVILIANS EXPERIENCED BUSHMEN SWORN IN AS SPECIAL CONSTABLES EACH PAID £5 PER WEEK AND KEEP STOP STRONG DEMONSTRATIVE FORCE IMPERATIVE AS NATIVES NUMEROUS, HOSTILE AND CUNNING, MANY MURDERS BY THEM DURING THE LAST SIXTEEN YEARS REMAINING UNPUNISHED STOP THESE ABORIGINALS ENTIRELY UNIMPRESSED BY THE GOVERNMENT'S EFFORTS THEIR THREATS TO ATTACK ANY POLICE PARTY HAVING BEEN EFFECTED STOP CONSIDER MISSION IN IMMINENT DANGER IF IMMEDIATE ACTION NOT TAKEN STOP PROPOSE ARMING PARTY WITH TWENTY RIFLES AND 2000 ROUNDS OF AMMUNITION, TWELVE REVOLVERS AND 1000 ROUNDS OF AMMUNITION AND FOUR SHOT GUNS AND 300 CARTRIDGES STOP PLEASE OBTAIN AND FORWARD BY MARELLA WITHOUT FAIL TWELVE .450 REVOLVERS AND 1000 ROUNDS REVOLVER AMMUNITION, TWELVE BANDOLIERS ALSO TWO PAIRS OF BEST FIELD GLASSES NOT FORGETTING THE WIRELESS SET STOP IN VIEW OF PAST EXPERIENCES CONSIDER CASUALTIES AMONGST THESE ABORIGINALS INEVITABLE BUT EXPERIENCED LEADER WILL BE INSTRUCTED TO GUARD AGAINST UNNECESSARY KILLING STOP GLAD TO RECEIVE IMMEDIATE ADVICE SO THAT ARRANGEMENTS MAY BE MADE TO CHARTER MAROUBRA AND ENGAGE SPECIAL CONSTABLES STOP IF SENATOR ELLIOTT DESIRES TO ACCOMPANY PARTY PLEASE ADVISE HIM TO PROCEED TO DARWIN BY SEPTEMBER MARELLA. [18]

The influence of J A Carrodus, Chief Clerk, and H C Brown, Secretary and Permanent Head of the Department of the Interior in Canberra, was henceforth of vital importance. Both were hard-headed, experienced public servants; and it is fascinating to trace their manipulation of events. Carrodus minuted Brown, concerning Weddell's telegram:

I am not keen on including civilians in the party even though they be sworn in as Special Constables. Nevertheless we cannot confine the party to police without serious detriment to general police work. The party, to be of any use must be fairly large, because the abos (sic) having routed the first party, will be in fine fettle and will certainly attack the second expedition. I think we must do something, in view of the killing of a police constable. Otherwise the lives of all whites in the north-east will not be safe. Everything will depend on the calibre of the officer-in-charge. [20]

Brown in turn recommended to Perkins that the firearms and ammunition be forwarded, but that the Administrator be instructed to 'take no action regarding swearing-in of special constables or despatch of party until further advised from Canberra'. [21] He went on to ask Weddell to justify the expedition on the basis of acquiring evidence, and identifying and prosecuting offenders, 'failing which it would appear futile to risk further loss of life and bloodshed'. [22]

Brown and Carrodus were aware of the international outcry that followed the Coniston shootings in 1928. They were wise to play for time, for on the same day that Weddell hastened to reply that 'ample evidence [was] available' and sought 'early advice if Minister approves despatch of party', [23] telegrams, letters of protest and editorials began to appear. The north buzzed with rumours about the proposed 'punitive expedition', and these filtered quickly to the 'southern do-gooders and ratbag organisations'. [24] Archbishop Mannix, the controversial and politically influential Roman Catholic Archbishop of Melbourne, sent this telegram to the Prime Minister:

WITH I HOPE THE MAJORITY OF AUSTRALIANS I WOULD REGARD THE PUNITIVE EXPEDITION WITH GRAVE MISGIVINGS AND THE POSSIBLE RESULT WITH HORROR...[25]

Miss Olive Pink, a Sydney anthropology student who would soon go to Central Australia to become one of the Territory's great identities and eccentrics, asked Lyons a pertinent question:

FOR SAKE OF ORDINARY HUMANITY DASH EVEN NOMINAL CHRISTIANITY
AND NAME OF AUSTRALIA DO NOT SEND EXPEDITION AGAINST ARNHEIM (sic)
NATIVES WHAT IS CHIEF PROTECTOR FOR [26]

On 4 September the former Australian Prime Minister, S M Bruce, now Minister without Portfolio in London, sent a telegram to the Australian Prime Minister, J A Lyons, advising of protests in London from the Anti-Slavery Society, the Aborigines Protection Society, and the British Commonwealth League about the proposed 'punitive expedition against Caledon Bay Aborigines'. Bruce went on to say that the various groups all 'support the suggestion...that the conciliatory aid of the missionaries be invoked'. [27]

Australia was now part of the world. Lyons replied to Bruce on 5 September that 'the Government has made no statement whatever justifying assertions re punitive expedition. The phrase has been invented by the Press without any authority whatever. Government is advised that missionaries (at Groote Eylandt) are in imminent danger, and is ascertaining at once what can be done to provide protection which appears to be necessary and also to apprehend murderers'. [28]

Lyons telephoned Professor A P Elkin, head of Sydney University's Anthropology Department, asking for his opinion. Elkin urged that a 'peace party' headed by a missionary experienced in the region, should seek to make contact with the killers. [29] Elkin followed up with a letter to Perkins. The wily anthropologist had heard the euphemisms before. He wrote, "'Giving the natives a lesson" is, to those who know the north, more sinister than the term "punitive expedition"'. In 1926, he wrote, following a police-organised massacre in the Kimberley region of Western Australia, missionary John Gribble apprehended an Aboriginal who had killed a white man: thus the Aboriginal was brought to trial rather than suffering the fate of at least thirty other innocent people who were shot, then burnt by police investigating the killing. Elkin suggested that Perkins canvass the mission bodies. [30] But on 9 September 1933, the firearms, bandoliers, ammunition and binoculars and two-way radio ordered by Weddell were forwarded to Darwin on SS *Marella*. [31]

First suggested for the role of 'conciliator' was Gordon Sweeney of the Methodist Overseas Missions (MOM). Sweeney was based at Goulburn Island. He would have been an excellent choice: an intelligent, forthright man, he was also a licensed surveyor and a fine bushman. [32] But Reverend Theodore Webb, the senior Methodist in the north, opposed the idea of missionaries doing 'police work' so the Methodists declined to participate. The Anglican Church Missionary Society (CMS) however, conscious of the religious/political advantage involved in 'getting a foot in' north-east Arnhem Land, quickly volunteered the services of Reverend H E Warren, Reverend A J Dyer and a lay missionary named Donald Fowler. Fowler, an ex-Navy man, would be wireless operator. [33]

Dyer, who was Superintendent of Oenpelli Mission, wrote later that as soon as he heard the rumours about the proposed police punitive expedition he sent a telegram to his mission superiors in Melbourne saying that he was 'leaving on horseback for Caledon Bay at one o'clock in three days time'. [34] It was typical of the impetuous Dyer. His superiors immediately instructed him to remain at Oenpelli. But only three weeks later Dyer received another telegram from CMS:

GOVERNMENT PERMIT US ORGANISE PARTY MISSIONARIES TO APPROACH CALEDON BAY BLACKS AND ESTABLISH MUTUAL RELATIONS MEANWHILE SUSPENDING POLICE ACTION. WE EARNESTLY DESIRE YOU. WILL YOU GO?
[35]

Dyer could not leave Oenpelli quickly enough, and immediately began to relish being a 'celebrity'. He gave press interviews in Darwin on 'how to tame the Caledons with a toy squeaker', [36] delighting some journalists, annoying others, and generally bewildering the police and the Administrator, who had not yet been advised that the Commonwealth Government was seriously considering the proposal to allow missionaries to establish peace in Arnhem Land.

In Canberra Reverend Warren had an audience with Lyons. The Prime Minister gave Warren six months to make friendly contact with the Aboriginals and investigate the killings. In 1933 Warren was living in Tasmania, but he and Dyer had started the Anglican Mission at Groote Eylandt in 1921. In 1916 they had travelled up and down the coastline they now intended to revisit. [37] The three missionaries were to rendezvous at Thursday Island and sail to Groote Eylandt on the *Holly*.

ENDNOTES: CHAPTER 3 TEACH THE BLACKS A LESSON.

- 1 Department of the Interior file 47/1434, 27 August 1933
- 2 *ibid.* 11 August 1933
- 3 *ibid.*
- 4 *ibid.*
- 5 *ibid.* 12 August 1933
- 6 *ibid.*
- 7 *ibid.* date indecipherable, probably early September 1933
- 8 *ibid.* 15 August 1933
- 9 *ibid.* 2 September 1933
- 10 Department of the Interior file 33/7362, 5 September 1933
- 11 Department of the Interior file 47/1434, 27 August 1933
- 12 *ibid.* 28 August 1933
- 13 Letter, Vic Hall to Stewart McColl, 14 August 1933. Stewart McColl Collection.
- 14 *ibid.* 29 September 1933
- 15 *ibid.* 29 August 1933
- 16 *ibid.* 14 August 1933
- 17 *ibid.* 25 August 1933
- 18 Department of the Interior file 47/1434, 27 August 1933
- 19 People in the Northern Territory complain to this day of 'remote control' from the national capital. The fiery Harold 'Tiger' Brennan, at various times a Member of the NT Legislative Assembly and Lord Mayor of Darwin, used to approach apoplexy as he fumed about 'those blinking bods in Canberra'.
- 20 Department of the Interior file 47/1434, 28 August 1933
- 21 *ibid.* 29 August 1933
- 22 *ibid.*
- 23 Department of the Interior file 47/1434, 31 August 1933
- 24 Letter, Jessie Litchfield to Stewart McColl, 17 August 1933. Stewart McColl Collection. Jessie Litchfield was editor of the *NT Times*. When that newspaper closed down she became a reporter for the *Northern Standard*. She was a grandmother of Marshall Perron, Chief Minister of the Northern Territory, who sixty years later maintained the tradition of 'bashing southerners'.

- but in more moderate language.
- 25 Department of the Interior file 33/7632, 5 September 1933
- 26 *ibid.* 4 September 1933
- 27 *ibid.*
- 28 *ibid.* 5 September 1933
- 29 I met Professor Elkin many times and studied Anthropology under him at ASOPA in 1956. He delighted in recalling the part he played in the negotiations to set up the Peace Party. He would sum up his recollections with a smug 'I referred the PM to my notes'.
- 30 Tigger Wise *The Self-Made Anthropologist* Sydney, Allen & Unwin 1985 pp. 62-3. See also *Royal Commission into Alleged Killing and Burning of Bodies of Aborigines in East Kimberley* Perth: Government Printer 1927
- 31 Order No. 722, 5 September 1933, Department of the Interior to the Defence Department, Department of the Interior file 33/814
- 32 Gordon Sweeney later became a patrol officer with the Native Affairs Branch of NT Administration. I served under him from 1952-4 when he was District Superintendent, Darwin. See J P M Long *The Go-Betweens* Darwin, North Australian Research Unit (NARU) 1992 for detail of the fine work done by Sweeney as a patrol officer.
- 33 See D Fowler *Guns or God* Brighton, Victoria: Lane Publishers, 1985
- 34 A J Dyer *Unarmed Combat: An Australian Missionary Adventure* Sydney, Edgar Bragg & Sons n.d., p. 6
- 35 *ibid.* p. 10
- 36 *ibid.* p. 11. Also reported in *Sydney Sun* 3 November 1933
- 37 Warren was made a Fellow of the Royal Geographic Society (FRGS) for revisions he made to Matthew Flinders' charts of the coastline in this region. See Keith Cole *Groote Eylandt Mission* CMS Historical Publications 1971 p. 13

CHAPTER 4 A POLICEMAN'S LOT

We, as members of the Northern Territory Police, who have the honour and interests of the service at heart, know that we would never recover from such an ignominy if this operation is taken from the police and placed in the hands of the missionaries.

Constable Ted Morey (Groote Eylandt)
5 October 1933 [1]

In September 1933 Constable Hall was at Groote Eylandt, having remained there since the death of McColl. He sent several telegrams to Darwin, advising that the *Balamumu* were poised, armed, and ready to attack the Groote Eylandt Mission station and if successful, take over the Roper River region. [2]

Other opinions on this subject varied. Superintendent Stretton wrote to Constable Heathcock, a very experienced officer relieving Constable Sheridan at Roper Bar, seeking his opinion. [3] Heathcock canvassed white settlers in the region. Heathcock himself thought that the rumours being fed to Hall by the Groote Eylandt Aborigines were 'all bunkum'. He was supported by J W Rogers, Manager of Roper Valley Station, who wrote 'The blacks are a peaceful, inoffensive lot...Exaggerated journalistic statements seem to amuse southern papers and incites (sic) missionaries and their like to make capital out of them'. But on 16 January 1934 Jim Gibbs of Urapunga station wrote to Heathcock: 'Just you mention the Balamooma's (sic) are coming and watch their eyes'. [4]

Before announcing the formation of the Peace Party, as it came to be called, and perhaps to seek to save face, Canberra approved a larger police presence at Groote Eylandt as 'protectors', but the police were specifically ordered not to resume their patrol to investigate the killings of the Japanese. Morey was re-appointed leader of the police party. He travelled overland from Darwin to Mataranka, thence Roper Bar, accompanied by a young constable, Clive Graham. [5] At Roper

Bar they were joined by Constable Mahony, who had remained there after the earlier patrol. Hall greeted his three comrades at Groote Eylandt when they arrived on the *Holly* on 27 September 1933. The police were instructed to report by telegram each week to Darwin, regardless of whether anything important occurred. [6]

The long-term missionaries at Groote Eylandt, led by Mr and Mrs Port, welcomed the presence of police, but the newly-appointed Superintendent, Reverend Wynne-Evans, while totally inexperienced, seemingly relished his newly-acquired position of power. Through the press Wynne-Evans and his wife sided with their Melbourne superior, Reverend R Long, in ridiculing the police presence as guardians of God's chosen ones. Was not the CMS motto: 'Allowed of God to be put in trust with the Gospel'? Long took things further, alleging the police had shot Aboriginals at Woodah Island at the time of McColl's death, although he did not say where he got that information.[7] Long was also angry that the police had been transported to Groote Eylandt on the *Holly*. He instructed that henceforth the police be given no access to CMS vessels.[8]

When told of the plan to send a party of missionaries to make contact with the killers of the Japanese and McColl, Morey protested to Canberra on 5 October 1933, presumably encouraged by Stretton:

The Honourable,
The Minister for the Interior,
CANBERRA F.C.T.
(Through His Honour the Administrator and Superintendent of Police)

Sir,

I have the honour to submit the following for your information and consideration.

The Reverend E.W.Evans, Superintendent of the Groote Eylandt Mission, informs me that he has received a telegram from the Secretary of the Church Missionary Society, Melbourne, calling for volunteers from the Roper River, Groote Eylandt, Oenpelli and Milingimbi Mission Stations for the purpose of forming an expedition to go to Arnhem Land and there endeavour to come in contact with the lawless Balamooma (sic) tribe. This tribe range from the English Company Islands to Blue Mud Bay and all other adjacent islands in the Gulf of Carpentaria.

The probable procedure of the Mission party, Rev. Evans states, would be to establish contact with the Balamooma (sic) tribe, and from them obtain the names of the natives who murdered five Japanese at the latter end of last year, and the late Mounted Constable A.S. McColl in August this year. The Missionaries would not attempt to capture the blacks but hold the opinion that the innocent members of the tribe may be enticed to hand the guilty ones over to the Missionaries and bloodshed would be avoided.

It is expected by the Missionaries that by the lavish gifts of tobacco, flour, tea, sugar etc., that they will win the confidence of the natives. The Missionaries, according to the Rev. Evans, would not leave the sanctuary of their boat but invite the natives out to them with the promise of gifts. Mission natives would act as interpreters and go-betweens.

To our minds the whole scheme is wrong, both in theory and in practice. It is really bribery and its harmful psychological effects on these natives is difficult to gauge.

The Balamooma (sic) tribe have to their discredit twenty-six known murders. These attacks are on persons visiting Arnhem Land for the purposes of trepanning, sharkfishing or prospecting. Apart from these series of murders the Balamooma (sic) tribe terrorise the more peaceably-disposed natives of the Walker and Rose Rivers, and Bickerton and Groote Eylandt tribes and hold them in perpetual fear and dread. They attack these tribes for no other apparent reason than to steal their women and satisfy their lust to kill. Here at Groote Eylandt in 1929 the Balamoomas (sic) made war on the island natives and captured their women and cut one elderly native to strips. The women were regained by Rev. Warren and natives.

During the month of January of this year Mr Port of the Groote Eylandt Mission visited the Balamooma (sic) tribe when they again came to the island. He had with him a quantity of tobacco for trading purposes. At conclusion of the trading Mr Port had some tobacco over. The natives told him that if he did not give that to them also they would spear him. Mr Port returned to the Mission expecting at any moment to get a spear in his back.

Early this year a Roper River native went for a 'walkabout' in the vicinity of Blue Mud Bay and there came in contact with a division of the Balamooma (sic) tribe. He spent some days with them and learned that the Balamoomas (sic) expected another police party out to capture them, and that they intended to kill the police party. When this was done they further intended to attack the Groote Eylandt Mission, and, if successful

there, to do the same at the Roper River Mission. The Roper River native heard the Balamoomas (sic) planning to kill him so that he would not warn the police or the Missions. He was fortunate enough to escape and returned to Roper River.

Natives (sic) yarns and bush-telegraph rumours are usually viewed with the deepest suspicion, but throughout that section of the country where the Balamoomas (sic) prevail, including Roper Valley, Roper River, St. Vidgeon's and Groote Eylandt the natives all confirm the opinions held by the Caledon Bay patrol party, who most emphatically stress the point that the Mission and Missionaries are in imminent danger of attack. Such universal opinions from the various groups of aboriginals must be taken as a grave warning.

On the 3rd October 1933 a staff meeting of the Groote Eylandt Mission was called to consider Mr. Long's telegraphed call for volunteers for Arnhem Land. At its conclusion the mission staff agreed that the Secretary of the Church Missionary Society, Melbourne, be informed that the Groote Eylandt staff held the opinion that the Missions should not interfere as it was entirely a police matter.

For the proposed missionary party to receive, in return for their gifts, only the names of the wanted natives is infinitesimal and of little consequence. The names of eighteen of the natives who were present at the attack on the five Japanese at Caledon Bay are already in our possession, together with a few names of the aboriginals who were on Woodah Island when the late Mounted Constable McColl was murdered. Once the tribe is captured there is no difficulty in obtaining evidence to determine who are the ringleaders and murderers.

The total number of the Balamooma (sic) tribe is unknown. They divide into groups and range along the coast and the islands. At different periods they congregate at some pre-arranged spot and time; hold their corroborees and then divide into groups again. The reason for this is that a very large tribe would take so much feeding that they would soon work their hunting grounds out. A small tribe is much easier to feed than a large one - hence the division.

As stated above, eighteen known Aboriginals were present at the killing of the five Japanese at Caledon Bay and it is reasonable to suppose that they were all, more or less, concerned in the murders. It will be seen that to obtain the murderers of the Japanese and the late Mounted Constable McColl, with all necessary witnesses, they will total a large number. It may be taken for granted that the head-men, or rulers of the tribe

take a leading part in these massacres, and for the missionaries to have these leaders handed over to them by their subordinates is passed without comment. They may, possibly, have the lesser fry brought to them by the head-men by promises of gifts or the threat that if they do not give them up the police will come out and shoot them all. And thus the police will receive another flowery tribute! Be that as it may the position will remain practically unaltered with the real culprits still at large.

The natives primitive creeds and codes ruling killings and acts of injustice may be sufficiently summed up in the Biblical passage of 'An eye for an eye and a tooth for a tooth', and is older than the Bible itself. Knowing this, it is not necessary to be prophetic or omniscient to follow the psychology of the natives minds if the missionaries visit them with tins of lollies, sticks of tobacco and supplication.

To put the case bluntly the Missionary and Church Societies of the Southern capitals have launched a no-confidence motion (as far as native affairs here are concerned) in either the Government, or the Northern Police or both.

Not understanding the position they scream hysterically and write frantically to the press denouncing a 'punitive expedition' which has never even been suggested.

Strong exception is taken by this party to a number of misleading and vituperative statements that have been published about the Police concerning this operation. Many of these people, it seems, consider the Police a lot of wanton murderers with no other pastime in life than to shoot down a tribe or two of blacks every morning before breakfast. One splendid young life has been sacrificed by giving the blacks every consideration and another life almost extinguished for the same reason.

I would unhesitatingly (sic) place my honour in the hands of Mounted Constables Hall, Mahony, and the late McColl in their treatment of aboriginals and to carry out their hazardous duties, under any circumstances whatsoever, to the limit of their endurance and in a manner that is both praiseworthy and commendable, and which the Government can only acclaim with approval.

Are these honourable men to be targets for all the insults and abuse that any person, however irresponsible, may write to the papers? The whole position is outrageous and unjust and we are placed in the unenviable plight of not being able to fight back. Our hands are tied as far as press comments go and have no other redress except by issuing a writ for libel, and on behalf of the Caledon Bay Patrol Party, I respectfully ask your

approval to sanction any libel action that may arise. We feel that we have been grossly insulted and that the entirely misleading and libelous (sic) statements being published should be checked.

Missionaries, clergymen and others are given - so far as this party has power to do - a hearty invitation to accompany this party on any of its patrols after natives. The severe nature, hardships, danger and great physical sufferings which are usual routine duties on these patrols would become apparent to them and an experience of this nature would render them fully alive to the delicate and difficult nature of our work and, perhaps, have the effect of them better understanding a much maligned service.

The following is a copy of a telegram from Mr Long, Secretary of the Church Missionary Society, Melbourne, to Mr S C Port, who was at this time Missionary-in-Charge of Groote Eylandt:

WIRE FULLEST INFORMATION SITUATION CALEDON BAY BLACKS LATEST DEVELOPMENTS ANY SUGGESTIONS PLANS AND OUTLOOK ALSO VIEWS OF STAFF ABOUT ANY FURTHER PUNITIVE ACTION BY GOVERNMENT AS POSSIBLY AFFECTING YOU AND MISSION WORK NOW AND FUTURE.

Mr. Port replied as follows:

NO KNOWLEDGE CALEDON BAY NATIVES PRESENT MOVEMENTS THEY HAVE NOT VISITED GROOTE THIS YEAR BUT EMBOLDENED BY THIS FURTHER SUCCESS MAY VISIT US WITH HOSTILE INTENTIONS ANY TIME STOP STAFF THINK ADVISABLE POLICE PROTECTION FOR MISSION AS UNLIKELY POLICE WILL TAKE FURTHER ACTION CALEDON BAY UNTIL AFTER WET STOP SUGGEST MISSION BOATS BE NOT USED FOR FURTHER POLICE EXPEDITION EXCEPT TRANSPORT ROPER TO GROOTE STOP THIS LAST POLICE EXPEDITION NOT IN ANY WAY OF A PUNITIVE NATURE STOP CONSTABLE McCOLL SPEARED BY AMBUSHED (sic) NATIVES UNDOUBTEDLY DANGEROUS BOTH TO WHITES AND PEACABLY (sic) DISPOSED NATIVES OF SURROUNDING TRIBES UNLESS CONTROLLED BY POLICE STOP UNTIL JUSTICE IS METED OUT FOR THESE SERIES OF ATROCITIES MISSIONARY WORK NOT POSSIBLE AT CALEDON BAY.

Mr Port has been at Groote Eylandt for the past four years and has a complete understanding of the present position and he expresses his opinion concisely and without exaggeration.

No appearance of Mr. Port's message can be discovered in any of the southern papers to hand. Mr. Port's telegraphic report appears to be the only authoritative statement forwarded from the scene of action to the Church Missionary Society, Melbourne, and its suppression makes one wonder and look for the hidden reason. The query is raised: 'Why was this not given for publication? Was it because the Church Missionary Society thought that by doing so they would lose a lot of public support? Was it because such may be detrimental for the purpose of raising funds?' It would seem that the Church Missionary Society are trying to construct a positive edifice on a negative foundation.

Much prominence is given to the following:

WHITES ON ISLAND NOT WORRYING. THE WHITE PEOPLE ON THE ISLAND ARE NOT WORRYING AT ALL. THEY ARE SIMPLY LAUGHING AT THE REPORTED DANGER.

It will be noted that this article gives the impression that the Missionaries on Groote Eylandt were laughing at the idea of the blacks attacking them. This is erroneous. This is the outcome of a telegram dispatched by Mrs. Evans (wife of the Rev. Evans) to her father before she arrived at Groote Eylandt and had no first hand knowledge of the situation. Mr. Perriman, Mr. & Mrs. Port and Miss Cross, who have years of service in this area, fully realise the possibility of the blacks attacking the Mission if no protection is given, and unanimously voted for Police protection. The Reverend Evans, now that he has received further facts of the matter, is aware that his Mission is in danger. If the Balamooma (sic) tribe do not make any hostile movements it is not to be construed that it was never their intention to attack the Mission for they will be informed by other natives that there is a police guard at Groote and abandon the attempt.

Mr. Long asks about further punitive action and what will be the effect on the natives and mission work. Mr. Long's obloquy is deeply resented. The fact of a religious body making such slanderous statements is incredible. Mr. Long should be sure of his facts beforehand.

The mission work among the natives on Groote Eylandt is almost negative. The mission here is only a segregation home for half-castes. The natives are prohibited inside the Mission enclosure. Their contact with the Mission is chiefly for trading purposes. In exchange for native produce such as fish, turtle, turtle eggs etc. they receive tobacco. If the Mission require(sic) additional labour for their boats or heavy work they

engage the services of a native. For a day's woodchopping the natives receive a stick of tobacco and a box of matches, valued about 3d. The Roper River Mission do (sic) not admit adult aboriginals, but children are taken in and schooled. It will, therefore, be obvious that the presence of the police can have no possible effect on the natives as far as the mission work with them is concerned.

After considering the matter from every possible angle we are forced to the conclusion that it is not concern for the natives that inspires all this agitation but that the Church Missionary Society is afraid that the police will see too much of the manner in which their Missions are conducted. During only a week's observation of this mission it is apparent that this segregation of the half-castes is not for their best interests from any possible viewpoint.

It is inconceivable that the Church people do not express any horror at these natives murdering whites and others but quite openly condone these series of massacres. Any expression of retaliation or punishment towards the natives is a signal for the churches and missionary societies to raise a cry of protest that is difficult to understand.

Another fact which these people conveniently overlook is that native spears are dangerous lethal weapons and have to be regarded as such. At close quarters spears are as efficacious as rifles, if not even more so, and they have the further advantage of being noiseless. These ironpointed spears leave such a gaping hole in a body that a bullet could never leave. One of the Japanese killed at Caledon Bay last year had a spear go in his back, through his body and out of his chest. The natives are uncannily accurate with them and have an instinctive aim, whereas most white men have to bring their rifle to their shoulder for an effective aim. There could not, of course, be any comparison of spears versus rifles over a distance, but as rifles are to be used only as a last extremity (vide instructions issued) their advantage in that direction is reduced to nil.

A vitally important matter why this party considers that the Arnhem Land patrol should be essentially a police operation and that is to clear up beyond all possible doubt the mystery of the two supposed white women who are reputed to be survivors of the ill-fated 'Douglas Mawson'. [9] Many rumours are current among reputable bush people with regard to them. From independent sources news of these women, from time to time, is received. This party has always made it a strict duty to obtain any information that may clear the matter up. From North Arnhem Land natives who were questioned last year and who were examined separately,

the same statement from each was received viz., 'that the Balamooma (sic) tribe have two half-caste women'. On being asked if they had seen them, they individually replied that 'They had not seen them but had only heard about them'. Natives in the vicinity of the Koolontong (sic) River gave exactly the same statements.

This is very puzzling. For natives to be living at different periods with the tribe and not see these women is most astonishing. North Arnhem Land natives who are on friendly terms with the Balamooma (sic) tribe state that they have heard that on their arrival the Balamooma (sic) conceal these women and discolour them with fat, ashes and charcoal. It is reported that the women write messages on bark and throw them in the sea and rivers. Wongoo (sic) king of the Balamooma (sic) tribe and Noming, another member, are supposed to have these women. Other reports have it that Nuckiar (sic) and Marrawatta possess them. The whole mystery is conflicting and confusing. It will always be a mystery until it is investigated until there is not the least shadow of a doubt remaining.

To do the whole operation thoroughly it would be necessary to establish a police post in the vicinity of Caledon Bay with an adequate force of police and trackers and for them to remain for an indefinite period. It would be necessary for this party to have a full plant of horses and a suitable boat for inland and coastal patrols. Such a post would have the effect of controlling the lawless elements in that area and make the coast less dangerous than it is at present.

The Balamooma (sic) tribe have an abundance of confidence in themselves and have not, to our knowledge, yet been beaten. It is anticipated that, unless taken completely by surprise or at a disadvantage these natives will be aggressively hostile and bloodshed will be unavoidable. Whose blood will stain Arnhem Land, whether black or white, or both, only the future will tell. It will be vitally necessary for the police party to be able to bear losses and casualties and yet be numerically adequate to carry on the operation to its finalisation.

For the missionaries to organise an expedition to do work that is essentially police duties is a suggestion, we hope, that has not been entertained. We feel that the whole scheme amounts to an act of vilification of the Northern Territory Police and we, as members who have the honour and interests of the service at heart, know that we would never recover from such an ignominy if this operation is taken from the Police and placed in the hands of the missionaries.

Trusting, Sir, that you will give this matter your gravest consideration.

Yours faithfully,

E H Morey
OFFICER IN CHARGE OF PATROL. [10]

A policeman's lot is not a happy one: a search suggests that Canberra did not respond to Morey's letter. [11] On 18 October 1933 Morey wrote to Darwin to outline the elaborate steps taken to effect 'the safety of the Groote Eylandt mission'. He reported that 'barricades of barbed wire have been erected to prevent any rush by hostile natives'; that a 'length of wire running from the mission house and connecting with the large bell erected in the compound will be rung in the event of danger'; that 'dogs are picketed at strategic points'; and that 'in the event of a night attack ships distress rockets will be let off'. Morey anticipated that 'these will have a bewildering effect on the natives'. [12]

Warren, Dyer and Fowler arrived from Thursday Island on 21 November to a cool reception from the police, who had taken over 'our beloved station'. Warren wrote to his wife to tell her of 'armed black boys called trackers...barbed wire entanglements...and one is not allowed to go about without a police escort'. He felt it was 'a rotten subterfuge...all part of a policy to keep up fear in the minds of all on the station'. [13]

There was another unhappy starting point for the peacemakers. Only a few days previously, on 15 November, the young Reverend Wynne-Evans had fallen while carrying a loaded shotgun, and killed himself. He was buried in the bush - but later re-buried at the mission. [14] Warren and Fowler took the distraught widow to Roper River mission, thereby delaying the departure of the Peace Party. Dyer hinted at the longer-term aspirations of the Church Missionary Society when he recorded that, during the absence of Warren and Fowler, he 'was to collect tools, seeds and other equipment necessary to start the mission station among the Caledons'. [15]

Dyer wrote that 'the police pressed us to take rifles and ammunition, but we declined even to take a shot gun for game'. [16] Warren haughtily told Morey they would take 'nothing offensive beyond medical supplies and love and faith in God'. [17] Dyer did take a portable organ and a football, but there was no further mention of the

'toy squeaker'. The Peace Party left Groote Eylandt mission on 5 December 1933. That same day Morey wired Darwin:

RELIABLE INFORMATION RECEIVED THAT ENTIRE CALEDON BAY TRIBE MUSTERED AT CAPE BARROW EXPECTING ANOTHER POLICE PARTY OUT STOP THEY ARE WAITING TO AMBUSH PARTY AND WHEN POLICE KILLED OR DO NOT COME BLACKS PLAN TO VISIT GROOTE WITH HOSTILE INTENTION STOP ALL PRECAUTIONS BEING TAKEN STOP HOLLY BEING ADVISED ENDS. MOREY [18]

Nowadays it is called gamesmanship. In a follow-up telegram the next day Morey advised Stretton:

ABORIGINALS REPORT McCOLL'S BODY REMOVED AND DESECRATED. [19]

In the absence of attacks the police officers played a bit of cricket, swam in the Emerald River, and posted extracts from their diaries to the southern press. This was understandable frustration. Everybody else with an opinion about the events immediately 'went national', especially those alleging that the police were about to start shooting. Eventually Mahony's diary was published by the Melbourne *Herald*, and contained an interesting account of the day when McColl was killed. This will be considered later. [20]

Warren's party sailed north towards Caledon Bay. It was the worst time of the year, for the rain does not come to north-east Arnhem Land until after Christmas, and it was hot, humid, sticky and uncomfortable. The *Holly* was cockroach-ridden. The missionaries consoled themselves with 'words of prayer'. Dyer professed himself anxious to meet up with the killers, for 'like St Paul I oftentimes purposed to go unto them'. [21]

The missionaries arrived at Caledon Bay on 6 December and were confronted by silent, staring Yolngu, who told Gray later they thought the tall Warren was a policeman. Warren's Aboriginal companions were then recognised, and the Peace Party was given an enthusiastic welcome. They were taken along the beach, where they were surprised, and not a little piqued, according to Fred Gray, to find two very relaxed white men, Gray and Andy Wright, and two Aboriginal men from Darwin, the Holtze brothers, all on good terms with the locals. Gray introduced Warren formally to the *Djapu* Yolngu (but not yet Wonggu,

who was away) and the white men began to exchange notes on the various killings. [22]

Gray was disturbed to hear that the police considered the Yolngu were members of 'one tribe' and thus collectively responsible for the deaths of the Japanese and McColl. Gray had talked to Wonggu about the likelihood of a punitive party, and had convinced the old man that 'before the dry season' he (Gray) should take the killers of the Japanese to Darwin for 'talks' during which they could establish that they had justifiably killed the Japanese because Yolngu *rom* (law) had been violated by the insult to Wonggu.

Then Gray gave the Peace Party further dramatic news. The previous February he had sailed *Northam* from Darwin to Arnhem Land. He stopped at Milingimbi Mission, en route to Matamata, on the mainland near the English Company's Islands. (See map 3). There he was asked by Reverends Webb and Shepherdson if he could provide assistance to two white men whose boat had broken down. They were William Fagan, a Tasmanian, and Frank Traynor, formerly a hairdresser, from Sydney. Shepherdson professed himself unimpressed with the pair, [23] who stated they were 'heading east' but to no specific destination - maybe Thursday Island, maybe Burketown, maybe Borroloola. They had no money, no supplies, and were typical drifters of the Great Depression.

Anxious to be rid of them, the missionaries gave Traynor and Fagan some supplies, and Gray offered to tow them as far as Arnhem Bay. Gray told the pair of the killings of the five Japanese in September 1932, and suggested they avoid contact with Aboriginals, but Traynor said he was not unduly concerned. 'One white man is worth any sixty niggers', he said. At Matamata they parted company. Gray drew them a map, gave them a compass, and Traynor and Fagan sailed east in their red and white cutter.

Gray collected a load of trepang at Matamata, and sailed to Darwin where he returned *Northam* to her owner, Murumatsu. In June 1933 he headed back to Arnhem Land in another lugger, *Llyris*, which he had hired from Clarke Pearling Company. At Elcho Island he was told by a Yolngu man, Burrumurra, that two white men had been killed recently at Woodah Island. Gray was heading for Caledon Bay, but he wrote a letter and sent this with two Yolngu men, Bunya and Bunaka, who said they were going west, by canoe, to Milingimbi. In the letter Gray told Webb and Shepherdson of the reported killings at Woodah Island, so they could report by radio to the police in Darwin. Gray thought the men

killed must be Traynor and Fagan, as there was no other information of white men in the region. Because he knew Woodah Island was almost one hundred kilometres south of Caledon Bay he also assumed (correctly) that Wonggu's clan, the *Djapu*, were not involved with the latest killings. Gray duly arrived at Caledon Bay, where Wonggu confirmed that yes, two white men were reported to have been killed 'down south'. Gray resumed trepaning at Caledon Bay.

Over the years much has been written and surmised about the events of 1932/33 in north-east Arnhem Land. Some writers have claimed that Traynor and Fagan were killed in November 1933. [24] They were almost certainly killed in March 1933. The reason for the confusion is that Gray's letter, written in June, was not delivered by hand of Bunya and Bunaka at Milingimbi until November. [25] Djaparri Wirrpanda, Tuckiar's wife in 1933, told me in 1976 that Tuckiar, Mirera and Djimbaryun killed two white men 'on a white boat' at Woodah Island. [26]

It is essential to know:

- that two white men (beyond reasonable doubt Traynor and Fagan) were killed by Yolngu at Woodah Island, probably in March 1933;
- that one of the men who killed Traynor and Fagan was Tuckiar, the husband of Djaparri;
- that Djaparri was 'on the boat' with the white men when they were killed;
- that Djaparri said she and other women had been 'fucked' on the boat by the two white men
- that the two white men had been killed because of this; and
- that all these things happened before McColl was killed. [27]

It is significant, too, that the killings of Traynor and Fagan were not reported to any white person other than Gray by July 1933. The police in Darwin had no knowledge of any killings other than the Japanese at Caledon Bay in September 1932. When Morey and his party landed at Woodah Island in August 1933 the Yolngu probably surmised that the police were there to investigate the killings of Traynor and Fagan. How ironic that one of the women captured by the police was Djaparri, whose husband, Tuckiar, had already killed two white men who had abducted her.

Back at Caledon Bay Warren, Dyer and Gray could see that all sorts of ramifications were possible, for it seemed likely the same Yolngu who killed McColl were implicated in the earlier killings of

Traynor and Fagan. Gray agreed to continue to negotiate with the killers of the Japanese, his sole concern. Warren and Dyer said they would go south to Woodah Island to try to establish the identity and motives of the killers of McColl, Traynor and Fagan. [28]

That night Gray served 'a feast fit for a king' - oysters, crab, fish, potatoes, rice, custard and stewed fruit. [29] For the next two weeks the missionaries used Caledon Bay as a base while they established contact with as many Yolngu as possible. Runners were sent with message sticks to invite Wonggu and other leaders to 'come and meet us on the beach, to talk about what the Government, the big-fella-boss, wanted them to do'. [30] Dyer later wrote:

- We had been told by people whose knowledge of the Territory entitled them to speak, that it was perilous in the extreme to enter Caledon Bay unarmed, and that, even if we were not slain out of hand, any effectual contact with the tribe would be impossible. As it actually turned out, we were greeted with cheers instead of spears, and found that friendly relationships and a camp in the tribe's home base had been established for us by a white man who did not even know of our existence. [31]

Although in the distance they could see 'the smoke signals being put up by our messengers to Wonga (sic) the Caledon chief' [32] Warren and Dyer were not to meet Wonggu or the killers of McColl, Traynor and Fagan on this voyage of the *Holly*. They planned to be back at Groote Eylandt for Christmas, so they concluded their initial visit to Caledon Bay with a service of Thanksgiving, followed by a rough-and-tumble game of football on the beach! Dyer recorded that 'as always, my heart warmed to these simple and lovable people, and my own thanks were unfeigned.... I prayed earnestly that these lips might yet sing and love the songs of Zion, and these wild hearts come to feel "the peace of God which passes all understanding"'. [33]

En route to Groote Eylandt the missionaries met Clara Dilyera. Clara told them that Tuckiar was the man who had speared McColl, but she did not know who had killed Traynor and Fagan other than, again, it was 'cheeky buggers'. On Woodah Island a man nicknamed Monkey took Warren to McColl's grave. Warren exhumed the remains, but not before:

I took four photos of the grave - two before it was touched by me, and two after bones had been removed, to show how shallow the grave was. After removing logs I removed bones with my own hands - mainly only backbone and head remaining in place. Remainder scratched about under logs or scattered around as dogs had burrowed hole in feet and removed most of bones. Put in kero case. Dug up grave looking for more bones. Filled up and left. Possibly blacks had taken body up after burial to remove clothes, but had most certainly put it back carefully in its place, covered it, and piled logs on it, but dogs had disinterred it again. [34]

On 6 December Stretton had authorised Warren to exhume McColl's body 'in presence of one person who was present at burial and who can identify grave and body'. How this might have been achieved, given that the police, the only people present at McColl's burial, were now forbidden to leave Groote Eylandt, was not explained. [35]

On 18 December Weddell wrote to Interior, Canberra, advising:

Since the murderers of Constable McColl and Messrs Traynor and Fagin (sic) are now known, it is my duty, unless otherwise instructed, to take steps to apprehend the murderers. [36]

What was Weddell's source of information? The Peace Party had not yet returned to Groote Eylandt on 18 December, when Weddell wrote his letter. Warren telegraphed CMS on 8 December from *Holly* advising that 'three natives concerned in the killing of Japanese voluntarily surrendered themselves for arrest, believing Warren to be police', and concluding: 'Believe Fagan and Traynor died on Woodah Island'. [37] Warren sent no radio traffic after that owing to 'failure of transmitter'. [38] although he received, on 9 December, Long's reply: 'Rejoice news. Not yet disclosing fact surrender pending further advice from you'. [39] On 12 December Warren also received a telegram from Morey: 'Big concentration of Caledon blacks at Cape Barrow. Be careful'. [40]

The next contact between Warren and Long was on 22 December when Warren sent, from Groote Eylandt, a comprehensive 183 word telegram, still not naming any killers, but merely saying 'have

secured names of blacks supposed to be implicated'. [41] At that point Warren had only been told by Clara Dilyera that Tuckiar killed McColl; he had not yet been told who killed Traynor and Fagan. Long's track record suggests that he would not talk to the police.

Perhaps Warren had contacted Groote Eylandt by radio before his transmitter failed? It seems unlikely that he would tell the police what he had discovered before he told Long. The most likely explanation is that Morey, or somebody at Groote Eylandt mission, intercepted Warren's telegram to CMS as it was transmitted over the radio on the frequency Fowler used on the *Holly*, and passed the information on to Weddell? More intriguing is the thought that Big Pat passed on to Morey, or someone, information he had been given at Woodah Island when he questioned the women they had captured.

Weddell told Interior that Sergeant Bridgland would lead the proposed new police party, and said that 'although the object of the patrol is to apprehend the murderers, it appears to me that bloodshed is inevitable'. [42]

Weddell's proposal depended absolutely on the provision of 'a suitable power boat'. The Administrator asked that 'HMAS Moresby be stationed in North Australian waters' or perhaps 'some amphibious machines of the RAAF be requisitioned'. Canberra did not take the Administrator's request very seriously. They were committed to giving the missionaries a chance to resolve matters, and Weddell was told this on 18 January 1934. [43]

The Peace Party arrived back at Groote Eylandt on 20 December 1933. Morey grimly accepted the remains of Constable McColl and they were eventually taken to Darwin. On 27 December Stretton wired Warren:

VERY MUCH APPRECIATE YOUR SERVICES SECURING McCOLL'S REMAINS
MOREY REPORTS PORTIONS OF REMAINS RECOVERED BUT DISTURBED BY
NATIVES THEN PARTIALLY DESTROYED BY DOGS GLAD YOU TELEGRAPH
COLLECT WHETHER ANY INTERFERENCE BY NATIVES AND WHETHER CUSTOM
OF ABORIGINALS THAT DISTRICT DESECRATE GRAVE AND USE ANY PORTION
OF BODY FOR CEREMONIAL PURPOSES SEASONAL GREETINGS. [44]

Warren immediately replied:

MY OBSERVATIONS AT GRAVE POINT TO BLACKS HAVING REMOVED CLOTHES AFTER INTERMENT THEN REPLACED BODY IN GRAVE PARTLY COVERING WITH SAND AND CAREFULLY REPLACING LOGS ON TOP STOP DOGS LATER SCRATCHED AN ENTRANCE REMOVED MUCH OF BODY EXCEPT HEAD AND SPINE STOP DO NOT THINK ABOS WOULD USE ANY PORTION OF WHITE MAN'S BODY BUT WOULD NATURALLY REMOVE ANY CLOTHES AND I BELIEVE CLOTHES WERE SOLE OBJECTIVE IN THIS CASE. [45]

On 1 March 1934 Warren recorded that the Yolngu 'all denied touched body and stated police only buried body in shallow trench'. [46] On the day he was killed McColl was not in 'uniform' but was wearing khaki (probably police issue) trousers, a black 'Jacky Howe' singlet, sandshoes and a hat. He wore a revolver belt (see photo 14) [47] It seems a hasty judgement for Professor Elkin to record that the Yolngu 'had dug up the remains of McColl immediately...in order to get his uniform'. [48] Perhaps Elkin read Warren's diary. Perhaps Morey's telegram was taken literally. Yolngu desecration of McColl's grave seems decidedly out of character, but obviously Warren (five months after McColl's burial) found no trace of clothing. On Morey's admission, the body was buried in a very shallow grave, and Hall later stated that the bones 'had been chewed by dogs'. [49] Perhaps the clothing was destroyed at the same time.

In his book *Dreamtime Justice* Hall wrote this account of McColl's funeral:

Somehow we moved away, and kept on the move until we put the stretcher down half a mile away in open forest. This, we decided, would be where we would bury him in a temporary grave. The body could be exhumed later and taken to Darwin to be given full Police honours. With the camp tomahawk, the Trackers cut themselves digging sticks; then they dug a shallow grave at the foot of a big cedar. Big Pat insisted that he should be the only one to cut a pile of leafy boughs with which to line the grave. Just as Pat finished arranging the sweet-smelling greenery, Ted Morey looked at me.

'Can you, Vic?' he said. 'The Burial Service, I mean.'

I shook my head.

'Try'.

Every bird in the forest seemed to be singing as Pat stood in the grave and reverently took his boss's body in his arms, lowered it, and placed the big Police sombrero over Mac's face. In the cedar a pair of kookaburras burst into raucousness as I strove to remember the words of the Burial Service and began: 'I am the Resurrection and the Life....He that believeth in Me shall not perish but have everlasting life...' I heard my voice stumbling through the half-remembered words. Stooping, I took a handful of the light earth and cast it into the grave. It rustled as it fell on the folded hands of my friend. Big Pat, Roper Tommy, Dick, Reuben, and Menikman squatted around the grave, and cast in their handfuls of earth. A soft aboriginal requiem mingled with bird-song in the aisles of the forest. [50]

All very nice if it was accurate. We can probably assume that McColl's body was clothed, and that his hat was buried with him. But there are no cedars on Woodah Island, no kookaburras. Reuben was on *Hope*. And I am informed that McColl was not buried 'half a mile away, in open forest', but under some casuarina trees, fifty yards from where he was speared. (see photo 21).

ENDNOTES: CHAPTER 4 A POLICEMAN'S LOT

- 1 NT Administration file 34/11, 5 October 1933
- 2 NT Administration file 34/11. The Groote Eylandt Aboriginal people, the *Anintilyagwa*, to this day are apprehensive about the mainland Yolngu, whom they call either *Waninduguna* or *Balamumu*. Judith Stokes, a linguist with many years experience at Groote Eylandt says: 'All *Waninduguna* are "wild" to these people: that includes all mainlanders of north-east Arnhem Land, generally speaking'. (Letter to the author 16 January 1973). When I was Head Teacher at Angurugu, Groote Eylandt, in 1966 I remember on several occasions children saying they were very frightened 'because the *Balamumu* are coming'.
- 3 NT Administration file 34/11 Heathcook to Stretton 5 Dec 1933
- 4 Department of the Interior file 34/1141
- 5 Clive Graham eventually became the first NT Commissioner of Police to rise through the ranks.
- 6 Department of the Interior file 47/1434. Each week for six months the Administrator wired Interior, 'Morey reports all quiet Groote Eylandt'.
- 7 A deputation led by Long met the Minister in Melbourne on 10 September 1933. Long's allegations were quickly followed by similarly worded telegrams on 13 September from the National Missionary Council, Sydney, signed by Burton, and the Association for the Protection of Native Races (APNR) signed by Morley. Department of the Interior file 47/1434
- 8 Minutes of meeting with Perkins, 10 September 1933. Department of the Interior file 47/1434
- 9 Rumours that 'the *Balamumu*' held captive white women were almost as prevalent as stories about their marauding propensities. At least three police patrols had gone through north-east Arnhem Land since 1923, after reports of white women survivors from the *Douglas Mawson*, which was lost in the region. It was said that, in the best 'Phantom' traditions, the captive women often left pathetic messages on bark, pleading to be rescued. Almost certainly the explanation to the *Douglas Mawson* rumours is that there is - and presumably always has been - a family of albino Aboriginals in the region. They live currently in the

- Numbulwar area. Photographs of the family were published in *The West Australian* on 9 February 1993.
- 10 NT Administration file 34/11
- 11 The Australian Archives, Canberra, and the Northern Territory Archives, Darwin, were searched. Carrodus sent the original report to Brown 'for information' with the suggestion that the Minister might issue a press release. There is no indication that that happened. It is simply noted 'Seen by Minister. JAC' on Department of the Interior file 47/1434, dated 22 November 1933.
- 12 NT Administration file 34/11
- 13 Keith Cole *Groote Eylandt Pioneer* pp. 88-9
- 14 Keith Cole *Groote Eylandt Mission* p.35. See also Department of the Interior file 33/7632, where Miss Jean Finlayson wrote from East Malvern, Victoria, to the Prime Minister, (n.d.) to allege that the police had shot Wynne-Evans. She said that 'the police on Groote Island (sic) were there to silence any who could speak for the natives of Caledon Bay'. She urged the Prime Minister to 'get those police away at once before the other three men reach the scene and there is an organised massacre'. She was sent the standard 'Thank you for your letter' response. Keith Cole *Fred Gray of Umbakumba* p.37, wrote that Wynne-Evans' companions at the time he was shot 'were not Groote Eylandters, but *Balamumu* tribesmen, the same group that had killed the Japanese. This led to conjecture in Darwin that the *Balamumu* had been responsible for his death. The police camped at the Emerald River mission were convinced after full investigation, however, that he had not been murdered, but that his death had been accidental'.
- 15 A J Dyer *Unarmed Combat* p. 17
- 16 *ibid.* p. 12
- 17 Keith Cole *Groote Eylandt Pioneer* p. 90
- 18 NT Administration file 34/11, 5 December 1933
- 19 *ibid.* 6 December 1933
- 20 Melbourne *Herald* 10 May 1934
- 21 A J Dyer *Unarmed Combat* p. 20
- 22 Keith Cole *Groote Eylandt Pioneer* p. 90, wrote that Warren was introduced to Micky, Yama and Waidjung 'who were implicated in the killing of the Japanese and who wanted to give themselves up'. There is a photo of those three men on p. xiv, facing p.83.

- They probably were implicated in the killings. Occasionally Gunguyuma, who fired at Gray, was called Micky or Mickey. However, it was Mau, Natjelma and Narkaya who eventually went to Darwin and were tried for killing the Japanese.
- 23 Shepherdson was always wary of 'outsiders' entering Arnhem Land, but the 1930s were especially troubled times. The Arnhem Land Reserve for Aborigines, created in 1931, provided *de jure* protection for Aborigines: *de facto* there was a vast, unpatrolled coastline available to the hundreds of boats which plied the trepang and pearling beds, illegally landing anywhere they could get fresh water and safe anchorages. To the dismay of the Christian missionaries at Bathurst Island, Goulburn Island and Milingimbi, who represented the only European presence in 1600 kilometres of coastline, the crews of the boats traded tobacco, rice and liquor for water, anchorages and women. Originally the offenders were Malay and Japanese crews employed on Darwin-owned pearling luggers. In the 1930s there were many foreign-owned boats as well. See M A Bain *Full Fathom Five* p. 211
- 24 Among them R M and C H Berndt *Arnhem Land: Its History and People* Melbourne, Cheshire 1954 p.134, and Keith Cole *Fred Gray of Umbakumba* Bendigo, Keith Cole Publications 1984 p. 36
- 25 Records, Milingimbi Mission, quoted in Maisie McKenzie *Mission to Arnhem Land*. Adelaide, Rigby 1976 p. 74
- 26 Interview with Djaparri Wirrpanda, Yirrkala, 1976.
- 27 *ibid.*
- 28 Keith Cole *Groote Eylandt Pioneer* p. 9
- 29 *ibid.*
- 30 A J Dyer *Unarmed Combat* p. 25
- 31 *ibid.* p. 26
- 32 *ibid.* p. 27
- 33 *ibid.* p. 26
- 34 H E Warren *Diary 4 November 1933 to 14 April 1934* Mitchell Library ML MSS 872 Item 3 CY Reel 482
- 35 H E Warren *Telegrams re CMS Expedition 1933-4* Mitchell Library ML MSS 872 Item 4 CY Reel 482
- 36 Department of the Interior file 34/29, 18 December 1933
- 37 H E Warren *Telegrams re CMS Expedition* 8 December 1933
- 38 *ibid.*

- 39 *ibid.* 9 December 1933
- 40 *ibid.* 12 December 1933
- 41 *ibid.* 22 December 1933
- 42 Department of the Interior file 34/29, 18 December 1933
- 43 *ibid.* 18 January 1934
- 44 H E Warren *Telegrams re CMS Expedition* 27 December 1933
- 45 *ibid.*
- 46 H E Warren, *Journal*, quoted in Keith Cole *Groote Eylandt Pioneer* p. 100
- 47 See Vic Hall *Dreamtime Justice* facing p. 113
- 48 Tigger Wise *The Self-Made Anthropologist* p. 124
- 49 V C Hall, evidence to NT Supreme Court , *R v Tuckiar*
1 August 1934
- 50 Vic Hall *Dreamtime Justice* pp. 100-101

CHAPTER 5
BLESSED ARE THE PEACEMAKERS

Against individual criminals, black and white, or even against small groups, the 'Mounted' had never failed. This Arnhem Land business was another cup of tea.

Constable Vic Hall *Dreamtime Justice* p.130.

At Groote Eylandt Morey's police party continued to mount guard, swim, play cricket and simmer as they read the press cuttings which arrived with the Christmas mail from Roper River. The missionaries were getting good press in the southern papers, but the *Northern Standard* was beginning to reflect the more pragmatic opinions of those who 'really understand the blackfellow'. 'Smoko' wrote to the editor:

I say, oh Don McKinnon
What the devil does it mean
All this idiotic drivel
In your paper that I've seen;
Of these mission blokes that's going
Out into Arnheim's Land
After thieving murdering niggers
With a Bible in their hand

One will take a little whistle
With a shrill and piercing tone
While one will play a Jew's harp
And one a gramophone;
And when the mystic music
Floats out beneath the moon
Do they think the simple niggers
Will come dancing to their tune?

I've heard that charming music
Will soothe an angry snake
But, as to soothing niggers
Well, I think there's some mistake,
And perhaps the strains of music
Falling on the savage ears
May bring melodies of sorrow
Tuned with boomerangs and spears.

It may be I'm mistaken
But the chances are I'm not
To capture blacks with music
Is a lot of flaming rot;
For the killing blood is in them
And they'll kill whene'er they can
And they'll spear the man of gospel
As they would another man.

Now as to winning chances
And making good their boast
They haven't got an earthly
With the abos on the coast
And the abos in their glory
On the moonlit beach alone
Will corroboree till daylight
To a Jew's harp and a 'phone.

Go and preach to them the gospel
Preach it to your fill,
Play your Jew's harp and your whistle
And still you'll find they'll kill.
No, the only class of music
To satisfy the dead
Is the mighty roar of powder
And the hum of killing lead.

As Canberra mugs have sanctioned
That these parsons go and try
With nought but God and music

And the beggar's chance to die
Can you tell me. Don McKinnon
Can any judge decide
If it's a case of murder
Or a case of suicide? [1]

C E Gaunt, of Pine Creek, south of Darwin, was less poetic:

What is the opinion of the Territorians? Ninety-five percent of the people consider this affair a dirty, disgusting, missionary-ridden affair. Everywhere you hear it ridiculed. When General Gordon of Khartoum was massacred by a lot of savages, no better than the abo, did the English Government send a Methodist missionary out to parley with them, the only weapon a Bible in his hand? Not on your life. They pelted lead medicine at them - the only message that a savage race understands - and cleaned them up. [2]

After Christmas the missionaries repaired the radio on *Holly* and travelled to Caledon Bay again, via Roper River. At Roper River they met an Aboriginal named Smiler, who told of a recent big ceremony at Ourindi (Cape Barrow). (see map 3) This was the gathering Morey reported on 5 December 1933 as a preparation to launch an invasion of Groote Eylandt. Smiler agreed to travel with Warren and assemble 'the entire Caledon Bay tribe'. They dropped Smiler at Blue Mud Bay on 16 January 1934 and the *Holly* sailed north, looking for Traynor and Fagan's boat. They came ashore and witnessed the amazing but not atypical tracking ability of Aboriginals, that had seemingly deserted the police trackers searching for McColl. Among hundreds of other tracks on the beach a footprint was identified as Tuckiar's. Soon after they saw 'Tuckiar's wife'. (We are not told whether it was Djarparri. Tuckiar was variously said to have two or three wives). She ran away from them. Little wonder. [3]

The next day they met a man named Mundougal, who took them to Tuckiar. Tuckiar admitted he had killed McColl because the policeman had captured his women and held Djarparri for 'two days'. Tuckiar and Mundougal acknowledged that Traynor and Fagan were killed 'by *Balamumu*' (Tuckiar did not implicate himself in those killings at this point) and they took Warren's party and showed them the remains

of Traynor and Fagan's boat, on the beach at Grindall Bay. (see map 5) The boat wreckage must have been close to where Morey camped in July 1933, but the police obviously did not find the wreckage. Warren collected pieces of the boat as evidence and then took Tuckiar and Mundougal back to their camp. [4] The missionaries camped on the *Holly* where Warren made a bewildering entry in his journal:

Harold tells us after the men had left ship to go ashore police captured four women and tried to get information. McColl offered to mind them while others go to catch the men - Pat said if McColl was left alone he would not be seen again - three escape and McColl struggles with the other with handcuffs on. Dark now and he is speared. [5]

'Harold' was Harold Hamilton, a 'half-caste' from Groote Eylandt, skipper of the *Holly*. He is reported to have been a good speaker of local languages, and fluent in English, having been reared from childhood at Roper River and Groote Eylandt Mission. It is a mystery that Hamilton was not subsequently taken to Darwin. It may be argued that the missionaries and Gray did not intend presenting the Yolngu for 'trial' in Darwin, and thus would not wish to send 'witnesses' likely to be hostile to their best interests. But if they were going to Darwin for 'talks' Hamilton was surely the only person capable of any credible 'interpreting' on their behalf. Gray maintained that his sole concern was for the 'Caledons' - as he called the *Djapu* - the killers of the Japanese, and Hamilton was a stranger to them. But the dialects of north-east Arnhem Land are all very similar, and if Hamilton was able to interpret for Tuckiar during Warren's questioning he would certainly have been able to talk to Wonggu's people.

Another intriguing part of Warren's entry relates to Big Pat the tracker, who is obviously the 'Pat' referred to. When did Pat say that 'if McColl was left alone he would not be seen again'? To Morey at Woodah Island? To Harold Hamilton at Groote Eylandt? Or to both at different times? And how could Pat know that 'three escape and McColl struggles with the other with handcuffs on' unless he saw something or 'read' the tracks at the place where McColl was speared? And if Pat was so skilful a tracker [6] why did he take so long to find McColl's body?

At the time Warren and Harold Hamilton met Tuckiar Big Pat was at Groote Eylandt with the police party, and would have had

many opportunities to talk with Hamilton. Pat was from the Roper River region, and Hamilton had knowledge of that region's languages, having been reared there from childhood. [7]

On 19 January Warren and Fowler went ashore and met Tuckiar, Mundougal, and their wives and children. Photographs were taken and medical assistance was given to some sick people. Warren reported that Tuckiar's people were 'very nervous and scared'. [8] Dyer wrote that Tuckiar told them Wonggu was about to attack him, and that was the reason why Tuckiar would not accompany them to the scene of Traynor and Fagan's killing. [9] The missionaries sailed to Woodah Island where Dyer found, on the beach, 'the bones of a white man'. (see map 5). It will be recalled that Morey, Mahony and trackers Big Pat, Lock and Dick were camped for four days in this vicinity, from 28 to 31 July, when they made 'an extensive search' for canoes. Presumably they walked along all the beaches on the north end of Woodah Island. But they failed to see these bones. Dyer, not unexpectedly, claimed that he had 'a strong sense of Divine commissioning and guidance' as he walked 'straight to where the bones lay on the beach'. [10] The remains were placed in a box and later given to Constable Morey at Groote Eylandt.

On 23 January the missionaries sailed north and met 'the whole of the Caledon Bay tribe' - Wonggu the patriarch, fifty-seven men, and 'numerous' women and children. So much for Hall's rumours of thousands of marauding savages poised to threaten first the north and then the rest of white Australia. Again Warren found them 'nervous'. But Wonggu was most friendly and quickly gave Warren permission to establish a mission in the region. Warren took more photographs and promised to return in a month. [11]

Warren had a poisoned leg, caused by infected insect bites, and decided to return to Groote Eylandt. A few days later he had to be evacuated to Burketown Hospital for treatment. Dyer was also admitted to Burketown Hospital, his leg having been gashed by a spear when the impetuous missionary had insisted on breaking up a fight at Groote Eylandt. [12] On their return to Groote Eylandt the missionaries were given a letter Gray had sent, during their absence, from Trial Bay (see map 3) by hand of Narritjan Maymuru. *Llyris* had been wrecked in a big storm, and Gray and his crew were fortunate to survive. They salvaged most of their stores but lost their load of trepang. In this emergency, and in the absence of Warren, the police had - probably most enthusiastically - begun to prepare *Hope* to go to Gray's rescue.

Warren's return to Groote Eylandt thwarted the police move, however, and Warren quickly sailed north in the *Holly* to render assistance. [13]

On the way to Trial Bay Warren's party stopped again at Woodah Island, where Tuckiar and 'over a hundred' Yolngu were camped on 1 March 1934. Once again they went over the detail of the killings of Traynor, Fagan and McColl. Warren wrote:

1ST MEETING.

Tarkiera (sic) admitted having killed McColl because he had taken his young lubra. This is correlated by evidence of Randika and Clara. It appears the lubras were out hunting and the Police managed to capture Japparri (sic) and according to Tarkiera handcuffed her and kept her for two days apparently for questioning. On the evening of the second day McColl was left behind (apparently to mind the lubra). She made frantic attempts to get away and must have succeeded in getting McColl into the scrub and it was here that Tark. speared McC. he naturally being under the impression that the lubra had been taken for other purposes.

Traynor and Fagan were killed at Woodah Island by Tark. and Jambarion and as far as we can find yet there appears to have been no definite reason. They had spent several days on the island and although Tark. stated they were interfering with the lubras we have no correct evid. of that statement.

2ND MEETING

Tribe seemed much more at ease and in a perfectly frank way gave us all information about killing i.e. Tark. and Mer. killed T & F. One being killed on boat other on shore. They threw the body of the one in the boat into the sea. The reason for killing being that T & F had their lubras for 2 nights apparently paid for their services for the first night and refusing to pay for second night's services. Then according to Tark. and others T & F stating that they were leaving the next day they feared that T & F would take lubras with them so decided to kill them. Agreed to show where bones were.

3RD MEETING

On Woodah. Previous statements reiterated and little addit. information gained. Their story was in ref. to McC. McC held Tark. lubra. She dragged McC towards bush, struggled and called out to

Tark. to come and kill him as policeman was going to take her, they wrestled - Tark. arrived. McColl fired one shot and missed & then Tark. speared him. They all denied touched body and stated police only buried body in shallow trench. Re T & F killed one man on boat with tomahawk and the other made for shore and a fierce fight took place all the way between Merara and the white man. M. recd. blow over head which nearly finished him. The white man staggered ashore and died just near beach. Merara still has lump on his head which he showed us. [14]

At Trial Bay Warren and Dyer found Gray in high spirits and being looked after by Wonggu and the *Djapu*. When I talked with Fred Gray, in 1989, the old man, still hale and hearty and aged 90, looked back on his month at Trial Bay as 'the happiest time of my life'. Warren and Dyer decided to demonstrate their long-term intentions. They obtained Wonggu's permission to build a small chapel and a three-roomed house. The Yolngu gave them enthusiastic assistance, and in only eight days Warren dedicated St David's Church, built of bush timber, with sheets of stringybark for walls and roof (see photo 30) and conducted a ceremony of Holy Communion attended by Gray, Fowler and Dyer. The same evening fifty-two Yolngu attended another service where they were fascinated by the music of the small organ played with gusto by a doubtless joyful Dyer. While the building was in progress Fowler received a radio message from CMS, authorising Dyer to take Tuckiar and Mirera to Darwin. As Gray was anxious to keep faith with Wonggu by taking his three sons, Mau, Natjelma and Narkaya, to Darwin for 'talks' about the killing of the Japanese it was decided Gray would hire the cutter *Oituli*, the property of Mr Lousada, a staff member at Groote Eylandt. [15] Initially CMS proposed that Warren send Dyer with Gray on *Holly* but then felt that the mission body would be implicated, through their ownership of the lugger, in 'police work'. [16]

CMS obtained Government approval for Warren's suggestion that Gray be paid £150 to cover the cost of hiring *Oituli*. [17] CMS then instructed Warren to return south as quickly as possible and present his report. He was told that a public welcome was arranged, and also instructed to 'Bring large number of spears and woomeras from Groote. Excellent prospective sale now'. [18] Warren received from Wonggu an assurance that the 'St David's mission buildings' would be safeguarded until permanent mission staff could be recruited. On the

return trip to Groote Eylandt Warren's party called at Woodah Island.[19] They again met Tuckiar and Mirera, who agreed to travel by canoe to Groote Eylandt. Warren had been asked by Stretton if he would transport the police party to Roper River. He agreed, probably anxious to get rid of the police in case Tuckiar and Mirera arrived at Groote Eylandt prematurely, and were thereby exposed to the police.

On 16 March 1934 Warren conducted a funeral service and buried the latest set of human remains found at Woodah Island. Gray considered these to be the remains of William Fagan. [20]

On 17 March Warren took the four policemen and their three trackers to Roper Bar. The police travelled on horseback to Mataranka, carrying McColl's remains in a box on a packhorse. They caught the next train to Darwin.

On the return journey to Groote Eylandt Warren recorded that a 'squall struck us in the channel...could only make Cape Rancherie (sic) by nightfall. Anchored open sea and spent night rolling, deck under'. [21] When they arrived back at Groote Eylandt on 20 March Warren and Fowler quickly prepared to travel by *Holly* to Thursday Island. They departed at 10.30 pm that same night but had to turn back as the 'strong NE wind turned to a gale. Tried to make Chasm Island for shelter but could make no headway'. [22] Back at Groote Eylandt, they spent two days waiting for the weather to improve, and helped Gray and Dyer prepare *Oituli* for their journey to Darwin. On 22 March Tuckiar, Mirera 'and some of their tribe' arrived at Groote Eylandt, obviously having contended with the same weather conditions as they crossed the open sea in tiny dugout canoes. According to Warren, Tuckiar and Mirera 'again agreed to go to Darwin and put their case before the Government'. [23]

Tuckiar and Mirera obviously had second thoughts about going to Darwin with Gray and Dyer, and on 24 March they absconded overnight from *Oituli*. The next day they willingly rejoined the ship. *Oituli* sailed from Groote Eylandt on 25 March 1934, farewelled by Warren and Fowler, who then travelled to Thursday Island by *Holly* to board the steamer *Marella* for Melbourne. [24]

As the Yolngu sailed across the Arafura Sea to Darwin it is highly likely they thought they were going to be involved in some ritual whereby they and the enigmatic white men whom they called *balanda* would re-establish peace. A ritual something like the *Makarrita* perhaps?

ENDNOTES: CHAPTER 5 BLESSED ARE THE PEACEMAKERS

- 1 *Northern Standard* 30 January 1934
- 2 *Northern Standard* 25 May 1934
- 3 H E Warren *Journal*, quoted in Keith Cole *Groote Eylandt Pioneer* p.94
- 4 *ibid.*
- 5 *ibid.* p. 95
- 6 To have worked for the police for so long Big Pat would have to be a superb tracker. See also a comment from Judge Wells in Chapter 9
- 7 For details of Hamilton's life see *NT Dictionary of Biography* Volume One p. 138
- 8 HE Warren *Journal*, quoted in Keith Cole *Groote Eylandt Pioneer* p. 96
- 9 AJ Dyer *Unarmed Combat* p. 38
- 10 *ibid.* p. 39
- 11 Warren *Journal* p. 96
- 12 Dyer *Unarmed Combat* pp. 44-47
- 13 Warren *Journal* p. 97
- 14 *ibid.* pp. 99-100
- 15 *ibid.* pp. 98-9
- 16 Department of the Interior file 36/4022. Telegram, Long to Perkins 11 March 1934
- 17 H E Warren *Telegrams CMS Expedition 1933-4* Mitchell Library ML MSS 872 Item 4 CY Reel 482, Telegram, Long to Warren 10 March 1934
- 18 *ibid.* Telegram, Long to Warren 12 March 1934
- 19 HE Warren *Journal*, quoted in Keith Cole *Groote Eylandt Pioneer* p. 99
- 20 H E Warren *Diary 4 November 1933 to 14 April 1934* Mitchell Library ML MSS 872 Item 3 CY Reel 482, Entry of 16 March 1934
- 21 *ibid.* 19 March 1934
- 22 *ibid.* 21 March 1934
- 23 *ibid.* 22 March 1934
- 24 *ibid.* 28 March 1934

CHAPTER 6 TALKS WITH THE BIGFELLA BOSS

It must have been realised by the missionaries that the promise of safe conduct and quick return for the Aborigines was one of doubtful fulfilment.

Dr W B Kirkland

(Acting Chief Protector of Aborigines) 16 April 1934. [1]

Oituli left Groote Eylandt on 25 March 1934 with Dyer, Gray, Tuckiar, Mirera, Parriner, Baupuma and the Aboriginal crew. Against Dyer's wishes Gray went ashore at his old camp at Trial Bay to contact Wonggu and collect Mau, Natjelma and Narkaya to go to Darwin to 'talk about the killings of the Japanese'. Dyer's concern was not to lose Tuckiar and Mirera again. Dyer obviously felt he was 'in charge' for CMS had asked the Government to pay Gray for taking the party to Darwin on *Oituli*. But Gray insisted. [2]

At Trial Bay Baupuma identified a footprint on the beach as that of Andy Wright, Gray's crew member. Gray thought Baupuma was mistaken, for Wright had set out to walk to Milingimbi with his other crewmen, Ron and Gordon Holtze, after the wreck of *Llyris*. Night fell, and Gray and Dyer slept on the boat. In the morning Dyer's fears were realised: Tuckiar and Mirera were missing. Dyer was very angry, and he went ashore thinking all his efforts might have been in vain. But out of the bush came a line of men led by Wonggu, resplendent in Andy Wright's shirt. Following him were Tuckiar, Mirera, Mau, Natjelma, Narkaya, the Holtze brothers, and Andy Wright, wearing a neck-to-knee bathing costume which Wonggu had acquired, and swapped. Good trade! And so *Oituli*, with every spare inch of space taken up by Tuckiar, Mirera, Mau, Natjelma, Narkaya, eight other Yolngu, Gray, Dyer, Wright and the Holtze brothers, headed out to sea.

Dyer now insisted on calling at Milingimbi, Goulburn Island and Cape Don lighthouse. Gray felt this was 'grandstanding' on Dyer's part, but Dyer insisted it was important to share 'Christian witness' with the Europeans in those remote outposts.

Oituli berthed unannounced at Darwin wharf at 3 am on 8 April 1934. In the dawn light the nineteen men - they had picked up a Yolngu named Harry at Milingimbi - had a swim, and Gray and Dyer prepared to go ashore to arrange the 'big talks'. Before this could happen Eric Wilson, the Darwin representative for the Melbourne *Herald*, came to the jetty for some historic photographs. [3] Wilson took Dyer to see Superintendent Stretton at the Police Station. So much for congenial talks: that afternoon the police truck arrived and the five self-confessed killers were arrested and taken to the cells at the police station. Gray and Dyer were furious, but to no avail. Gray recalls that Mau and Narkaya could not climb the jetty steps and went up on all fours. [4]

Dyer was called that afternoon to the police cells to pacify the prisoners who thought they were going to be killed on the spot. They screamed when they saw some other prisoners in handcuffs. When the police touched them they struggled and Dyer said: 'The position was made worse in that nobody knew their language, nor could they speak any English'. [5] He should perhaps have thought about that before he brought them from Arnhem Land.

Gray also saw the prisoners in the cells, where Mau indicated that the police had given him a hiding. Parriner, a countryman of Tuckiar, who had come to Darwin on *Oituli*, promptly 'did a bolt'. He was subsequently found and was a witness in the trials of Tuckiar and Mirera.

News of the arrests was quickly transmitted to southern capitals, and there was the predictable outcry. Southerners could bemoan the treatment given to these noble savages, but there would be no starry-eyed nonsense in the north: hard-bitten Darwin knew how to handle the blacks.

Darwin has always been a paradox of a town. In the 1930s the majority of the population of around 3000 were Asians, who ran efficient businesses and kept to themselves. A pompous component of 'silvertails' - white civil servants and business leaders - were full of wind and condescension. They did not mix socially. There were other normal, hard-working frontier people. Some were of mixed race, the product of contact between Aborigines, Chinese, Malays, Japanese, Filipinos, Europeans and Torres Strait Islanders in goldmining, pearling and other maritime industries of the north. Discriminatory legislation aimed at 'protecting' Aborigines - certainly limiting their 'freedom' - prompted most of the people of mixed-race not to identify with any Aboriginal

component of their heritage: in the 1990s the opposite is the fashion. There was always a large body of ne'er-do-wells and transients, for whom Darwin was as far as they could get from whatever it was they sought to escape.

There was a strong Communist influence in the town. A resident Australian Labor Party Federal member of Parliament, Harold Nelson, was vocal, active and influential. 'Labour agitation' had been a feature of Darwin since the Vestey's Meatworks riots in 1918, and the expulsion of 'His Obstinacy', Gilruth the Administrator. [6] Doughty unionist Don McKinnon, who had served a gaol sentence for the principle of 'no taxation without representation', was the editor of the local newspaper, the *Northern Standard*, which was decidedly left-wing. One might expect such a cosmopolitan town to be racially tolerant, and in some respects it was, with the exception that town residents shared common Australian attitudes to tribal Aboriginals, who could work but not live in the town area. At best they were held to be quaint, a joke: at worst they were deemed 'lower than shark-shit', as an old-timer once put it to me. It is part of the institutionalised racism which adversely affects the attitudes of many non-Aboriginal Australians: if Aboriginals are kept discredited, drunk, disorganised and dependent, their claims to a meaningful ownership and occupancy of the continent prior to 1788 can be ridiculed or denied.

Morey's police party arrived in Darwin on 9 April 1934, the day after *Oituli* berthed. McColl's remains were taken to the mortuary at the Darwin Hospital. Kinjo, the Japanese survivor, was taken to the gaol, but failed to identify from a 'line-up' any of the self-confessed killers of the Japanese. [8]

Warren was back at CMS headquarters in Melbourne by this time, after receiving a hero's welcome in Sydney. He was dismayed to hear that the Aboriginals had been arrested on arrival in Darwin; but on 1 May 1934 in the Melbourne Town Hall Perkins assured Warren that 'the natives will be treated well. They are nominally (sic) in gaol, but are not receiving treatment given to ordinary prisoners. I receive news daily that they are quite happy. I hope that as a result of their trial Mr Warren and his colleagues will never regret that they brought the Aborigines back'. [9] Perhaps this was the first public indication that Canberra was anxious for early trials and quick acquittals.

On 1 May Perkins issued an important press release which foreshadowed provocative and innovative legal changes for the Northern

Territory. He announced that, in future, tribal customs would be an important factor in the trial of Aboriginals in the Northern Territory. He had signed an ordinance [10] which would allow the Judge presiding over the trial of the 'Caledon Bay Aboriginals' to take cognisance of Aboriginal customs, to dispense with a jury if he wished, and generally to conduct the trial as his discretion directed. It was no longer mandatory for Aboriginals convicted of murder to be sentenced to death. Perkins said he was contemplating a general review of the laws governing Aboriginals, and the introduction of a special system of conducting trials. He did not think there was any need for a Parliamentary Select Committee to investigate the 'control of the blacks by Northern Territory Administration' as Harold Nelson had demanded. [11]

Perkins was apparently reacting to constant pressure from Professor Elkin and others, but may also have been prompted by a growing concern about the style of the new Judge of the Northern Territory Supreme Court, Thomas Alexander Wells. Appointed only on 28 August 1933 [12] 'Tommy' Wells had arrived in Darwin in October 1933, two months after the death of McColl. He was a 'no-nonsense' veteran from World War I, and was proud of his record as a simple gunner during the carnage of the war in France. After the war he became a court reporter. On a returned soldier's scholarship he studied law and was admitted to the New South Wales Bar in 1927. He quickly made his mark in Darwin, acquiring the art of 'bashing the southerners', a favourite pastime in Australia's deep north.

Wells incurred the wrath of the APNR and Professor Elkin early in 1934 when he had taken a vehement stand against 'southern ratbags' in *R v Stott*. Stott, a policeman, was charged with assaulting various Aboriginals. Wells refused to allow the APNR to brief counsel for the Aboriginals, so now the 'blackfellow-lovers' and 'native companions' were after the learned Judge's scalp. 'Tigger' Wise, Elkin's biographer, says that one of the 'kinder' descriptions of Wells among members of the APNR was that of a 'bull-headed "briefless barrister" from Sydney, with a wen on his upper lip, a curl to his mouth and an inflexible interpretation of the letter of the law'. [13] The *Bulletin* came to the Judge's defence:

No doubt Judge Wells himself would be delighted if the Minister accepted the advice of this body [APNR], on whose meddling he made such drastic remarks during the Stott case.

For months on end he has been trying native murder cases, and he has evidently come to the conclusion that much of the disorder is partly due to the bad habits of the weak Government, which leans on the advice of interfering missionaries and mushy philanthropists rather than on that of experienced officials and police....Most people baulk at the death penalty; but the fact that nearly 20 whites and Asiatics have been murdered in the NT in the last couple of years shows that the murderers themselves have no such qualms. The present tender policy is an invitation to the myall to slay. [14]

There had been discussions for several years about the establishment of 'native courts' in the Northern Territory, and the opinions of people like Sir Hubert Murray, Lieutenant-Governor of Papua, were sought. Murray pointed out that conditions in the Northern Territory seemed to him to be vastly different from those prevailing in Papua. Murray did not think that any set of laws could give effect to 'native custom' except either where it could thereby be shown that there was no criminal intent, and that the accused should therefore be acquitted; or as mitigating the sentence to be applied where a guilty verdict was reached. [15]

One of Judge Wells' first tasks in the Northern Territory was to comment on the proposal for 'native courts'. Wells wrote:

I find myself in complete agreement with the view expressed by Sir Hubert Murray. I think that any attempt to go beyond this would be most unwise and likely to lead to endless difficulties and hopeless confusion in the administration of the law, and that it is quite possible to give effect to native custom in the Supreme Court to the extent indicated by making certain amendments in our criminal law and procedure. [16]

Wells had been only two weeks in the Northern Territory when he wrote the above, but said he had already discussed the question of native courts with, 'amongst other persons, Reverend Webb, the missionary in charge of Milingimbi'. Webb had told the judge about the traditional 'makkarrata' (sic) trial by ordeal. Wells considered that the most important amendment to the Criminal Law would be to provide that:

...where one aboriginal is convicted of an offence committed on another aboriginal involving the death penalty, the Court should not be obliged, as it is at present in the case of a conviction for murder, to sentence the offender to death, but should have power, after a verdict of guilty and after hearing evidence tendered on behalf of the prisoner of mitigating circumstances arising out of native custom or otherwise, to impose such a penalty as appears to the Court to be proper. [17]

In March 1934 J A Carrodus travelled with his family to Darwin to be Acting Administrator and Acting Commissioner of Police while Lt-Colonel Weddell was on leave. Canberra probably welcomed the opportunity to send Carrodus to Darwin and thereby avoid resolving a local dispute as to whether Weddell's choice, Dr Cook, Chief Protector of Aborigines, or L H A Giles, Chief Clerk of Northern Territory Administration, and *locum tenens* on many previous occasions, would be Acting Administrator during Weddell's absence. [18]

Carrodus was aware of the many complaints against Judge Wells who, within months of his arrival, and in spite of the opinions he expressed about 'native courts', was already being called the 'hanging judge'. He had sentenced to death eight convicted Aboriginal murderers, thereby delighting many white Darwinites. [19] Perhaps Carrodus had a brief to keep an eye on the Judge, and, as Acting Commissioner of Police, seek to curb the excesses of the north, given the immense political sensitivity of the trials about to take place.

On the evening of 11 April Superintendent Stretton convened a meeting with Morey, Hall, Carrodus and Weddell, who was about to go on leave. The police lodged official complaints against Warren's party, principally 'that Warren, in order to induce the Aborigines to hand themselves over, had enlarged upon the atrocities that would be committed by the police if they were sent to capture the murderers, and, in effect, did considerable damage to the prestige of the police by circulating untrue and exaggerated reports'. [20]

Carrodus reminded the police that these were very serious allegations: he agreed to investigate. He volunteered to interview Dyer and Gray himself and arranged for Dr Kirkland (relieving Dr Cook as Chief Protector of Aborigines) to interview the Yolngu. After interviewing Gray and Dyer Carrodus considered the police allegations

unsubstantiated. Dyer acknowledged that he and Warren informed Tuckiar and Mirera it would be better to hand themselves over to the missionary party because, 'if they did not do so the police would be sent after them, and it was a foregone conclusion that there would be casualties on both sides'. [21] Gray said he had told the Caledon Bay Yolngu it would be to their advantage to go to Darwin rather than await capture by the police. [22]

Kirkland, on the other hand, wrote a three page report indicating that he found the police allegations against the missionaries largely substantiated. He had interviewed the five accused, plus Nanyin and Uluira (Woolaware) through four different interpreters. On two occasions a fifth Aboriginal was used to listen and check the interpreter's translation. Kirkland maintained the Aboriginals had been told they should 'go to Darwin with the missionaries (sic) where the latter would intercede with the authorities and the natives would eventually be released'. They all felt that their time in Darwin would be 'approximately one month'. [23] Alternatively they were told that 'should they refuse to go with the missionaries they would eventually be captured by the police and hung or shot'. Kirkland also reported the Aboriginal allegation that at Groote Eylandt Warren and Dyer 'had frequently beaten natives who were doing casual work for them' and that 'food supplies to the natives at Groote Eylandt mission consisted mainly of flour and water'. [24] Kirkland then referred to Dyer's notorious 'tin squeaker' interview where the missionary, in what seemed a denial of Christian principles, was reported as saying:

When these savages do wrong the best way of dealing with them is to give them a good beating. They almost grow to love afterwards and respect a man who goes among them like a Mussolini. [25]

Kirkland's interviews highlighted the problems and inadequacies of this type of 'interpretation', which was standard for the times. There was absolutely no common ground between white officials and tribal Aboriginals. No white could speak Yolngu *matha*. The accused spoke no English. The interpreter's knowledge of English was restricted to unstructured Kriol ('pidgin' English); and there was no way to check that any of the interpreters fluently spoke or understood the language of the accused.

The interpreters Kirkland used on this occasion probably came from somewhere in Arnhem Land, and were thus able to establish the basic feelings of the five accused and two prospective witnesses. However, exact interpretation of specific questions and answers was probably not possible. There are various traps to avoid when speaking 'pidgin', but perhaps the biggest problem is that 'tribal' Aboriginals in situations like this often display a desire to please. It is reasonably easy to elicit a 'yes' answer. A smile, a nod, a leading question - 'So the white man said that, did he?' - would place the interpreter in the position where he himself could be led, or where he might 'interpret' the story as he felt it should be told, or might best be received.

It is not surprising to find that Kirkland was given some false information:

- that 'all five prisoners were later taken to Groote Eylandt, the above promises being repeated there'. In fact, only Tuckiar and Mirera went to Groote Eylandt, and they were not 'taken'. Rather, they undertook a quite dangerous canoe trip to join Gray and Dyer voluntarily.
- that 'Dyer and Warren speak their language, and spoke to them in their own tongue on frequent occasions'. There is no evidence that either Warren or Dyer spoke any Aboriginal language. [26]

Kirkland offered these opinions:

- 'Firstly, it must have been realised by the missionaries that the promise of safe conduct and quick return from Darwin was one of doubtful fulfilment'.
- 'Secondly, the Aboriginals were given an impression regarding police methods which will add grave difficulties to future administration of the area concerned and which was absolutely unjustified'.
- 'M C Morey's leadership of the party and general conduct throughout appears to have been excellent and his attitude towards the Aboriginals most tolerant'.
- 'The Japanese at Caledon Bay had assaulted and illtreated the natives on several occasions attacking various individuals with sticks, fists and boots, and on one occasion shooting Mau

through the thigh. The scar of this wound has recently broken down and was seen by me during the last few days'. Apart from ill-treatment 'the usual trouble with lubras arose during the stay of the Japanese at Caledon Bay'.

- 'The murders of Traynor and Fagan appear to have occurred as the result of an argument about the white men taking lubras'.
- 'The murder of M C McColl apparently resulted from fear. It appears that McColl had charge of four lubras including one belonging to Tuckiar. Tuckiar gained the impression that the police were taking the lubra away and he followed McColl into the jungle and called out to his lubra who came back towards him, McColl following. McColl first saw Tuckiar at a distance of some twenty or thirty paces. No doubt the sight of an Aboriginal armed with spears and woomera under such conditions gave McColl the idea that Tuckiar was about to attack him, whatever the latter's intentions may have been. McColl fired two shots at Tuckiar and the latter then speared McColl through the chest'. [27]

Kirkland concluded with an observation which will be considered in detail later:

I cannot give credence to the suggestion that McColl had anything to do with the lubra. It is impossible to conceive that a man could ever consider such conduct in the atmosphere of excitement and tension which must have prevailed at the time. [28]

Carrodus obviously considered Kirkland to be the man with local expertise, for he also asked the doctor to investigate the allegation by Kepert (the owner of the *Myrtle Olga* and *Raff*) that Gray had incited the *Djapu* clan to kill the Japanese. On this specific subject Kirkland pointed to 'the difficulty of obtaining correct evidence through interpreters!' [29] When Carrodus's report reached Canberra H C Brown was quick to comment: 'So how much of the evidence obtained by Dr Kirkland is of any value?' [30]

Carrodus wrote a comprehensive report indicating that he accepted the stories of Dyer and Gray on the question of inducement to travel to Darwin as being closer to the truth than the story elicited from

the Aboriginals. He also asked the Secretary to advise the wishes of the Minister concerning the impending prosecutions for 'considerable difficulty is being experienced in obtaining evidence, as no witnesses were brought to Darwin with the prisoners. The police feel that they can secure a conviction in respect of the murder of McColl, but are doubtful regarding the other charges'. [31] Carrodus concluded by saying:

Either of two lines of action may be adopted:

- To permit the law to have its course and rely upon the amendment of the *Criminal Law Consolidation Act* to secure lenient treatment at the hands of the Judge; or
- To withdraw the proceedings, keep the Aboriginals for a short period in Darwin, treat them well and send them back as emissaries of peace to their tribes. It is certain that the Government will be criticised whatever course is adopted, and probably it will be considered that the adoption of course number (1) is the most appropriate method of dealing with the matter. [32]

Brown noted on Carrodus's summary of Kirkland's investigations:

- What right have the police to capture and hold four lubras who are not being accused of any wrong?
- Apparently McColl was the aggressor in firing first.
- Quite a natural conclusion from the Aboriginal (to think 'that McColl intended to, or had interfered with his [Tuckiar's] lubra'). [33]

While Brown agreed with Kirkland and Carrodus that it would be highly unlikely 'McColl had any intention of interfering with the lubra' he minuted that 'the husband's views might quite reasonably be quite different. In any case, what right had the police to detain his lubra?' [34]

One wonders why Kirkland was not called as a witness in the trials. Notwithstanding the translating difficulties, Kirkland's interview with the five defendants conducted by Kirkland seems more substantial than some of the evidence tendered at the trials. Provided the interpreters he used were also called it would seem that Kirkland's evidence would have been admissible, and certainly, in the case of Mau,



of great benefit in establishing a case of provocation for killing the Japanese.

Morey, the leader of the police party, was transferred to Lake Nash, over 1000 kilometres from Darwin, (see map **2**) just before the trials of the Yolngu began. Yes, it was April, the start of the cattle mustering season, and Lake Nash, police station, strategically placed near the Northern Territory/Queensland border, required the presence of an officer like Morey, knowledgeable about droving, movements of stock, quarantine etc. But with the court cases imminent why was Morey so hastily transferred, and Hall left to be the only police witness who would give evidence for the prosecution? Was there a prospect of conflicting evidence? Stretton later insisted Morey would only have given the same evidence as Hall, but Morey's transfer nonetheless raises another query about the police performance. In 1993 I asked Morey's widow for an opinion about the transfer. She replied, 'It's very simple. He was anxious to marry me'. Mrs Morey's family lived at Camooweal, near Lake Nash, and she and Ted Morey were married shortly after he was posted to Lake Nash. Mrs Morey said 'Ted was tired of all the nonsense from the missionaries'. [35] Mahony was not called to give evidence either, even in the preliminary hearings. Mahony, too, was married during 1934, and went on a three-month honeymoon, but he was in Darwin for McColl's funeral (see photo 44) and while the preliminary hearings took place.

On 16 April 1934 a preliminary coronial inquiry was held into the death of McColl, and as a result Tuckiar was formally committed for trial for the murder of the police officer. A strange twist to the coronial inquiry was that Hall and Stretton seemingly insisted that Tuckiar be present at the mortuary when Hall identified McColl's remains. [36] Was this some sort of psychological ploy to terrorise the accused? There is no record that Mr Harry Partridge, the solicitor appointed by Dr C E Cook (Chief Protector of Aborigines) was present or even consulted at the time of the identification, and it seems highly irregular that Tuckiar was present, presumably taken there 'in custody'.

On 22 April Darwin turned out in force for McColl's funeral (see photos 39-44) He was buried in the 'Old Gardens' cemetery. Constable Sheridan of Roper River had obtained Stewart McColl's permission to 'give Albert a Rationalist funeral' [37] after Stewart McColl had written to Harold Nelson MP, asking that his brother be buried in Darwin, for 'any hesitation in this matter may mean the

dismembering of the body for ceremonial purposes by the natives connected with the murder'. [38]

Darwinites seemed anxious to demonstrate that McColl, who had spent only a few weeks in Darwin, then six months at the remote Roper River police station, was their old and dear friend. It was one of the largest funerals held in Darwin to that time. Mounted Constables Hall, Mahony, Graham and Sheridan acted as pall-bearers - not that there would have been any great weight to carry - and, as the coffin was carried from the hearse to the grave the Palmerston District Band rendered *The Dead March in Saul*.

Nelson read the eulogy and said that 'our late colleague and friend died as he had always lived, courageously facing death in doing his duty, ...and now we must wish Comrade McColl one last farewell. Although we will miss him in the flesh, knowing him as we did, the memory of his many kindnesses will always live in our memory'. [39]

It would be a safe estimate that more than ninety percent of those present at the funeral had never met McColl, and it was particularly indiscreet of Judge Wells, who would soon be hearing the Supreme Court trials, to take up almost a 'chief mourner' position at the graveside [40] (see photo 42) for there is no evidence that Wells had ever met McColl. Bill Nuttall played *The Last Post* at the conclusion of the service.

Emotions ran high in Darwin after the funeral. A public meeting was held at the Town Hall on the evening of Tuesday 24 April. The main speaker was Nelson, who castigated

Hollywood missionaries with their tin squeakers....You only had to go around to the cells when the unfortunates knew they had been betrayed. They were like a lot of wild animals...betrayed by the greatest Judasses that ever existed in this country. This country has no time for such men. If we cannot protect people by decent law and order we don't want Hollywood missionaries coming here to tell us how to do the job. (Loud applause) [41]

Dyer was present. He protested at Nelson's remarks but was loudly booed. [42]

Reverend Warren, now in Melbourne, wrote to CMS on 6 June 1934, expressing concern about delays in dealing with the prisoners. He felt that the Yolngu back in Arnhem Land would conclude that 'these

men have been betrayed and killed by the white man'. Warren went on to say:

As leader of the Expedition I met these blacks as a friend and promised that we would stand beside them, speak for them when they made their confession to the Government, and return them to their country when the matter was settled. The blacks accepted my word and went to Darwin. I now look to the Government to expedite matters with due regard to the black man's point of view.

To safeguard my own honour and that of my country and to secure the safety of white men in the North, unless the matter is speedily dealt with we will be compelled to return to the Caledon Bay blacks as a hostage with them until the return of their tribesmen. [43]

Warren's comments about their promises to the Yolngu are interesting, given the recent investigations of Kirkland and Carrodus. Had his lofty offer to go as 'hostage with them' been followed up he would have been waiting a long time in Arnhem Land. But he would not have met his death in a Bass Strait air crash on 19 October 1934. [44]

The Melbourne *Herald* of 14 June 1934 said the treatment of Tuckiar and Mirera 'is being likened to Middle Age methods of justice'. The *Herald* reported that Stretton wanted to send Hall to Groote Eylandt 'to collect the necessary witnesses, but after those plans were cancelled by Mr Carrodus on 7 May he could take no further action. The Chief Protector (Dr C E Cook) has protested about the delay in trying them. Judge Wells cannot deal with them under his new native-trial powers because they are not yet committed for trial'. [45]

Brown asked Carrodus to comment. Wearing his two hats - Acting Administrator and Acting Police Commissioner - Carrodus sent a coded telegram:

HAVE DISCUSSED MATTER WITH THE POLICE WHO ARE OF THE OPINION THAT IF POLICE PARTY SENT TO WOODAH NO GUARANTEE CAN BE GIVEN THAT THERE WILL BE NO BLOODSHED AND APPREHENSION WILL BE DIFFICULT. I AM NOT PREPARED TO SEND POLICE TO WOODAH.[46]

Brown was losing patience. He wrote to his Minister, Perkins:

If the Aboriginals are to be tried according to our laws they should at least be treated with the same consideration as any other Australian citizen (sic) receives. [47] In fact I would go further and say that they should receive even more considerate treatment. I cannot imagine a case where an Australian citizen would be apprehended as a witness by a body of police, and held under restraint for days, or weeks, or months, hundreds of miles away from his home and interests. Furthermore, if the wives of Australian citizens were treated in the same manner as the Aboriginals' lubras in respect of being arrested and forced to give evidence against their male partners, the whole nation would rise up in protest. [48]

Brown also felt it 'remarkable that such advantage be taken of the ignorance of the accused Aboriginals to obtain from them the names of the witnesses to be used against them'. Perkins took up Brown's recommendation that 'the Attorney-General might be asked to advise'. [49]

Fairly obviously the principal witnesses to the killings of McColl, Traynor and Fagan would be the women involved in each case, and the question of compelling spouses to testify against their partners was obviously going to be a factor. Judge Wells said later, in the Supreme Court, that he would accept 'the evidence of lubras', but that was certainly not the intention behind the framing of the *Criminal Law Consolidation Act* (1934), so the Attorney-General recommended against bringing the women to Darwin. [50]

Cabinet accepted the recommendation of the Crown Law Officer that a police party should go to Groote Eylandt, but remain there while 'a native guide' went looking for any witnesses 'other than the spouses of the accused'. Cabinet also approved that an application for an adjournment of 'the Tuckiar case' be sought, pending the arrival of new witnesses. [51]

But CMS played a trump card when Long advised Perkins that, in any case, they would not hire the *Holly* (the only boat in the area) to transport the police to get witnesses. [52] The Cabinet decision was reversed, and on 12 July Brown urged Carrodus to take various steps to hasten the charges through the lower court and

STRONGLY PRESS FOR ACQUITTAL CONSIDER IN VIEW ALL CIRCUMSTANCES THAT ACTING CROWN LAW OFFICER SHOULD NOT ENTER ANY STRONG OBJECTIONS TO ACQUITTAL BUT ON CONTRARY MIGHT CONSIDER DESIRABLE WITHDRAW CASE ALTOGETHER WHICH WOULD BE ACCEPTABLE HERE FROM EVIDENCE COLLECTED BY WARREN AND DYER IN ADDITION TO WHAT YOU ALREADY KNOW APPEARS THAT THERE WAS INTERFERENCE WITH WOMEN IN ALL CASES INCLUDING MCCOLL'S

To make himself perfectly clear Brown concluded:

DEFINITE DESIRE HERE THAT ACCUSED BE ACQUITTED [53]

The Melbourne *Herald* of 13 June quoted Perkins as saying 'The blacks will be brought before the Police Court and formally charged. As no direct evidence can be obtained against them, there is every chance that the prosecution will be dropped'. [54]

Constable Hall had made arrangements to travel to Groote Eylandt but was now told his visit was cancelled. Hall sent a memorandum to Stretton on 16 July:

I am of the opinion that the only witnesses whose testimony will be of evidentiary value are the lubras concerned in both the killing of Constable McColl and Messrs Traynor and Feighan (sic). His Honour the Acting Administrator in his remarks at a recent interview showed that he is under the impression that there are other witnesses who might be of value in these cases. I merely wish to make clear the fact that this is in all probability not so. [55]

Carrodus sent Brown a coded telegram, followed by a 'private and confidential' letter indicating that the Minister was being criticised in Darwin. He said:

EVERY ENDEAVOUR WAS BEING MADE TO KEEP DEPARTMENT AND MINISTER OUT OF CASE AND PLACE RESPONSIBILITY FOR PROCEEDING WITHOUT WITNESSES ON ADMINISTRATION. THAT IS NOW IMPOSSIBLE AND MINISTER MAY BE CRITICISED. [56]

But on the same day, in his letter to Brown, the crafty Carrodus wrote:

What I have in mind, however, is that Hall's report might be valuable to the Minister, if any criticism is made in regard to the non-production of witnesses. The fact that only lubras of the accused, in Hall's opinion, would be of value as witnesses, and the Attorney-General's ruling that such lubras should not be brought to give evidence against their husbands, added to the difficulties of securing transport, might be regarded as ample justification for proceeding with the cases without such witnesses. I think Hall's report in this regard is valuable. [57]

The trials showed promise of being very interesting.

ENDNOTES: CHAPTER 6 TALKS WITH THE BIGFELLA BOSS

- 1 Department of the Interior file 36/4022
- 2 I discussed the events surrounding the voyage of *Oituli* to Darwin, the arrival, and the subsequent arrests many times with Fred Gray. For a confirmation, see Keith Cole *Fred Gray of Umbakumba* pp.48-56. My version of events accords with Cole's except for two points. He wrote (p.48) that 'two of the killers had arrived with the Peace Expedition party and were now staying inside the barbed wire enclosure of the Mission!' That is incorrect. See H E Warren *Diary* where Warren records Tuckiar's arrival at Groote Eylandt on 22 March 1934. The police departed on 17 March. Also on p. 48 Cole records that Warren buried Constable McColl. It was 'the unknown man, believed to be Fagan' who was buried on 16 March. The police took McColl's remains to Darwin.
- 3 Now known as the Wilson Collection, Australian Institute of Aboriginal and Torres Strait Islands Studies, Canberra.
- 4 We take so much for granted. At Yuendumu (Central Australia) in 1959 I was asked if I could take a large group of tribal Pintubi Aboriginals to Papunya. They had recently 'come in' from the desert. 'Sure' I responded, and indicated that they might climb onto the back of the truck I was driving. They would all have been very much at home climbing over rocks, but none could co-ordinate themselves into climbing onto the truck. Amid much laughter, we had to lift each one aboard.
- 5 *Northern Standard* 10 May 1934.
- 6 The prescribed formal title for the Administrator of the Northern Territory is Your/His Honour. The haughty Gilruth, who was recalled by the Federal Government in 1919 after lengthy confrontation with the militant NAWU, insisted on being called Your Excellency. Local wags changed that to Your Obstinacy. When Gilruth left Darwin unionists stood on the wharf and sang 'For He's a Jolly Good Failure'. Conversation with Don McKinnon, Darwin, 1953
- 7 Department of the Interior file 47/1434, 5 October 1932
- 8 Evidence to Darwin Police Court, Aki Kinjo 16 May 1934, reported in *Northern Standard* 18 May 1934

- 9 *Sydney Morning Herald* 2 May 1934
- 10 *Criminal Law Consolidation Act* No.10 (1934), being an Ordinance to amend the *Criminal Law Consolidation Act*, (1876), of the State of South Australia, in its application to the Northern Territory, as amended by the *Crimes Ordinance* (1928) of the Territory of North Australia. Previously the mandatory sentence for any person convicted of murder was death. Ordinance No 10 prescribed that, 'where an Aboriginal native is convicted the Court may...impose such penalty as...appears to the Court to be just and proper'. For 'the purposes of determining the nature and extent of the penalty to be imposed where an Aboriginal native is convicted of murder, the Court shall receive and consider any evidence which may be tendered as to any relevant native law or custom and its application to the facts of the case and any evidence which may be tendered in mitigation of penalty'
- 11 *Hansard* House of Representatives 1 November 1933
- 12 *Commonwealth Gazette* 28 August 1933
- 13 Tigger Wise *The Self-Made Anthropologist* p.122
- 14 *The Bulletin* 16 June 1934
- 15 Department of the Interior file 36/327, 29 June 1932
- 16 *ibid.* 17 October 1933
- 17 *ibid.*
- 18 Department of the Interior file 34/1137
- 19 In the *Northern Standard* 25 May 1934, Letters to the Editor, the vitriolic C E Gaunt of Pine Creek described Wells as 'one of the straightest and most independent judges the Territory has ever had'.
- 20 Department of the Interior file 36/4022, 16 April 1934
- 21 *ibid.*
- 22 *ibid.*
- 23 *ibid.*
- 24 *ibid.*
- 25 *Sydney Sun* 5 November 1933, reported in the *Northern Standard* 13 April 1934, when feelings against Dyer and the Peace Party were running high in Darwin. The *Northern Standard* captioned the report 'Acting the Goat to Calm Killers: Squeaker v Savages Spears'.
- 26 Department of the Interior file 36/4022, 16 April 1934
- 27 *ibid.*

- 28 ibid.
- 29 ibid.
- 30 ibid. n.d., but almost certainly 24 April 1934
- 31 ibid. 16 April 1934
- 32 ibid.
- 33 ibid. n.d., but almost certainly 24 April 1934
- 34 ibid.
- 35 Interview with Kath Morey, Alice Springs 1993
- 36 Evidence to NT Supreme Court, V C Hall 1 August 1934
- 37 Telegram from F K Sheridan to Stewart McColl 11 April
1934 Stewart McColl Collection
- 38 *Hansard* House of Representatives 1 November 1933
- 39 *Northern Standard* 24 April 1934
- 40 I knew Judge Wells and thought I recognised him in the photo.
This was confirmed by his son, Bill Wells, and old Darwin
identity Eileen Fitzer.
- 41 *Northern Standard* 27 April 1934, also Department of the
Interior file 34/6710
- 42 ibid.
- 43 Letter, Warren to Long, copy on Department of the Interior
file 36/4022
- 44 Keith Cole *Groote Eylandt Pioneer* p. 106
- 45 Melbourne *Herald* 14 June 1934
- 46 Department of the Interior file 36/4022, 20 June 1934
- 47 At that time Aboriginals were not counted in the national
Australian census, and thus could hardly be called citizens.
- 48 Department of the Interior file 36/4022, 22 June 1934
- 49 ibid.
- 50 ibid. 3 July 1934
- 51 ibid.
- 52 ibid. 10 July 1934
- 53 ibid. 12 July 1934
- 54 Melbourne *Herald* 13 June 1934
- 55 Department of the Interior file 36/4022
- 56 ibid. 17 July 1934
- 57 ibid.

CHAPTER 7 THE CALEDONS IN COURT

They described the Japanese as cheeky buggers. They said that if I had been a cheeky bugger they would have done the same to me.

Fred Gray 1 August 1934. [1]

With Superintendent Stretton himself as complainant at the preliminary hearing of the Darwin police court the five Yolngu, represented by Mr Harry Partridge, were brought before Norman C. Bell, SM., on 10 April 1934. The *Northern Standard* reported:

Tuckiar and Merara (sic) are aged men, the former being clad in a red narga and the latter in a loincloth. The other three accused wore only loincloths, some of them of a very scanty nature ... The accused were making signs for tobacco while sitting in the court and appeared more interested in tobacco than in the court proceedings. [2]

Tuckiar was charged that he did feloniously and of malice aforethought kill Albert Stewart McColl at Woodah Island. Tuckiar and Mirera were charged that at Woodah Island they did kill and murder 'an unknown person' believed to be named Traynor or Fagan. Mau, Natjelma and Narkaya were charged with the wilful murder of Tanaka, one of the Japanese, at Caledon Bay. The preliminary hearings were all immediately adjourned, pending the arrival of the Methodist Mission boat *Maree* and the Catholic mission lugger *St Francis* which would bring to Darwin the *Tiwi* and Goulburn Island men who had worked with the Japanese at Caledon Bay. The prisoners were taken to Fannie Bay Gaol, where Gray told me he and Dyer visited them regularly.

When the police court was reconvened on 16 May the prosecutor was Constable Koop. He sought another adjournment, saying the case against Mau, Natjelma and Narkaya 'bristled with difficulties and complications'. [3] The Methodist Mission boat had still not arrived, Kinjo had failed to identify the killers in a line-up, and Partridge

indicated that Dr Cook had instructed him to seek dismissal of the charges. Kinjo gave evidence through interpreter Jimmy Lee Sye that the Japanese had firearms but 'we never fired at the Aborigines' - although he did say shots had been fired 'to clean the guns'. He went on to say:

I never saw any lubras there belonging to the Caledon Bay Aborigines. The boats were well out in the water and we had a smoke house on a sandy beach for treating the trepang. We always slept on the boats leaving about sundown. I remember 17 September. Early that morning we started to get trepang. About 8 o'clock we brought trepang to the beach and started washing it. While we were washing the trepang we heard Inamori scream out. Myself and Kimishima went to see what the row was about and found Inamori was dead. We went to get the firearms and also the oars in a boat, but they were gone. Suddenly the blacks chased us with spears. One spear went through Tanaka and another hit Kimishima. Tanaka was speared the first time and Kimishima the second time. Another spear seemed to go right through Tanaka again. When the natives with spears rushed onto the beach a spear came from behind, hit Tanaka, and went through him. I tried to swim to one of the luggers, and whilst trying a blackfellow got hold of a dinghy and chased me. I dodged away from him. I cannot identify any of the Aborigines in court. [4]

The hearing was adjourned until 25 May. The court reporter noted that 'Rev A J Dyer took a seat alongside the three accused whose features registered a welcome expression of glee'. [5]

The case would be adjourned several more times before it finally came before the Supreme Court on 1 August 1934. Because the evidence given at the various police court hearings was substantially the same as in the Supreme Court, the evidence of each witness in the lower court will be considered in detail at this point.

The interpreter for Kinjo, Jimmy Lee Sye, was half-Japanese, half-Chinese. He was a long-term resident of Darwin and spoke quite good English as well as Japanese and Chinese. I saw him in the Darwin court on many occasions, and he seemed to be an excellent interpreter, translating questions, and then, in the first person, apparently relaying exactly the response of the witness.

But for the three Aboriginal defendants, the entire procedure must have been totally incomprehensible. The language of the court was English, and there was no translation of the charge, evidence, or comments by counsel or the bench. It is probably reasonable to assert that the charges should never have been heard. Court cases involving Aboriginals were, in those days, farces. In court, tribal Aboriginals were at best held to be 'quaint' creatures. Until the 1960s the swearing of witnesses was always good for a laugh. It provided an opportunity for experienced policemen to show the new boys 'how to handle the boongs'. A witness was 'sworn in' thus:

You savvy that bigfella trouble bin come up there longa (in this case Caledon Bay). Orright, you tellim this one bigfella 'boss, this Judge, you tellim true story for that business. No more gammon, no more lie, no more talk way nother boy talk long you. You tellim story way you seeim long you roan eye. You sing out loudfella, allasame corroboree.

A couple of 'orrights' all round and the story would start.

Evidence was taken from the Goulburn Island and *Tiwi* Aboriginals who had been working for the Japanese at Caledon Bay, Nanyin, Woolaware and Mowenbowie, who had travelled to Darwin on *Oituli* and were presented as eye witnesses to the killings of the Japanese, and Harry, described as 'a mission boy from Milingimbi'.

Harry was about to become a central figure in this trial, and even more in the trial of Tuckiar for the killing of McColl. Harry had come to Darwin on *Oituli*, and he would give evidence of conversations with the various accused. In the Caledon Bay case he stated:

My name is Harry. I am a mission boy belong Milingimbi. I remember the *Oituli* come along Milingimbi. Mr Gray and Mr Dyer on board that boat and (nodding at defendants) these three boy. I can understand their language and they can talk to me. Those boys talk, the Japanese get some boy there and make smoke house and camp, and the Japanese sent these boys to get trepang. That day he trepang and bring ashore, and one boy Noming, the Japanese tell him put firewood in the boiler. The

boy not understand English. Those Japanese gettim wild and hit that boy Noming. He get wood and hit him with wood. He kick him with boots and get neck and knock him down on the ground and rolled him in trepang guts and wipe him along trepang guts along face. Noming never do anything along Japanese. The Japanese hit one boy Mau. The Japanese cook got no teeth been hittim Mau. He hit Mau with a stick on the back. Mau didn't fight back with Japanese. The other Japanese fight Woolaware. He catches his neck and knock him. The boys get up from the ground, walk away, never do nothing. These hidings were given to these boys on different days. The boys tell me he not understand what Japanese say.

Four boys come from Mr Gray's camp another morning. He come to the Japanese camp. The boys ask for tobacco. The Japanese give tobacco to Natjelma. Natjelma try break em up tobacco put him along pipe and he was ready for smoke and this Japanese man get revolver and he shoot this boy. He shoot Natjelma and missed. The boy frightened, run away, he go round and stop along camp. The Japanese come out and callem Natjelma come in and he ask him to work. Natjelma say 'Alright I workem for you'. Then Natjelma go out trepang. All these three here and nother boys go trepang. They start paddling and go out. Four women get up and go lookem for oyster. The Japanese man look and go round get net and get fish bag. This boy see woman walking first and Japanese come behind. This boy go out a little bit far and dive down trepang. Alright this boy can't see the woman now, he alongside the reef. He can see the Japanese man put down bag and put down net. He saw the Japanese man sneaking up along the reef. He hear a sound like sing out along the reef. He see three women run from reef, come out along beach and go bush. This three fellow boy say 'Only three women go back and where the other woman?' After they see one girl come out along beach.

After they hearem something. They hearem 'Shoot'. They been hear six shot altogether. They say 'Hullo. There's something happened there along camp. Might be a henemy (sic). Come on, we'll turn back, go ashore. We try look what that happened there'. All the boys go ashore. This boy when he get out along the beach, the Japanese man get revolver, and

shoot all them working boys. He missed them. All boy gettim one side the dinghy. He give them another shot along nother dinghy. All them boys get out swim along water and go ashore and run away in the bush. They go down bush and meet Wonga (Wonggu) This boy askem Wonggu what shot been go here for. Wonga say 'Trouble been happen here. One Japanese gettem woman and do wrong and he came after me and take four more woman from me. They take this four woman and lock them up along smoke house'. Wonga say 'I askem Japanese what you do that woman. That's not right'. Wonga said 'If I stealem anything from you what you do? You takem something. You killem me you hittem me'. And Wonga said 'This Japanese pull out revolver and start shootem'. Wonga got woomera and spear that time. Wonga say he shoot six time. Japanese get the women and Wonga looked after the children.

These boys ask Wonga 'What we do'? Wonga say 'We got to kill them'. And Natjelma say 'Why'? Wonga say 'We must cut them up' and Mowenbowie said 'No, more better we go round and see Mr Gray'. Another two boys say 'More better we go and see Milingimbi station'. These two boys Woolaware and Nanyin. They say 'We see Harry, Myangler and Andrew. Those boys savvy more talk English'. Wonga say 'Why? If we leave Japanese no more killem, he's going to shoot us someday'. Natjelma and Mau say 'Alright' and Waninya and Noming say 'Yes' and Mineowie. Three boys Nanyin, Mowenbowie and Woolaware said 'We not kill him'. These boys all come down to the smoke house. They got spear alright. Then they get around smoke house. They sing out 'Tout Waah'.(sic) All Japanese come out and try to get gun, and two black boy there pick up the gun. Alright all these Japanese go away and hang onto the dinghy and try to push it into the water, and one boy get one Japanese along spear and another boy gets another Japanese, and another boy get another Japanese. The same boy get one Japanese and then get another Japanese spearem through the arm. That Narkaya. And another boy get another Natjelma get one, the first one. Mau got the next one. Waninyah get one. Minieowie chase another one, no more gettem.

And one boy named George stoppem Minieowie. George somewhere along Melville Island boy. One Japanese still swim round in the water. Noming go round the water, Noming come in close to Japanese and say 'Me got nothing no spear or anything'. But Noming got axe behind him in belt and hit that Japanese. The Japanese sink down. Everybody killed now. Three old men go round to smoke house and takem out tucker and lettem out four women.

Natjelma tell me one day. Mau tell me next time, and Narkaya tell me last time. [6]

Harry's evidence seems just too neat. He emerges as what cynical whites of the time called a 'head' - a blackfellow who was 'too smart by half'. Perhaps Harry, like me when I talked to Mau in 1968, was given a summary of the entire Yolngu experience with Japanese trepangers, not just the events of ten days in September 1932. Harry would certainly have known from dealings with missionaries that what most interested white folk were stories involving the abduction of Aboriginal women. Harry would also know that whites expected Aboriginals to 'know their place' and respect white authority. His evidence suggests that when they were assaulted and offended by the nasty Japanese the eminently reasonable Yolngu felt perhaps they should seek assistance from Milingimbi Mission (hundreds of miles overland) where those invaluable intermediaries Andrew (also an interpreter in this case) Myangler and Harry lived. History suggests, however, that the *Djapu* did not feel they needed outsiders to help sort out their problems.

Harry seemed anxious to suggest that the witnesses in court, like Nanyin, had been placidly tolerant of the Japanese, so he would present nothing to incriminate them in any way. His evidence concerning Mau, Natjelma and Narkaya seemed framed to show they had been cruelly mistreated, and had participated in the killings only after being 'pushed' by Wonggu (who was conveniently not charged before the court). So, in summary, it seems Harry might have set out to present a story everybody would like, a story which would enhance his own standing as a 'go-between' in the game of 'blackfellows and whitefellows'.

Evidence was given by the *Tiwi* [7] and Goulburn Island Aboriginals who had been working for the Japanese. The *Tiwi* all agreed that the Caledon Bay Yolngu were 'cheeky' in that they had accepted the

presents from the Japanese and then killed them without provocation. Billy Bigyarrumboy said, for example:

I no more been seeim Japanese kill (i.e., hit or beat) Caledon boys alonga stick. The Japanese been givem those Caledon boys rice, flour, tobacco alonga work...I been seeim Japanese gottem gun. I never been seeim Japanese shoot alonga Caledon Bay boy. [8]

Another *Tiwi*, George Woongiin, told of identifying the three accused at Fannié Bay Gaol. He made specific allegations about the killings:

I been look first time and cook been catchem (a spear) from that man (points to Narkaya)...Shovel spear been killem those Japanese. That boy been chuckem spear (points to Natjelma). I savvy that boy alright. [9]

The three Goulburn Island witnesses all agreed that the Japanese had growled at and hit the Caledon Bay Aboriginals. Solomon said he did not witness the killings for 'I been hearem noise and cook been sing out, and I run away quick'. [10] Solomon did give quite specific evidence about cruelty by individual Japanese:

Japanese been thrash those Caledon Bay boys, been thrash four boys. Kimishima been thrash those boys. I been see Japanese shoot guns. They been shoot at those four boys. That morning when trouble come up I been gettim trepang. Three boats been go out for trepang. Might be my boat took two Caledon Bay boys but I am not sure. I do not know what other boat took. I been see lubra alonga beach when we get trepang I been see four lubras. They been go for oysters. I been see Japanese cook there where they get oysters. I been seeim take one lubra. The other three lubras been run away. After that cook went back. I been hearim shot. I been hearim six shots. When we been hearim shot we been come home. Kimishima been fire gun at people. Him been missed them. They been frightened and run away. Kimishima took those boys and made them friends again and we been cut trepang that we been bring in.....I been seeim lubra alonga smoke house four lubras. They were working

tre pang. They were inside smoke house. Door been shut up. Kimishima been shutem up. Door locked up outside. Japanese been give Caledon Bay boys little bit tucker. [11]

So Harry's evidence also tied in neatly with that of the Goulburn Islanders. Mowenbowie, Nanyin and Woolaware, three Caledon Bay Yolngu, all gave evidence that the Japanese administered floggings, discharged firearms, and abducted women. They said they had opposed the decision to kill the Japanese, and clearly implicated Mau, Natjelma and Narkaya in the killings. Each witness indicated that Wonggu had ordered the killings after the abduction of the women, first on the oyster beds, and later at the smokehouse.[12] Each gave evidence through interpreter Andrew, another 'mission boy from Milingimbi'.but there is no transcript.

It is highly likely that even if Andrew himself spoke English well he would know that the more quaint 'pidgin' was what the court wanted to hear, for the Judge's associate and clerk of the courts at all these trials was J W 'Fatty' Nichols, who liked to show off his own competence by insisting that all Aboriginal evidence was taken down in 'pidgin', whether or not that was how it was given.

Fred Gray gave evidence that he was 'told something' on 17 September and had gone by dinghy towards the Japanese camp. He told the court he found the two luggers occupied by the Yolngu and that one of them, Mickey (Gunguyuma) discharged a shotgun. Gray went back to his own camp, and he and his party walked around the beach to the Japanese camp, now deserted except for four bodies, which they buried. The next day they found the body of the engineer Higashi and buried him. They saw the tracks of Kinjo and the *Tiwi*, and noted that iron from the boilers (suitable for spear heads) was missing. [13]

Gray said he then organised to take the two Japanese luggers, plus *Northam*, to Darwin. He went on to say that in December 1933, just before meeting Warren and Dyer, he had again gone over the detail of the killings of the Japanese in the presence of the accused. Thus his evidence was admissible, as had been Harry's. Even though Gray spoke only a few words of Yolngu *matha* it would be reasonable to assume that he could communicate quite effectively with the Yolngu in December 1933, for he had been among them for almost two years. Aboriginal sign language (sometimes called 'finguistics') is very dramatic and precise. Here is Gray's evidence

Several of the boys, Natjelma, Wonggu, Nanyin, and all of the accused were present and could hear what was said. I understood them to say that the Japanese had fired at them, also that they had trouble with the women. That was the principal complaint. I did not get any actual details at that time, afterwards they told me more details. They told me how Inamori had interfered with one of the women. All the accused were present at the time. Also that Inamori and Tanaka had fired at the Caledon Bay boys, also that several had been beaten by the Japanese....Natjelma told me that he had killed one Japanese. Mau said that he had killed one Japanese. Narkaya also said that he had killed one of the Japanese. Natjelma, Mau and Narkaya said that they had been fired on by the Japanese, also others said so. They described the Japanese as cheeky buggers. They said that if I had been a cheeky bugger they would have done the same to me. [14]

Gray reported the discussions about coming to Darwin. He said he told Wonggu he 'would help them as much as I could.... I made no promises to them or made any threats before they told me all their troubles'. [15]

All of the above evidence was given at the lower court hearings, following which the defendants were committed for trial in the Supreme Court. Despite the terms of the new Ordinance Judge Wells elected to have a jury appointed for these three Supreme Court trials. John Harris, Acting Crown Law Officer, appeared for the Crown, and William Joseph Pius Fitzgerald appeared for the defence. J A Carrodus attended. He was a highly skilled shorthand writer [16] and took comprehensive notes at each of the three Supreme Court trials. He spoke of the 'interpreter', presumably Andrew:

The first interpreter used was the one who had been employed in the lower court. It was evident that he had become so saturated with the evidence given by the various witnesses that the replies interpreted by him from the witnesses were greatly elaborated and were really his own statements and not those of the witnesses. This was so apparent that the Judge ordered another interpreter to be used. [17]

The evidence given by Gray, Kinjo and the Aboriginal witnesses was, according to Carrodus, 'substantially the same as that given in the lower court'. [18] Fitzgerald indicated that he would put the three accused in the witness box, but it seems from Carrodus' notes that only Natjelma spoke:

When Natjelma, the first of the accused, commenced to give evidence incriminating himself the Judge wanted to stop him but informed Counsel for the defence that he could not stop him if he desired to go on. [19]

I am unable to find any record of what Natjelma said. Carrodus recorded that Fitzgerald wanted to enable the accused to give direct evidence of provocation and mitigating circumstances. Yet the solicitor did not seek to elicit mention of Mau's bullet wound! One would have thought Dr Kirkland, or somebody, would have pointed out Mau's wound in briefing Fitzgerald, or that Dr Kirkland himself would have given evidence. Fitzgerald felt there was no use denying the killing as it had been freely admitted by all witnesses and the accused themselves. When he addressed the jury he urged them to accept that the abduction of women provided a strong motive for the killing, and that the Aboriginals felt they had no redress available to them other than to kill the Japanese. He strongly urged the jury to bring in a verdict of not guilty. [20]

Harris, counsel for the prosecution, maintained there was no justification in law for the killing. The attack was not one made in frenzy and on the spur of the moment but was premeditated. [21] Harris asked that each of the three accused be found guilty.

When Judge Wells addressed the jury he summarised 'the essential facts':

- 'Something had annoyed the Aboriginals. It does not really matter so far as you are concerned what it was. No matter how grave the injury inflicted upon them was, it does not justify premeditated murder'
- 'The three accused and some other boys went off, stalked the Japanese and deliberately murdered them'
- 'If those facts are proved, and they are admitted by the accused, it is premeditated murder'

- 'It has been suggested that there was provocation... To establish provocation in the legal sense, it must be proved... that there was provocation on the part of the person killed, and was calculated by a reasonable man to deprive him of his self-control'
- (The Aboriginals) 'went into conference and decided upon the killing. It was a deliberate decision and consequently does not come within the category of provocation in the legal sense'
- 'The suggestion that they were thrown into a frenzy by the stories about the lubras is a matter for you. It seems rather far-fetched'
- 'Whether the Japanese ill-treated the natives or not is not a matter for you to consider. It is a matter for the judge to consider when dealing with the question of punishment'. [22]

The all-white jury took only a quarter of an hour to bring in a verdict of guilty, but added a recommendation for mercy on the grounds that 'the jury took into consideration the Aboriginals were stone-age men and savages, [and that] there was a certain amount of provocation established in connection with the use of firearms'. [23]

When Judge Wells re-convened the court on 1 August he called on any person in the court to give evidence on behalf of the Aboriginals before he passed sentence. He was exercising the new power granted by the amendment to the *Criminal Law Consolidation Act* to take 'any relevant factors' into consideration. Fred Gray told of his good relationships with the accused and their families and pointed out that 'if they have a grievance, or an injury done to them, they have no representative of the Government to confide their troubles to'. He asked that they be not sent to prison, suggesting instead that 'they be sent back to their country, and follow them with some representative of the government....so that, in future any policeman can go amongst them in comparative safety'. [24]

Gray said he felt 'the interpreters in this case have not a complete knowledge of the Caledon Bay language, each of them belonging to some other tribe well over a hundred miles away'. If he had these doubts, one must ask why he and Dyer brought Harry to Darwin on *Oituli*? And how he could test the extent of Harry's knowledge of the language of the accused? Gray concluded:

Also, I am confident from my knowledge of this tribe and also the nervous state of mind that the Japanese were in on 16 September, that no women were even seen or molested on the 17th: that if there was a cause or provocation at all, it was some injury to men and not women. I might also mention that Natjelma, Mau and Narkaya, and also Nanyin, did not at any time work for the Japanese previous to the 17 September. [25]

Gray has been accused over the years of 'waxing and waning' on the question of whether the Japanese abducted women, and on the face of it his various statements over the years seem inconsistent. [26] It must be kept in mind, however, that during the trial he was giving admissible evidence of conversations he had heard, in the presence of the accused, that is, of Wonggu and others saying that women had been abducted. His private opinion has always been that there is some considerable doubt about abduction or ill-treatment of women during this visit of the Japanese in September 1932, and he is reasonably certain that there was no contact with women either on 16 September, when plans for the killing were in hand, or on the morning of 17 September, when the killings occurred.

In response to Gray's opinions, Judge Wells said he did not believe the stories about women in the smokehouse, and if the incident on the reef did occur 'the Aboriginals took no notice of it...The women might be dismissed from the case'. The suggestion that 'the Aboriginals were thrown into a frenzy of passion through the ill-treatment of women' was nonsense. He did not believe the Japanese intended to shoot the Aboriginals; and he would accept Gray's evidence only so far as it established that the natives were friendly to him. [27]

Judge Wells then delivered one of his more notorious *obiter dicta*, which he perhaps recalled when he was doing truly heroic things in Darwin during and after the Japanese air raids of 1942, and when he ordered the release of all prisoners from Fannie Bay gaol, personally telling the Aboriginal prisoners that they should now go and kill as many Japanese as possible! Before he sentenced the three Yolngu, he said:

The people killed are subjects of a friendly nation. They were engaged in a lawful occupation and they were murdered. If we allow the Aboriginals who had been convicted of murdering them in a wholesale manner and on very little if any

provocation to go unpunished that would be a course of action at which their own government might very reasonably take offence, and might even reasonably suggest if we were not able or willing to afford proper protection to their nationals, they should be allowed to take the matter of protecting them into their own hands. [28]

Judge Wells called on the Chief Protector of Aborigines, Dr Cook, to state what he thought should be done with the prisoners. They squared up like two scrub bulls, it seems, as they had this exchange:

DR COOK You mentioned a moment ago that the Japanese were engaged in a lawful occupation. They were not. They were in an Aboriginal reserve and should not have been there.

JUDGE Mr Gray was there.

DR COOK Yes, but he had a permit; the Japanese had not. The Japanese were there because the Administration has no patrol boat to keep them out. The Aborigines may very well have regarded the Japanese as invaders.

JUDGE Apparently they were not regarded as invaders, because they were not prevented from landing and were permitted to fish for trepang.

DR COOK If a term of imprisonment is inflicted upon them, no useful purpose will be served by making it a long one.

JUDGE A short term in gaol they will probably enjoy and go back and tell their people what a fine time they had.

DR COOK When a number of people in a tribe decide on doing something, they may not understand that there may be trouble, and there is a certain amount of loyalty required from other members of the tribe. That is not necessarily an indication of a flaw in their character.

- JUDGE I do not think there is any question of tribal loyalty, because several men refused to join in the murder. The evidence really shows that the tribe is not uniformly wild or uncivilised.
- DR COOK A short term of imprisonment will probably serve as a corrective, but a long term may disintegrate their character altogether.
- JUDGE They will learn all that can be learnt if they go to Fannie Bay for one year. I think that they should be sent to prison for a lengthy period.
- DR COOK A lengthy period of imprisonment will result in their losing their tribal position altogether and they will only have a gaol aspect. They will be de-tribalised.
- JUDGE I do not think there was very great provocation for the killing. I consider there should be a long sentence. One of the dominant ideas in their minds was loot. As soon as the Japanese were finished - off they proceeded to loot.
- DR COOK It is possible to remove them without sending them to prison. If they had a short term of imprisonment they could be withheld from their country for a further period by the Department, not necessarily in Darwin. After being in Fannie Bay they would be used to being away from their country. If they were sufficiently myall in character they would think the intervening country hostile.
- JUDGE. Possibly the best and kindest thing to do to them is to hang them. It is difficult to decide what to do with them. I do not feel inclined to take any risk of their going back to their country. Probably the best thing to do is to give them a long term of imprisonment and if it appears, after they have served a substantial part of that sentence, that their conduct is satisfactory and conditions in their country are such as to warrant it, to recommend to the Executive Council that they be released.

I am going to sentence them to a long term on those conditions. If things improve at Caledon Bay and the country is brought under control and things are peaceful down there, I am prepared to make a recommendation to the Executive Council. There is very little reason why sentence of death should not be given. [29]

In sentencing the prisoners Judge Wells said:

You are sentenced to imprisonment for twenty years, and if after the expiration of a substantial part of that sentence, say four years, it is found that the people from whom you come are peaceful and under control and if, in the meantime, you behave well in gaol and the gaoler reports well on your behaviour, I will be prepared to recommend that you be sent back to your own country. [30]

The Judge ordered that the sentence be explained to the prisoners and also the witnesses before they returned to Caledon Bay.

The Melbourne *Herald* reported the case under the heading JUDGE MERCIFUL WITH NATIVE MURDERERS [31] pointing to the fact that Judge Wells had for the first time exercised his 'new prerogative of mercy' under the terms of the recent amendment to the *Criminal Law Consolidation Act*. The *Sydney Morning Herald* concentrated on the 'friendly nation' statement and also the remarks 'It is difficult to know how to deal with the natives. Probably the kindest thing is to hang them.' [32] *The Canberra Times* had the stark headline HEAVY SENTENCES. [33] The enigmatic *Bulletin*, as a rule sympathetic to Judge Wells, attributed to him the words: 'Probably the best and kindest thing would be to hang them', but went on to say:

The poor devils were, of course, merely meting out justice to the invaders according to local custom. If they were hanged on the spot with a display of Government force, it might be the best thing as a deterrent, though not the kindest. Judges have always shown an extreme distaste for being hanged themselves, and natives are just as human. [34]

Carrodus immediately reported the details of the trial to Canberra, where Perkins was being besieged by requests to have Wells replaced. On 6 August Perkins sent a coded telegram to Wells pointing to 'statements it is difficult to believe you made. In order to enable me as Minister to protect reputation of Territory for fair administration of justice please reply re following alleged statements'. [35] Of his 'better to hang them' remark, Wells said

COOK POINTED OUT THAT A LENGTHY SENTENCE OF IMPRISONMENT DETRIBALIZED AND CUT OFF FROM ALL ASSOCIATION WITH THEIR OWN PEOPLE AND ON DISCHARGE WOULD BECOME MERELY HUMAN DRIFTWOOD AND SUGGESTED THAT THEY SHOULD ONLY BE SENTENCED TO A SHORT TERM OF IMPRISONMENT. I REPLIED THAT IN A CASE SUCH AS THIS WHERE THE PRISONERS HAD BEEN CONVICTED OF WHOLESOME MURDERS COMMITTED ON LITTLE IF ANY PROVOCATION I COULD NOT CONSIDER THE IMPOSITION OF ANY MERELY NOMINAL PENALTY THAT I HAD ALREADY DECIDED THAT LAWFUL SUFFICIENT REASONS HAD BEEN SHOWN IN CASE TO JUSTIFY ME IN REFRAINING FROM PASSING SENTENCE OF DEATH BUT THAT I FULLY APPRECIATED THE FORCE OF WHAT HE HAD SAID AS TO THE EFFECT OF A LENGTHY TERM OF IMPRISONMENT AND IT WAS REALLY DOUBTFUL WHETHER IT WOULD NOT BE A BETTER AND KINDLIER THING TO SENTENCE THEM TO DEATH. [36]

Wells was giving a narrative, not a verbatim account of what had transpired, but he was, in effect, denying that he had uttered the words 'Possibly the best and kindest thing to do with them is to hang them' but rather 'it would be a better and kindlier thing to sentence them to death'. Carrodus, the *Sydney Morning Herald*, the *Canberra Times*, the *Melbourne Herald*, the *Bulletin* and the *Melbourne Argus* all attributed to the Judge the direct quotation 'better to hang them'. [37] It seems more than a semantic quibble to say that the Judge's comments in court were considerably more dramatic in intent than the words he now attributed to himself and defended in his telegram to Perkins.

Wells had sentenced eight Aboriginals to death in the preceding months and, that very day, would sentence a ninth. [38] It was widely accepted that any death penalty would be commuted. There

had been plenty of executions in Darwin in earlier days, but the next hanging at Fannie Bay Gaol would be in 1954. [39]

On his comment about the 'friendly nation', which Japan was supposed to be at the time, Wells said:

THIS REMARK WAS MADE NOT IN CRITICISM OF ANYTHING THE ADMINISTRATION HAD DONE OR FAILED TO DO BUT AS AN INCIDENTAL REASON FOR THE EXERCISE OF DISCRETION VESTED IN ME IN A CERTAIN WAY. I SUGGEST THAT IT IS NOT IMPROPER BUT ON THE OTHER HAND HIGHLY PROPER FOR A JUDGE IN DECIDING IN WHAT WAY HE WILL EXERCISE A DISCRETION PROPERLY VESTED IN HIM TO HAVE REGARD TO FACTS THAT A PARTICULAR COURSE OF ACTION MAY GIVE JUSTIFIABLE OFFENCE TO A FRIENDLY NATION. [40]

Wells concluded his lengthy telegram:

I STRONGLY RESENT THE SUGGESTION THAT ANY CASE DECIDED IN THIS COURT HAS BEEN DECIDED OTHERWISE THAN ON EVIDENCE AND IF SUCH SUGGESTION IS MADE PUBLIC I SHALL BE COMPELLED TO PUBLICLY REFUTE IT. [41]

The bluster paid off. Perkins sent back a mealy-mouthed reply:

GLAD TO HEAR THAT REPORT NOT JUSTIFIED. IT ILLUSTRATES ANXIETY OF PRESS TO MAKE SENSATIONAL STATEMENTS. PRESS IS SPECIALISING ON (sic) MAKING DARWIN SENSATIONAL AND SECTION OF PRESS IS SOMETIMES REGARDLESS OF NATIONAL REPUTATION. HENCE NECESSITY FOR GREATEST CARE TO AVOID AS FAR AS POSSIBLE GIVING ANY OPPORTUNITY FOR SENSATION SEEKING JOURNALISTS. [42]

It was the sort of stuff an indulgent father would write to his pampered offspring. Perkins did admonish the Judge mildly on the 'friendly nation' issue:

I UNDERSTAND HOW MATTER CAME UP BUT HOPE YOU APPRECIATE RISK POINTED OUT BY MINISTER FOR EXTERNAL AFFAIRS IN MY TELEGRAM AS TO COMMENTS BY JUDGES ON INTERNATIONAL

MATTERS WHERE EVIDENCE IN CASES DOES NOT RELATE TO THEM.
[43]

Probably the most astute comment on the trial was provided by a Melbourne *Herald* editorial:

There is nothing in the arrest and trial of the aborigines, at any stage, which does credit to the Federal Government's administration. The three wild blacks will pine for weary years in a white man's prison. Penalties in criminal cases are supposed to be a deterrent to other evil-doers as well as punitive. Penal reformers hope also that the treatment of prisoners during their sentences might be to some extent reformative. What value as a deterrent can there be in the case of savage tribes wandering the wilderness, hundreds of miles from court and prison, knowing no more about those institutions than do the Territory's wild buffaloes? The possibilities of 'reformation' are suggested effectively by the answer made by the judge to the proposals that the sentences be made shorter.....

Of recent years public opinion has been irresistibly in favour of a policy unfailing in humanity and helpfulness. The Federal Native affairs administration is anxious to enforce the humane policy. It is unable to do so because it is checked by an obstinate political ignorance, which leads it to try to regulate native affairs before it has any real knowledge of the aborigines or the best means applicable to their mentality. The Melbourne University has generously offered to grant the Minister the services of an eminent anthropologist (Dr Donald Thomson), who is willing to live among the Arnhem Land blacks for a year or two and study them. Until the Government accepts means of the kind for replacing groping ignorance by intelligent understanding there will continue to be farces like the one just staged at Darwin. [44]

In *R v Mau, Natjelma and Narkaya* it was established beyond reasonable doubt that the five Japanese, including Tanaka, the

person specifically named in the indictment, were killed at Caledon Bay. The prosecution does not seem to have proved, beyond reasonable doubt, that the three men charged in court were the actual killers of Tanaka, or indeed, any of the Japanese. And the defence counsel certainly did not establish or pursue the contention that provocation was a factor, when it may have been.

ENDNOTES CHAPTER 7 THE CALEDONS IN COURT

- 1 Fred Gray, evidence to NT Supreme Court, 1 August 1934
- 2 *Northern Standard* 13 April 1934
- 3 *ibid.* 18 May 1934
- 4 *ibid.*
- 5 *ibid.*
- 6 Department of the Interior file 36/111
- 7 'Tiwi' is a quite modern appellation, first used by Colin Simpson in the book *Adam in Ochre* (1951). It is something like 'Yolngu', simply meaning 'we'. In my first contacts in the early 1950s with people who now call themselves *Tiwi* they scoffed at Simpson's suggestion that that was their tribal name. The only word they knew that collectively described them was the jawbreaking *Ngeningatingauila*.
- 8-15 Department of the Interior file 36/111
- 16 Interview with Peter Carrodus, son of J A Carrodus, Alice Springs 1992.
- 17-25 Department of the Interior file 36/111
- 26 Mickey Dewar *The Black War in Arnhem Land* Darwin, North Australian Research Unit (NARU) 1992 p. 47
- 27-30 Department of the Interior file 36/111
- 31 *Melbourne Herald* 2 August 1934
- 32 *Sydney Morning Herald* 2 August 1934
- 33 *Canberra Times* 2 August 1934
- 34 *Bulletin* 8 August 1934
- 35 Department of the Interior file 36/111
- 36 *ibid.*
- 37 *ibid.*
- 38 Butcher Numandal was convicted of murdering William Jennings.
- 39 Keith Edmunds, Crown Law Officer in Darwin in the immediate post-war years, told me that he got plans and drawings from Newgate Prison, England, when a gallows was constructed at Fannie Bay Gaol to hang Novotny and Kocy, convicted in 1954 of the murder of Darwin taxi driver George Grantham.
- 40-43 Department of the Interior file 36/111
- 44 *Melbourne Herald* 2 August 1934

CHAPTER 8 WORTH SIXTY NIGGERS

The plain fact is that in the Northern Territory the trial of an aborigine in most cases proceeds, and so far as I could gather, has always proceeded, as if the accused were not present. If he were physically absent no one would notice this fact.

Martin Kriewaldt, NT Supreme Court Judge (1960) [1]

The killings of Traynor and Fagan never aroused any great level of feeling in Darwin or Canberra. Nobody knew their backgrounds. Unlike McColl, nobody mourned them. It seemed obvious, from the reports of Gray and Shepherdson, that they were at best 'no-hopers', at worst 'combos' or 'gin-jockeys'. Thus, even in 'egalitarian' Darwin, they were posthumously ostracised by white society. Yet Tuckiar and Mirera were about to stand trial for killing 'an unknown man' - in effect these two derelict white men - and might be sentenced to death largely because of the efforts and evidence of their friends Dyer and Gray. 'No police work' indeed: not only would Gray and Dyer give evidence themselves, they had brought to Darwin other witnesses who had obtained statements from the accused in the guise of friendship. It had never been suggested to either of the two Yolngu, now accused, that they might be better advised to say nothing.

R v Tuckiar and Mirera was adjourned several times, with the defendants held in custody throughout. A hearing eventually took place in the Darwin Police Court on 26 July 1934, before Mr V L Lampe, Special Magistrate. Evidence was taken from Gray, Dyer, Hall, Parriner and Harry, the 'mission boy' from Milingimbi. [2]

Gray told of meeting Traynor and Fagan at Milingimbi in February 1933 and testified that early in 1934 he had been shown the skeleton of a man he believed to be Fagan. Those remains were then buried by Warren at the Groote Eylandt Mission. [3]

Hall reported receiving the human remains at the Groote Eylandt police post. Parriner and Harry both tendered admissible evidence of conversations they had with Tuckiar and Mirera. [4]

In the lower court Dyer was allowed to tell of conversations he and Warren had with Tuckiar and Mirera at Woodah Island. He told of finding wreckage of a red and white boat, and also the remains of the person Gray identified as Fagan. [5]

Dyer gave evidence that on 21 January 1934, at the first meeting of the Peace Party with Tuckiar and Mirera, the defendants were very frightened and ran away; but after their fears were calmed they talked to the missionaries through two interpreters, Harold Hamilton and Jalma. Although the defendants themselves had shown the missionaries the wreckage of a red and white boat on the beach (Dyer produced a photograph) the two Yolngu at first denied all knowledge of 'the two whites' or of having killed them. But when the Peace Party returned on 26 January Tuckiar and Mirera paddled out in canoes 'with their tribes' to greet the mission lugger. [6] At that point Tuckiar and Mirera, according to Dyer, 'confessed readily'. They told how while they were away hunting the two white men sailed into Grindall Bay (see map 3) and remained 'three nights'. When the defendants returned to their camp from hunting on the second day they were told two 'lubras' were missing. 'Tribesmen' told them the missing women were on the boat with the two white men. Tuckiar and Mirera, accompanied by 'Jim Barrion' (Djimbarion) paddled out to the boat to bring the 'lubras' back. Mirera looked down into the cabin and saw the two 'lubras'. One of the whites hit him on the head with a piece of wood, raising a big lump that was apparent 'months afterwards'. [7]

Dyer said Mirera closed with the white man, who was very powerful and threw Mirera overboard. Mirera swam round to the canoe where 'Jim Barrion' picked up a piece of firewood and threw it at Mirera's adversary. His aim was straight, and the missile knocked the white man into the sea. That man then swam ashore where, apparently, there was another fracas, but it was not known exactly what happened to him. Meanwhile Tuckiar was wrestling with the other white man and eventually threw him into the water. In falling the white man struck his head on the side of the boat. He sank and was not seen again. Dyer said that after Tuckiar and Mirera told them the story they agreed to show the missionaries the remains of the white man who had swum to shore, but 'several days later, when we asked them to do so they refused. Tuckiar told us that Wonga (sic), King of the Caledon Bay tribe, had declared war on them, and had threatened to raid and kill them. As Tuckiar's best spearmen were needed to combat the threat, they told us to find the

remains ourselves. I found the bones in the spot they indicated'. The bones were undoubtedly those of a white man, Dyer said:

I collected them and handed them to Mr Warren in the presence of the police at Groote Eylandt. Constable Hall was there. They were the bones of a big man about six feet, and you would know the difference between a white man's skull and a black man's skull. There is such a vast difference, and knowing the difference I would certainly say it was the skull of a white person. I have handled many Aboriginal skulls, they are lying in the bush everywhere out our way. I am well acquainted with the characteristics of an Aboriginal skull. An Aboriginal has a very heavy frontal bone over the eye, protruding well over the eyes, and an Aboriginal skull is much heavier than a white man's skull. You can tell it as soon as you lift it up. The teeth are often a good indication too. In a young Aboriginal the teeth remain in the skull for a very long time. In the skull I found the teeth were missing, evidently with decay. There was a very prominent lower jaw on the skull I found. [8]

Fitzgerald, counsel for the defence, cross-examined the missionary. Dyer was in his element, on stage:

Fitzgerald: How do you account for the fact they so readily confessed?

Dyer: Nineteen years of experience has shown me that aborigines will generally lie at first, and then, if bowled out in a lie, will tell the truth. Besides, they have known me for years, and regard me as a friend.

Fitzgerald: How did you hear of the killing?

Dyer: Mr Gray heard the story, and told us when we met him at Caledon Bay.

Fitzgerald: Do you think Tuckiar and Mirera had any idea of the consequences of their confession, that it might mean their loss of liberty? Did you warn them of that?

Dyer: Yes. I told them they would have to face white justice. They know murder is wrong, as they have their tribal punishment for it. They know something of white law

as some of their tribesmen have been to Darwin as witnesses, and no doubt told them of our systems. [9]

Fitzgerald submitted to the magistrate that the evidence of the different witnesses was contradictory, that the defendants were justified in going to the assistance of their wives, and that Mirera was 'defending himself from attack'. He also suggested that the white man Tuckiar had allegedly wrestled with might have been 'seized with cramp and drowned', once thrown into the water. The magistrate was not convinced. He said that a *prima facie* case of murder had been established, and committed Tuckiar and Mirera to the Supreme Court. [10]

The Supreme Court hearing took place on 2 August 1934, before Judge Wells and a white, male jury. No attempt was made to translate the charge, which was read aloud in English. Tuckiar and Mirera were charged that 'between 1 February 1933 and 1 August 1933 at Woodah Island in the Northern Territory of Australia they feloniously, wilfully, and of their malice aforethought did kill and murder a certain person whose name is unknown'. Fitzgerald entered a plea of 'Not guilty' on their behalf. The Crown Prosecutor was again John Harris.

The essential difference in the Supreme Court was that Judge Wells correctly refused to allow Dyer to give evidence of conversations he had at Woodah Island with the defendants, on the grounds that the interpreters used by the missionaries at that time were not present in the court. [11] Dyer did give evidence of the voyages of the *Holly* up and down the coast. He told of collecting the bones.

- Judge Wells: Where are these bones?
Dyer: They are buried on Groote Eylandt.
Judge Wells: Where are the interpreters who acted for your expedition?
Dyer: They are at Groote Eylandt too.
Judge Wells: (to the Prosecutor) Why are not the bones and the interpreters produced by the Crown? They are apparently easily obtained.
Harris: Because the trial of the accused would have been further delayed if we had attempted to get them.
Judge Wells: How long have they been waiting trial?
Harris: Several months.

Judge Wells: And you had several months to get this evidence. The jury is entitled to all the evidence available, and it is a most serious situation that evidence that is available is not here. The public is entitled to an explanation. [12]

Fred Gray tendered the following evidence:

My name is Frederick Harold Gray. I am a trepanger residing in Darwin. In February of last year I met Traynor and Fagan at Milingimbi. They were repairing a boat. Traynor was a stocky (sic) built man I should say about 5 feet 9 inches. Fagan was slimmer and taller and rather loosely built, Fagan had rather a long face and a prominent jaw. I saw them repairing their boat and offered to tow them to Elcho Island, and I advised them to turn back. From Elcho Island I towed them further on to Arnhem Bay. They stayed for three days at Arnhem Bay. I saw them leave. They left in an easterly direction through the English Company Islands. They wanted to go to Thursday Island. They decided to go to Borroloola at the finish. In going to Borroloola they would have to pass Woodah Island. It was a small cutter about 16 or 18 feet long, painted red and white. It was about half decked. I haven't seen Traynor or Fagan alive since. I remember 21 March last. I was at Groote Eylandt. I saw some bones there and I believe they were the bones of Fagan. They were in the possession of Mr Warren and Dyer. The bones were clean and fresh looking. They were the bones of a fairly tall man. The skull had the appearance of the shape of Fagan's head. The jaw bone was rather prominent. I saw portion of a boat or cutter at Groote Eylandt. I have reason to think that it was the cutter that Traynor and Fagan had. It was the shape and the colour, and the size of the portion would indicate the contour of the boat similar to that used by Traynor and Fagan. [13]

Cross-examined by Fitzgerald, Gray said he identified the bones as 'probably those of Fagan' by the skull. He agreed there were lots of people with prominent jaw bones and long faces in the world. He agreed that he had not seen many skulls or skeletons, and that he had

never studied anatomy. He agreed that the piece of wood he had been shown would 'not be enough to indicate the exact size of the boat'. He realised that it was a very serious thing to say that the bones were those of the man Fagan he knew when alive. But, he added, 'Seeing about all the facts I would not mind being judged by that evidence'. Gray went on to say that there was no white population between Groote Eylandt and Milingimbi as far as he was aware. And then, pressed by Fitzgerald, he acknowledged 'I should hardly be able to distinguish between a white man's skull and a black man's skull unless I had some previous information as to where it was found. I was informed that it was a white man's skull'. [14]

Victor Charles Hall, Mounted Constable, stationed at Darwin, stated:

On 27 January 1934 I was at the mission station at Groote Eylandt. The auxiliary ketch *Holly* arrived from Blue Mud Bay and Reverend Warren, accompanied by Reverend Dyer and Wireless Operator Fowler came ashore. Reverend Warren in the presence of Reverend Dyer handed to me the remains of an adult person. The remains consisted of the skeleton almost complete. The bones were those of a tall, heavily built person. I am familiar with the appearance of Aboriginal bones. I am also familiar with the appearance of the remains of persons of European race, through my experiences in the Territory and my experiences at the war respectively. The abovementioned bones handed to me by Reverend Warren were considerably heavier (sic) than those of the Australian Aboriginal skeleton. They resembled more the type of bones usually found in the skeletons of persons of European origin. The remains were subsequently buried in the Groote Eylandt mission cemetery. [15]

Cross-examined by Fitzgerald, Hall said he felt the person might have been dead from six to nine months: 'I should say anything under a year'. He said he had no doubt that the skull was that of a white man. He could have been reading from a nineteenth century anthropology text as he continued:

The characteristic difference between a white person's skull and an Aboriginal skull is the shape of the skull, the size of the cranium and particularly the shape of the lower jaw. In an Aboriginal skull the brain pan is smaller and the lower jaw receding. The skull of an Aboriginal is much heavier (sic) and two or three times thicker than a white man and a crack on the head does not mean as much to a black man as a white man. [16]

Parriner gave evidence of a conversation he had with Tuckiar and Mirera at Bickerton Island, when they had travelled by canoe to join Gray and Dyer and travel to Darwin on *Oituli* for 'the big talks'. The interpreter for Parriner was Big Pat, the police tracker. The evidence recorded is as follows:

My name Parriner. My country Woodah Island. I been savvy those two defendants Tuckiar and Mirera. I been savvy that time the two defendants go alonga Bickerton Island. They been talk 'Two fella men been come up alonga boat'. I been talk "True"? They been talk 'Yes, two white men'. They said they been seeim boat and they catchem canoe, and 'we go alonga boat and sit down there and two fella man been sing out. The men been askem us to catchem firewood, they been give us a tomahawk and we been go ashore and catchem wood. We been catchem wood and take alonga men alonga boat and we been then go to catchem more. They been say to us when you fetchem last load we will give you tobacco. When we been fetchem wood alonga boat the men gave us two sticks of tobacco and they been give us dinner. The two men say you catchem lubra and we been catchem two lubra and takem longa boat. The men said to us "You leavem this two fella lubra alonga us and you go back alonga camp". We come straight back alonga camp. When we been get back mob been talk "What those two fellows doing alonga those two lubras"? We been camp today and we sleep tonight and we go sneak up along those two men picaninny daylight and we takem mate belonga us Jimbarrion. We go straight out alonga canoe. We been get in canoe and allabout been sneak up alonga boat. We tie up canoe and allabout go alonga boat.

We been sing out and Tuckiar been catchem one lubra and chuckem alonga canoe. Mirera catchem another lubra and chuckem alonga canoe. One man catchem stick and hit Mirera. Jimbarrion and Mirera been catchem stick and been throwem along one white man. Tuckiar catchem another stick and killem that other white man. That man slip over the boat, and him been swim alonga shore and him been sink down half way. Tuckiar hittem white man and him fall over the boat and sink altogether. We go in alonga canoe and go alonga shore and straight back alonga our camp and we talk "We go and get rations alonga boat". We been takem ration and takem alonga shore and come back and sit down alonga shore alonga our camp'.

Tuckiar and Mirera been say 'We been killem those two men and go back to camp and sit down'. They been say 'They been dead altogether'.

I (Parriner) been come up to Darwin alonga boat. Tuckiar and Mirera two been alonga boat too. Tuckiar and Mirera been say alonga boat. After I been askem 'What for you go along Darwin'? They been talk 'Because we been kill those two fella white men alonga boat'. They been talk 'No matter we go to Darwin, we been kill those two men and we been go alonga Fannie Bay (Gaal)'. Tuckiar and Mirera both been talk that way. [17]

Cross-examined by Fitzgerald, Parriner was reported as saying

Tuckiar and Mirera been say they kill those white men because for lubras. The two white men been too strong. They been askem Tuckiar and Mirera for the lubras. They been ask those two boys for lubras. White men been too strong. Tuckiar been talk 'We will have to give them to them'. White men been too strong altogether. Tuckiar and Mirera been talk to Mr Dyer 'You been take us two fellows alonga Darwin'. They talk alonga Mr Dyer because they been kill two white men. These two fellows savvy themselves about Fannie Bay. [18]

Re-examined by Harris, Parriner said

Not much blackfellow been there at the time. No more been big mob. Tuckiar, Mirera, Jimbarrion, Wundercol, Mondugal and Orlambo been there. All about been proper hungry fellow. [19]

The next witness was Harry:

My name is Harry. I am a mission boy from Milingimbi. I know Mr Gray. I remember the day that Mr Gray came to Milingimbi in the lugger *Oituli*, and I came to Darwin in that boat with him. I savvy Tuckiar and Mirera. They were on the boat too, and Parriner also. I been talk to Mirera first time and Tuckiar afterwards. Mirera been say to me 'A cutter came up and anchored outside the beach and I see that boat and take a canoe and went alongside the boat and see those two men in the boat'. And these two men asked Mirera to come in the boat. He said they were two white fellow men but he did not know their names. Jimbarrion and Tuckiar been go with Mirera first time when canoe go out alonga boat. Mirera been say 'That two white men been get in the canoe and went to shore and they told me to go out for cutting wood. I went into the bush and was cutting wood in the bush and the two white men were walking around the camp, and they get two girls in the camp, and took them alonga canoe and took them out to the boat. Me Jimbarrion and Tuckiar went down afterwards. I put down the wood on the beach and pushed the other canoe in the water and Jimbarrion and Mirera put the wood alonga the canoe. And then Tuckiar went to the camp and was getting news there. Another woman tell him from camp, that two men catchem girl and takem them alonga boat. Tuckiar came back to tell me and Jimbarrion that two girl alonga boat. Me, Jimbarrion and Tuckiar go alonga canoe we go right alongside the boat. The two girls come out on the boat and said to Tuckiar and myself "Come quick those two men do wrong to us". I got first into the boat and put down my hand and grabbed that girl and put her on the deck of the boat. The man grabbed a paddle and hit me with it. I was half-drunk like, and I picked up a piece of wood and threw it at one white man and hit the white man on the

head. I fall over in the water and the white jumped over the boat into the sea, and the white man swam round for a little while and he sink. Two boys got after the other man. Jimbarrion and Tuckiar pushed the white man down, and he slip up and he bumped himself on the head on the rail of the boat, and fell out into the sea and him sink straight away'.

Mirera been talk 'We been catchem half bag of flour alonga boat and half a stick of tobacco, old blanket. Jimbarrion and Tuckiar went inside and couldn't find anything more'.

Tuckiar been talk another day, next day. Him talk same way. Him been say 'We been see that boat come in with two white men in it. I go out alongside the boat and white man asked Mirera: "We come in the canoe"? The two white men got in the canoe and went to shore and two white men asked me to get some wood. Jimbarrion, Mirera and myself went into the bush to get wood and the two white men went to the camp. We brought the wood back and put it alongside the canoe on the beach. The two white men went first to the boat and take girl with him. Two girls. I tell Jimbarrion and Mirera to load up wood alonga canoe and I went to the camp and some woman tell me news there and I went back to the canoe and I tell Mirera and Jimbarrion and we pushed the canoe out and pick up the wood and put it in the canoe and go out. We go alongside the boat and two girls sing out "Come quick he do something wrong to me". Mirera got out on the boat and put his hand down to get the girl who was inside the boat and he gave that girl a lift up and put her on the deck. The white man picked up a paddle and he hit Mirera. Mirera half- drunk like, pick up piece of wood and threw it at the white man and hit him side of head and white man swam over the sea. He jumped over. Mirera also fall over into the sea and white man swim a little way and sink down. Me and Jimbarrion get after the other white man and push him down, and white man fall over and knocked himself on the rail, the back of his head. Jimbarrion picked up Mirera and put him alonga canoe. Jimbarrion and myself went inside the boat. When the white man fell down and hit himself he fall in the water straight away. Jimbarrion and myself went into the boat and looked for tucker and find half a bag of flour and half stick tobacco and old blanket and then we went ashore'. Mirera been

tell me 'After two days dead body been float ashore all about the same man'. Mirera said ' I did not pick up the bones but left them there'. [20]

Was there confusion in the minds of Tuckiar and Mirera as this stream of men in whom they had placed their confidence told their stories? Presumably they could understand what their countryman Parriner had said, and perhaps they felt that in relaying their story their friends were helping them. There is no evidence that the defendants were asked, even by gesture, to indicate whether the stories told by Harry and Parriner accorded with their version of what had happened, or what they had told their friends had happened.

In 1960 Martin C Kriewaldt, who succeeded Wells as Northern Territory Supreme Court Judge, wrote:

The plain fact is that in the Northern Territory the trial of an aborigine in most cases proceeds, and, so far as I can gather has always proceeded, as if the accused were not present. If he were physically absent no one would notice this fact. The accused, so far as I could judge, in most cases takes no interest in the proceedings. He certainly does not understand that portion of the evidence which is of the greatest importance in most cases, namely the account a police constable gives of the confession made by the accused. No attempt is made to translate any of the evidence to him. If a jury is present the accused certainly does not understand the summing up nor could it be explained to him. If there is no jury, the accused in most cases has no comprehension of the addresses made by counsel to the Judge sitting as the fact-finding tribunal. If the rule requiring substantial comprehension of the proceedings were applied in the Northern Territory many aborigines could simply not be tried. [21]

It would be a joke in Arnhem Land to hear evidence of three middle-aged Aboriginal men going to get firewood: collecting wood is *miyalk djama* - women's work. But perhaps the Yolngu men were paid for wood which their women collected, as well as for sexual services.

The white men would have had no chance of getting Yolngu women aboard their boat unless the women volunteered or had been given instructions by their men to go. So it is probably reasonable to assume the two white men made some sort of deal to secure the sexual favours of the two women, and Djaparri's statement to me that she and other women were 'fucked' by the two white men corroborates that. Indeed, in 1992, I was told that seven women were on the boat with the two white men: Djaparri, two other wives of Tuckiar, two wives of Mundukal (Mundougal), Mirera's wife, and one other woman. [22]

Maybe Tuckiar and Mirera lulled the visitors into a false sense of security by allowing the whites - who would not have wanted any Aboriginal men looking over their shoulders to assess their sexual performance - to take the women to the boat in the one obvious canoe. Fred Gray is certain that Traynor and Fagan had no dinghy when he towed them from Milingimbi to Matamata. The Yolngu would probably not have known if the cutter had an engine, even if the white men had arrived under sail, so they would have needed to guard against the old trick of the white men sailing away and dropping the women further 'down the coast'. It seems likely that the story recorded by Warren was true - that the services of the women were paid for for one night, but that there was a dispute over payment for a second night. [23] The Aboriginal men surprised the whites at daybreak by coming out in a second canoe, seeking further payment. When no payment was forthcoming there was a fight, in which the two white men were killed.

In his summing-up Judge Wells said nothing had been done by the Crown to prove the accused guilty. The bones Dyer found were buried at Groote Eylandt, and were not brought to Darwin for examination. Nothing was done to connect the bones with the missing men, Traynor and Fagan. Portion of the boat was handed to the police at Groote Eylandt, but was not brought to Darwin. The 'half-caste boy', Harold Hamilton, who originally acted as interpreter for the missionaries, was left at Groote Eylandt. The jury had only alleged confessions to rely on for proof of murder. The two confessions (to Harry and Parriner) differed widely and the jury had to choose which it would accept. If the jury accepted 'one story of the confession', (Harry's evidence), it would bring in a verdict of not guilty, as it suggested the women were taken without the men's consent. The Judge said it seemed that when the defendants tried to get their women back the white man hit Mirera first and that Mirera acted in self-defence. [24]

The accused were acquitted. Mirera was discharged and Tuckiar remained in custody, to stand trial next day for the murder of Constable McColl.

- 1 M C Kriewaldt *The Application of the Criminal Law to the Aborigines of the Northern Territory of Australia* University of Western Australia Law Review, December 1960 p. 23
- 2-6 Deputy Crown Solicitor, Darwin, file DL 886
- 7 *ibid.* One might have expected the magistrate at that point to ask Mirera if he still had the lump, but there is no evidence that he did.
- 8 Deputy Crown Solicitor, Darwin, file DL 886
- 9 *ibid.*
- 10 *ibid.*
- 11 Melbourne *Herald* 3 August 1934
- 12 *ibid.*
- 13-20 Deputy Crown Solicitor, Darwin, file DL 886
- 21 M C Kriewaldt *The Application of the Criminal Law to the Aborigines of the Northern Territory of Australia* p.23
- 22 Letter from Judith Manybunu Wunungmurra, passing on information from Mirera's daughter, Shirley Gunumunggu, 1 October 1992
- 23 Department of the Interior file 36/4022
- 24 *ibid.*

CHAPTER 9 WHICH COUNTRY YOU ARE.

Gentlemen of the jury, the accused Tuckiar has pleaded 'Not Guilty' and has put himself upon his country, which country you are.

Judge's Associate, *R v. Tuckiar* N T Supreme Court (1934)

It is ironic that the system of justice in Arnhem Land, Tuckiar's country, was based on a 'trial by ordeal' called *Makarrita*. His trial in Darwin would be conducted under the British legal system, a younger system, but one whose supporters would insist was much more civilised than the *Makarrita*. Under the British system trial by jury had been slowly introduced to replace the 'barbaric' 'trial by ordeal'. Sir W J V Windeyer wrote that not everybody welcomed the change:

To try a man by a jury instead of by ordeal was to substitute the voice of the countryside for the voice of God. While (trial by) ordeal lasted it was felt this (trial by jury) ought not to be done unless the accused consented. Trial by jury did not appear a privilege to a man who feared the verdict of his neighbours. At the ordeal he might be lucky: it was worth the chance. To deprive a man of his right to trial by ordeal was to require him to renounce the chance of God's favour.... Upon his arraignment a prisoner was asked how he pleaded. If he said 'Not guilty' he was then asked 'Culprit, how will you be tried'? To this question he was expected to reply: 'By God and my country'. He having thus 'put himself upon his country' a jury could be empanelled to try him. [1]

While to 'put yourself upon your country' was the essence of trial by jury, it was also fundamental to the Yolngu *Makarrita*, for the accused person volunteered to be tried by ordeal. Tuckiar voluntarily went by canoe to Groote Eylandt, joined Gray and Dyer and travelled to Darwin for judgment by his peers. Did he thereby 'renounce the chance of God's favour?' Did he feel that the strange *balanda* ritual he was going through in Darwin had any meaning at all, compared to the

Makarrta to which he would have been subjected had he killed three Yolngu men in his home country? The *Makarrta*. An ordeal where his spear-dodging skill would ensure that he '*would be lucky*'. Where it would be '*worth the chance*'. Where the ritual spear in his leg would be received in the knowledge that justice was thereby '*seen to be done*'.

Tuckiar's trial in the Northern Territory Supreme Court began in Darwin at 9.30 a m on Friday 3 August 1934, with Judge Wells presiding. John Harris appeared for the prosecution and W J P Fitzgerald for the defence. After the indictment against Tuckiar was read Fitzgerald entered a plea of 'Not Guilty'. The jury was then sworn. The jurymen were W McMillan (foreman), E W Presley, Arnold Orton, J Myhill, D Presley, R S Parker, C W Parsons, H Porter, T O Morgan, H R Marchant, C O'Sullivan, and J O'Donoghue. [2] How much affinity did the twelve white, male jurors feel for their 'country' and their 'countryman', Tuckiar? They were addressed by the the Judge's Associate:

Gentlemen of the jury, the accused Tuckiar at the bar stands charged with murder. The particulars are that on the first day of August 1933 at Woodah Island he did kill and murder one Albert Stewart McColl, a constable of police, by spearing, and upon this he has been arraigned, and upon his arraignment has pleaded 'Not Guilty' and has put himself upon his country, which country you are. Your charge therefore is to enquire whether he is guilty or not guilty and to harken to the evidence.

There was no clerk to record proceedings, but three very skilled shorthand writers were taking notes. Judge Wells had been a court reporter for many years before studying law. Eric Wilson, the representative of the Melbourne *Herald* and associated newspapers, was the son of a Hansard reporter, and an extremely competent shorthand writer himself. [3] And Carrodus took his notes in order to 'ride shotgun' on Wells. On 3 August Brown sent this coded telegram to Carrodus:

DESIRED IF POSSIBLE HAVE VERBATIM REPORT ANY REMARKS MADE BY JUDGE DURING HEARING McCOLL CASE COULD YOU ARRANGE THIS WITHOUT JUDGE'S KNOWLEDGE STOP IN EACH CASE TRIED PRESS HERE

HAVE DECISION BEFORE DEPARTMENT AS THIS EMBARRASSING
GOVERNMENT GLAD YOU ARRANGE IMMEDIATE ADVICE [4]

After witnesses were instructed to leave the court Harris addressed the jury and then called his first witness, Constable Vic Hall:

I am a Mounted Constable stationed at Darwin. On 1 August 1933 I was at Woodah Island with Constables Morey, Mahony and McColl. Woodah Island is off Blue Mud Bay near Groote Eylandt. We left the police launch with four trackers and tried to get contact with the natives of Woodah Island to make enquiries. We walked about 20 miles, and arrived at an Aboriginal camp on the edge of the thick jungle. The camp was deserted, but had recently been occupied: the fires were still warm. We camped nearby for lunch. We posted the trackers as outposts round about. Later, a tracker reported something, and we surrounded a number of lubras. These lubras were handcuffed together and brought back to our camp and questioned in the matter of the murder at Caledon Bay. A tracker reported something, and the party, with the exception of McColl, who was left in charge of the lubras, entered the jungle and passed through it out upon the sea beach. Two trackers were left with McColl, and two trackers accompanied the rest of the party, Constables Morey, Mahony and myself. We saw a number of Aboriginals on a rocky point, which runs out into the sea, and a canoe load of Aboriginals at the end of the point just disembarking. All these Aboriginals then ran along the point, inland. Our entire party ran across the neck of the point, through the scrub, to intercept them if possible. We lost sight of them in the process. We reached the opposite side of the point and came out on the sandy beach, to find that all the natives had already passed - by the tracks running along the beach we saw that they had passed. We spread out in extended order and went back through the scrub towards where we had left McColl and the lubras. We were separated fairly widely in this operation. I heard a number of shots, and ran to where I could see Morey some distance ahead, in a patch of open clearing in the scrub, I spoke to Morey. On the first occasion I heard several shots, three or four in rapid succession. After I

spoke to Morey I heard another shot or two, fairly close, on the right flank. We ran in the direction of the shots, and came into a clearing where we saw Mahony re-loading his pistol. He told us something, and showed us his hat, which was slashed across the pugaree and through the felt. There were no natives visible then. The scrub was very thick around this clearing. In consequence of what Mahony had told us we headed back to where we had left McColl, at the dinner camp. The camp was in the scrub, on the edge of the jungle. The jungle was very much thicker than the scrub. The scrub in comparison with the jungle was quite light. The jungle was dense. We arrived at the dinner camp but McColl was not there and the lubras were not there. The two trackers we had left with McColl were there. We asked them something, and started to search for McColl. We searched until sundown. It was a moonlight night, and we searched right through until about midnight and we failed to find McColl. We camped for the night, and the following morning resumed the search; we picked up McColl's tracks on the edge of the jungle, and followed them all the way through the jungle. About 10 am we found McColl lying on the edge of the jungle, just outside in the scrub, in a comparatively clear place, not more than a mile from the dinner camp. In following the tracks the tracker had to go on his hands and knees all the time, and was very frequently at fault; the ground was all covered with leaves. McColl was dead. We searched the ground round about, and found a spear a few paces away. The spear now produced is the spear we found.

(Spear marked Exhibit A)

The spear was stained with blood over the whole of the blade and for some distance up the shaft (indicating on spear about 6 or 7 inches up the shaft). We examined the body, and there was a wound in the middle of the chest, gaping wide open and about 2 inches broad. The wound was right through into the chest cavity and there was a large pool of dried blood in which the body was lying. The wound was of the type usually made by a shovel-nose spear. The spear Exhibit A could have made such a wound. McColl's revolver was lying alongside him. The revolver now produced is McColl's revolver.

(Revolver marked Exhibit B)

We examined the revolver. Three cartridges had been fired, the third being a mis-fire. McColl had no spare cartridges in his possession. He carried no cartridge belt and the only cartridges in his possession were the six actually in his pistol. I am sure of this by reason of the fact that I spoke to McColl two or three days before in regard to this matter. We searched his clothing, and he had no spare cartridges. We searched the ground all around for tracks or for any objects of any evidential value, and found nothing but the spear and some running tracks of two Aborigines going from the spot. I should say McColl had been dead for twelve hours, since the previous evening. The signal arranged for the party to come together was two quick revolver shots. We buried the body nearby. When the trackers came in the first time to the dinner camp and told us something we went after the lubras. The second time they told us something at the dinner camp, and in consequence of what they told us there was a good deal of apprehension - I felt there was danger. As we left the dinner camp and went into the jungle I saw Morey removing the handcuffs from the lubras. The questioning was finished, and they were released; they were unfettered before we left McColl. I do not know the exact instructions given to McColl by the patrol leader, but the lubras were unfettered. I assume that McColl was in charge of the lubras from the fact that he was left with them. They were potential witnesses and would be required later on.

Subsequently, on 21 December 1933, I was at Groote Eylandt. Mr Warren and Mr Dyer handed to the police party in my presence some bones, including a skull. I recognised the skull as that of Constable McColl by means of the gold fillings in the teeth, which, during our association together on the police launch had been pointed out to me by McColl during a discussion on dental matters. The rest of the bones might have been any bones, they were all chewed up by dogs, and that sort of thing. The skull was the only thing that I could recognise. I brought all these bones into Darwin when we returned, and lodged them in the morgue at the hospital, Darwin. On 16 April last I went to the morgue at the hospital in Darwin, with the coroner and the accused Tuckiar. I saw these bones and the skull

referred to there, and I identified them in the presence of the accused. He made no statement.

CROSS EXAMINATION.

TO MR FITZGERALD. On 16 April there was an interpreter present. These actions which I have described on Woodah Island took place on the Bickerton Island end, the southern end. The police party landed from the launch on the mainland side, and we travelled along and across the island, almost the whole length of the island, which is about 23 miles long. I could not say how far it would be across the island at the point where the camp was. At the broadest part the island is about five miles across. The Aboriginal camp we came to was situated on the seaward side, towards the southern end.

Morey, Mahony and myself were in full uniform. McColl was dressed in khaki trousers, sandshoes, and a black athletic singlet, with a police hat and a revolver belt. I think he had a badge in (sic) his hat. It was a felt hat of the police type, but I would not be quite sure if the badge was there or not. Mounted Constable Morey was in charge of the party.

When we found the lubras it was about midday or a little after midday. We had no watches. That would be midday on the first of August. The questioning of the lubras took about half an hour from the time we brought them to the camp until we parted. The lubras were in custody about half an hour. The point at which we took the lubras was quite close to the camp, about 100 yards away. I know why they were handcuffed. It was to prevent them running away. They were very wild. They ran when they saw us, and we overtook them and detained them for questioning. There was a little fear apparent, which was very quickly allayed when the interpreter explained who we were and for what purpose we wanted them.

TO THE BENCH. When they had been in custody for some time they did not appear to be frightened. They had a smoke, and they talked and told us everything. When Morey and Mahony and I left McColl with the lubras the lubras did not then appear to be frightened.

TO MR FITZGERALD. I knew two of these lubras. I had met them some years ago in Blue Mud Bay. They knew me, they recognised me. I was present at the questioning. I assisted in the questioning through the interpreter. They were no longer frightened and the handcuffs were taken off because we did not think they would bolt. They had got over their fear.

At this stage we could not see any sign of any Aboriginal men. We could not see 10 yards through the bush at that place.

I cannot tell you anything about the two trackers after I left McColl. They were with the general party up to that, and they were left with McColl. What they did I cannot say. Their names were Dick and Roper Tommy, two old police trackers.

TO THE BENCH. They are boys who would be likely to be easily found.

TO MR FITZGERALD. When I heard those first shots I should say we were the best part of a mile away from the dinner camp. I think the shots I heard were Mahony's shots. They could not have been McColl's shots. The second lot of shots were Mahony's also. In examining McColl's revolver I found three shots had been fired, one of which had been a mis-fire. I did not hear any of McColl's shots. I heard no shots which could have been McColl's. A revolver shot in the thick scrub does not carry far.

TO THE BENCH. We were not armed with anything but revolvers. We had no rifles with us.

TO MR FITZGERALD. One of the trackers gave the alarm that led us to go after the Aboriginal men. I think that was Paddy, to the best of my recollection. He was also our interpreter in the party. Paddy said 'Mob of blackfellow come, look out'. He did indicate in what direction they were - he just waved his arm around like that (illustrating). He did not say north or south, but he made some gesture. He said 'Mob blackfellow come up', and waved his arm around the way he thought he had heard them. It was in consequence of that

information that the party started out to try and intercept these men. We thought we could intercept them. When the alarm was given I did not myself see any of the Aboriginal men. It was after we had cut through the jungle that we saw them. That party that Paddy met did not approach us or attempt to make any attack on our camp. They would have had to come very close to us before we could have seen them. They could have been within 15 or 20 yards without our seeing them. No attack was made on the police party while we were all together.

We ran across the point to do this intercepting. The scrub was fairly thick there, but we made the best speed we could. The Aboriginals had cut through first and passed before we could get there - got away. At the time they disembarked from the canoe and made up the point tracker Paddy, our interpreter, ran in front of us and shouted to them at the top of his voice, in their language, after being instructed to tell them that we were police, and to sit down, that we wanted to speak to them. Paddy ran down and shouted to them after being instructed in that way by Morey. He shouted to them for four or five minutes, I suppose, while they were running. I take it he told them we were a police party. He was told to tell them that. They took no notice of him, and continued on. Instead of going away to sea in the canoe when they saw us they got out of the canoe and ran towards our camp - not actually towards us but on a converging course. We expected them to go away in the canoe, but they did not. If they had been frightened they could have got into the canoe when we first saw them out on the point. Just after Paddy gave the alarm at our dinner camp we cut through the jungle on to the sandy beach, and saw the two parties of Aboriginals, one on foot on the reef and the other disembarking from the canoe. They all ran in a direction which would bring them out in our direction, and we ran along to intercept them.

Paddy was away from our dinner camp, and he came back to our camp and gave the alarm.

Down on the shore the Aboriginals did not take any notice of Paddy. They did not get away from us, because we never had them - they ran.

When I saw the skull the gold fillings in the teeth were still intact, just as I knew them when McColl was living. There were no marks of violence on the skull.

We did not find any trace of the lubras afterward. There were five lubras - four or five, I would not be certain. There were no less than four. There might have been five. [5]

Several points in Hall's evidence prompt queries. Like Morey, he exaggerated the size of Woodah Island. Like Morey he suggested that there was a lot of 'jungle', whereas the area I was shown as the place where McColl was killed is low (head height) entanglement, no more than one hundred metres in length, and never more than fifty metres wide. A spearthrower, or a dead body, could be concealed in this area, but not for long, once it was searched.

Hall said that an interpreter was present when Tuckiar was taken to attend the identification of McColl's remains. He did not name the interpreter. If, as seems likely, it was the tracker, Big Pat (Paddy) it could add to the apparent level of intimidation imposed on Tuckiar, who was apparently not represented by counsel at the coronial inquiry.

Hall said they were 'not armed with anything but revolvers. We had no rifles with us'. In a photograph taken by Mahony 'on the day McColl was killed' the police all have revolvers - Hall appears to have two - and the trackers all have rifles. (see photo 14) [6]

Hall said the handcuffs were taken off the women 'because we did not think they would bolt'. The police were naive to think that McColl could hold unfettered women while his armed partners chased their men? Djaparri said she was 'chained' to McColl when he was speared. She said the handcuffs had been 'opened'. [7]

Hall said that the women were questioned by the interpreter, Big Pat, and 'they told us everything'. One must ask 'Everything about what?' The killing of Traynor and Fagan? The whereabouts of their men?

Hall estimated that McColl seemed (at 10 am) to have been dead 'about twelve hours'. If he was anywhere near accurate that means McColl was speared at night, while Hall said they were searching for him. Big Pat is recorded earlier as saying to Harold Hamilton, 'Dark now and McColl is speared'. Harry would give evidence that Tuckiar claimed he speared McColl first, then went after another white man, threw a spear at him, but, according to the transcript, 'missed him by the head'. If that was true, and it was Mahony who he 'missed by the hat',

McColl died in the early afternoon. While Hall said that it would have been difficult to hear revolver shots 'in the jungle' he also testified that McColl was found 'on the edge of the jungle' and no more than a mile from the dinner camp where the search for McColl began.

I find it difficult to accept that, if McColl was alive when the search for him was mounted, he would not have been found quickly. Apart from the questionable 'jungle' the entire island is very lightly timbered. (see aerial photo 2) Morey is said to have 'fired shots' to attract McColl's attention, and McColl, if alive and not yet confronted by Tuckiar, would have had two good rounds in his own revolver to fire in order to attract attention. Djaparri - and perhaps the other women - would be still with him, certainly obvious, and probably making some sort of noise. Hall said that after Mahony's hat was hit they returned to the dinner camp and regrouped with the two trackers who had been told to stay with McColl. They met on the edge of the jungle. If that is true, and McColl was alive at that point, he could not have been more than fifty yards from them, and therefore must have heard their shots. And, if he was dead, why did seven experienced bushmen not find his body in the several hours they say they searched. If, as Hall stated, it was not until the next morning at 10 am that they found McColl's tracks on the edge of the jungle, do we accept that that was the first time the jungle was searched, when 'the scrub, in comparison to the jungle, was quite light'?

Morey said, in his report of 21 August 1933, (Chapter 2) that when Mahony first saw the Aboriginal who threw the spear that hit his hat he refrained from shooting to 'follow the Superintendent's instruction'. When extracts from Mahony's diary appeared in the *Melbourne Herald* on 10 May 1934 he was reported as follows:

Nearing sundown, Mahoney (sic) was hastening across the salt pan when, on the scrubby slope beyond he caught sight of spears. Suddenly an evil, ferocious visage, with staring eyes and a mass of woolly hair appeared in the undergrowth. Mahoney (sic) crouched, drew his revolver, and fired over the head of the native to frighten him. The native fitted a spear in his womerah (sic) and let drive from a sitting (sic) position. Mahoney (sic) leaped (sic) to one side and a big shovel-nosed spear whizzed past his thigh. Mahoney (sic) could hear other natives working in behind him so he fired again at the native - this time to kill.

[8]

It is important to note that the diary entry was reported in the press before the trials started: is that why Mahoney was not called as a witness? If the above was presented as evidence in court it would surely have been grounds for a plea by Tuckiar of self-defence, particularly as Hall claimed that the incident with Mahony happened before McColl was speared. It seems to me that Tuckiar was involved in both incidents, and that McColl was killed first. This is supported by a statement made by Warren, obviously recorded in Arnhem Land during the Peace Expedition, but not tendered in Tuckiar's trial:

Tarkiera (sic) admits having killed a policeman at Woodah Island by spearing him because having taken his young lubra, he had detained her in his camp, & when Tarkiera appeared the policeman was struggling with her & she was calling for help. It appears that the lubras were out hunting, & the police managed to capture Japparri (sic), Tarkiera's young lubra and several others. They were handcuffed & detained for two days apparently for questioning.

On the afternoon of the second day one policeman was left behind apparently to mind the lubras while the rest of the party went after the menfolk.

Yappari (sic) made frantic efforts to escape & must have succeeded in getting the policeman into or near the scrub while struggling with him & at the same time calling to her husband for help. It was here that Tarkiera speared him being naturally under the impression that his lubra was being ill-treated.

The policeman fired one or more shots at him before the spear was thrown. Tarkiera then ran away.

Another policeman fired three shots at him & he threw three spears one touching the policeman's hat. The blacks all cleared out & did not return to the scene of the killing and they stoutly denied touching the body or the grave or removing the clothes of the policeman after burial. Tarkiera also said that the killing of the two white men (Traynor and Fagan) took place before the police arrived on the island. [9]

Dyer also took a statement, either at Milingimbi or on *Oituli*, and wrote that 'Harry and Takerá (sic) vouch again and again for its truthfulness, we could not shake him from this statement':

The police go ashore from the boat, follow tracks & find a camp of women only & detain them all night. Next day they go to look for the men, with police boys and some women. One policeman is left in camp with Takerá's young lubra he has three wives he said. Takerá comes to look at the camp but cannot see anyone. He looks further and sees this policeman away from the camp in the scrub she is calling out for help. He finds them (sic) in the act of intercourse with his wife. We charge how important it is that he tells us truly through Harry, he said it is true, he saw it with his eye, pointing to it. He hid behind a tree watching. As he did up his clothes he Takerá showed himself to take her away. The policeman fires three shots at him & when he stops to attend to his gun, he throws the spear that kills him. He also describes how he tried to dodgè the bullets that went very close to him. The spear hit him in the chest, he points near to the nipple. Asked if he was killed immediately he said he pulled out the spear & went a little way & fell down. They ran away. Ulambo son of Takerá & Mooloomèe brother of Takerá were there. [10]

Is there not some considerable flaw in the police version of events?

The next witness was Big Pat, referred to as Paddy throughout the trial. Carrodus wrote that 'the Judge then asked that Paddy be put in the box'. Commenting later on what Carrodus had written, Judge Wells wrote to the High Court: 'This might be construed to mean that the witness Paddy was actually called by me, which is not so. I made the suggestion to the Crown that Paddy should be called as a witness, and he was then called by the Crown'. [11] The tracker gave this evidence:

I bin savvy time I bin go down Woodah Island as police tracker alonga Mr Morey, Mr Hall and Mr Mahony. I bin savvy travel alonga Woodah Island and come one place and havem dinner. After dinner we bin bring up four fella lubra alonga billabong. I bin takem policeman alonga that place and they bin talk that

fella lubra. Policeman bin talk along that lubra, and we bin takem back longa dinner place. Policeman bin take them alonga dinner place. I bin puttem on handcuffs. I bin stop alonga dinner place that time all time. I wait good while there, don't hear anything. We bin listen. I bin listen alonga dinner place. Policeman bin stop alonga dinner place. All tracker bin stop. I bin hearim someone far away sing out little bit. I bin wait little bit, listen, hearem sing out close up. We no bin do anything. We bin sit down, just wait. I bin see one boy come up from jungle, one blackfella. One tracker bin talk alonga policemen. After that we bin sit down quiet, we bin let him come. When that one blackfella get close, all tracker bin see, everyone. I bin pick up rifle - I bin have .44. I bin get up. All policeman bin get up too. Makem lubra sit down one place. That blackfella bin run away, I bin chasem. Three fella policeman bin chasem, Mr Morey, Mr Mahony, Mr Hall. Mr McColl bin stay back. We bin chasem. Other blackfella tracker bin go along one place, I bin go nother place. I bin hearim blackfella sing out along canoe. Policeman bin run look alonga shore see lot of blackfella come alonga canoe. All policeman bin stand up. I bin catch one fella lubra alonga jungle, and he [? Morey] bin say 'No more, let em go'. We bin go after that bin see mob alonga canoe. I bin come up, blackfella look from canoe. Policeman bin there all time. Blackfella bin puttem canoe out to sea after they bin see policeman, and they bin go alonga little point straight out. I bin run along shore. I bin hearem blackfella talk-talk all time they run. I lookem blackfella run along beach. I bin sing out to blackfella, 'Don't run', but they no bin stop. They bin run back alonga jungle and go in. They bin leavem canoe. While I bin along top side three fella blackfella come behind, alonga jungle. I go through scrub, I come out behind jungle. I no can see anything. I come back, I see blackfellas near scrub. They run back to jungle. I come back, I no see anything. I stand up, listen. I hear two fella policeman come up. I come back and meet them. After that I talk alonga them two fella policeman. I bin go back look along jungle, along top side. After that I bin hearem shot go off behind me, along beach. I come back, I see Mr Mahony. I go up close and I talk along Mr Mahony. After that I bin come back along dinner place. Three policeman go first, I

bin come behind, and other police boys too. Dick and Roper Tommy bin go after another mob. Mr McColl bin stop himself. I bin come back along dinner place, and we bin look and no more policeman or anyone there. I bin wait there little while. It bin late fella. We all bin wait, but policeman no bin come back. I bin go look along bush, I see track of sandshoes, me bin walk alonga jungle. I bin come back, and we bin pick up tucker and everything and go down along beach and makem camp. Next morning I bin get up and I bin pickem up track, and I bin trackem up and they bin finish along jungle. We bin go in and I bin trackem up more, all way I bin trackem up. I bin missem track sometimes, plenty hard catchem track, and I bin come back again same place and catchem track again, and I bin trackem all way. I bin go again in jungle. I bin missem track and I bin come out, and I bin catchem track again. I bin trackem up all way and I bin see body lie there. That bin policeman Mr McColl. I bin see one blackfella track not far from that place. I bin know from that track that that blackfella bin throwem spear. I bin stand up and I bin go round behind dead body and bin pickem up spear. (Looks at Exhibit A) That bin spear. After that sometime I bin pickem up revolver. (Looks at Exhibit B). That bin revolver. I bin give them alonga policeman.

CROSS EXAMINATION.

TO MR FITZGERALD. When policeman catchem them fella lubra they bin frightened. I bin talk to them fella lubra and tellem 'All right' and tellem no need to be frightened, and then lubra fella quite all right and him talk and tell policeman news. When three policeman go way and leave Mr McColl there with lubra fella I bin see policeman take handcuffs off before him go. I bin see that alonga my eye. When they bin take handcuffs off, lubra bin sit down, do nothing. Then we all go away and last time I see lubra they bin sit down quiet and Mr McColl look after them. That bin time I bin see one fella blackfella. That before three policeman go way. When I see that blackfella lubras still bin in camp. When blackfella come up he bin see lubra. He bin look long way. He no more bin see chain, him too far away to see chain. Him bin look from long way. When him get close up then him see lubra sit down. Him bin come close as that tree over there (indicating tree about 60 feet from door of

Court House). Where lubra bin sit down that bin clear open place. Blackfella could see lubra easy fella then. I don't think blackfella could see handcuffs. Lubra bin have hands down then. Lubra bin sit down quiet, look at blackfella coming, and blackfella bin look from long way and see only body. When that blackfella bin look lubra bin smokem pipe, all lubra bin smokem pipe. Mr Morey bin takem off handcuffs. Everybody bin sit down quiet and this blackfella come up and see, and then him run away. As soon as him run away all bin get up.

I bin talk alonga them lubra fella before that along Mr Hall alonga Blue Mud Bay. I bin along that Blue Mud Bay before that alonga Mr Bridgland. I bin go alonga Woodah Island with Mr Bridgland. We bin see blackfella alonga there that time.

One fella lubra alonga dinner place belonga nother blackfella, and three fella lubra belonga Tuckiar.

Blackfella no bin see us catch that fella lubra, he just bin coming up from sea when him bin see us.

When I bin hear that blackfella talk and they bin run along shore I no could hear what they say. They bin frightened that time.

I bin follow that fella track good way from camp before I bin find Mr McColl, good long way.

TO THE JURY. First time we bin sit down clear place little bit outside from scrub. I bin sit down that place all time till three policeman bin go away, then I bin go with them.

When I bin follow that fella track white policeman bin follow up behind. I bin pick up revolver and spear and hand them to policeman.

I bin remember one fella lubra's name - Chartarri. [12]

Probably 'Chartarri' was how the Court heard 'Djapparri'. It is interesting that, obviously, nobody asked Big Pat (Paddy) if he knew Tuckiar, 'the defendant now in court' from previous visits to Woodah Island, or if 'the defendant Tuckiar' was one of the men they chased on Woodah Island, or if the track of the man who threw the spear 'matched the track of the defendant'.

I was puzzled by the fact that Big Pat in his evidence did not seek to establish that Tuckiar was present on Woodah Island on the day

McColl was killed. One might conclude either that the tracker did not at any time see Tuckiar, or that he did not see him to the point of being able to identify him. It seems likely that 'the blackfellow who came within sixty feet of the dinner camp' was Tuckiar, and thus Big Pat should have been able to identify 'the defendant' as being that same man. But he did not. As Big Pat had been 'the interpreter' for Morey's party, and had visited Woodah Island previously with Sergeant Bridgland, I began to wonder if there was not some 'kinship' factor involved.

Eventually I was able to establish that Big Pat was Djaparrri's brother (same father, different mothers) and thereby, he and Tuckiar were brothers-in-law. Normally in Arnhem Land, if a marriage is 'arranged' the brother-in-law relationship is a very benign one, but, according to Dawson Daniels Kambarawara, grandson of the tracker, Tuckiar and Big Pat were in a 'poison' relationship. [13] That may explain why the tracker did not mention Tuckiar by name (except when identifying that 'three of the women belonged to Tuckiar') or seek to incriminate him through his own evidence. The two men may have been enemies, for in Arnhem Land women were often stolen by raiding parties. Was this how Tuckiar acquired Big Pat's sister? Or perhaps their relationship simply required maximum avoidance.

The next witness was Parriner, and the interpreter was Big Pat. Anything was possible! The Judge drew attention to the fact that the tracker had just given evidence, and wondered whether Fitzgerald might object. Harris pointed out that it was difficult to get anybody else who understood Parriner's language, and Fitzgerald offered no objection. [14]

Fred Gray insists that, on the day of Tuckiar's trial for the killing of McColl in the Supreme Court, he saw Paddy (Big Pat), who was about to be the Court's interpreter, outside the Court building, apparently instructing Parriner about his story. Gray says that the tracker's attitude was quite aggressive, and that he kept punching his own fist into his palm as he harangued the witness. [15]

Carrodus subsequently submitted an affidavit to the High Court as 'a true copy of the report of the proceedings at the said trial made by me to the Secretary of the Department of the Interior'. He merely supplied a summary of the evidence given by the different witnesses, whereas Judge Wells submitted to the High Court: 'It is my practice in these matters to myself take shorthand notes of the evidence tendered, and a transcript of my notes of the evidence in this case has

been prepared...These notes are taken in narrative form, not verbatim'.
[16] Here is Parriner's evidence, as recorded by Judge Wells:

My country Woodah Island. I bin savvy that fella Tuckiar, him same country belonga me. Tuckiar bin daddy longa me. I savvy one time I bin sit down alonga Bickerton Island, and that man Tuckiar bin come up. Him bin talk along me, him bin say alonga me 'Good news I bin tell you'. I bin talk 'You bin tell me news what you bin do along Woodah Island'. Tuckiar bin talk 'Yes, me bin tell you everything. Policeman come up from along Woodah Island, bin come up along my fella camp'. I bin talk 'How many boys bin there' and Tuckiar bin talk 'Paddy bin there'. Tuckiar bin talk 'These fella policeman come up along Woodah Island. I bin come tell you good news what I bin do along Woodah Island'. I bin talk 'All right you tell me all about news you bin do'. Tuckiar bin talk 'Policeman been come up there and grab four fella lubra. I no more savvy that alonga my eye. I bin sit down alonga jungle and I bin wait for that fella lubra good while. Sun bin up here (indicating overhead)'. Tuckiar bin talk that way alonga me. He bin talk 'I bin sing out from jungle. I bin sing out again. I bin leavim that jungle and I bin walk, bin come up outside. I bin look and I bin see policeman sit down and I bin come up more close. I bin look from long way, and then I bin come up close, and I bin see lubra all sit down one mob. I bin look and I bin see them fella move, and I bin run away and go into jungle and plant myself and sit down quiet'. Then Tuckiar bin say 'I bin see somebody go past, I bin see policeman go past'. Tuckiar bin tell me that himself, that he bin see policeman go past. Then him bin talk 'I bin sit down little bit longer, I bin sit down quiet and listen. Then lubra bin sing out little bit outside, lubra bin sing out alonga mouth'. Then Tuckiar bin talk that him bin gettem stick and talk alonga stick, and that lubra bin sing out again from scrub inside, and that Tuckiar bin talk alonga stick, and bin sit down quiet. Tuckiar bin talk that policeman bin come up behind lubra, and lubra bin sing out, and that Tuckiar bin talk alonga stick 'I no more long way. I sit down quiet'. Then Tuckiar bin talk that lubra bin come up close alonga him and

he bin look and see lubra and policeman come up close behind. Then Tuckiar bin talk that he talk to lubra alonga finger, no more bin talk alonga mouth, 'You bin give me room'. Then Tuckiar bin talk that he bin hookem up woomera alonga spear, that lubra bin go back behind and policeman come up, and that Tuckiar bin chuckem spear. Tuckiar bin talk all this. Then Tuckiar bin talk that policeman grabem spear one hand, and bin gettem revolver and bin shoot three shots. Tuckiar bin talk that policeman no bin talk anything. Then Tuckiar bin talk that he bin run away and get behind jungle and go right in.

CROSS EXAMINATION

TO MR HARRIS. Tuckiar bin come alonga boat to Darwin, I bin come too. All fella bin sit down alonga boat. Alonga boat coming to Darwin I bin talk along Tuckiar 'What for you bin come alonga Darwin?' and Tuckiar bin talk 'I go alonga Darwin my own fault. I bin killem white man'.

TO MR FITZGERALD. Tuckiar bin tell me him bigfella frightened when him bin see policeman. Him say everybody, blackfella, lubras and picaninnies, big fella frightened, and Tuckiar too. Tuckiar bin tell me him bin have three fella lubra and policeman been grab them three fella lubra. Tuckiar bin talk alonga me that him big fella frightened. Him bin talk alonga me, 'I bin killem that man'. Tuckiar bin talk 'I chuck spear alonga him before him kill me'. Tuckiar bin talk him bin see policeman first.

RE-EXAMINATION BY MR HARRIS Tuckiar bin tell me that he and that fella lubra bin talk alonga stick and that he bin tell that fella lubra bring up that one fella man, and that him bin talk alonga stick 'You bin give me room' and then him bin chuckem spear.

TO THE JURY. When Tuckiar bin talk alonga me that way alonga Bickerton Island I bin have two fella lubra there alonga me.

TO MR FITZGERALD. I bin camp alonga Bickerton island and three fella bin come up. Tuckiar bin talk 'I want words alonga you'. Tuckiar bin come up, Wondercol and

Orlambo. Tuckiar bin talk alonga me, only myself. When I bin there Wondercol and Orlambo bin listen. [17]

Parriner's evidence corroborates neatly Big Pat's version of things, and, neatly through a third person, Tuckiar was identified as 'the blackfella' who came within 60 feet of the dinner camp, yet Big Pat had not thus identified 'the defendant' when giving his own evidence.

Tuckiar is recorded in Parriner's evidence as saying 'Good news I bin tell you'. J W 'Fatty' Nichols was Judge's Associate in the Supreme Court on that day. I attended court hearings many times when Nichols was a Darwin Special Magistrate. It was his practice to provide an interpretative 'overview' - an imprimatur even - on everything that was said by any Aboriginal.

I became more proficient at 'pidgin' than Nichols. To me 'good news' sounds wrong, and I consider it more likely that Big Pat would have translated whatever Parriner said as 'Got news I tell you'. One would expect a 'pidgin' speaker to say 'I gottim story la (alonga) you'. Most of the 'bins' in the evidence attributed to Aboriginals in all these trials are standard Nichols. The word 'bin' (been) is usually used only to denote past tense. 'Tuckiar bin talk' is common usage. 'Me bin tell you everything' is not. To denote present or future tense a speaker would be more likely to say 'Me tellim you everything'. It is a minor point, but 'got news' is more likely to be correct than 'good news', which, in the context of Parriner's evidence, almost equals 'Hooray! I just speared a policeman', a comment likely to influence a jury.

Judge Wells later sought to explain Parriner's evidence to the High Court. [18] On the question of Big Pat saying he could tell, from the tracks near McColl's body, that a spear had been thrown, the Judge said: 'It is a well-established fact that Aboriginals are able to deduce from the nature and appearance of tracks the actions of the persons who made those tracks'. I agree that this level of skill would have been common among police trackers in the 1930s, and raise again the query made in respect of Morey's report - in Chapter 2 - that it seemed to take the trackers an inordinately long time to find McColl, if Morey or Hall's record of the approximate times when things happened are to be believed.

Concerning Parriner's statement that 'Tuckiar bin daddy longa me', Wells said: 'This is a reference not to actual relationship of father and son, but to an artificial relationship arising out of tribal custom. The witness Parriner, judging by appearances, is a considerably

older man than the accused Tuckiar'. Parriner spoke no English, and the word 'daddy' is Big Pat's translation of whatever relationship term Parriner used. There is great confusion in translating relationship terms used by Aborigines, who generally place so much importance on kinship that they have single-word terms for the most obscure contacts. As Big Pat used the word 'daddy' in respect of Parriner's relationship with Tuckiar, it probably meant that Parriner, the older man, was either 'mother's brother' or 'father's brother' to Tuckiar, and perhaps, thereby, a classificatory father, or, in an English language context, uncle.

Of Tuckiar's reported statement 'Paddy bin there', Wells said: 'It was made clear that this was not a reference to the witness Paddy, but to another boy named Paddy, a tribesman of Parriner'. If Judge Wells meant 'it was made clear' in the Court, he seemed to be the only one who noted the fact. Carrodus made no mention of it. Nor did any newspaper report. The writer finds it hard to accept that Parriner did not mean 'Paddy the tracker was there'. English names were very uncommon among the 'tribalised' Yolngu in those times, and I have never seen or heard any reference to a Yolngu from north-east Arnhem Land named Paddy, other than the tracker. If it was indeed 'Paddy the tracker', this establishes that Tuckiar knew the tracker by name. Of course he did.

What was the tracker saying to Parriner outside the court when Fred Gray saw him 'intimidating' the witness? We can only conjecture. It is fascinating to recall that Big Pat helped to capture and interrogate the women on Woodah Island when one of them was his sister Djaparri, and that the tracker's relationships were never revealed to the police, or the Court. What did his sister tell him on Woodah Island that he did not already know? Of the killing of Traynor and Fagan? Why did Morey go to Woodah Island in the first place? Because Big Pat had some hidden agenda? Did the tracker orchestrate the entire sequence of events, including taking an inordinate length of time to find McColl's body, thereby giving Tuckiar and Djaparri time to escape? Was there some sort of feud between Big Pat and McColl?

At the conclusion of Parriner's evidence the Judge asked Fitzgerald whether he had put before Tuckiar the story told by the witness and talked it over with him. Counsel replied that he had not done so. The Judge then asked whether he did not think it proper to do so. The judge arranged for Fitzgerald to take the interpreter, Big Pat, and Parriner and discuss the evidence with Tuckiar. The court was adjourned for half an hour to enable this conference to take place. [19]

The next witness was Harry, the 'mission boy from Milingimbi'. Carrodus wrote, and Judge Wells did not deny, that 'after this boy had been sworn the Judge made the following statement to him: 'Last time you talk alonga me I think you gammon. You promise talk true allatime. If I find out you gammon I be plenty angry. If Mr Webb (Superintendent of Milingimbi mission) find out you gammon he be plenty angry too. You must talk what Tuckiar told you himself, and no gammon''. [20]

From Judge Wells' notes, the following is Harry's evidence:

I bin mission boy. I bin work alonga Milingimbi mission station. I bin talk alonga Tuckiar when I bin come up alonga Mr Gray's boat to Darwin. Tuckiar bin tell me that morning alonga Woodah Island he went fishing, and when him come back from fishing he see boat. 'Hello', he says, 'boat here'. Him bin look around more close, him bin see boat very close, then nother man bin see him, black man bin see him and Tuckiar bin get up and go off and this man bin chasem. Tuckiar bin say 'I run inside jungle and I bin hide myself. I see people run past me, and I bin inside there in jungle. Then I bin come out from that place and go on to a clear place. I look and I see nobody and I come back into the jungle. Then I hear baby crying and I go round behind jungle, and I go more close to where I bin hear the baby cry. I see man and woman stop there, and I come more closer, and I stop behind tree and I see something bad. I stand there, and I see that fella man get up and tie up his trousers, and that woman get up and pick up baby'. Then him bin say 'That one white man bin get woman's hand and he come on, come out from jungle to clear place'. Then Tuckiar bin talk 'I go round different way and I come out to clear place and I call up my woman. I sing out again by hand, and that fella white man bin see my woman talk longa hand. That whitefella bin look and bin see me. I bin ask for tobacco alonga hand, and I ask again another time, and white man he take out something and he fire at me. and fire nother time, and fire nother time, and he splitem up gun and fillem up again. Tuckiar bin talk him bin fire five times. Tuckiar bin talk 'I alongside tree, hide myself, and I bin say to myself "What this white man going

to do to me. Him going to shoot me, or what?" and I bin say to myself "I think I will chuck spear at him" and I bin hookem up spear. Then that fella white man bin shoot nother time, and I bin liftem up spear and throw it and catchem that whitefella man'. Then Tuckiar bin talk that he bin run away, that him bin go little bit long way from that place, and then him see nother white man run, and him say to himself 'I hide myself in grass'. Then him bin talk that handle of spear bin stick up out of grass and that white man bin see him and bin shoot at him like this (indicating shooting with two hands as with a rifle). Then Tuckiar bin talk 'I hookem up spear and chuckem at that white man and miss by the head'. Then Tuckiar bin talk 'This white man bin run away, and myself I bin go in the bush'.

CROSS EXAMINATION.

TO MR FITZGERALD. Mr Gray asked me to go to Tuckiar and get the news from him. Mr Gray was there when Tuckiar told me this story. I said to Tuckiar 'Mr Gray wants to find out the news' and Tuckiar said 'Alright'. I took Tuckiar then to the cabin. Mr Gray asked me to talk to Tuckiar. He said 'You ask Tuckiar, and I find out all this news and I tell big fella boss in Darwin'. I told Tuckiar that. I said to Tuckiar ' You tell story for me and I tell this captain, and then he will tell big fella boss in Darwin'. I said to Tuckiar 'You tell, and I get news from you and I tell Mr Gray, and then we go to Darwin and we talk alonga Court'. He asked me 'What Court?' and I told him 'It has got one place there, and we tell that boss who look after that fella place'. We did not say any more. I did not tell him that maybe he go Fannie Bay (Gaol) or maybe he go back home. I did not want to talk to him that way. Mr Gray not quite understand this language, he understand very little. He did not hear much of what I was told, he would not know much of what Tuckiar told me. Tuckiar did not tell me that he had talked to anyone else about this trouble.

Tuckiar told me that he saw four lubras and he told me that three of those lubras were his wives. He told me he was very frightened of the policeman. First day he came to Milingimbi he told me he was frightened of the policeman.

TO THE BENCH. He was a little bit ashamed when he came to Milingimbi. There were other people at the mission that he knew and he could not talk to them. At Milingimbi he said 'My three women bin there. I saw all my woman sit down beside white man'. Then other crowd of mission boys came up and he stopped talking. He stayed at the mission one day. Mr Gray came there and anchored there. I did not talk with him any more that day. I went ashore.

When I came up to Darwin the first time I bin come along police office and I bin tell what I know about this trouble.

TO MR FITZGERALD. When Tuckiar told me about the second white man he told me he hit the hat of that man. He did not tell me that all the tribe, picaninnies, and lubras were very frightened. He did tell me that he was frightened.

TO THE JURY. I am an Arnhem Bay boy. All the boys belonging to Arnhem Bay savvy that man Tuckiar's language. One time lot of boys understand that language, now there are few. Groote Eylandt boys speak Caledon Bay language. [21]

Carrodus did not transcribe Harry's evidence in full. His notes are as follows:

Harry related the story told to him by Tuckiar while on the boat coming to Darwin. This story varied in a number of details from that told by Tuckiar to Parriner, but the principal variations were:

- McColl interfered with one of the lubras. Tuckiar saw him come out of the scrub, adjust his trousers and lift the lubra up from the ground
- McColl fired shots at Tuckiar before the latter speared McColl
- McColl fired five shots (Parriner said he fired three only)

[22]

When Harry began to talk of McColl's alleged misconduct with Djaparrri the Judge stopped him and warned him that he must be

absolutely sure that what he was going to say was what Tuckiar had really told him. Harry assured the Judge that the story had actually been told to him by Tuckiar. [23]

What exact words did Harry use when he mentioned Tuckiar's allegation about McColl and the woman? The standard 'pidgin' word to describe sexual intercourse was/is 'humbug' - 'Him bin humbug that woman'. According to Carrodus Harry stated that McColl 'interfered with' the woman. Wells transcribed Harry's evidence to read that Tuckiar 'saw something bad'. If that was what Harry actually said, one would have expected the ebullient Wells to roar, 'What do you mean, he "saw something bad?"' and demand chapter and verse to determine exactly what Tuckiar alleged had taken place. Were they all just too shocked at the allegation that a white policeman had had sexual intercourse with, or perhaps raped, an Aboriginal woman? Or did Harry use a word like 'humbug' or even 'fuck', and thereby shock everybody in the court into a frantic search for euphemisms?

In cross-examination by Wells Harry said he had first told his version of Tuckiar's story in Darwin 'when I came up to Darwin the first time. I bin come along police office and I bin tell what I know about this trouble'. That was in April, three months before the Supreme Court hearing, and perhaps accounts for earlier, seemingly mysterious references to 'sexual misconduct' on the part of McColl from people like Dr Kingsland, Carrodus and Brown. [24] Harry did not stay in Darwin in the intervening period, but returned to Milingimbi. There is advice of him returning to Darwin on 26 July 1934 for the Coroner's court, the week before the Supreme Court. [25] The Coroner's court was attended by Carrodus, who recorded Harry's evidence in full. On that occasion, according to Carrodus and Nichols, who took notes, and Harry, interpreter, Tuckiar said:

I see white man and girl there. I been see something bad. I hide myself along a big tree, look from there. I go back (indicating moving backwards). Girl get up and this white man get up and pulling up his trousers like. The girl picked up her baby and put over her shoulder. White man got hand along girl and led her.
[26]

Carrodus, Fitzgerald, Harris and the press must have known, from their attendance at the Coroner's court the previous week, what to expect when

Harry entered the witness box in the Supreme Court, but was it new information for the Judge and the jury? In a small, isolated town like Darwin, perhaps not. Was it not irregular for Wells to suggest earlier to Fitzgerald that the Court adjourn while Parriner's evidence was discussed with Tuckiar, in the presence of the ominous Big Pat? Was it intimidatory? Was it a means of pre-empting Harry's anticipated evidence? Wells' 'caution' to Harry before he gave evidence was highly irregular.

Before cross-examining Harry, Fitzgerald informed the Judge that he had a specially important matter to discuss. He was 'in a predicament, the worst predicament that he had encountered in all his legal career'. [27] The jury retired, and the Judge, Dr Cook (Chief Protector of Aborigines) and Fitzgerald adjourned to the Judge's chambers at 3.20 pm. They returned to Court at 4 pm.

Although it was not revealed in Court until later that evening, the 'predicament' Fitzgerald wanted to discuss arose out of the earlier adjournment when he had gone through Parriner's evidence with Parriner, Paddy (Big Pat) and Tuckiar. Fitzgerald said that Tuckiar (through Big Pat) admitted that the story related to Parriner was the true one and that the story told to Harry (who had not at that point given his Supreme Court evidence) was a fabrication. There was no truth whatsoever in the statements regarding McColl's misconduct with Djaparri, according to Fitzgerald.

The Judge, aware of the detail of Fitzgerald's 'predicament', and obviously with some foreknowledge of what Harry might say - hence the warning to the interpreter - reconvened the court but did not recall the jury. At that point Harris sought leave to answer the Judge's earlier query about the absence of witnesses. He said that trackers Dick and Roper Tommy were not brought to Darwin because, when the rest of the police party left McColl with the women, all the trackers followed them. The trackers, therefore, could give no more evidence than Big Pat. Constable Morey had been posted to Lake Nash and could not give additional information to that supplied by Hall. In fact Harris said that Morey could not give as much evidence as Hall, for Hall had identified McColl's remains. Thus it was considered that the expense of bringing Morey to Darwin was not warranted. According to Carrodus this exchange took place:

Judge Wells: He was the leader of the party and should have been brought in.

Harris: Any instructions to McColl would not have been admitted (as evidence). With regard to the lubras I personally asked that I be given every opportunity of getting the lubras and other witnesses as far as possible and was informed that the lubras were not to be brought in.

Judge Wells: The Government has no right to interfere. It has been laid down in this Court that the evidence of lubras is admissible. The evidence of lubras will be admitted in this Court until the High Court says I am wrong. I do not accept it as an explanation at all. The story told by Harry will probably be published. It is a scandalous thing that the witnesses were not brought forward. If the matter had been properly investigated this story would have been found out months ago, and every step should have been taken to ascertain whether it was correct. It seems to me in this case and the last case there has been only shown neglect, and witnesses have been deliberately withheld. If that is so, it is a most serious matter, a matter which requires very full explanation - a better one than that you have yet given. The Government should have known that there has been a definite ruling in this Court that lubras will be admitted. That is not a ruling by myself, but by Justice Hallam (Wells' predecessor) with which I thoroughly agree. The only conclusion I can come to is that evidence has been deliberately withheld. [28]

Harris sought leave to adjourn for 'a short period'.

Judge Wells: Some explanation is due to the Jury. If you want to confer with anybody about the matter I will

give you five minutes. I want an absolute undertaking that steps will be taken immediately to obtain witnesses. I will approve of an adjournment only on those grounds. The present feeling is that there might be a miscarriage of justice, and that a man who is dead may be slandered. The people who are responsible for withholding witnesses must bear the burden. [29]

The Court adjourned. Carrodus, as Acting Commissioner of Police, conferred with prosecutor Harris and Stretton, Superintendent of Police. Carrodus reported:

I instructed Harris to proceed with the case for the following reasons:

- The direction received from the Department that the lubras of the accused were not to be brought in;
- The possibility of bloodshed if a police party were sent to Woodah Island to get witnesses, either lubras or Aboriginal men;
- The probability of failure, even if a police party were sent for that purpose, and the great delay that would be occasioned;
- My definite instruction from the Department to file information in the case after the committal from the Coroner's inquest. [30]

On his return Harris informed the Judge that he proposed to proceed with the case on the evidence now before the Court. There was discussion about whether any other interpreters besides Harry might be available. The jury foreman joined in:

Foreman: Who was the original interpreter that led to the securing (sic) of the accused?

Harris: A half-caste boy named Harold, who is at the mission at Groote Eylandt.

Foreman: The Jury would like to have an explanation as to why that boy was not brought into Court

A Juryman: Canberra interfered with the matter.

Judge Wells: (to the Jury) My view of the matter is that someone should explain. I do not know who. It is up to someone. I have asked Mr Harris for an explanation and he cannot give me one. You can draw your own conclusions. It is the first time in my court experience that I have ever known such a thing to happen. At the same time you have a duty to perform in this case and you have to do the best you can with the evidence before you. It is proper for you to say that somebody has failed in his duty. That, however, does not absolve you from doing what you can. Maybe you are satisfied on the evidence one way or the other. If so, it is your duty to bring in a verdict. If there is not sufficient to satisfy you, you must bring in a verdict of not guilty. It is your duty to bring in a verdict in spite of what you may think about it. As a Jury you are entitled to weigh that matter. If you get into a position in which you think a verdict of guilty should be brought in, it is your duty to do so.

Foreman: Assuming that we reach a stage that we are not satisfied to bring in a verdict of guilty or not guilty, what is our position?

Judge Wells: You must think very carefully about that. If you bring in a verdict of not guilty this man is free and cannot be tried again. That may apparently mean a gross miscarriage of justice. The aspect of the matter that troubles me is that evidence has been given here today about a man who is dead and if the Jury brings in a verdict of not guilty that evidence may be believed and it would be a serious slander of that man. It was the obvious duty of the Crown to bring all the

evidence and that matter would have been cleared up entirely. You should go and think about the matter quietly and weigh all the evidence given to you. [31]

After Harry was cross-examined Harris informed the Judge that he wanted to recall Constable Hall to give evidence as to the character of the late Constable McColl, because he did not believe the story told by Harry. Constable Hall made the following statement:

From my knowledge of Constable McColl and of his general repute he was a very decent man and I have never heard any allegations about his moral character. I was associated with him very closely on the patrol at Groote Eylandt where there was a number of half-caste girls and many native women at hand close by. There was nothing in his conduct which could be in any way detrimental to the slightest degree. [32]

Fitzgerald's address to the Jury was pathetic, the half-hearted defence of a man perhaps weighing-up the prospects of continuing to live in remote Darwin after 'letting the side down' by gaining an acquittal for a savage who had murdered a white policeman. One would have expected him to concentrate on the vital issue of who fired first, McColl or Tuckiar, and seeking to establish that it had not been proven, beyond reasonable doubt, that Tuckiar had been the aggressor. It seems that he never mentioned provocation, or self-defence, or the rights of a man whose three wives had been captured, handcuffed, and held against their will. Instead Fitzgerald pursued the line that if more evidence, more witnesses and further statements had been introduced into the trial 'it might have given quite a different colour to the whole unhappy story of Constable McColl's death'. He observed that 'very little evidence has been put before the Jury, and it was unconvincing. Not even a black man should be convicted on it'. [33]

Judge Wells flew for him. 'Why do you say "not even a black man?" A black man has the same rights in this Court, and gets the same consideration here as a white man'. [34]

Continuing, Fitzgerald pointed out that the evidence had been given 'through three blacks' and said he felt it was impossible to get a correct story by that means. He said he was sorry to hear the aspersion on

the character of the late Constable McColl, who 'cannot answer it'. He said he felt Tuckiar killed McColl 'through fear' and suggested that the jury could not convict his client on the basis of the 'skimpy' evidence before it! Such 'scrappy' evidence, with its contradictions, shortcomings and gaps could not possibly enable the jury to say that the accused killed McColl. This from the same counsel who, one sentence earlier, had acknowledged to the jury that Tuckiar did kill McColl! [35]

In his address to the jury Harris said he was satisfied that McColl was killed by a spear thrown by the defendant Tuckiar. He argued that the confession made to Parriner was 'more likely to be true' than the story told to Harry. The statement to Parriner was made shortly after the killing 'when the facts were clear in the mind of the accused'. The story told to Harry was made on the boat when the accused was being brought to Darwin a long time after the killing. It was 'highly probable' the Prosecutor suggested, that when proceeding to Darwin the accused considered it would be to his advantage to concoct a different story altogether, in order to save himself from punishment. Harris said he felt the jury should believe only the story told to Parriner, and he urged them to bring in a verdict of guilty. [36]

The Court adjourned at 5.34 pm for dinner, and resumed at 7.15 pm for the summary by Judge Wells.

In a subsequent affidavit to the High Court Carrodus presented his version of the Judge's summing-up to the jury. Later, when given the opportunity to comment on Carrodus' affidavit, Wells said he felt that 'the report of the summing-up is particularly incomplete, and is most misleading. The summing-up took an hour to deliver; the report is condensed into two pages of foolscap, and omits some of the most important parts of the summing-up'. [37]

The following notes are taken from Carrodus' affidavit, and where Judge Wells challenges particular points to what seems to be a vital degree that will be indicated. Judge Wells told the jury:

In this matter the accused Tuckiar is charged with the murdering (sic) of Mounted Constable McColl at Woodah Island on or about 1 August 1933. I have already made some observations about the way this case has been presented and you yourselves have given some indication of what you think about it. I want you now, if you can, to put all of that out of your minds, to look at the matter dispassionately

without reference to any observations of that sort, and to consider the evidence put before you and decide whether or not you can act on that evidence. It may be that owing to the neglect or incompetence in the preparation of this case by the Crown a grave miscarriage of justice may occur and a serious slander may be placed on a dead man. That is a matter which should be inquired into elsewhere and not here.

It is the duty of yourselves to endeavour, if you can, to avoid any miscarriage of justice. The other matter we cannot, unfortunately, deal with. Where the responsibility for that rests should be fixed.

I am going to put to you certain considerations regarding the evidence that has been put before you, not in regard to the way the case has been conducted or presented but only as to the evidence put before you. I am going to point out certain ways in which that evidence may be looked at. I am going to indicate my own views in the matter.

I want you to understand quite thoroughly that although I am making very strong statements in regard to some of the evidence you must not take any notice of that.

Paddy was put in the box at my suggestion. He gave his evidence extremely well. It has been brought out in evidence that three of the lubras were the wives of Tuckiar. That should be remembered by you. You are not compelled to take it, but I put it to you strongly that that is a strong connecting link between the accused and the killing.

The story of Parriner fits in very accurately with the story told by Constable Hall and Paddy, but that is for you to decide.

The Judge detailed the evidence given by Constable Hall and Paddy which established the killing of Constable McColl. He pointed out how that evidence agreed on essential details. He compared the evidence given by Parriner and Harry. Wells said he felt that the story told by Parriner 'seemed true'. It 'concurred with all the known facts'. It was told shortly after the killing and was more likely to be true than that told to Harry a long time after the killing. The question of believing it to be true, however was one for the jury to decide. It was told to Parriner, a

kinsman of Tuckiar, when the events would be fresh in his memory. The Judge put it to the jury 'very strongly' that it was a highly probable story.

Harry's story, the Judge reminded the jury, was told at a much later date, under very different circumstances. It was told when Tuckiar had realised that he was in a very nasty hole, on his way to Darwin. He knew he had to answer for what he had done. He knew that the story was going to be told to 'the big boss' in Darwin. It was totally different from the one told to Parriner when his memory was fresh, shortly after the event. According to Carrodus, Wells said:

It is a mighty ingenious story and if he did invent it, it means he is a mighty ingenious and cunning gentleman. I put it to you that he did invent it. That is my view but you are not compelled to accept it. You must use your own discretion and come to your own conclusions. [38]

Judge Wells later claimed that his notes, and those of Wilson, contained what he really said at that point:

The story [Tuckiar] told Harry is not only different to the story told to Parriner, but it is a mighty ingenious story. If he actually invented it himself he is not an ignorant savage, but a very cunning gentleman. We do not know whether he did invent it or not, but whether he did or whether it was invented for him by someone else, you will probably have very little difficulty in coming to the conclusion that it is a sheer invention. There again, you are not compelled to accept my view; you must use your own discretion, consider the story carefully yourselves, and come to your own conclusion about it. [39]

Judge Wells told the Jury the principal difference between the two stories told by Tuckiar was that the version related by Harry 'introduced the woman element':

It may be he has put it up himself or somebody may have suggested it to him. I put it to you that this story is a concoction. Give it very careful consideration. If you agree with my view, I ask you to say so. I see the real

improbability of it. It is so improbable as to be incredible. The story is so ridiculous that you should not have the slightest difficulty in coming to the conclusion that it is a fabrication from start to finish. One story is highly probable, the other utterly ridiculous and a fabrication.

You are entitled to take into consideration that the accused has not gone into the box and told you which story is true. You are entitled to take that fact into very serious consideration. You can draw from it any inference you like. Harry's story is obviously ridiculous, absurd, and a fabrication.

Because I have expressed strong views you are not compelled to accept them. You must give them serious consideration and your independent judgment must decide whether you are to accept them.

The onus is on the Crown to prove its case. If you accept the story told to Parriner you should bring in a verdict of guilty of murder. It is deliberate murder. You must leave other matters out of your minds in arriving at a decision. You must not regard the manner in which the case has been put before you. [40]

If one merely reads the Carrodus account of the trial, it seems that at that point the Judge's summing-up ended, and the jury retired. [41] Judge Wells agreed that he said 'If you accept the story told to Parriner you should bring in a verdict of guilty of murder', but insisted that it was followed by

a careful explanation of what constitutes the crime of murder and of the way in which the story told by Parriner involves all the essential elements of murder. It was also pointed out to them at a later stage that they were entitled to bring in a verdict of manslaughter if, in their view, the facts amounted to manslaughter, which was defined for them. The question of what amounts to provocation in law was dealt with, although Counsel for the defence had not raised the question of provocation in his address to the jury.

At the request of the Crown Prosecutor, I directed the jury on the question of what would constitute self-defence.

Counsel for the defence again did not raise this question in his address to the jury, but it had been very properly pointed out by the Crown Prosecutor at the beginning of his address, that if the jury should believe the story told by the accused to the witness Harry a plea of self-defence might be arguable, and he then requested me to direct the jury, when summing-up, that even if they accepted the story told by Harry a plea of self-defence would not lie. This I did not think it proper to do; but in dealing with the evidence of Harry in my summing-up, I directed the jury fully as to what constituted self-defence, and told them it would be for them to decide whether the story told to Harry, if they accepted it, could be construed to fit the definition of self-defence which I had given to them.

Both the stories told by the accused, one to Parriner and one to Harry, were fully put by me to the jury in my summing-up, and the position was put to them that they must give the fullest consideration to both these stories; that they might come to the conclusion that they could accept the story told to Parriner as being true, in which case they should bring in a verdict of guilty of murder, for the reason that that story involved all the elements of murder and did not afford any ground for any plea, such as legal provocation, which would reduce the charge to one of manslaughter, or self-defence, which would entitle the accused to an acquittal; that, secondly, they might discard the story told to Parriner and accept as being true the story told to Harry; in which case they would have to consider further whether the circumstances set out in that story afforded grounds for a finding of provocation which would reduce the crime to one of manslaughter; or whether those circumstances amounted to a killing in self-defence, which would entitle the accused to a verdict of acquittal; and that, thirdly, they might come to the conclusion that they could not rely on either of the stories put before them, in which case, they should bring in a verdict of 'not guilty'. [42]

The jury retired at 8.25 pm. At 9.55 pm they returned and the foreman said they wanted further information:

We wish to ask whether Your Honour will read out from Harry's evidence the part leading up to the shooting. We wish to know where McColl's body was found. We wish to know whether the shooting (sic) took place at the dinner place (sic) where the camp was. The jury has a difference of opinion as to whether the killing took place at the dinner place. Is there any possibility of further information being obtained from Constable Hall as to whether there was any reason why McColl did not have more ammunition on him? [43]

The Judge read out the portion of the evidence desired and gave information as to where the shooting took place. Constable Hall was recalled.

Hall: We searched McColl's body after we found him. He had no ammunition on him. He had no cartridge belt, ammunition pouch, or any receptacle for carrying spare cartridges. We searched the ground and there was nothing to show that he had any spare ammunition. None of us found any empty shells where the body was. [44]

Foreman: Did you have any ammunition left at the dinner camp?

Hall: No. The objects in the dinner camp were the flour bags and mosquito nets. [45]

The jury again retired at 10.10 pm. At 10.40 pm they returned and the foreman announced:

We have arrived at a decision and wish to bring in a verdict of guilty. I have been requested by the jurymen to emphasise the fact that the jury is disgusted at the manner in which the Crown has presented this case. There are many witnesses that could have been brought before the Court and have not been brought. The jury think that there should be a protest lodged on that question.

Judge Wells responded:

All I can say is that I thoroughly agree with you. I seriously thought of personally laying the matter before the Attorney-General, but after all I do not know that it is the Attorney-General's business. I regard it as a very serious business and one that should be enquired into. [46]

It was 11 pm, Friday, the end of a marathon session. Fitzgerald asked Judge Wells to defer sentencing Tuckiar until the following Monday, 6 August. But before the Court adjourned Fitzgerald was given permission to make the following statement:

I have a matter which I desire to mention before the Court rises. I would like to state publicly that I had an interview today with the convicted prisoner Tuckiar in the presence of an interpreter. I pointed out to him that he had told these two different stories and that one could not be true. I asked him to tell the interpreter which was the true story. He told him that the first story told to Parriner was the true story. I asked him why he told the other story. He told me he was too much worried so he told a different story and that story was a lie. I think this fact clears Constable McColl. As an advocate I did not deem it advisable to put the accused in the box. [47]

Judge Wells had the final word:

I am glad you mentioned it, not only in fairness to McColl but also to prove that the boy Harry was also telling the truth. I had no doubt that Harry was telling the truth and apparently he was. [48]

The Court was adjourned. During the Coroner's court hearing a few days earlier journalists and others present apparently agreed that Harry's allegations of McColl's 'misconduct with the lubra' would not be reported. Jessie Litchfield, reporter for the *Northern Standard*, wrote to Stewart McColl on 8 August:

When the inquest on your late brother was continued in Darwin, and the evidence of Harry, the mission-boy first heard, we who were friends of your brother decided to ignor (sic) the slander on your brother's memory, and to admit (sic) all reference to it. The police, Mr F Thompson, who is a press reporter, myself (another press reporter), Mr Fitzgerald, counsel for the defence, and Mr Harris, counsel for the prosecution, also Mr Bell the Coroner; all agreed that no good could come from the story being made public, and that it would only inflict suffering upon the relatives and friends of the dead man. Also we were all sure that the story of Constable McColl's relations with the lubra was a wicked lie, and that, in the interests of justice and fair play, it was better to suppress it.

Another correspondent, Mr E Wilson, who represents the Melbourne *Herald* was not present at the inquest, but he got reports of the sitting later on, and also promised to suppress any allusion to bad conduct.

I was astounded, therefore to obtain word from my papers informing me that the slander was being published in other papers, and asking why I had omitted it.....But, as a press correspondent, I feel that I should write to you and express my deepest regret that any member of the profession in Darwin should be so lost to all ethics of decency and honour as to publish a report which, from the very nature of the case, cannot be confuted (sic); since the only man who could deny the story is dead.....

The authorities here have done all that was humanly possible in the matter; all shortcomings are the fault of the Canberra officials, who would not give the residents of the North (sic) a fair deal; it is they who must be held morally responsible for your brother's murder. But for the murder of his fair fame (sic) you must blame the mission-boy Harry, and the filthy little reptile of a press reporter who saw an opportunity to slander a dead man, and to provide his papers with a 'scoop' that he knew other reporters were too decent to handle.....

If you can send me copies of the papers containing the inquest (at the end of July) and the trial of Tuckiar (August 2,3,6) it may help us to discover who was the one responsible, and so lift a slur off the rest of our community. And I can assure you that,

once he is known, he will be made very sorry for his blazing indiscretion, and will not be permitted an opportunity to offend again. [49]

It is disturbing that journalists agreed to suppress Harry's evidence, but worse is Litchfield's allegation that Coroner Bell, Harris, and especially Fitzgerald agreed it was a good idea. One wonders why, then, Harris called Harry as a witness in the Supreme Court, but perhaps he had no alternative, given that Harry had already appeared in the Coroner's Court, and that the 'filthy reptile' had published the story after the Coroner's inquest. One certainly wonders about Fitzgerald's sense of ethics in continuing to accept the brief to defend Tuckiar.

But where was the 'slander' published? Litchfield was aware of it on 8 August, only two days after Tuckiar was sentenced to death. The fact that she wrote immediately to Stewart McColl asking him to monitor the southern press suggests that her superiors heard of a comprehensive interstate report of Harry's evidence. Litchfield undoubtedly read the *Proletarian*, the 'Official Organ of No. 7 District, Communist Party, Darwin' which issued a 'special supplement' on 8 August to comment on 'what must be one of the greatest travesties of a trial ever held in Australia'. Speaking of Harry's evidence the *Proletarian* said:

Harry, the Millingimby (sic) mission boy was the next to give evidence. Before he started the Judge did everything to intimidate this witness, who spoke fairly good English. Harry stated that, on the lugger coming to Darwin, Tuckiar had told him that he had seen McColl misbehaving himself with one of his lubras. [50]

The *Sydney Sun* said:

After the jury's verdict had been given Mr W J P Fitzgerald for the defence said he wished to make a statement that would clear McColl of the slander that he had ill-treated a lubra. [51]

I have been unable to find any southern newspaper account which mentioned prior to 8 August any allegation of McColl's impropriety.

Here is Litchfield's own coverage of Harry's evidence in the *Northern Standard*:

Harry....gave evidence of a conversation with accused in which he confessed to witness, which differed to that told to Parriner by accused. The story told to Harry was when accused was on his way to Darwin. No evidence was called for the accused. [52]

Most other newspapers reported Harry's evidence in similar vein.

- 1 Sir William John Victor Windeyer *Lectures on Legal History* 2nd Edition (revised) Law Book Company of Australasia, Sydney 1957 pp. 67-8. It impressed me as a youth in Darwin that, when Aboriginal people accepted you as a local rather than a transient, they would greet you by saying 'Goodday, country'. It allowed you to feel you 'belonged' to the country, as they did.
- 2 *Northern Standard* 7 August 1934
- 3 Interview with Ian Wilson, son of Eric, Canberra 1994
- 4 Department of the Interior file 36/4022 Part 1
- 5 *Affidavit of J A Carrodus to High Court of Australia* 25 September 1934 on Deputy Commonwealth Crown Solicitor file DL 894
- 6 See photograph taken on the day McColl was killed, in Vic Hall *Dreamtime Justice* facing p. 113. Four trackers, Big Pat, Lock, Dick and Roper Tommy had rifles. The three policemen, Morey, Hall and McColl had revolvers.
- 7 Interview with Djarparri Wirrpanda, Yirrkala 1976
- 8 Melbourne *Herald* 10 May 1934
- 9 Department of the Interior file 36/4022, undated
- 10 *ibid.*
- 11 *Report of His Honour Judge Wells to High Court of Australia* 1 October 1934 p.4, on Attorney General's file 34/929
- 12 *Wells Report* Appendix A pp. 8-12
- 13 Telephone interview with Dawson Daniels Kambarawara, Ngukurr, September 1994
- 14 *Carrodus Affidavit*, p. 2
- 15 For confirmation see Mickey Dewar *Black War in Arnhem Land* p. 53
- 16 *Wells Report* p. 1
- 17 *Wells Report* Appendix A p. 12
- 18 *Wells Report* p. 2
- 19 *Carrodus Affidavit* p. 2
- 20 *ibid.* p. 3 'Gammon' is the 'pidgin' for either 'lie' or 'bluster'.
- 21 *Wells Report* Appendix A pp. 14-16
- 22 *Carrodus Affidavit* p. 3

- 23 *ibid.*
- 24 Department of the Interior file 36/4022 part 1
- 25 *ibid.*
- 26 Deputy Commonwealth Crown Solicitor, Darwin, file DL 886
- 27 *Carrodus Affidavit* p. 3
- 28 *ibid.* p. 4
- 29 *ibid.* p. 4 ; also *Wells Report* p. 5
- 30 *Carrodus Affidavit* p. 5
- 31 *ibid.* p. 6
- 32 *ibid.* p. 7
- 33 *Wells Report* p. 6; also *Carrodus Affidavit* p. 7
- 34 *ibid.*
- 35 *Carrodus Affidavit* p. 7
- 36 *ibid.*
- 37 *Wells Report* p. 4
- 38 *Wells Report* pp. 6-8; also *Carrodus Affidavit* pp. 8,9
- 39 *Wells Report* p. 7
- 40 *Wells Report* p. 7 ; also *Carrodus Affidavit* p. 9
- 41 *Carrodus Affidavit* p. 9
- 42 *Wells Report* pp. 8-10
- 43 *ibid.* p. 4
- 44 Hall said earlier in his evidence that McColl 'had a revolver belt'.
(see photo 14)
- 45 *Carrodus Affidavit* p. 10
- 46 *ibid.*
- 47 *ibid.*
- 48 *ibid.*
- 49 Letter, Jessie Litchfield to Stewart McColl, 8 August 1934,
Stewart McColl Collection
- 50 *Darwin Proletarian* 8 August 1934
- 51 *Sydney Sun* 8 August 1934
- 52 *Northern Standard* 7 August 1934

CHAPTER 10 GIVE THEM A JOLLY GOOD BEATING

They are only little children, these Aboriginals....I would line them up in a big square and give them a jolly good beating, have the soldiers in, and have a bayonet charge.

Reverend A J Dyer, N T Supreme Court, 6 August 1934.

Monday, 6 August 1934 was 'Picnic Day' a public holiday in Darwin. Later that day local people would gather at the Government Gardens for a sports carnival organised by the NAWU. But in the Supreme Court, at 10 am, it was 'business as usual' when Tuckiar was brought up for sentence. In a flamboyant demonstration of his new discretion under Ordinance No.10 of 1934 Judge Wells asked to hear any evidence in support of a plea for leniency for Tuckiar.

In another confrontationist exchange with Wells Chief Protector of Aboriginals Cook submitted that, as Tuckiar was 'an uncivilised myall', he had 'a different outlook and valuation on human life from those of white people'. He said it was impossible from the evidence presented to the Court to say whether the motive for the killing was fear, rage, malice or simply brutality. In any event the motive might to Tuckiar be creditable. The killing might be regarded by his tribe as a matter of privilege or even as being imperative. The Chief Protector put it to the Judge that Tuckiar might have considered spearing the policeman necessary to save his wife. He asked the Judge to note that Tuckiar went voluntarily to Darwin. [1]

Wells was not impressed. He said, 'If anyone wants me to take into account tribal law and practice they will have to bring evidence before me on those matters. I am not going to speculate'. Fitzgerald supported Cook in asking for consideration that Tuckiar came voluntarily to Darwin. The Judge responded: 'It is quite possible that the people who brought him to Darwin may have a lot to answer for'. [2]

Cook pressed the question of motive. He said, 'We cannot talk to him and understand why he did this killing'. The Judge replied, 'We have very good reason to suspect that he was shortly before that

mixed up in another murder, and when he came along and found his lubra, who no doubt knew a lot about the other murder, in the hands of the police, he probably came to the conclusion that the police would find out things from her, and he went to extreme measures to get her out of their hands. He knew who the police were, and probably he was afraid of the information she might give the police'. [3]

The acerbic Cook asked: 'Why did he come to Darwin?' Wells replied, 'I do not know why he did that. It would be very interesting to know. It is quite possible that he was brought to Darwin under false pretences, but if that is so, it must lie on the conscience of those who brought him. Have you considered the effect on the minds of other Aboriginals of announcing to them that they may kill a policeman and the only punishment they need fear is a few years imprisonment? I am not going to be a party to the making of such an announcement. I do not think it is proper to sacrifice the interests of the other Aboriginals for this one man'.

Cook proposed, 'He might have felt obliged to recover his lubras. It might have been that he was actuated by courage'. Wells said, 'I am afraid I am unable to look at it in that light. On the evidence it appears to have been a deliberate and cunning killing. If the Government had taken the proper steps we might have been able to ascertain what the view of the tribe was as to the killing, but no one seems to have worried about that matter. The legislative authorities have recently passed an amendment to the law which throws upon me the responsibility of deciding what the punishment is to be; it is true that Cabinet have since shown that they are not prepared to abide by my decisions and I think their action in that respect is highly improper. But that is a matter for Parliament to deal with. As far as the law is concerned, they have thrown the responsibility on me, and I have to discharge that responsibility in the light of the evidence which is before me...The position is that the legislature has not abolished the death penalty. I have suggested to them that they should do so if they think it proper, but they have not done it. (Wells was here apparently referring to the commutation of other death sentences he had imposed in recent months). It cannot be abolished by back door methods. In this case no justification has been shown for refraining from imposing the death penalty'. [4]

Dyer must have been thoroughly miserable, not allowed to give evidence of statements made to him and Warren in Arnhem Land, because interpreter Harold Hamilton had not been brought to Darwin.

Dyer sought leave to plead for leniency for Tuckiar, but then had this bizarre exchange with Wells:

Dyer There is a grave doubt in my mind. I do not know what I should do, and I am going to ask your advice. We had a conference with Parriner at Woodah Island, and a number of witnesses were present, and Parriner told us a different story to what was told us in Court.

Wells He told a story here that fits in quite accurately with the known facts, and when Tuckiar was interrogated by Mr Fitzgerald about it he said it was true.

Dyer I could show you quite a different story.

Wells Yes, there was a story he told to Harry which he told Mr Fitzgerald was a fabrication. Who is responsible for bringing him to Darwin?

Dyer We are.

Wells Well, you should have brought the witnesses in too. Who asked you to bring him in?

Dyer Someone down south.

Wells When you are asked to do a thing of that sort you should use your own judgment. You must know that it is not your business to interfere in these matters.

Dyer I was put in a very difficult position. I did not want to do it.

Wells If you did not want to do it you should not have done it. Other people were asked to interfere in the matter, and refused to do so.

Dyer In the light of subsequent events, we know now that it was a mistake.

- Wells If this matter had been properly investigated in the ordinary way probably there would have been no difficulty about it.
- Dyer I will take the blame for bringing him here. I agree with you that there is nothing to do but pronounce sentence. I know you have done your best as an honest man, but you have not had all the evidence.
- Wells The jury evidently decided that they could accept Parriner's story.
- Dyer There is another aspect of the matter. We have neglected that coast for sixteen years. Sixteen years ago five men were killed down there, and nothing was done about it. We have let them kill crews. I do not believe all these stories about the women. I believe thieving was the main object. They are like naughty boys who have never had a whacking. Before you consider it, would you take that into consideration. Later on some of the police went to Woodah Island and they got the wrong men, and had to let them go again. Consider the effect of that on the minds of the natives.
- Harris Those men were brought to Darwin, tried, and found not guilty.
- Dyer They are only little children, these Aborigines. There have been twenty-eight killings down there within the last sixteen years, and nobody has ever been caught or punished. We have failed, as a nation, in giving them a fair go. If I were a dictator I will tell you what I would do with them. I would line them up in a big square and give them a jolly good beating, have the soldiers in, and have a bayonet charge. I would be prepared to beat them myself. Then I would send them back to the tribe and tell them that if there were any more killings they would be shot on the beach.
- Wells There may be a good deal of common sense in what you say. But I think the best thing to do is to let them see that the result of killing is inevitable and unavoidable. The people in

the north may understand your attitude, but I do not know what your friends down south will say about it.

Dyer I don't care what my missionary friends think. I am speaking as a dictator, not as a missionary.

Wells Well, Mr Dyer, if you don't care any more about the opinion of the people down south than I do, you won't lose any sleep over it. [5]

The exchange was transcribed by the Melbourne *Herald* correspondent, Eric Wilson. Carrodus recorded the conversation also, but added a final response from the distraught missionary: 'I have lost a lot of sleep the last three nights and am very worried about the whole business'. Carrodus added, 'He (Dyer) was palpably distressed'. Carrodus also attributed to Dyer the opinion that 'Mirera is the biggest scoundrel of the lot. Tuckiar is a peaceful little fellow', during the harangue about 'giving them a jolly good beating'. [6]

Before sentencing Tuckiar, Judge Wells announced:

I take the view that this man, despite the fact that the evidence is very scanty, killed McColl. I think it is quite safe to draw an inference that he killed McColl in a deliberate and cunning way. I do not agree with the suggestion that these Aborigines as a party murder and kill. The reason is that quite a lot of them, and probably the majority of them are quite well disposed. There are individuals who are truculent and dangerous. I am certainly of the opinion that it should not be allowed to go out amongst the Aboriginal population that an Aboriginal can murder a policeman and get away with a few years imprisonment. The white population seems to be impressed with that fact. I cannot find any reason at all for doing other than pronounce sentence of death. [7]

The Judge then sentenced Tuckiar to be hanged twenty eight days hence. It was 11 am. Darwinites had a lot to talk about as they assembled for the sports meeting.

Southern reactions to the sentencing of Tuckiar to death, and Mau, Natjelma and Narkaya to 20 years imprisonment, were swift and predictable. Tuckiar's own reaction was more difficult to assess. The next day the Melbourne *Herald* presented the front-page headline NO ONE HAS TOLD TAKIAR (sic) OF DEATH SENTENCE YET:

Takiar, the aboriginal who was yesterday condemned to death for the murder of Constable McColl, does not yet know that he has been sentenced to pay the extreme penalty. Nobody in court yesterday explained to him what it meant when everybody stood silent and Judge Wells ordered him to be hanged. His eyes flitted disinterestedly around the Court and he displayed no animation until the gaoler tapped him on the arm and beckoned him from the dock. He held out his wrists for the handcuffs and walked quietly out, his face lighting up in a smile when he saw the gaol motor car, and realised that he was to again have the thrilling experience of travelling in it.

At the gaol no one could make him understand that he was under sentence of death. He was only slightly puzzled when locked in a cell by himself instead of with his countrymen, as in the past. Gaolers have no means of letting him know either, because he speaks very few words of English. An attempt to explain to him through Natjelma, Mau and Narkaya, the three Caledons sentenced to twenty years imprisonment last week, also failed, because they, too, understood insufficient pidgin to grasp the meaning of the death sentence and hanging. So, until an interpreter is taken to the gaol, Takiar will probably sleep unconcernedly as he did all this morning. [8]

It is a wonder nobody thought to get Big Pat to give Tuckiar the 'good news'! It is worth recalling, too, Dyer's earlier comment at Woodah Island about Tuckiar's concern that Wonggu had 'declared war on him'. [9] Tuckiar had been required to share a cell with three sons of his enemy Wonggu for four months, while officials blundered around trying to prepare a case against the four of them, all supposedly innocent until proven guilty.

At a packed meeting at King's Hall, Sydney University, on the evening of Tuckiar's death sentence, a motion of protest 'on sentencing North Australian Aborigines to death' was passed, plus another 'to

criticise Governmental administration of native affairs'. Canon R B S Hammond said that 'our dealings with the aborigines have been paltry and despicably mean'. Professor Elkin said that the whole system of dealing with native affairs needed alteration. He proposed that a judge always have an anthropologist as an 'assessor', and that courts should be convened in the areas where crimes were committed. The meeting demanded that Judge Wells be recalled, 'on the ground that he is unsuitable to try such cases'. 'What do you think of a Judge who says that the best thing to be done to these people is to hang them?' asked Michael Sawtell, amid cries of 'Shame'. [10]

In a scathing, perceptive editorial the *Sydney Morning Herald* criticised Judge Wells for being prepared to receive evidence from 'a lubra' against her husband. Is there one law for the white man in this country and another for the black man, the editorial asked? 'If the ground of this decision is that an aboriginal is not married according to the white man's law, it means refusal to recognise as valid perhaps the only form of marriage ceremony that the aboriginal has ever known, and which in his belief is the only genuine form. To stretch legal technicality to that point would be to ignore the purpose for which a wife's exemption from liability to give evidence against her husband has been granted. The raising of such a question alone would be sufficient to make this trial a fit subject for inquiry'. [11]

The editorial went on to query the jury's protest against the way in which the Crown had conducted the trial. 'Had necessary and material witnesses been procured, it was said that "the case would not have been so difficult"'. Surely, the editorial asked, the verdict of guilty was not found in the absence of any necessary evidence? 'If all that was necessary to prove the guilt of the prisoner beyond the shadow of a possible doubt was not submitted, why was he convicted?' The editorial concluded, 'Necessary as it may be to let the Northern Territory Aboriginal understand that he must not take the white man's law into his own hands, he should also be taught that British justice knows neither race nor colour, and that before its judgment seat all men are equal'. [12]

Minister Perkins promised a review of the administration of native trials as soon as possible, and indicated that he would talk to anthropologist Donald Thomson, who would shortly go to the Northern Territory, operate from north-east Arnhem Land as a patrol officer, and make recommendations about administration for the region. Perkins stated that Judge Wells was appointed to age 70, and

could only be removed by the Governor-General, that is, the Federal Executive Council, on the ground of behaviour or incapacity. [13]

Elkin and the APNR were after Wells' blood. Morley wrote to Perkins on 16 August to suggest that conditions were created during Tuckiar's trial 'from which it could not be thought the trial was in accordance with the principles of British justice'. [14] *The Bulletin* criticised the APNR and 'every busybody in the south (that) has been at work to save the Caledon Bay culprits'. *The Bulletin* ridiculed the 6 August King's Hall public meeting, which was announced as 'non-political and humanitarian' but was, in *The Bulletin's* opinion, convened by the International Labour Defence, 'a body much given to defending people. It carries on a campaign against Fascism, Social Fascism, White Terror, War and Illegality, apparently with ample funds'. [15]

By 10 August Fitzgerald and Cook had commenced proceedings for a High Court appeal against Tuckiar's conviction. They were probably galvanised to action when NT authorities were approached by Mr Waldie of the International Labour Defence on 8 August, seeking to interview Tuckiar, 'as legal counsel has been briefed to represent him in his appeal'. [16] Carrodus quickly sought to discredit the International Labour Defence, describing them as 'Communists probably wanting to use (the appeal, politically) for Territory elections'. [17]

The International Labour Defence was fobbed off. Carrodus told Waldie that 'the matter is under consideration by the Attorney-General'. [18] Cook and Fitzgerald took over the preparations for the appeal. Not until 27 August did the Secretary of the Attorney-General's Department actually advise Interior that 'the Attorney-General considers that an appeal should be lodged forthwith against Tuckiar's conviction'. [19] On the same day the Attorney-General's Department asked Interior to 'have a telegram despatched to the Administrator at Darwin' in the following terms:

SECRET FOR YOUR OWN INFORMATION ONLY. ORDINANCE BEING PASSED GIVING POWER TO ATTORNEY GENERAL TO RECOMMEND TO GOVERNOR-GENERAL THAT CARRYING OUT OF ANY DEATH SENTENCE BE POSTPONED FROM TIME TO TIME FOR PERIOD NOT EXCEEDING IN EACH CASE TWENTY EIGHT DAYS. PROPOSED TO RECOMMEND SUCH POSTPONEMENT IN TUCKIAR'S CASE. MEANTIME APPEAL SHOULD BE MADE IN TUCKIAR'S CASE BUT ALL INSTRUCTIONS TO MELBOURNE SHOULD GO THROUGH FITZGERALD, TO FACILITATE PREPARATION OF PAPERS IN APPEAL. AM

Was this the first step in a campaign to discredit the politically embarrassing Judge Wells? Wells was on record (and prepared to 'go public') denouncing the Government for refusing to abolish the death penalty, but at the same time 'interfering in the judicial process' by commuting or postponing death sentences. A Federal election was imminent.

Cabinet had just approved Attorney-General J G Latham's submission on 23 August that Judge Wells be instructed 'to proceed with the draft Criminal Code immediately, leaving the question of the penalty to be inflicted in cases of murders by aboriginals to be inserted by the Department'. [21] Latham gave Cabinet a ten page briefing on how Wells had opposed the idea of a Court Of Native Affairs. Latham indicated that one of Judge Wells' duties at appointment was to prepare a draft Criminal Code for the Northern Territory, but that he had stalled, pending the airing of his strong views about unequal treatment before the law. The Attorney-General outlined how, following the enactment of Ordinance No 10 of 1934, Wells complained of 'the anomalous position that, whilst a white man convicted of the murder of an aboriginal must be sentenced to death as a matter of course, an aboriginal convicted of the murder of a white man may or may not be so sentenced'. Wells further complained, 'if the Court, having a discretion in the matter, is of opinion that the extreme penalty should be imposed it must give its reasons for that opinion; if, then, the Executive Council desires, for any reason, to commute the sentence, it must commit itself to the expression of definite disagreement with the Court'. [22]

Things can move quickly in government. The Governor-General, Sir Isaac Isaacs, was petitioned by the new Attorney-General, Robert G Menzies [23] under the new Crimes Ordinance (No 2 of 1934) to postpone Tuckiar's execution, scheduled for 3 September, for 'a period of twenty-eight days from 2 September 1934'. [24] Between 8 August, when the International Labour Defence made its play, and 27 August, when the Attorney-General asked that grounds for appeal be prepared, Cook, Fitzgerald and Carrodus had been busy in Darwin. Each of them, plus Dyer, prepared affidavits and Cook and Fitzgerald listed possible grounds for appeal.

The Carrodus affidavit was a fifteen page summary of the proceedings of Tuckiar's trial, and is an objective and (as substantiated by Wells) reasonably accurate account of much of what happened. But Wells objected to the Carrodus affidavit being accepted as the definitive word on the proceedings, particularly because Carrodus did not report in detail the Judge's summing up to the jury. Wells thought it 'most regrettable' that the affidavit was submitted to the High Court 'without any explanation of its nature and the purpose for which it was made'. [25] That purpose, according to Wells, was 'to let Ministers and the officials of the Department of the Interior know exactly what had happened and had been said,...to serve as a check on newspaper reports of the proceedings, which past experience has shown to be necessary'. [26] After reading Jessie Litchfield's letter to Stewart McColl one could only agree.

Cook's affidavit followed the lines of his exchange with Wells in the Supreme Court at the time of the trial. The Chief Protector concluded:

I am strongly of opinion that the knowledge and understanding of the viewpoint, mentality and psychology of Aborigines are indispensable necessities for understanding their actions and conduct and that in judging such actions and conduct such mentality and psychology together with such laws and customs of their tribe as can be ascertained ought to be taken into consideration in order to deal justly with them.

[I make oath and say] that there was no evidence (and no means of obtaining it) at the trial to indicate the dominant emotion impelling Tuckiar to the killing, whether fear, mistrust, rage or blood lust, so that the Court was unable to determine whether there existed the ingredients of manslaughter or even justifiable homicide and that it may be that the killing according to his standards was a deed of courage and virtue. [27]

The essence of Fitzgerald's affidavit was that the Judge 'did not define or attempt to define to the jury murder or manslaughter and did not indicate to the jury what elements constitute the crimes of murder or manslaughter or either of them. The Judge did not tell the jury that all killing is not murder'. [28] Fitzgerald then discussed Aboriginal evidence, and Aborigines as witnesses:

I have practised in the Northern Territory as a Barrister and Solicitor for nearly three years last past and have had much experience in Aboriginal cases before the Courts and I have appeared to defend murder charges against Aborigines in about ten cases involving the examining (of) members of numerous tribes from many parts of the Northern Territory. I have read much literature concerning the Aborigines including official reports and books written by scientists, travellers and missionaries. I am sincerely interested in the Aborigines generally and have endeavoured to get an understanding of their mentality and psychology by constant observation of them in Darwin, where the domesticated Aboriginal lives and works (and such domesticated or partly civilised Aboriginal in spite of a thin veneer of civilisation gained by domestic contacts as servants is in fact just as much a savage as the bush myall who has hardly come into contact with white people or their civilisation) and by numerous contacts and conversations with them both as a lawyer and as a humanist, and they have spoken freely to me and given me much information of themselves because they know I am in friendly sympathy with them. From my experience in the Criminal Court at Darwin and in preparing the defence of Aborigines I have learnt much concerning Aboriginal interpreters and the difficulties of getting good or reliable interpretations of statements made by the accused or by Aboriginal witnesses during the course of a trial.

From my knowledge of the Aboriginal...I say that the following are substantially true characteristics of the average Aboriginal who has come under my notice:

(a) The Aboriginal is first and foremost a liar to the white man. He will rarely tell the truth at all. The answer to any and every question is nearly always a lie for a start. Several versions of anything will be given by him before he will mention the true one, and the difficulty is always to know which is the true version or which version contains the nearest approximation of the truth. He can fairly be called a natural and habitual liar and he seems to love lying so much that in my opinion no value whatever should be placed on Aboriginal testimony in the witness box. When bowled out in a lie he laughs heartily at it. I

have experienced this on very numerous occasions with the domestics employed at the home where I resided in Darwin for nearly three years, and with their friends, relations and visitors.

(b) The Aboriginal has the mind of a child, is childlike in most of his thoughts and actions, though he is also possessed of much cunning.

(c) His language is not capable of expressing anything but the simplest ideas, and he really has no ideas except those of the simplest kind. He cannot understand the ideas intended to be conveyed by ordinary simple questions. He has only very vague ideas of time and distance and no means in his language of expressing his ideas of either. My experience in examining Aboriginal witnesses is that it is hopeless to get from them the slightest approximation of either time or distance. Aboriginals generally do not understand alternatives. Even the most cultivated of the Darwin Aboriginals in daily contact with the whites if asked such a question as 'Which do you like, an orange or an apple?' invariably answer 'yes' without apparently having any idea that one desires them to express a choice between the two. Numerous other instances could be quoted to show the almost insuperable difficulty in everyday conversation of understanding the Aboriginal and making him understand you. This is intensified when exact information is required from a witness in Court.

(d) The Aboriginal's general answer to questions is governed by a desire to please the questioner. He appears to think that that is the best thing to do, and the result is a mass of contradictions which do not strike him at all as such. I have received from the present prisoner Tuckiar both before during and since his trial many accounts of his actions in connection with the death of McColl and all widely varying and I do not know which if any to believe. All such accounts are consistent with his innocence of the 'murder' of McColl, the crime with which he was charged.

(e) The Aboriginal is very prone to boast of his exploits and to exaggerate them particularly to members of his own tribe and more particularly when relating a story concerning the killing of an enemy or one whom he believes to be an enemy.

I am strongly of opinion that the system (even though it be the only one possible or available) of interpreting evidence

given by Aboriginals in our courts is a most imperfect and inadequate one for the ascertainment of facts and truths. It is rarely possible to get as interpreter an Aboriginal who is not a Police boy or one who is a fellow tribesman of the accused who at least can thoroughly understand what the accused wishes to convey. There remain for the interpreter the difficulties of properly understanding the questions put, properly putting them to the accused or the witness, and properly translating and giving out the answers. In those processes much is changed both of question and answer and the result is the almost complete unreliability of interpreted testimony. The leanings of the aboriginal interpreter have also to be taken into account. It is so easy also to get a wrong or distorted meaning both of words and actions.

For the reasons and considerations before mentioned I am of opinion that the truth concerning the killing of Constable McColl or even an approximation to such truth will never emerge from the further trial of this case. [29]

Fitzgerald's belief that all Aboriginals were liars who failed to understand or express the simplest notions of sense or choice indicts him and his peers. None of them seemed to have the faintest idea of how to begin to communicate with Aboriginals, yet all would profess to 'understand the blackfellow' and sneer at southerners who did not. To this day a problem in talking to Aboriginals whose first language is Australian is that questions in English are often framed stupidly. For example:

Q. You're not going to the football?

A. Yes.

Q. So you are going to the football?

Of course the person is not going to the football. Aboriginals would say:

Q. Are you going to the football?

A. No.

Q. What would you like, an orange or an apple?

A. Yes. (Both of them, thank you very much.)

At the same time Fitzgerald's comments on interpreters are perceptive, just what he should have said in Tuckiar's defence at the trial, just the point to hammer to establish reasonable doubt, the basis of the British system of justice.

Dyer was frustrated because he had not been allowed to give evidence at the trial, and probably embarrassed because his emotional outburst when pleading for Judge Wells to be lenient with Tuckiar precipitated front-page headlines like THRASH THEM SAYS DYER in the southern press. [30] In his affidavit for the High Court Dyer outlined the function of the Peace Party, and then said:

On the first day of March 1934 at Woodah Island the members of the Expedition met more than one hundred Aboriginals including the said Tuckiar and one Parriner and we as a body questioned the leaders of the various tribes then present about the killing of McColl amongst other things. The answers were given by the leaders of the tribe to which Tuckiar and Parriner belonged and we took down these answers as a tribal story. Both Tuckiar and Parriner answered questions. I entered questions and answers in my diary at the time as also did Warren and Fowler in theirs. As a result of such questioning I say that Parriner gave a different version and he Parriner heard Tuckiar give a different version thereof to that which Parriner himself gave in the witness box at the trial as a confession by Tuckiar. One Harold Hamilton, a half-caste Mission boy, acted as the Society's interpreter on the occasion of such questioning, and Parriner was the interpreter to Harold Hamilton of the answers to our questions. The interpreter of Parriner's evidence at the trial was Paddy, a police boy Aboriginal who accompanied the police party as a tracker on the police expedition when McColl met his death. Paddy at the request of the Judge also gave evidence at the trial. The version received from the tribe and Tuckiar on the said first day of March 1934 pointed to justifiable homicide on the killing of McColl. There was in it no suggestion of any decoying of McColl into an ambush by Tuckiar's lubra which was the Crown case at the trial, and I believe that if Parriner was telling the story of any decoy at all in the witness box at the trial, it was a subsequent invention, because the story told us was that the lubras ran

away. The interpreting was most difficult, a lot of sign language was used, and I say from my knowledge of interpreting conditions that it is almost impossible to get through several interpreting channels (as was the case in this trial) anything more than a very vague and unsatisfactory approximation of the actual admissions or confession made by Tuckiar. The paucity of native ideas and language in which to express ideas is the fatal bar to understanding question and answer, and it is highly probable that signs were misinterpreted and that anything Tuckiar did say or admit about the killing of McColl was vastly distorted by the time the Court and jury got it from the interpreter at the trial.

The information mentioned in the last preceding paragraph of this my affidavit was only given by me to Tuckiar's counsel after Tuckiar's conviction, when at a conversation with him after the trial I learnt that he knew nothing of those things. Some of that information including the record of the questioning on the first day of March last is contained in the report of the said Missionary Expedition a copy of which was supplied to the Minister for the Interior about three months before the said trial. No copy of such report was supplied to Dr C E Cook, Chief Protector of Aborigines, so far as I am aware, and Dr Cook did not have the said information at the time of the said trial.

Other versions were received from different Aboriginal sources as to the killing of McColl, and I believe from what I know of the whole of the circumstances that it will be impossible to reconcile the differing stories and get at the truth. Aborigines are notorious liars and boasters; and I solemnly believe that the truth concerning McColl's death can never be known and that the stories given by the Crown witnesses Parriner and Harry of confessions by Tuckiar are unreliable and that it was a grave injustice for any jury to convict a man on such evidence especially in the absence of a large body of available information and evidence which could have been procured by the Crown but was not and which might have influenced the jury in favour of Tuckiar.

I heard the summing up of His Honor (sic) the Judge to the jury at the said trial and I am of opinion that it was one-sided

against Tuckiar and that it was calculated to unduly influence the jury against him.

The Australian Aboriginal has a vastly different and inferior mentality to that of the white race, and, although his tribal laws and customs forbid unlawful killing, and severe tribal punishments are mercilessly meted out to offenders, there are many degrees of justification which an Aboriginal recognises for killing. In the districts with which I am familiar he does not kill white men indiscriminately or for loot or for lust of blood, though he will loot after killing - his blood being then up. He generally has a good reason, be it fear of attack by an armed adversary, or provocation, or self-defence, or in defence of his lubras who are as sacred to him (as against strangers) as our wives are to us. In most tribes there is no actual marriage ceremony, the marriage being constituted by the simple (sometimes publicly) taking at the appropriate time what had been arranged for him under tribal custom. Such unions, whether monogamous or bigamous, are just as sacred to the Aboriginal as our marriages are to us, and they are recognised in the tribe just as ours are by the community.

After several discussions with the Aborigines and their leaders, several individuals including Tuckiar and one Merara (sic) voluntarily agreed with the Mission Expedition to come to Darwin and explain their actions and if necessary take the consequences of them. These natives do not understand the legal meaning of murder and its consequences. I believe that all the killings in the Caledon Bay district are to the minds of the natives justified or at least excusable, because their tribes did not take the killers to task which indicates either that the killers were justified or that the killings were tribal affairs.

In cases of wrong-doing the natives have not up to the present time been taught anything of our system of justice nor have they been brought to suffer for misdeeds. The consequence of this has been to engender in their minds a false idea of our system, and this is owing to our neglect and failure as a community in the past sixteen years to deal with the problem. [31]

On 30 August F F Clausen, Deputy Crown Solicitor, wrote to the Crown Solicitor to advise that on that day Mr Justice Starke had

granted leave to appeal to the High Court in respect of Tuckiar's conviction. [32] D A Tregent, Fitzgerald's Melbourne agent, engaged Mr Dethridge 'of Counsel' to appear for Tuckiar. Mr Reynolds 'of Counsel' appeared for the Crown. It is important to note that, at that stage, Judge Wells had not then been advised officially of the High Court appeal, and the only papers submitted to Justice Starke at the application were the affidavits of Cook, Dyer and Carrodus, plus an affidavit from Tregent that listed 24 grounds of appeal. [33]

Dethridge forcefully pointed to the unsatisfactory way in which the Darwin trial had been conducted. He spoke of Judge Wells' 'general attitude', and said that if Carrodus' version of the summing-up were correct, Wells did not advise the jury that 'they had before them evidence that the accused, first of all, was an aboriginal of inferior mentality to that of the white people'; that 'secondly, the only direct evidence connecting him with the crime had come from another aboriginal'; and 'thirdly, that the evidence of the confession could only come to the jury through the means of an interpreter, so that the possibilities of error in the testimony before it reached the jury were triple-fold'. [34]

Dethridge said that Judge Wells seemed unduly influenced by the effect which a verdict of "not guilty" may possibly have had upon the reputation of Constable McColl, and that was a matter which of course was quite irrelevant to the question as to whether or not Tuckiar had committed murder. Dethridge continued: 'And he (Wells) does seem to assume that if the jury brought in a verdict of "not guilty" the only conclusion was that Harry had told the truth and that Constable McColl had been interfering with the lubras'. To Justice Starke's comment: 'There was the evidence that Constable Hall gave', Dethridge responded, 'I submit that that is clearly irrelevant. Having regard to the Judge's general attitude, that very probably would affect the course of the trial'. In summing-up Dethridge submitted that Wells 'does not appear in any way to have outlined the question that the jury should be satisfied beyond any reasonable doubt'. [35]

Reynolds, for the Crown, seemed only mildly interested in the proceedings. He said: 'So far as the material before the Court shows it is submitted that the trial on the material available was a fair trial. The difficulties which my learned friend has referred to in ascertaining the truth of the witnesses must have been present in the minds of the jury and so they had arrived at their verdict. So far as the summing-up of the

learned Judge is concerned, it is submitted that he has certainly put his view on the facts to the jury. Another thing is the very low mental power of these primitive people. The Judge does not seem to have bothered his head about that'. [36]

Starke said he felt that 'as this is the first case of this kind, it is desirable that the matter be considered by this Court'. [37] He granted leave to appeal, but not before saying:

There is one observation I would like to make. I rather regret that the Counsel for the defence made any public statement of what the prisoner had said to him at any time. That is very prejudicial to the prisoner. One would have thought that the procedure would be if the prisoner made confessions to Counsel, the duty of Counsel, unless he is seriously embarrassed, is not to make public those statements, but to do his best on the evidence. I am surprised that Counsel disclosed that information. [38]

Reynolds reminded Justice Starke that 'the Court may require a report from the Judge'. Starke replied, 'It would be desirable to have that. We cannot require it. We can merely invite the learned Judge'. [39]

On 30 August Darwin's Clerk of Courts, J W Nichols, was instructed to forward to the Principal Registrar of the High Court 'the Presentment, the Certificate of Conviction, and the official transcript (if any) and the evidence on the trial, and the Judge's summing-up'. Judge Wells was invited 'to forward the notes taken by him on the trial'. [40]

On 1 October 1934 Wells submitted a 38 page report giving his version of proceedings of Tuckiar's trial. [41] It is a most comprehensive report, and as he only received official advice of the High Court appeal on 31 August, it seems likely that Wells had been anticipating events, reading the newspapers. He probably typed the 38 page report himself. [42] So he was ready when sent a copy of the 'lettergram received by the Administrator on the 17th instant setting out twenty-four grounds of appeal'. [43]

Wells said that he felt the various opinions about the 'inferior mental power' of Aborigines 'are not at all likely to influence the Appeal Court', but he defended his own understanding of Aborigines when he took exception to Reynolds' statement that he (Wells) 'did not seem to have bothered his head about the very low mental power of these

primitive people'. [44] Wells pointed out that he had made an extensive study of Aborigines, and tartly added, 'My opinion as to their mental powers does not altogether coincide with the possibly hasty opinion expressed by Counsel'. [45]

In respect to Fitzgerald's statement in *R v Tuckiar* that Tuckiar had indicated that the story presented by Parriner was true, and that told by Harry untrue, Judge Wells said: 'When Counsel indicated that he proposed to make this confession public I warned him that it might be inadvisable and that he must do it entirely on his own responsibility. It is clear that at that stage he must have been quite satisfied with the conduct of the trial and the justice of the verdict, and that he had no thought of appealing; otherwise it is inconceivable that he would have made the confession public'. [46]

Wells attacked Dyer's affidavit. On Dyer's assertion that the object of the Peace Expedition was to 'establish friendly relations with the aboriginal natives of the west side of the Gulf of Carpentaria' he said, 'this very clearly indicate(s) a lack of frankness, if not an intention to mislead, in the attitude of the deponent'. The Judge said he felt that 'it is clear the purpose of the expedition was to usurp the functions of the police and carry out an investigation into the several murders which had been then recently committed on the Arnheim (sic) Land coast'. [47]

On the question whether Big Pat's interpreting for the Court was satisfactory, Wells said, 'the boy Paddy who interpreted the evidence of Parriner in this case was undoubtedly the most careful and competent interpreter who has acted before me in this Court'. [48] Wells acknowledged that 'on one or two occasions difficulties did arise; and on such occasions the interpreter was always most careful to resolve the difficulty before passing on his interpretation to the Court, and it was always apparent from the witness' demeanour on such occasions that whatever difficulty had arisen between them had been overcome'. [49] He added, 'It is possible that if (he) is a very able and unscrupulous man he may have succeeded in deceiving both Court and Counsel for the defence in regard to the story told by Tuckiar to be true. But that is a flight of imagination of which I am sure no Court could venture - there being not one scintilla of evidence to support it'. [50] Fred Gray, who saw the exchange between Big Pat and Parriner outside the Court on the morning of the trial, might not have agreed.

Dyer's affidavit stated that the Judge's summing up was 'one-sided against Tuckiar and calculated to unduly influence the jury against

him'. To refute this Wells contented himself with saying that Dyer's comment 'does not seem entirely in accord with the view expressed by the deponent as to the conduct of the trial when he was addressing me on the question of sentence'. [51]

Judge Wells indicated that Dyer's assertion that the story 'came through several interpreting channels' was 'manifestly wrong'. According to Wells: 'Parriner and Tuckiar are fellow tribesmen, and there would be no danger of misunderstanding between them; the evidence was given by Parriner in his own language, and was translated once only - that is by the interpreter Paddy into pidgin English: the latter being a means of communication which is highly expressive and which is perfectly familiar to everyone who, like the jurymen and myself, has constant contact with Aboriginals'. [52]

On the 'alleged paucity of native ideas and language' Wells revealed himself as more enlightened than any other white person in these judicial proceedings. He said: 'My information is that most of the native languages in the Territory have quite extensive vocabularies and whilst not suitable for the statement of abstract ideas with which the Aboriginal mind is unfamiliar, are quite apt for the narration of concrete happenings, such as the story of this killing. It has been stated that one of the Aboriginal languages of the Territory has a vocabulary of over 6000 words.' [53]

Wells said that he considered Dyer's statements concerning the 'different and inferior mentality to that of the white race' did not accord with 'the observations of reliable and experienced observers with whom I have discussed this matter'. Wells was obviously referring to people like Webb of Milingimbi, for he went on to differentiate between 'the degrees of justification for killing' among 'our Aboriginals'. He observed that the system of vendettas which often prevailed was 'lex talionis' in its crudest form; but there were other 'ceremonies by which family groups may heal their differences and restore peace, e.g., the "Makkarata" (sic) ceremony of the East Arnheim (sic) tribes'. [54]

Dyer's affidavit asserted that Aboriginals generally would not be party to bartering their women. Wells pointed out that during *R v Tuckiar and Mirera* Dyer gave evidence on oath that 'it is the almost universal custom of the natives to trade their women', and during *R v Tuckiar* Dyer stated, 'I do not believe all these stories about the women. I believe thieving was the main object'. [55]

On the 24 grounds of appeal Tregent listed, where Fitzgerald had obviously made a substantial contribution, Wells opened with: 'If it is going to be seriously suggested that even one half of these grounds of appeal have any foundation whatsoever, then the fact that throughout the trial counsel for the defence made no protest whatever against the way in which it was being conducted, objected to none of the evidence tendered, did not at the close of the summing-up or at any time ask for any further or other directions to the jury, and after the verdict made, entirely of his own motion, a public statement which would make a new trial almost certainly a futility, seems to call for some explanation'. [56]

Wells responded to the specific grounds of appeal as follows:

Ground 1: That verdict of jury was against evidence and weight of evidence.
Comment: It is difficult to see how this ground is going to be argued. No evidence whatsoever was given for the defence, so that no question of the relative weight of evidence arose. The position was that the jury might (a) accept the first of two stories of the killing attributed to the accused, in which case they could hardly bring in any verdict other than murder; (b) accept the second of these stories, in which they might have brought in a verdict of murder, of manslaughter, or of not guilty on the ground that the killing was done in self-defence; or (c) decide that in the circumstances it would be unsafe to rely on either story, in which case they must bring in a verdict of not guilty. This position was fully explained to and undoubtedly understood by them. They brought in a verdict of guilty of murder.

Ground 2: That conviction of accused was wrong in law and in fact.

Comment: Until the meaning of this is made clear it is obviously impossible to make any comment on it.

Ground 3: That there was no evidence or not sufficient evidence of guilt of accused to go to jury.

Comment: This (sic) clearly was evidence of guilt if the jury chose to accept it. What it is intended to raise under the words 'or not sufficient evidence of guilt' I cannot imagine.

Ground 4: That learned Judge misdirected jury and/or failed to adequately direct them as to the law and the evidence.

Comment: It is clearly impossible to pass any comment on a ground of appeal framed in this way.

Ground 5: That since trial fresh evidence which could not with reasonable diligence have been discovered before has been discovered.

Comment: If this is intended to apply to the evidence mentioned in paragraph 5 of the affidavit of the Rev. Mr Dyer and in the lettergram of W J P Fitzgerald which is embodied in the affidavit of D A Tregent of the 30th August, I have already dealt fully with it. I would only add that if even the least amount of diligence had been displayed by the defence it could hardly have failed to be discovered.

Ground 6: That trial generally was so conducted as not to adequately safeguard interests of accused.

Comment: To a statement framed in such a general way as this, the only answer possible is the equally general one that it is untrue.

Ground 7: That evidence was wrongly admitted or rejected.

Comment: No evidence was rejected. No objection was taken to any evidence tendered. It may or may not be that had objection been taken to the evidence given by Constable Hall when he was recalled by the Crown Prosecutor it would not have been admitted: Objection was not taken, and I express no opinion now as to its admissibility: it is a matter for the Appeal Court to say whether or not it will entertain the objection now, and if so, whether the evidence was admissible or not.

Ground 8: That learned Judge did not having regard to the whole of his directions to jury sufficiently direct them as to the elements constituting the crime of murder and the onus of proof in respect thereof.

Comment: The jury were fully directed on both these points.

Ground 9: That learned Judge in light of the evidence should have directed jury that it was open to them to bring in a verdict of manslaughter.

Comment: I did so direct them.

Ground 10: That learned Judge should in circumstances have directed jury that they should not be affected in their verdict by a desire to vindicate character of Constable McColl.

Comment: The jury were carefully directed that in coming to a decision they should not allow themselves to be influenced by any extraneous circumstances at all, including the fact that a verdict of not guilty might result in a serious slander being affixed to the name of a dead man.

Ground 11: That learned Judge was wrong in directing jury (in substance) that they should be influenced in their verdict by a desire to vindicate Constable McColl.

Comment: No such direction was given to the jury: they were directed to the opposite effect.

Ground 12: That direction of learned Judge in answer to enquiry of jury as to what verdict they should bring in (in substance) if they were not satisfied

either as to guilt or innocence accused was wrong in law and was calculated to cause a miscarriage of justice.

Comment: This matter has already been dealt with by me.....The question asked by the foreman of the jury was not in the form suggested in this ground of appeal. It was clear to me from the way the question was framed, and from what had gone before that what the foreman meant was, what was their position if they were satisfied that not sufficient evidence had been produced by the Crown, in the sense that the Crown had not brought before the Court all the evidence it might have brought. The question asked by the foreman of the jury is reported differently by the Acting Administrator and the *Melbourne Herald* representative....Neither is a verbatim report of what the foreman said, and I am not able now to recollect the whole of what was actually said: but it was clear to me at the time that what was in the mind of the foreman is what is set out above.

Ground 13: That learned Judge did not direct and/or adequately or properly direct jury as to weight to be given to evidence of uncivilised Aboriginals such as Parriner or Harry.

Comment: Harry is not an uncivilised Aboriginal: he is a mission boy from the Methodist Mission at Millingimbi (sic), and I believe has been reared from boyhood by the Rev. Mr Webb. With regard to Parriner, the jury had before them and were able to observe the manner in which he gave his evidence and his general demeanour; the jurymen were all of them men who are in constant contact with Aboriginals, and it was a matter for them to decide what weight they should attach to Parriner's evidence. If I had expressed any opinion on the point I should have had to warn them at the same time that they must not accept that opinion unless in their own independent judgment they agreed with it. They were reminded that the story came to them from Parriner through an interpreter, and that they must take into consideration the possibility of misunderstanding.

Ground 14: That learned Judge wrongly directed jury as to weight to be attached to or inferences to be drawn from the alleged statements of accused.

Comment: I am quite unable to imagine what this is intended to refer to.

Ground 15: That learned Judge should in circumstances have directed jury as to danger of accepting statements of Parriner and Harry as to meanings of statements allegedly made by accused.

Comment: I am equally at a loss to attach any meaning to this.

Ground 16: That learned Judge unduly pressed upon jury his own views of and inferences from evidence.

Comment: I certainly did put to the jury my own views as to the relative credibility of the stories told by the accused to Parriner and to Harry. At the same time I carefully and emphatically warned them that they must not accept my views unless, after carefully weighing all the circumstances, they in their independent judgment came to the conclusion that the views expressed by me were sound. It was most strongly impressed upon them that the decision of any question of fact, or the weight to be attached to any part of the evidence, was for them alone. On this point I would draw the attention of the Appeal Court to *R v O'Donnell* 12 CAR 219

Ground 17: That learned Judge did not put to jury the views which might be taken of evidence consistently with innocence of accused.

Comment: It was put to the jury that if they discarded the story told to them by Parriner and accepted that told by Harry it was open to them to find that the circumstances of the killing amounted to self-defence, in which case, they should acquit; or that there were circumstances involved amounting to legal provocation, in which case they should bring in a verdict of manslaughter. It was also put to them that it was open to them to come to the conclusion that in all the circumstances it would be unsafe to rely on either of the stories of the killing which had been put before them in which case also they should acquit. It would be interesting to know what else it is suggested I should have put to the jury in favour of the innocence of the accused, on the evidence before the court.

Ground 18: That comments of learned Judge to jury on conduct of prosecution by Crown and on possible effect on reputation of Constable McColl of verdict of guilty made fair trial impossible and conviction of appellant amounted to miscarriage of justice.

Comment: Any comments made by me on the conduct of the prosecution by the Crown could have only one effect on the minds of the jurymen, and that is to make them reluctant to convict on the evidence which was put before them in view of the fact that other witnesses who might have been produced were not produced. As already pointed out the jury were specifically directed that they must not allow extraneous matters, including the effect of a verdict of not guilty on the reputation of McColl, to influence them in any way in coming to a decision.

Ground 19: That evidence as to the character of Constable McColl was wrongly admitted and was calculated to cause miscarriage of justice.

Comment: This has already been dealt with under Ground 7 above.

Ground 20: That generally case for accused was not presented to jury adequately or fairly by learned Judge in all circumstances of case.

Comment: This is too vague and general to permit of useful comment. Strictly, there was no case for the accused put before the Court: the only point relied on by the defence was that the Crown had failed to produce all the evidence that might have been produced, and this was very definitely and emphatically before the jury.

Ground 21: That manner in which Aboriginals gave their evidence was contrary to law.

Comment: I am unable to imagine what this refers to, unless it be the fact that the Aboriginals were not sworn, but cautioned only. If this is the point to be taken, attention is directed to Ordinance No. 3 of 1848, of the State of South Australia, as amended by No. 4 of 1849. This is part of the law of South Australia which was continued in force by the legislation effecting the taking over of the Northern Territory from South Australia by the Commonwealth, and is still in force here. The evidence of the Aboriginal witnesses who gave evidence in this case was admitted strictly in accordance with the provisions of this legislation.

Ground 22: That learned Judge in passing sentence misdirected himself as to principles governing exercise of discretion vested in him by section two of Ordinance No.10 of 1934 relating to Territory.

Ground 23: That learned Judge exercised discretion vested in him by terms of said Ordinance improperly and/or unreasonably.

Ground 24: That sentence of death imposed by learned Judge was excessive.

Comment: I am, of course, quite unable to anticipate what contentions are going to be raised under these last three grounds; or to imagine on what evidence, if any, such contentions will be based.

The law dealing with the discretion referred to is to be found in the Criminal Law Consolidation Act, No 78 of 1876, of the State of South Australia, as amended by the Crimes Ordinance 1928-1934, of the Northern Territory, the principal Act being part of the law of South Australia which was continued in force on the taking over of the Territory by the Commonwealth. The relevant sections of the principal Act, as amended, read:

5. Subject to the provisions of this Act, whosesoever shall be convicted of murder shall suffer death as a felon.
6. Upon every conviction for murder the Court shall pronounce sentence of death, but it shall not be necessary to express the time for the execution thereof. If no time for the execution be expressed in the sentence, it shall take place on the twenty-eighth day after the day on which the sentence was pronounced.

Provided that, where an aboriginal native is convicted of murder, the Court shall not be obliged to pronounce sentence of death, but, in lieu thereof, may impose such penalty as having regard to all the circumstances of the case, appears to the Court to be just and proper.

6A. For the purpose of determining the nature and extent of the penalty to be imposed where an aboriginal native is convicted of murder, the Court shall receive and consider any evidence which may be tendered as to any relevant native law or custom and its application to the facts of the case and any evidence which may be tendered in mitigation of penalty.

The amending Ordinance No.10 of 1934 also provides the following definition of 'aboriginal native':

'Aboriginal native' means any person who is:

- (a) an aboriginal native of Australia or of any of the islands adjacent or belonging thereto; or
- (b) partly of aboriginal and partly of other parentage and who habitually lives or associates with aboriginal natives.

Although this definition would cover the accused Tuckiar, no actual evidence was given to prove that he came within it. This consideration, however, did not influence me in deciding to sentence him to death: had I thought it a proper case of leniency I would have taken the necessary steps to have the necessary proof provided.

My view of this legislation is that it does not abolish the death penalty in respect to aboriginals, whether they be 'myalls' - that is to say, uncivilised - semi-civilised, or otherwise. It vests in the Court a power to impose any penalty, either the death penalty or any lesser penalty, which in the discretion of the Court, having regard to all the circumstances of the case, may be considered a proper penalty; and it directs that for the purpose of determining the nature and extent of such penalty, the Court shall receive and consider any evidence which may be tendered as to native law and custom applying to the case and any other evidence which may be tendered in mitigation of penalty.

In the present case the only evidence given on the question of penalty was that given by Dr Cook and the Rev. Mr Dyer...I announced in Court that I was prepared to hear any further evidence from anybody who

cared to come forward, but there was no response to this invitation. Whilst in the witness box, Dr Cook, the Chief Protector of Aborigines, said that after hearing the evidence in this case, the only observation he could offer was that these people placed a lower value on human life than we do: but from my own investigations I am by no means sure that this observation is correct, as applied to aborigines generally. The position with which the Court was faced, therefore, was that the accused had been convicted of murdering an officer of the police in circumstances which - taking the account of the murder which appears to be the most probable, which the jury apparently accepted, and which he had confessed to his own counsel was in fact true - disclosed treachery, cunning and deliberation, without any mitigating circumstances whatever. This being so, it appeared to me that the only proper course was to impose the extreme penalty provided by law.

It is a fact that for some time past it has been the practice of the Executive to commute sentences of death passed on aborigines, and it may be that there is a more or less settled policy to this effect. No such policy, however, has received legislative expression, and the Court can only administer the law as it finds it on the statute book. I have myself suggested to the Prime Minister and the Minister for the Interior that if the abolition of the death penalty in respect to aborigines is the definite policy of the Government legislation should be passed giving effect to it: but this has not been done. As to the wisdom of such a policy there is room for very grave doubt. Over lenient treatment of aboriginal murderers appears to be making the turbulent elements amongst the aborigines increasingly truculent and aggressive. During the past two years there have been no fewer than 23 white people and Asiatics murdered by aborigines in the Territory. Public feeling in this matter in the Territory is very strong, and there is a real danger that members of the white community may themselves carry out reprisals in future cases. That has been done here in the past, and a reversal to such a practice would be disastrous to both whites and aborigines. I should be particularly apprehensive as to the effect on the aboriginal community of an announcement that an aboriginal can murder a police officer who is acting in the course of his duty, and in the circumstances of this case, and the only punishment he need fear is a few years in gaol. News of matters of this sort spreads widely and with remarkable rapidity amongst the aborigines and my knowledge of these people leads me to believe that the effect of such an announcement on the criminal elements amongst them would be disastrous. [57]

It is interesting that in Dethridge's 'grounds for appeal' there is no specific listing of Judge Wells' comments about Tuckiar's failure to give evidence on his own behalf. It is covered by No.4 but only in the general terms that 'the learned Judge misdirected the jury'. The meticulous Wells raised the issue himself, perhaps in anticipation that the High Court would examine his comments as recorded in the Carrodus affidavit. Wells said:

No point seems to be made in the grounds of appeal of my reference to the fact that the accused did not enter the witness box, but if it should be sought to raise this question, the attention of the Court is directed to the decision of the Privy Council in the case of *Kops v The Queen*, 1894, AC 650

In *Kops v The Queen* the Privy Council held that the comments of the judge, in referring 'to the capacity of the prisoner to give evidence on his own behalf, and so explain matters which would be naturally within his own knowledge, and of which an explanation would be important in view of the evidence already given' were made 'according to law' and 'there was no reason to interfere with the verdict that followed'.

In his further appraisal of Tregent's affidavit Wells agreed that 'the evidence of nine other witnesses could have been procured', but insisted that he had severely criticised the Crown for not producing these people. Further, said Wells, 'If any of this evidence was likely to be favourable to the accused steps could have been taken to procure and tender it by the defence, but no indication was given by counsel for the defence that there were any witnesses who could or should be procured, and no adjournment was asked for'. [58]

Wells defended himself against Tregent's assertion 'that he directed the jury to disregard the absence of witnesses and bring in, if they could, a verdict on the evidence put before them'. Wells insisted he told the jury 'that if they found that there was sufficient before them to satisfy them of the guilt of the accused, they must not allow the feeling of resentment against the conduct of the case by the Crown that had been voiced by them to prevent them from bringing in a verdict'. [59]

To Tregent's claim that he 'showed no sense of proportion and ought to have refused to proceed with trial until these witnesses were

produced', Wells responded: 'The suggestion put forward here indicates what is to me an entirely novel idea of the functions of a trial Judge; namely, that he should refuse to allow a trial to proceed unless the Crown produces the strongest case possible against the accused. The accused was entitled to the benefit of the weakness of the Crown case, and Counsel for the defence was eager in his acceptance of that position'. [60]

Wells insisted that he did define the crime of murder to the jury, and felt that Tregent's allegation that his summing-up and review of the evidence was one-sided 'can only be regarded as in the nature (of) idle abuse'. [61]

Wells concluded his 38 page report aggressively:

In this report I have dealt at some length with the questions raised in the material which was before the High Court on the application for leave to appeal. Many of these questions, of course, appear to be quite irrelevant in regard to the appeal; but as I do not know what use may be attempted to be made of them at the hearing I have thought it wise to deal with them, in case my views should be found helpful by the Appeal Court.

In view of the reckless nature of some of the statements made on behalf of the appellant on the application for leave to appeal, and foreshadowed on the hearing by the grounds of appeal now filed, I would respectfully suggest that I should be given an opportunity of checking any new statements of fact made by affidavit or otherwise for the purposes of the hearing. [62]

In the meantime, on 13 August, this telegram went from Interior, Canberra, to Administrator, Darwin:

MELBOURNE HERALD SATURDAY ELEVENTH PUBLISHES FROM SPECIAL REPRESENTATIVE DARWIN FULL REPORT OF INTERVIEW WITH TAKIAR (sic) IN DARWIN GAOL ON SATURDAY STOP REPORT STATES INTER ALIA BEGINS SITTING CROSS LEGGED AND ILL AT EASE ON FLOOR OF CELL BARE EXCEPT FOR RUSH MAT TWO BLANKETS AND PANNIKIN OF WATER WITH AN INTERPRETER SQUATTING ON HIS HEELS BESIDE HIM AND A GAOL GUARD STANDING NEARBY TAKIAR TOLD HOW HE DID NOT WANT TO DIE AND HOW SORRIER AND WISER HE NOW WAS STOP REPORT CONTINUES FOLLOWING STATEMENTS IN FIRST PERSON BY TAKIAR I SAVVY ALL RIGHT WHY I SIT DOWN FANNY (sic) BAY NOW I MAKE BIG TROUBLE LONGA POLICEMAN

WHITE MAN LONGA MY OWN COUNTRY BY AND BY (sic) POLICEMAN HERE
(GAOL GUARDS) TIE UP LEGS TIE UP ARMS PUTTEM ROPE LONGA HERE
(POINTING TO HIS NECK) I VERY BIG FRIGHTENED I WANT TO STOP ALIVE I
VERY SORRY I SAVVY NOW I CAN'T KILL POLICEMEN WHITE MEN
JAPANESE I NO MORE SAVVY THAT BEFORE I SAVVY FANNY (sic) BAY NOW
AND SO ON IN SIMILAR STRAIN ENDS STOP MINISTER PERTURBED AT
ARTICLE AND DESIRES TO KNOW DID ANY INTERVIEW TAKE PLACE AND ON
WHOSE AUTHORITY STOP MINISTER STATES THAT HE CONSIDERS IT HIGHLY
UNDESIRABLE THAT INTERVIEWS WITH PRESS SHOULD BE PERMITTED.
[63]

There is no record of a response from Darwin. On 26 October the Governor-General granted Tuckiar a further stay of execution for a period of twenty-eight days from 28 October [64] The High Court appeal began on 29 October, in Melbourne.

ENDNOTES CHAPTER 10 GIVE THEM A JOLLY GOOD BEATING.

- 1 Attorney-General's file 34/929. Notes of Melbourne *Herald* representative, Eric Wilson, incorporated in Judge Wells report of 1 October 1934, pp. 11-15
- 2-5 *ibid.*
- 6 *Carrodus Affidavit*, Deputy Crown Solicitor's file DL 894, p.15
- 7 *ibid.*
- 8 Melbourne *Herald* 7 August 1934
- 9 See Chapter 5. See also Dyer, *Unarmed Combat*, p. 38
- 10 Melbourne *Herald* 7 August 1934, *Sydney Morning Herald* 7 August 1934
- 11 *Sydney Morning Herald* 7 August 1934
- 12 *ibid.*
- 13 Attorney-General's file 34/1437
- 14 *ibid.*
- 15 *The Bulletin* 8 August 1934
- 16 NT Administration file 34/11
- 17 Department of the Interior file 36/4022
- 18-20 *ibid.*
- 21 Attorney-General's file 34/1437
- 22 *ibid.*
- 23 After the Federal election on 25 August 1934 R G Menzies replaced Latham as Attorney-General, and T Paterson replaced Perkins as Minister for the Interior.
- 24 Attorney-General's file 34/1437
- 25 *Wells Report*, Attorney-General's file 34/929, p. 3
- 26 *ibid.*
- 27 *C E Cook Affidavit*, Deputy Crown Solicitor's file DL 894
- 28 *WJP Fitzgerald Affidavit*, Australian Archives, Series A 5520/1 Item A 9178
- 29 *ibid.*
- 30 Melbourne *Herald* 6 August 1934
- 31 *AJ Dyer Affidavit*, Attorney-General's file 34/1437
- 32-40 Attorney-General's file 34/1437
- 41 *Wells Report*, Attorney-General's file 34/929
- 42 Hon. Justice Dean Mildren, *Administration of Justice in the Northern Territory During The War Years* (unpublished papers)

- 1992 p. 16
- 43 *Wells Report* p. 3
- 44 *ibid.*
- 45 *ibid.* p. 16
- 46 *ibid.* p. 22
- 47 *ibid.* p. 23
- 48 *ibid.* p. 24
- 49 *ibid.* p. 25
- 50 *ibid.* p. 26
- 51 *ibid.*
- 52 *ibid.* p. 25
- 53 *ibid.*
- 54 *ibid.* p. 27
- 55 *ibid.* p. 28
- 56 *ibid.* p. 29
- 57 *Wells Report* pp. 30-38
- 58 *ibid.* p. 17
- 59 *ibid.* p. 21
- 60 *ibid.*
- 61 *ibid.*
- 62 *ibid.* p. 38
- 63 Attorney-General's file 34/1437. See also *Melbourne Herald*
11 August 1934
- 64 Attorney-General's file 34/1437

CHAPTER 11
TUCKIAR v THE KING

He lived under the protection of the law in force in Australia, but had no conception of its standards. Yet by that law he had to be tried.

Starke J., *Tuckiar v The King* 1934 [1]

Tuckiar v The King, on appeal from the Supreme Court of the Northern Territory, was heard in the High Court of Australia in Melbourne between 29 October and 8 November 1934 before Gavan Duffy, Chief Justice, and Justices Starke, Dixon, Evatt and McTiernan. Fullager and Dethridge appeared for the appellant, Reynolds for the Crown.

Fullager submitted that the High Court had 'the fullest jurisdiction' in the matter, 'empowering it to make any order it thinks just'. [2] He established that it was possible for 'uncivilised aboriginal natives to give evidence otherwise than on oath'. [3] In support of Tuckiar's appeal he argued these points:

- The evidence of the character of McColl was wrongly admitted and the jury were wrongly directed thereon.
- The evidence was insufficient to support a conviction.
- The evidence of the witness Parriner was never properly analyzed at the trial, and was put to the jury in a way that was quite misleading.
- In the circumstances of this case the trial Judge should never have commented on the failure of the accused to give evidence.
- The Judge's comments on the evidence were, in the circumstances, far too strong and he ought to have directed the jury with great caution.
- The trial Judge did not adequately direct the jury as to the nature of the charge and the onus of proof.
- He did not properly direct the jury as to the failure of the Crown to call certain witnesses.
- There is fresh evidence now available, which could not reasonably have been discovered before the trial, which is a prior inconsistent statement made by Parriner.

- The trial Judge was wrong in suggesting that counsel for the accused should interview the accused and ascertain whether he agreed with the evidence given by Parriner, and, particularly in view of the statement made by counsel for the accused in Court after his interview with the prisoner, he should not have commented on the failure of the accused to give evidence.
- The detention of the lubras was continuing all the time, and the possibility of this constituting provocation should have been put to the jury. (*R v Kops*) [4]
- The fact that objection to evidence in a criminal trial is not taken will not render the evidence admissible. (*R v Gibson*) [5]
- The evidence which was adduced shows that the whole story was not brought out. In the case of an aboriginal native there should be proof of more than the mere throwing of a spear and the fact that a man was killed. Parriner's evidence amounts to no more than a statement that the accused threw the spear. There are obvious gaps in Parriner's evidence. Parriner had made previous inconsistent statements as to the accused's alleged confessions.
- The conviction should be quashed and no new trial should be ordered, as it would, in the circumstances, be impossible to obtain a fair trial [6]

In response Reynolds, for the Crown, submitted:

- The materials before the Court show that the jury gave very close consideration to the matters put to them.
- Both the trial Judge and the jury had some knowledge of the mentality of aboriginals.
- The final consideration is: Has there been a miscarriage of justice?
(*Ross v The King*) [7]
- The evidence as to McColl's character was admissible as tending to show the improbability of the story told by the accused. If it is not admissible it has not led to any miscarriage of justice.
- The jury could accept the whole of one statement or part of each statement made by the accused to Parriner and Harry
- The evidence of provocation does not indicate that the attack was provoked by anything that the accused saw at the time.
- In spite of the irregularities the accused had a fair trial. Although Act No 245 (enabling a person to give evidence on his own behalf, provided no presumption of guilt shall be made by that person's electing not to give

evidence) is in force in the Northern Territory there was no substantial miscarriage of justice and the evidence justified the conviction and sentence imposed.

- The comments of the Judge were not too strong and he did in fact leave to the jury the stories told by the accused to Parriner and Harry.
- There was adequate direction on the distinction between murder and manslaughter.
- It is difficult to believe that the fresh evidence was not available had the accused's counsel desired to call it. The witness (through his affidavit) Dyer could have been interviewed before trial and in fact Dyer was in Court when Parriner gave his evidence and could then have intimated that Parriner had told him a different story earlier.
- The evidence shows that there was deliberation and collusion between the accused and the lubra at the time when the accused threw the spear at the deceased. [8]

In their majority judgment Chief Justice Gavan Duffy and Justices Dixon, Evatt and McTiernan gave a summary of the 'known facts', the story told by Morey in his report of 21 August 1933 and substantiated, in the main, by the evidence given in *R v Tuckiar* by Hall and Big Pat. The Justices summarised the different stories presented in the evidence of Parriner and Harry. They quoted directly from Wells' 38 page report of 1 October 1934, indicating - but not publicly acknowledging - that the report had been presented to them. But it is interesting to note that in preparing the transcript for the purposes of the appeal, Justice Starke, 'on behalf of the Bench' announced that Wells' report 'was in the nature of a confidential document' and 'went into matters which might perhaps not be strictly relevant to the appeal'. Starke said, therefore, that Counsel 'should be provided with copies of the report and they should consider what portions, if any, of the report should be discarded for the purposes of the appeal and subsequently inform the Court'. [9]

Wells would have been impressed, no doubt, that the affidavits of Cook, Carrodus, Dyer and Tregent in their entirety were part of the transcript, yet his report did not seem to be taken equally seriously. Reynolds, for the Crown, does not appear to have shown much initiative or interest in defending Wells' Darwin decision. Reynolds did not, for example, take up Wells' submission that *Kops v The Queen*

vindicated his stance that Tuckiar's failure to give evidence could be considered by the jury in *R v Tuckiar* in any way they thought fit. [10]

The four High Court Justices began their judgment by observing:

Unfortunately a verbatim report of the full summing up was not made and we do not know what direction was given in respect of very important matters, particularly in relation to manslaughter, provocation, and self-defence. But it does appear that, after telling the jury that a decision on any question of fact was entirely for them and they ought not to accept any view he indicated on a question of fact unless in their own independent judgment they agreed with it, the learned Judge proceeded to condemn the story which Harry said the prisoner told him, as an improbable concoction on the part of the prisoner, and, on the other hand, said that the only conclusion from the facts which Parriner said the prisoner narrated to him was that the homicide amounted to murder. [11]

The four Justices then referred to Wells' statement that 'owing to the neglect or incompetence or worse of the people who had the preparation of this case for the Crown, a grave miscarriage of justice may occur and a serious slander may be affixed to the name of a dead man'; and that 'for some reason Tuckiar has not gone into the box and told you which one (of the stories told to Parriner and Harry) is true, and that is a fact you are entitled to take into consideration. You can draw from it any inference you like'. [12] The Justices also referred to Fitzgerald's statement to the Court after Tuckiar had been pronounced guilty by the jury, and to Judge Wells' response that he had told Fitzgerald in his chambers 'that if your client had been a white man and had made a confession of guilt to you I thought your proper course would have been to withdraw from the case; but as your client was an aboriginal, and there might be some remnant of doubt as to whether his confession to you was any more reliable than any other confession he had made, the better course would be for you to continue to appear for him, because if you had retired from the case it would have left it open to ignorant, malicious and irresponsible persons to say that this aboriginal had been abandoned and left without any proper defence'. The Justices then delivered the body of their judgment:

We think that this narrative of the proceedings shows that for more than one reason the conviction cannot stand. In the first place we think that the observations made by the learned Judge upon the failure of the prisoner to give evidence amounted to a clear misdirection and one which in the circumstances was calculated gravely to prejudice the prisoner. Section 1 of Act No. 245 of South Australia, which enables persons accused of offences to give evidence on their own behalf and is in force in the Northern Territory, contains a proviso that no presumption of guilt shall be made from the fact of such person electing not to give evidence. In the present case the jury witnessed the spectacle of the prisoner's counsel, at the suggestion of the Judge, retiring to discuss with the prisoner the evidence of the principal witness against him and see whether it was correct, and of his saying after doing so, that he wished to discuss with the Judge a specially important matter, which put him in the worst predicament that he had encountered in his legal career. Afterwards the Judge, who had to their knowledge heard counsel's communication, directed them that for some reason the prisoner had not gone into the witness box and told them which of the stories was true and that they were entitled to take that fact into consideration and draw from it any inference they liked. He thus authorised them to make a presumption of guilt from the prisoner's failure to give evidence and the circumstances which had occurred before them were likely to reinforce the presumption with a well-founded surmise of what the Judge had been told by the prisoner's counsel.

In the next place, although the evidence of McColl's good character and moral tendencies was not objected to, it clearly should have been disallowed. The purpose of the trial was not to vindicate the deceased constable, but to inquire into the guilt of the living aboriginal. Before he could be found guilty it was necessary that by admissible evidence the jury should be finally satisfied to the exclusion of reasonable doubt that he had killed Constable McColl in circumstances which amounted to murder. By leading evidence that the prisoner told a story that he killed the deceased in circumstances supporting a plea of self-defence and involving a reflection upon the moral conduct of the dead man, the prosecution could not make relevant the latter's reputation

and moral tendencies. The prisoner should not have been exposed to the danger of the jury's regarding the matter as a dilemma between an imputation on the dead and the conviction of the aboriginal. That danger is likely to have been much increased by the manner in which the Judge expressed himself when the jury asked what was their position if they were satisfied that the evidence was not sufficient and afterwards in his summing up in the first passage therefrom which we have set out. Notwithstanding the direction which accompanied them, the observations as to the slander upon a dead man and the possibility of a miscarriage of justice by the escape of a guilty man were calculated to do anything but fix the jury's attention on the necessity of being satisfied beyond reasonable doubt of the guilt of the accused. No doubt his Honor (sic) was in the best position to interpret the jury's question, but it cannot be certain that it did not mean what the foreman's words appear literally to imply, namely, what were they to do if the evidence appeared to them to fall short of establishing guilt? If they did mean this the answer and subsequent treatment of the matter must have had a still greater tendency to prejudice the prisoner. It would be difficult for anyone in the position of the learned Judge to receive the communication made to him by counsel for the prisoner and yet retain the same view of the dangers involved in the weakness of the Crown evidence. This may, perhaps, explain his Honor's evident anxiety that the jury should not under-estimate the force of the evidence the Crown did adduce. Indeed counsel seems to have taken a course calculated to transfer to the Judge the embarrassment which he appears so much to have felt. Why he should have conceived himself to have been in so great a predicament, it is not easy for those experienced in advocacy to understand. He had a plain duty, both to his client and to the Court, to press such rational considerations as the evidence fairly gave rise to in favour of complete acquittal or conviction of manslaughter only. No doubt he was satisfied that through Paddy he obtained the uncoloured product of his client's mind, although misgiving on the point would have been pardonable; but, even if the result was that the correctness of Parriner's version was conceded, it was by no means a hopeless contention of fact that the homicide should be found to amount only to manslaughter.

Whether he be in fact guilty or not, a prisoner is, in point of law, entitled to acquittal from any charge which the evidence fails to establish that he committed, and it is not incumbent on his counsel by abandoning his defence to deprive him of the benefit of such rational arguments as fairly arise on the proofs submitted. The subsequent action of the prisoner's counsel in openly disclosing the privileged communication of his client and acknowledging the correctness of the more serious testimony against him is wholly indefensible. It was his paramount duty to respect the privilege attaching to the communication made to him as counsel, a duty the obligation of which was by no means weakened by the character of his client, or the moment at which he chose to make the disclosure. No doubt he was actuated by a desire to remove any imputation on Constable McColl. But he was not entitled to divulge what he had learnt from the prisoner as his counsel. Our system of administering justice necessarily imposes upon those who practice advocacy duties which have no analogies and the system cannot dispense with their strict observance.

In the present case, what occurred is productive of much difficulty. We have reached the conclusion, as we have already stated, that the verdict found against the prisoner must be set aside. Ordinarily the question would next arise whether a new trial should be had. But upon this question we are confronted with the following statements made by the learned Judge in his report: 'After the verdict counsel - for reasons that may have been good - made a public statement of this fact that has been published in the local press and otherwise broadcasted throughout the whole area from which jurymen are drawn. If a new trial were granted and another jury were asked to choose between Parriner's story, Harry's story, and some third story which might possibly be put before them it would be practically impossible for them to put out of their minds the fact of this confession by the accused to his own counsel, which would certainly be known to most, if not all, of them...Counsel for the defence...after verdict made, entirely of his own motion, a public statement which would make a new trial almost certainly a futility'.

In face of this opinion, the correctness of which we cannot doubt, we think the prisoner cannot justly be subjected to another trial at Darwin, and no other venue is practicable.

We therefore allow the appeal and quash the conviction and judgment and direct that a verdict and judgment of acquittal be entered. [13]

Justice Starke, in his separate judgment, said that there was no appeal possible to the NT Supreme Court, as Judge Wells was the sole Judge of that Court, so an appeal in this case could only go to the High Court. Although the High Court undoubtedly had power to intervene, Starke said, it should be reluctant to do so 'unless some substantial and grave injustice has been done'. 'Mere irregularities' in the course of a trial did not warrant High Court interference in the administration of criminal justice. Nonetheless, Starke said: 'In my opinion the present case is exceptional, and warrants the intervention of this Court'. [14]

Starke then accurately outlined 'the facts' relating to *R v Tuckiar* accurately, except that he said the evidence of both Parriner and Harry was rendered into 'pidgin' English by 'a police boy': in fact Harry gave his evidence in 'pidgin' without an interpreter. Starke continued:

It is manifest that the trial of the prisoner was attended with grave difficulties, and indeed was almost impossible. He lived under the protection of the law in force in Australia, but had no conception of its standards. Yet by that law he had to be tried. He understood little or nothing of the proceedings or of their consequences to him, and had the misfortune to place the counsel assigned to him 'in the worst predicament he had encountered in all his legal career'. [15]

Starke considered Parriner's and Harry's stories, up to the point where 'the learned trial Judge, in his charge to the jury said that Parriner's account was highly probable and involved "all the essential elements of murder" and that the statement made to Harry was "so utterly ridiculous as to be an obvious fabrication"'. Starke commented

In my opinion the charge (to the jury), in the circumstances of the case, denied the prisoner the substance of a fair trial. The Judge reports to this Court that he gave the jury a careful explanation of what constituted the crime of murder and how the story told by Parriner involved all the essentials of murder. He also reports that the jury were informed that they were entitled to bring in a

verdict of manslaughter, which he defined, and that the question of what amounted to provocation in law was dealt with, although counsel for the defence had not raised the question in his address to the jury. But we do not really know what the charge was upon either topic. The report of the learned Judge does not supply it, nor do the notes of the charge made by counsel for the prisoner supply the defect, though they make it clear that he did follow or record the charge in reference thereto. It is clear to me, however, that the case against the prisoner was too forcibly stated, and that aspects of the case all important to the prisoner were overlooked or, at all events, not presented with sufficient force. It was not right in this case to inform the jury that they should accept the statement of the aboriginal Parriner, and treat that of the aboriginal Harry as a fabrication. Nor was it right to inform the jury that if they believed Parriner the prisoner was guilty of 'deliberate murder - no argument about it'. The Chief Protector of Aborigines for the Northern Territory informs us that 'the conditions of interpreting the statements of aborigines through other aborigines, especially during the formal proceedings of a Court, make it difficult and almost impossible to get more than an approximation of the truth'. Yet the learned Judge in his charge to the jury passes by these difficulties and dangers. But, worse still, he wholly fails to suggest for the consideration of the jury the possible effect upon uncivilised aborigines of a police party capturing their lubras, and apparently endeavouring to capture the aborigines as well. It was, no doubt, necessary for the police to capture and handcuff the lubras if they were to achieve the object of their expedition, but the rules of English law cannot be cited in support of their action. To uncivilised aborigines, however, and particularly to the prisoner, the conduct of the police party may well have appeared as an attack upon the lubras and themselves, and provoked or led to the attack upon the police in their own defence. A finding of not guilty, or of manslaughter was quite open to the jury on the evidence. Yet the learned Judge is silent upon this important aspect of the case, and practically invites the jury to find a verdict of guilty. Again, in my opinion, it was not right to tell the jury that the prisoner's statement to the aboriginal Harry was 'so utterly ridiculous as to be an obvious fabrication'. The truth of and weight to be attached to the statement were essentially matters for the jury and not for the

Judge. The conviction of the prisoner for murder, in such circumstances as these, ought not to be sustained.

It was also contended that the conviction of the prisoner should be quashed because of the wrongful reception of evidence, and because the learned Judge commented on the fact that the prisoner had not gone into the witness box and informed the jury whether his statement to Parriner or that to Harry was true.

Both of these objections seem to me to be of minor importance, and hardly sufficient in themselves to warrant the intervention of this Court. It will be remembered that the prisoner said to Harry that he saw McColl having connection with one of his lubras. But it cannot be too clearly understood that there was no evidence whatsoever of the fact other than the statement of the prisoner related by Harry and translated into 'pidgin' English by the police boy. It is improbable that any jury, or any person, would place any reliance upon such a statement unless it were corroborated. The learned Judge, however, admitted evidence to prove that Constable McColl was an officer of undoubted character and reputation. The evidence was inadmissible according to English law. But was any substantial miscarriage of justice thereby occasioned? The learned Judge, in his charge to the jury, reflected upon the preparation of the Crown case, and upon the fact that persons had not been called as witnesses who should have been called. He added that a grave miscarriage of justice might thus occur and a serious slander be affixed to the name of a dead man, meaning McColl. But he informed the jury that was a matter they could not take into consideration. Further, the Judge asserted his own opinion that the prisoner's statement to Harry was, upon its face, a fabrication. It is difficult to conclude that the evidence called in support of the character and reputation of Constable McColl had any serious bearing upon the trial, or caused any miscarriage of justice.

The comment of the learned Judge which was objected to was as follows: 'You have before you two different stories, one of which sounds highly probable, and fits in with all the known facts, and the other is so utterly ridiculous as to be an obvious fabrication. What counsel for the defence asks you to do is to take up the position that you will not believe either of these stories. Tuckiar has told two different stories to two different boys, and

both of these stories have been told to you here in Court. Which one is true? For some reason Tuckiar has not gone into the box and told you which one is true, and that is a fact which you are entitled to take into consideration. You can draw from it any inference you like'. An Act of South Australia (1882 No. 245), which was in force in the Territory, enabled accused persons if they so desired to be sworn and give evidence as a witness: 'Provided that no presumption of guilt shall be made from the fact of such person electing not to give evidence'. It is said that the comment of the learned Judge was in contravention of this proviso. The comment should not have been made in the form adopted. The prosecution had put in evidence two statements alleged to have been made by the accused. They differed as to the circumstances under which Constable McColl was speared. It would have been legitimate to call attention to these differences, and to any circumstances that made the one statement more probable than the other, and to add that it was for the jury to consider whether either could be relied upon, and which, if either, was true. The Judge, however, took it upon himself to say that the statement to Harry was an obvious fabrication, and this course was calculated to influence the jury strongly against the prisoner, and to prevent a fair and calm consideration of the matters that the jury should have considered. But I doubt whether the comment that Tuckiar had not gone into the box and told the jury which story was true, and that they could draw any inference they liked, added much to the impropriety, or in itself caused a miscarriage of justice. It was obvious that the two statements differed in circumstance, and that the prisoner had offered no explanation of the difference, in the witness box or otherwise.

The trial of the prisoner seriously miscarried, but the reasons for this conclusion go deeper, to my mind, than the irregularities just referred to. Indeed, the latter do not seem to have been the subject of any objection on the part of counsel who appeared for the prisoner. But the conduct of the case by counsel is not above criticism. It was a grave mistake to announce, in open Court, after he had consulted with the prisoner at the suggestion of the Judge, that 'he was in a predicament, the worst predicament that he had encountered in all his legal career'. And it was a grave breach of the confidence reposed in him by the prisoner to make the

following public announcement after the prisoner had been convicted and before he was sentenced: ' I have a matter which I desire to mention before the Court rises. I would like to state publicly that I had an interview today with the convicted prisoner, Tuckiar, in the presence of an interpreter. I pointed out to him that he had told these two different stories and that one could not be true. I asked him to tell the interpreter which was the true story. He told him that the first story, told to Parriner, was the true one. I asked him why he told the other story. He told me that he was too much worried so he told a different story and that story was a lie. I think this fact clears Constable McColl. As an advocate I did not deem it advisable to put the accused in the box'. The Judge remarked: 'I am glad you mentioned it, not only in fairness to McColl, but also to prove that the boy Harry was also telling the truth. I had no doubt that Harry was telling the truth and apparently he was'. Comment is needless. The learned Judge reports that, "if a new trial were granted, and another jury were asked to choose between Parriner's story, Harry's story, and some third story which might possibly be put before them, it would be practically impossible for them to put out of their minds the fact of this confession by the accused to his own counsel'. I entirely agree. A new trial under conditions fair to the accused is now impossible. The result is that the prisoner's conviction should be quashed, and his discharge ordered. [16]

On 9 November 1934 the new Minister for the Interior, T Paterson, said in a press statement that he had noted the High Court's decision. The Minister went on:

In accordance with the High Court decision, arrangements have been made for Takiar (sic) to be released immediately. The Administrator has been instructed to take every precaution to ensure that the aboriginal in question receives sustenance and protection, and that he is escorted as soon as possible right back to his home.

As the wet season had now set in, the escorting of Takiar back to his home is not an easy matter but I am sure the authorities in Darwin would overcome the difficulties. In any case everything that is humanly possible will be done to see that

the aboriginal returns to his own people with a minimum of delay.

I am informed by an officer of the Department [probably Carrodus] who has just returned from Darwin and had taken a special interest in Takiar, that the aboriginal is in splendid physical condition and has received the best of treatment during the whole time he had been in Darwin. It is highly probable that Takiar will return to his tribe as an emissary of peace and a friend of the Government. [17]

On 3 December in Darwin Judge Wells wrote caustically to the Solicitor-General in Canberra:

I have to thank you for your letter of the 18th ultimo, which came to hand last week, forwarding copy of transcript prepared in connection with the recent appeal of the aboriginal Tuckiar against his conviction for the murder of Constable McColl.

This document is interesting, if only because it discloses the fact that not a single affidavit was filed by the Crown in answer to those filed on behalf of the appellant. [18]

But by then other events had captured the attention of Government officials in Darwin and Canberra.

- 1 *Tuckiar v The King* 52 CLR 1934 p. 349
- 2 *ibid.* p.336
- 3 *ibid.*
- 4 *R v Kops* 14 LR (NSW) 1893 p. 150
- 5 *R v Gibson* 18 QBD 1887 p. 537
- 6 *Tuckiar v The King* p. 336
- 7 *Ross v The King* 30 CLR 1922 p. 246 at p. 251
- 8 *Tuckiar v The King* p. 336
- 9 Attorney-General's file 34/1437
- 10 *Kops v The Queen* AC 1894 pp. 650-4
- 11 *Tuckiar v The King* p. 342
- 12 *ibid.* p. 343
- 13 *ibid.* pp. 344-7
- 14 *ibid.* p. 348
- 15 *ibid.* pp. 349-350
- 16 *ibid.* pp. 351-355
- 17 Attorney-General's file 34/1437
- 18 *ibid.*

CHAPTER 12
THE FATE OF TUCKIAR

'Many men, black and white, have talked of the matter, and have speculated as to what did happen'.
V C Hall, *Dreamtime Justice*, p 133

On 9 November 1934 Tregent sent this telegram to Fitzgerald in Darwin

APPEAL ALLOWED CONVICTION QUASHED ACQUITTAL ORDERED COURT
HOPES COMMONWEALTH WILL RETURN PRISONER TO HIS OWN
COUNTRY [1]

Wells immediately came under fire. 'It's to be hoped you've not got too many Judges like him', interjected Mr Stewart (Labor) to the new Attorney-General, R G Menzies, who was responding in Federal Parliament to questions about the High Court's acquittal of Tuckiar. Mr Brennan (Labor) asked whether the Attorney-General would take steps to prevent 'further public danger' in other criminal trials at the hands of the Darwin Judge.

Menzies said he would take 'appropriate action' when he had studied the High Court's judgment. As a legal man himself he was moved to add, 'If every Judge whose judgment was upset were dealt with as suggested the country would be denuded of its judiciary'. [2]

The Bulletin was typically volatile:

So Tuckiar goes free, the chief duty of the Darwin Judge continues to be the trial after trial of abo (sic) murderers, and in the outlands settlers become less and less safe, while laws framed by barristers out of experience in city chambers continue to govern people who understand only Stone Age law and custom.

It would be easy enough to frame a native code which would effectively protect lives and terrify the guilty - native tribes have one themselves which is just as rigid as our own. But not while the administration of the Territory is in the hands of coastal-farmer and suburbanite Ministers who have never seen a

blackfellow without his shirt on. Nothing brings home the weaknesses of our labyrinthine legal system like a face-to-face encounter with a naked and spear-armed savage. [3]

While parliamentarians postured, and editors dipped their pens in vitriol, the hapless Tuckiar, flabby after eight months imprisonment, (see photo 61) was released from gaol and taken to the Kahlin Compound in Darwin on the afternoon of 9 November. Dyer visited the Compound and took the photograph of Tuckiar. Dyer later wrote:

The Inspector (sic) of Police asked me to go and see Tuckiar and tell him not to run away as he would be returned to his own country by way of Roper River...I endeavoured to make Tuckiar realise what had happened, and what was about to happen. Language difficulties were such that I don't know what he really thought about it all, but he made it clear that he was glad to see me, and glad also that he was free to go home again 'in a few sleeps'...Two days later [it was in fact the next day] the Inspector asked me to take him to the open-air theatre. Knowing that the audience would seem a vast crowd in the myall's eyes, the officer thought it might usefully impress on Tuckiar the folly of trying to fight the white man.

I fell in gladly with this suggestion and arranged to meet Tuckiar at the door of the theatre, where he was to come with other natives, since he was no longer under arrest. In due course I took my stand, and had waited so long that the coloured crowd inside was already shouting in excitement at the fictitious drama on the screen, when the real-life drama of our expedition came to its strange conclusion. An agitated constable came hurrying up to me saying that Tuckiar had disappeared.

Why or how he did so I have never clearly understood; but his disappearance was complete and final - neither in Darwin nor in his own country was a single trace of him ever found. It became yet another of the many mysteries for whose solution we must wait until the secrets of all hearts are disclosed before the judgment seat of Christ. [4]

It is widely believed in Darwin that Tuckiar was shot by the police and dropped in Darwin harbour. In 1991 a former Darwin resident was prepared to sign a statutory declaration that she had several times heard a particular policeman brag, 'in his cups', that he had personally shot Tuckiar. Unfortunately, the woman then had a stroke. In 1994, when I canvassed Darwin readers of the *Northern Territory News* [5] for information about Tuckiar's disappearance I was told by two other old Darwinites that that same policeman often told them that Vic Hall shot Tuckiar. [6]

Was Vic Hall 'protesting too much' when he wrote *Dreamtime Justice* ? Hall alleges in the book that Big Pat, out of loyalty to 'his boss McColl' relentlessly pursued Tuckiar when he ran away from Kahlin Compound after being released from gaol, and headed for his country:

The big man was not conscious of any dramatic urge. What he must do was laid down. The dead trooper, his Boss, like all whites in association with natives and in a position of authority, had been allotted a place in the tribe and a kinship sub-section. In a community, must not all men possess significance? Must they not be subject to vindication when wronged, as is any aborigine? So it was with the dead trooper. [7]

In Hall's highly fanciful book the intrepid tracker stalks Tuckiar across Arnhem Land, and eventually they engage in bloody, to-the-death combat, during which Big Pat desperately rubs 'the poisoned sac of dust which is the home of Banarr the caterpillar' into Tuckiar's eyes. The blinded Tuckiar reels away, 'hands tearing at his tortured eyes' and staggers towards 'the shadowed waters of Yarek'. Big Pat moves in for the kill:

Then, half-way to his man, he saw it - a vee-shaped ripple headed by a black snout was being thrust out from under the rock over-hang, straight for the floundering Tuckiar. A full yard behind the snout, two eye-protuberances stared unwinkingly at the man from Woodah Island.

The tracker, petrified for a moment, saw the great jaws snap open. Where Tuckiar had been, a huge scaly body and a giant tail slapped the surface of the water into a burning cauldron.

A wave of faintness engulfed (Big Pat). He fell on the warm stones, but did not feel their heat....His eyes were closed, blood seeped from his wounds, and his chest heaved with huge shuddering gusts of breath. [8]

It is taking the notion of loyalty a bit far, I feel, to suggest that Big Pat would feel that strongly on behalf of McColl, a dour, taciturn man by all accounts, who had been at Roper Bar only six months, and referred to Aboriginals as 'niggers'. However, Dawson Daniels said his grandfather 'was a policeman first and an Aboriginal next'. [9] And the brother-in-law relationship between Big Pat and Tuckiar may have been quite antagonistic.

In fairness to Hall himself, I found him typical of many old bush policemen I have known, nostalgic for 'the good old-fashioned blackfellows' who served with them in their many remote postings. And in the immediate post-war years around Alice Springs Hall was apparently a very forthright Protector of Aboriginals when employed briefly by the Native Affairs Branch. [10]

Gerry Blitner was a fifteen year old youth at Groote Eylandt at the time of Tuckiar's acquittal. He was obviously an inquisitive, friendly young chap, and he talks with accuracy of Morey's police party, the various missionaries, and individual Aboriginals he knew at the time and discussed events with later. Gerry says he remembers Perriman, the missionary - in - charge, saying shortly after Tuckiar's release from gaol: 'Gerry, I have had a message on the radio that Tuckiar has run away from Darwin and has reached Pine Creek'. [11] A cynic might suggest that that would be precisely the message the Darwin police would circulate if they in fact had murdered Tuckiar in Darwin. Keith Cole wrote that 'Aboriginal rumour over the years and down to the present day claims that he was killed by police in the Pine Creek area as he tried to make his way home'. [12] Vic Hall was in charge of the Pine Creek police station in November 1934. But one wonders how a police party would apprehend a skilful bushman like Tuckiar under any circumstances in the bush. He had been much too smart for them at Woodah Island.

Depending on their individual attitudes towards police and Aboriginals, writers of books and articles since that time have speculated about Tuckiar's fate. Dr Charles Duguid wrote

According to law, he should have been taken home by the police. Instead, he was left to find his own way home, and was never seen again - or at least not by anyone who was going to talk about it. I have little doubt as to how he met his death. [13]

On 11 November 1934 Professor Elkin, who had been vilified in Darwin by people like Jessie Litchfield, *Northern Standard* journalist, sent urgent telegrams to Attorney General Menzies and Minister for the Interior Paterson:

EARNESTLY REQUEST COMMONWEALTH GOVERNMENT TO INSTRUCT IMMEDIATE STEPS BE TAKEN BY DARWIN AUTHORITIES TO FIND TUCKIAR AND PROTECT HIM FROM DANGERS HE IS EXPOSED TO AND PROVIDE SAFE CONDUCT FOR HIS RETURN TO HIS OWN COUNTRY AS WAS DIRECTED BY HIGH COURT STOP HIS PRESENT POSITION IS EQUIVALENT TO RE-IMPOSITION OF DEATH PENALTY [14]

Elkin's biographer, Tigger Wise, continued: 'But it was too late. Tuckiar was never found. The north had had the last word'. [15]

Two other fairly bizarre stories have been told. One is that Tuckiar hitched a ride on a truck and finished up at Shepparton, Victoria. Arnhem Land Aboriginals who went to Shepparton to pick fruit in the 1970s were told by Aboriginal people there that they looked just like 'the old man from Arnhem Land who came to Shepparton many years ago'. The other story is that Tuckiar reached Borroloola and then went to Mornington Island, Queensland, where he took a new name and identity and started a new life with an adopted family group. Over the years I have asked each old Mornington Islander I have met for information, but nobody has ever verified the story in any way.

In 1976 I asked Djaparri, Tuckiar's widow, 'Wanha nhungu dhuway mirringu?' (Where is/What happened to your husband?) She shook her head angrily. Her terse reply: 'Yaka marnggi' can translate either as 'I don't know' or 'There is no knowledge'. [16]

ENDNOTES: CHAPTER 12 THE FATE OF TUCKIAR.

- 1 *Northern Standard* 9 November 1934
- 2 *ibid.* 20 November 1934
- 3 *Bulletin* 14 November 1934
- 4 A J Dyer *Unarmed Combat* pp. 76-7
- 5 *Northern Territory News* 31 August 1994
- 6 Telephone interviews with Stewart Elliott and Len Graham, Darwin, August 1994
- 7 Vic Hall *Dreamtime Justice* p. 143
- 8 *ibid.* pp. 156-7
- 9 Telephone interview with Dawson Daniels Kamarawara, Ngukurr, September 1994
- 10 J P M Long *The Go-Betweens* pp. 48-9
- 11 Interview with Gerry Blitner, Darwin, August 1994
- 12 Keith Cole *Fred Gray of Umbakumba* p. 53
- 13 Charles Duguid *Doctor and The Aborigines* Sydney (Rigby) 1972 p. 95
- 14 Tigger Wise *The Self-Made Anthropologist* p. 131
- 15 *ibid.*
- 16 Interview with Djaparri Wirrpanda, Yirrkala, 1976

CHAPTER 13 AN APPRAISAL

Not that the story need be long, but it will take a long time to make it short.

Henry David Thoreau (1817 - 1862)

It is important to relate people to their place and time. In 1934 Australia was in most respects an idyllic country for the Anglo-Saxon-Celtic majority. They called themselves Australians, but had not felt it necessary to include the first Australians, the Aborigines, as citizens when political federation of the six Australian colonies was achieved in 1901. 1934 was the time of the Great Depression, but at least in Australia it was possible, if poor, to be warm for most of the year, to grow food, and to share the compassion of those for whom the Australian 'mateship' ethic was important.

As an island continent Australia was particularly advantaged, and its people could acknowledge only European values as being worthwhile, despite being across the world from their origins. Australia was a xenophobic, if not a racist country. So were most countries in those days of greater certainty, when people knew who they were, or thought they did. The remoteness of Australia as a country professing itself to be European was absolute, but that was good, it was felt. The 'yellow hordes' were not welcome: the White Australia Policy was easy to police. The main concern was that the vital shipping and telegraphic links were maintained with the British Empire, and particularly England, for that was where the security derived, in trade, defence, sport, the arts, the law, identity, civilisation.

The Aborigines of north-east Arnhem Land, the Yolngu, had no idea how the country was governed in 'white man terms'. They had not been decimated, demoralised and dispossessed like most other Aborigines in Australia. In 1934 they were able to feel that they were the undisputed owners of their land. They practised a lifestyle that catered for the spirituality, welfare and protection of their immediate families and clan groups. They maintained the ceremonial links with Nature to ensure bountiful seasons and their own continuing stability, sustenance and well-

being. They saw no need for change of any kind, and had neither the will nor the opportunity to become sedentary, or acquire material things beyond the vital hunting and gathering utensils and implements. Nature would provide.

Their behaviour among themselves and towards others was often barbaric by other people's standards - and sometimes by their own - but retribution was possible, permissible, inevitable even. Reconciliation was possible also. You break the law: the Makarrta can restore harmony and peace.

Because of their small numbers and lack of technology and material possessions they were vulnerable to the arrival of foreigners better-equipped in material terms than they were. Because of their isolation and consequent lack of immunity they were also prone to the diseases foreigners introduced. And almost every visitor displayed aggression or felt dominant in some way. It is perhaps true to say that only Fred Gray among the many foreigners they encountered in this series of events bore them no ill-will, and treated them not as inferiors but rather as the owners and controllers of the land. He was suitably deferential. All the others, the Japanese, Traynor and Fagan, the police, the missionaries, the officials of the court in Darwin, felt they were supported by a superior system which bestowed intrinsic rights, powers and privileges, and certainly allowed them to ride roughshod over simple savages.

The police at all times displayed a straight-forward approach to enforcing - there is no other word for it - the law of the governing power, the Commonwealth of Australia, as an extension of the British Empire. Their style was individualistic: they belonged to the NT Mounted. Heavy was their responsibility: few their numbers. They had the typical trappings of colonialism: the flamboyant clothing, the hats, the badges, the weaponry. And the discipline which must allow their tiny minority to impress the majority mightily. They must be members of a 'Force' whose proud traditions they must seek to augment at all times: they must have superior bush skills, be able to endure incredible hardships stoically, and report their experiences laconically. Selected members of the administered majority were taken into the lower echelons of the Force, never quite as brothers, but given benefits and regalia, and allowed to do menial tasks for the white boss like tracking, for which he could then take the credit. The indigenous members of the Force were given the wherewithal to create a new type of authority among their own

people, and were expected to be as grateful as Big Pat obviously was that he was a police tracker.

In those days of administrative neutrality, government officials knew that their role, as outlined by their Whitehall models, required them to be wise, suitably aloof, canny, aware who was really running the show, and apply the necessary experience and certitude to the important task of keeping Australia on the rails, despite the vagaries of their ephemeral masters, the politicians. Carrodus and Brown applied good brains, vast experience and their extensive knowledge of political procedures to their present administrative field, or any other to which they might be transferred. Importantly, they wielded the power, and could generally overlook the excesses of people like Cook, Weddell and Wells, because the remote Northern Territory only rarely attracted the interest of other Australians.

The authoritarian Cook was left to pursue his various goals, like breeding out the 'half-castes' through intermarriage of mixed-race women with white men - he seems totally to have overlooked the interests of mixed-race men - and keeping the 'full-bloods' on inviolable reserves, away from outside influences. Cook was king of his little domain, and by-and-large the Canberra-based politicians and bureaucrats did not seek to interfere.

Generally, life was good for the retired Lieutenant-Colonel Weddell - during World War 11 he would resume his army career - during his ten-year posting as Administrator in Darwin. The pace of life was casual, and nothing much happened in normal years. Government House was suited to tropical living, with punkahs, servants, good views, and reasonable weather in the dry season. And every second wet season one went south on leave, didn't one, accorded on the coastal passenger steamers the respect the Asian crews knew the work-weary Darwin public servants deserved.

Wells was last in a long line of strong-minded but eccentric Northern Territory Supreme Court Justices. [1] He came quickly to the opinion that Aboriginals should be out of town, out of sight, and left alone. But if they came before his Court they must understand that his law, not theirs, would be enforced to its strictest letter, and English was its language. At the same time he went to some trouble to learn about Aboriginals and their customs.

Sitting in the august High Court in the temperate southern cities of Australia, far removed from the steamy north and its intricacies,

were the eminent Judges who would analyse the errors, excesses and omissions of their judicial brother in Darwin, and deliver their impeccable, undeniably correct findings in *Tuckiar v The King*, probably aware as they delivered it that their judgment in this unique case would become required reading for First Year Law students in Australia thereafter. They did not need to know anything particular about Aboriginals, and, in their wisdom in the days before political correctness, allowed counsel to use phrases like 'uncivilised myall', and aver that Aboriginals were 'of inferior mentality and intelligence'. One wonders whether their minds were not made up beforehand that it was time somebody gave the chop to the politically embarrassing Wells.

The events in the north between 1932 and 1934 were bad news for a Government about to face a Federal election in an economically depressed time. Perkins must have prayed for the earth to open and swallow all the people involved, the Aboriginals, the officials in the north and in Canberra, the missionaries, the anthropologists, the do-gooders, even the Colonial Office in London. And Wells was the last straw. A man in his position, threatening to 'go public'.

The whole chain of events showed that the Government of the day had no idea what sort of policy, if any, it should have about Aboriginals. As for Aboriginals being recognised as the owners of their land, and having their laws and customs respected, that was unthinkable in 1934, when they were not even counted as human beings. Elkin's biographer says that Elkin felt the events of 1932-4 were the 'turning point' in policy-making for Aboriginals. [2] I rather think they were the starting point for positive policies..

Elkin's judgment of events was always influenced by his own role and level of involvement, and he certainly played an important part in the resolution of these incidents. The north hated him, but the testy little man was vital to the emergence of policies that have progressed from the humane, through the hopeful, to the positive policies of today, notwithstanding the lacklustre performance of government, churches and Aboriginals themselves along the way. At least today there are, *de jure*, policies which allow a productive, unfettered life for those Aboriginals who see the need for it. Today the better anthropologists are practical as well as academic, and their role in the various land debates in recent years has been invaluable. In 1934 anthropology was very much a science where Aboriginals were interesting phenomena, to be 'owned' and studied on a protective level by the various fieldworkers in the same manner that

Christian missions carved up 'spheres of influence' where outsiders were not welcome.

It is fashionable nowadays to vilify Christian missions as agents who helped organise the stealing of the land, the loss of language and ceremony, the proselytisation of Aborigines into flour, tea and sugar Christians, as villains who helped 'take the children away'. Some of it is true. The Aborigines of north-east Arnhem Land, however, should be grateful for the presence in their midst of the Methodists. After an unpromising start, with early missionaries, like Watson at Goulburn Island, prancing around with a Bible in one hand and a stockwhip in the other, the Methodists certainly helped ensure the physical preservation of people in their region. They encouraged the Yolngu to live in their own regions rather than congregate around mission stations. They encouraged the study of language, and it can be said that people like Beulah Lowe enhanced the languages of Arnhem Land by implementing programs designed to make people literate in their own languages as well as English. In 1934 Webb of Milingimbi stands out like a beacon, perhaps the most enlightened man in the north. On the other hand I query some of the CMS personnel. Long seems to me a most devious man. And a well-meaning but dangerous fool like Dyer, apart from being a member of the Peace Party, held a position of life-and-death authority among Aborigines, who had no alternative other than to accept him. They had to live with him and his system, for he had built his Oenpelli mission station in the heart of their country, he had the key of the ration store, and their children were in the dormitories. All things were not bright and beautiful.

So, was it unwise to allow the Peace Party missionaries, Warren, Dyer and Fowler, to be in Arnhem Land in 1934, taking on work normally done by the police, and organising to bring the five Yolngu to Darwin? I don't think so. It was the best way out of a tricky situation, and Warren, for all his pomposity, seems to have acquitted himself well. Remember that we have never been told the actual numbers of Aborigines shot at Coniston in 1928, only the number of 31 that the police acknowledged. It was probably twice that number, at least. In 1934 the arms were ordered, delivered to Darwin, and Weddell was still trying to send a large armed party to north-east Arnhem Land, even while the Peace Party was negotiating with Tuckiar and the other Yolngu. From that point in Northern Territory history the police knew their actions in respect of Aborigines might be subject to scrutiny.

What of the many chroniclers, including myself? Has the story yet been told accurately? Comprehensively? I would be the last to think that mine is the final word on this topic, for every time I felt I had the means to tell the entire story some new lead would emerge. The next work will perhaps be an Aboriginal perspective, probably written by a descendant of one of the participants in those events of sixty years ago. I do know that I have had access to papers and photographs never published before. I know I was the only white person who interviewed, however ineptly, Djarri, Tuckiar's widow, and she died on 22 April 1986. But it is with some trepidation that I draw to the end of my work.

In 1994, the time of writing, Fred Gray is the only person substantially and directly involved in the incidents who is still alive. His memory is as alert as ever, and he has told his story accurately and comprehensively to many people many times. Fortunately he is not given to embellishment, and will always say 'I don't know' if he was not particularly involved in any part of the total chain of events. Fred Gray emerges as an outstanding man for his or any time, and the north would have been a better place if there had been more like him in 1934 to respect the Aboriginal people as the first occupants of this land. May he span two centuries.

Many accounts of the time are coloured by prejudice, and the conspiracy by journalists, the Coroner and legal counsel to suppress or water down Harry's evidence in Tuckiar's case seems an unforgivable breach of ethics. One journalist of the time stands out: Eric Wilson, the Melbourne *Herald* representative in Darwin, was not only a fine writer, he was a superb photographer.

Many books and articles have been written around these events. The story has been covered from many angles in considerable detail. Or guesses at detail. In one book prescribed for academic study there are twenty-five errors of fact in two pages. I have run the risk, I know, of being tedious in this work by presenting great slabs of letters, reports, judgments, and evidence before courts. I have done so to enable readers to have the same opportunity I had to read and interpret actual documents rather than speculate on what might or should have been said or done at the time.

So I will complete this work by posing, and trying to answer, if possible, some questions:

Question 1. Did the police tell the truth about Woodah Island?

It seems ironic that Judge Wells constantly referred to the police story, as presented in evidence by Constable Hall and corroborated by tracker Big Pat, as 'the known facts'. Wells thereby accepted Parriner's evidence as 'according with the known facts', and rejected Harry's story as a fabrication because it did not 'accord'. It has been shown that Hall's evidence differed from Morey's report of the incidents in several respects - the time at which events occurred, the hours of search for McColl, the question of handcuffs.

If Morey, Mahoney and the other trackers had given evidence what then would have become 'the known facts'? The judge's choice of words implies that the police story is necessarily 'the truth' about the matter. If that is so we must query their general level of performance, on the detailed grounds I presented in Chapter 2. I repeat my assertions that either Morey is covering up for something or somebody or his party must be adjudged to have acted ineptly. Taking Morey's report and Hall's evidence as the truth, we are asked to accept as fact that Hall and McColl were unable to travel in the *Hope* a distance of four kilometres in three days; we are expected to accept as fact that, after three days waiting to cut off any canoes that headed for the mainland, it rained just as the police gave chase; and we are expected to believe that experienced outback policemen would leave their horses, saddlery and food unguarded for seven days. We are expected to believe that seven expert bushmen took many hours to find the body of McColl when, on their acknowledgement, he had not moved far from where they last saw him.

It will be recalled that Warren and Dyer were told that Djaparri and the other women were held 'for two days'. The police story, given in Morey's report in Chapter 2, is that Woodah Island was searched on 27 July and 'although natives were seen in the distance none were captured', so Morey and Mahony, with trackers Big Pat, Lock and Dick remained on the northern end of Woodah Island, while Hall and McColl with trackers Tommy, Dick (Menikman) and crewman Reuben went with the boat to Roundhill Island. On 1 August the entire party was at Woodah Island, and McColl was speared. According to Morey's report, while the women were being held at 'dinner camp', he and others ran off to chase some men and then 'a canoe was rounding the point with four natives aboard'.

When I first went to Woodah Island in 1957, to be shown the site of McColl's killing, I was told by a Groote Eylandt man named Malkari Amagula, who claimed to have been one of the men chased by the

police on Woodah Island in 1934, that Tuckiar was one of the men who arrived by canoe, (Malkari said there were two canoes) and that Tuckiar and his companions had been away at Groote Eylandt selling turtle shell. If that is so, the point of landing would verify that the four men in the canoe had come from the south-east (the direction of Groote Eylandt) rather than from the mainland. If coming from the mainland they would certainly land the ponderous canoe on the west side of Woodah Island and walk the short distance across the island to the eastern shore if that was where they wanted to go. Unfortunately I did not ask Malkari how long the police had been on the island. [3]

There seem to be two possibilities. One is that Tuckiar conveniently returned just in time to be confronted by the police. But what if the police, or some of them, had been 'told something' and were sitting for some time, say two days, or even longer, right at the spot where they knew a canoe from Groote Eylandt would land? With the women in custody? The police would not be likely to acknowledge in an official report, or as evidence in court, that they held innocent women in custody/handcuffs for a lengthy period like two days. Remember that Big Pat was Djaparri's brother, that he questioned the women, and according to Hall, they 'told us everything'. The women probably told Big Pat 'everything' but he was, it seems, the only one who could understand the women. What did he pass on to the white police? Information enticing enough to keep them at Woodah Island?

Gerry Blitner said that he talked in later years to Lock, one of the trackers. Lock told him that Morey and McColl argued over the question of handcuffs. Morey wanted to take the handcuffs off the captured women, but McColl told him he (Morey) 'did not know how to handle these people'. Blitner said that Lock told him McColl insisted that the women remain handcuffed, and that, when Morey and the others chased after the Aboriginal men who had appeared, McColl told all the trackers to go after the others, and leave him alone with the women.

Gerry Blitner said that Lock also told him that all the trackers were afraid the white police intended to shoot any Aboriginals they intercepted crossing to the mainland after McColl's death. Lock told him that when Morey's party left Roundhill Island to pursue the canoe they had all their firearms loaded. The trackers began to cry, and then 'pulled hair from their armpits, sang a song together, and made it rain'. Lock also said that, when the police party finally reached their camp at Blue Mud Bay after the rain had thwarted them, the trackers all saw the

chased canoe, tied in the mangroves, but did not point that out to the white police. [4]

Given Morey's hasty transfer to Lake Nash, the non-appearance of trackers Dick, Tommy and Lock and Constable Mahony as witnesses in *R v Tuckiar*, and the many queries which can be raised about time, distance and general competence, a cynic could be excused for thinking that the various police stories may not represent the total 'facts' of this case.

Question 2. What happened in the last five minutes of McColl's life? And what happened in the five minutes thereafter?

We know that Constable McColl was killed by a spear at Woodah Island, and that Tuckiar confessed to several different people that he threw the spear. I interviewed Djarparri in 1976 at Yirrkala. She spoke quite freely, in the presence of about ten of her relatives. I asked some questions in Yolngu *matha*, and could understand the sense of some of her replies in her own language. Where I could not understand, or could not frame my question adequately, a relative acted as interpreter. This is what was said:

Q. Who was killed first, the two white men on the boat, or the policeman?

A. Those two white men who came by boat were killed first. At Ningari.
(Woodah Island)

Q. What did the white men look like. Old? Young?

A. I can't remember.

Q. Where were they killed ?

A. On a boat. At Ningari.

Q. Whose boat was it?

A. It belonged to them. White boat.

Q. Any other colour? Blue? Green?

A. I only remember white.

Q. Why were the two white men killed?

A. They took Aboriginal ladies.

Q. Who did they take?

A. Number one was Wamirapu, my ngandi (mother). They took me.
I was a young girl. And some other women.

Q. Who killed the two white men?

A. My husband. Mirera. One more. Djimbaryun

Q. Dhakiyara was your husband? (Permission given to say the name)

A. Yes

It was established, through gestures - and a lot of laughter - that 'nhukanmirri' was the verb for sexual intercourse. We established that the crude English translation was 'fuck'.

Q. Marrma balanda, walala nhukanmirri nhuna? (The two white men, did they fuck you?)

A. Yo, Bukmak. (Yes. Everybody).

Q. What about the white policeman? Did he fuck you?

A. No. The policeman who was handcuffed to us did not do anything to the Yolngu ladies.

Q. How many ladies were there?

A. One white policeman was sitting with four ladies.

Q. How many policemen altogether? Yolngu. Balanda.

A. Five balanda. Five Yolngu. One tracker was named Djupainma.*

Q. When the policeman was speared, were you handcuffed?

A. No. The handcuff was open then. Only chain (Holds her wrist) Like puppy dog. We were sitting quietly. Only one white man. I got a signal from my husband.

Q. What kind of a signal?

A. He talked to me on his fingers. He said 'I will kill him'. I passed my fingers in front of my face (gestures).

Q. What does that mean?

A. It means 'Don't kill him'. He said, 'I'll kill him. Give me room'.

Q. What was the country like?

A. The policeman was in the open area. My husband was on the edge of the bush.

Q. Did the policeman fire his revolver?

A. He fired the revolver after he had the spear inside him.

Q. What happened afterwards?

A. We disappeared.

Q. What did the police do with his body?

A. They buried him.

Q. Were any other policemen speared?

A. No.

Q. Were any Yolngu killed or shot by the police?

A. No. They were diving into the water and the police were shooting at

them. Nobody was hit.

Q. How long did the policeman hold you?

A. One day. That afternoon the policeman was killed.

Q. What kind of spear killed the policeman?

A. I don't know.

Q. What happened to your husband?

A. They went to Darwin. Everybody. My husband. Mirera.

Djapu people.

Q. And what happened to your husband?

A. Yaka marnggi. (I don't know)

Q. Did you ever see him again?

A. No. [5]

*When Djaparri used the name 'Djupainma' in 1976 it did not have any special significance for me, and I did not ask further questions about 'the Yolngu policeman'. It was only after I had begun to query Big Pat's evidence that I wanted to know more about him. It is interesting now to wonder why Djaparri volunteered the name of her brother. When I raised the name with Dawson Daniels he said that Djupainma was the 'proper blackfellow name' of Big Pat. [6] This was further confirmed by Bangana Wunungmurra, who should have become a brother-in-law to Tuckiar himself, for his sister, Judith Manybunu Wunungmurra, not yet born in 1934, would have been promised to Tuckiar if he had returned to his country. She has never married. I said to Bangana, 'Does the name Djupainma mean anything to you?' He replied, 'That is Djaparri's wawa (brother). The policeman'. [7]

Question 3. Was Djaparri telling me the truth?

In her book *The Black War in Arnhem Land* Mickey Dewar wrote:

Ted Egan interviewed Tuckiar's wife, Japarri (sic), just before her death and questioned her whether sexual intercourse had taken place [with McColl]. Japarri apparently stated that it had not. But whether a male questioner would receive an accurate answer to such an intimate question after Japarri had been living for some forty years at the Methodist Mission seems doubtful. McColl's behaviour in separating himself and another woman from the rest of the party is difficult to explain as it was surely

both dangerous and failing in the duty with which he was charged, that is, the guarding of all the women. [8]

I can only say that the interview was conducted quite openly and freely, ten years before her death, at Yirrkala, and Djaparri, who did not live at Yirrkala mission but at Garn Garn, tended to volunteer information rather than have it dragged from her. Everybody seemed to enjoy the sexual bits enormously. The group constantly repeated one word: *mari* = trouble, in the sense that 'there was no end to the trouble'. While I did not know Djaparri all that well, I had been on good terms with members of her family for eight years prior to the interview. But how true her account was, I do not know.

Question 4. What manner of man was Big Pat?

Dawson Daniels' said his grandfather was 'a policeman first, an Aboriginal second'. [9] I can best describe the tracker's behaviour as intriguing, and hope that some Aboriginal person will seek to explain it all. Maybe he masterminded the entire Woodah Island exercise.

Big Pat was based permanently at Roper Bar, and news travels fast in the bush. Had anybody cared to ask him, I think he would have been able to supply the names of the killers of the Japanese before the police party even left for Caledon Bay to investigate the matter. As the police rode from Roper Bar to Blue Mud Bay they met various people who gave them news, usually bad, about 'the Balamumu'. I believe that Big Pat, speaker of all the languages of the region, would then, if he did not know before, have heard of the killing of Traynor and Fagan, and the involvement of his sister Djaparri and his brother-in-law Tuckiar.

Big Pat had been to Woodah Island before, with Bridgland in 1929. He could have been there at other times, on 'Aboriginal business'. I judge him from the photographs, (see photos 14 & 26) to be around forty years of age in 1934, so he would have been a fully initiated man in ceremonial terms. His very stature stamps him as an important person.

How much, if any, dialogue was there between Big Pat and Morey? Certainly something prompted two big decisions, a) to leave their horses, saddlery and supplies unguarded for even a moment, let alone seven days, and b) to use precious fuel. They had 'only ten cases' of kerosene, and still had 100 kilometres to travel before they could fulfil their original purpose and investigate the killing of the Japanese at

Caledon Bay. At Woodah Island, the police party stayed on, after a fruitless day on 27 July when 'the island was footwalked until dark, and, although natives were seen in the distance, none were captured'. Morey could easily have said 'Let's keep going to Caledon Bay'. Instead he sent Hall and McColl to Roundhill Island to prevent canoes heading for the mainland, and remained on Woodah Island himself.

Morey said that on 27 July two natives saw their boat and warned the rest of the tribe. As the Yolngu obviously did not perceive the police party as friendly, which is understandable, given the killing of Traynor and Fagan, they would have been difficult thereafter to capture. When, and how easily were the women captured? Perhaps Big Pat simply called to Djaparri, 'Sister, I want to talk to you'. If the brother and sister did come together for dialogue, why handcuff them? Perhaps McColl, as Lock suggested to Gerry Blitner, argued with Morey over the handcuffs. Perhaps Big Pat, who had been stationed at Roper Bar with McColl for several months prior to the patrol, had some score to settle with McColl, discovered from Djaparri that Tuckiar was due back soon, saw it as the opportunity to get even with McColl, and kept the police party at Woodah Island for several days with the information that 'the killers' would soon return from Groote Eylandt?

Big Pat was in charge of the search for McColl, and it is acknowledged that it took a long time to find him, when he had not moved far. Was this deliberate, to allow Tuckiar and Djaparri to escape? Perhaps they left the island that night? But if, as Dawson Daniels suggested, Tuckiar and Big Pat were in a 'poison' relationship (whatever that might entail) why would the tracker want to allow Tuckiar to escape? To pursue his own (Yolngu) agenda later? To have Tuckiar subjected to a *Makarrita* 'for spearing my friend McColl'? To speculate is fascinating.

Question 5. Where on Woodah Island was McColl killed?

In 1957 I was a patrol officer and was sent from Borroloola to Groote Eylandt for four months, to try to sort out disputes between missionaries and Aboriginals over marriage promises and other matters. There had been several cases of assaults of missionaries. One of the sources of discontent among Aboriginal men at Groote Eylandt, in those days before manganese mining, employment, and royalty payments, was that they had no access to money. I suggested that we get together some teams and go crocodile hunting in rivers like the Walker and the Koolatong, in the Blue

Mud Bay region. We had five canoes. There were sixteen senior Aboriginal men, and me. It was a wonderful opportunity to spend time with these men on a relaxed basis, away from the mission, in their traditional environment, and we discussed their various grievances as we lived off the land and sea for a month. We did very well financially from crocodile skins, and when we returned to Groote Eylandt we had two salted dugong and five live turtles as well. It was one of the great experiences of my life, especially dugong hunting at night, for the small-eyed dugong has acute hearing, and canoe paddlers must shake every drop of water off their paddles as they travel in ever-decreasing circles around their prey, until they are close enough for the dugong to be harpooned by a man who dives into the water as he throws, to obtain maximum thrust. Then the dugong takes off, and has to be hauled in. Only when the catch is secure is the harpoon man picked up, all in pitch darkness.

When we left Groote Eylandt we sailed our canoes 'on the blackfellow road' straight to Woodah Island. Aboriginals are logical people, and travel by canoe is hard work, whether paddling, or using, as we did, blankets for sails, so they go from A to B, not by circuitous routes. We skirted Burney Island on the northern side, and landed at the first visible spot on Woodah Island. We camped on the beach and the next morning I was told that 'this is where the policeman was killed'. I was shown a depression and told, 'that is where the policeman was buried'. It was then that Malkari Amagula told me how Tuckiar and others returned to Woodah Island by the same 'road', came ashore, and McColl was killed soon after. Malkari was the only man who claimed to have been at Woodah Island on 1 August 1933, but there were older men in the group who nodded heads to indicate that, in their opinion, he was telling me the truth. Again, I do not know.

It has been pointed out to me that Dyer's map (see map 5) seems to have 'McColl's bones found here' marked further to the north. I acknowledge that Dyer's map is basically accurate, but it is based on Matthew Flinders' map (see map 1) and Flinders' outline of the Woodah Island coastline is not accurate on the south-eastern side. The place I have indicated tallies with the estimates (however inaccurate) of Hall and Morey that they had a long walk back to the *Hope* on the northern end of Woodah Island. Hall said in evidence in *R v Tuckiar*, 'These actions which I have described on Woodah Island took place on the Bickerton island end, the southern end' and 'The Aboriginal camp we came to was situated on the seaward side, towards the southern end'. If the positions I

have marked on aerial photographs 1 and 2 are correct, the police claims about large areas of jungle are exaggerated. If, as seems probable, Tuckiar and other men returned to Woodah Island by canoe from Groote Eylandt, to be confronted straight away by police, it is highly likely that the places I was shown by Malkari -which I located easily again in 1991, simply by going to the first visible point on Woodah Island from Groote Eylandt - are the spots where the confrontation and burial took place. If I am incorrect, and McColl was killed and buried further north, there is still no large area of 'impenetrable jungle' anywhere on Woodah Island.

Question 6. Does Judge Wells deserve to be maligned?

Without condoning such attitudes, the very fact that Aboriginals were not even regarded as citizens of Australia tells something of the time and the general opinions of the majority of Australians in 1934. It was widely accepted as fact that Aboriginals were a lower species. Add that to the guilt factor, whereby any clear thinker would have to acknowledge that the land was stolen from the Aboriginals in the first place, and it is obvious that Aboriginals were/are not going to get recognition of their rights, let alone special consideration in terms of law. Then, as now, people of the Northern Territory looked askance at the decision-makers, who lived in the south where Aboriginals had either been eliminated or totally dispossessed. At least, say the northerners, we still have some Aboriginals left: we mightn't like them, but we didn't wipe them out. So don't you tell us how to handle our blacks.

Tommy Wells was very much a product of his time. A man from a modest upbringing, he served in World War 1 as a non-commissioned officer, a gunner who spent unglamorous times in the front lines in France. After the war he progressed through a law degree on a returned soldier's scholarship, spent seven years in legal practice, and then seized the opportunity to be a judge in remote Darwin, again a very unglamorous posting. He quickly became a standard bearer for the north, but was not the racist that so many others were: witness some quite enlightened comments in his 38 page report to the High Court.

Wells obviously knew and loved the British legal system, and to suggest to such a practical man that he should seek to accommodate the tried and true British legal system to the wishes of 'ratbag do-gooders' and anthropologists in respect of the legal treatment of Aboriginals would have been too much.

An outspoken man, he was an obvious target for the establishment and the political thrust, and it seems to me that there was a conspiracy, probably deserved, to bring him to heel. The way in which Perkins sought to pre-empt the impending court cases in Darwin, by announcing that there seemed to be no evidence available against the five defendants, and that 'early acquittals' were likely, must have infuriated Wells. Brown and Carrodus, as classic public servants, were obliged to steer the Minister's ship for him, as well as continue to monitor the strong public feeling, and the presence, close to the seat of power, of people like Elkin. Their political judgment seemed to tell them to watch Wells at all times.

Carrodus wrote an accurate report of the three Supreme Court trials, especially *R v Tuckiar*, for the Minister's information. He did not report on Wells' one-hour summing up to the jury, and that is a pity, for it seems that Carrodus' report was the document that had the greatest influence on the High Court appeal; and, as Wells pointed out, the Crown did not file a single affidavit in the appeal hearing. The lacklustre performance of Reynolds in *Tuckiar v The King* seems to underline the fact that Wells had no friends in high places. All of which is understandable.

There is no doubt that Wells became obsessed with the belief that gaol was bad for Aboriginals (who would disagree, in the light of the Deaths in Custody Royal Commission?) and that physical punishment was the best means of making them understand that there was a system of law in the land, over and above their own practices. The vast majority of his other Supreme Court decisions were apparently based on a good knowledge of the law, and I think he does not deserve simply to be a lampooned figure, on the basis of remarks like 'better to hang them' being largely taken out of context.

But he will be remembered mainly for his injudicious remarks in *R v Mau, Natjelma and Narkaya* and his considerable bias in *R v Tuckiar*, where his concern for the reputation of the dead white policeman caused him to neglect and deny absolutely the rights of the defendant Tuckiar to be held innocent until proven beyond reasonable doubt to be guilty. If Wells is maligned accordingly, it seems fair enough.

Question 7. What happened in Aboriginal affairs as a result of these incidents?

The game of 'church politics' was quickly played, and the Methodists established that any mission activity among the Yolngu should be organised by them. The little Anglican mission of St David's never came to anything, although CMS opened a mission station at Numbulwar, on the Rose River, after World War 11. In 1935 the Methodists recruited a very able man named Wilbur Chaseling to become the first Superintendent of the mission, and he and Webb chose Yirrkala as the site. (see map 3) [10]

Like most Methodist missions Yirrkala was sensibly run, with minimum interference in the lifestyle of the Yolngu. Education programs organised in local languages ensured that older Aboriginals were not disenchanted by the education process. Hence the level of scholarship among the Yolngu, while not high, is better than the Australian Aboriginal average, and there are some outstanding individual examples that the best form of education for Aboriginals is to enable them to be literate in their own languages first.

Dr Donald Thomson was appointed as Patrol Officer for north-east Arnhem Land in 1935, and he set up a base at Caledon Bay after he had taken back to their country Mau, Natjelma and Narkaya, pardoned after only serving two years of their twenty year gaol sentence. Wells had suggested at their trial their release after four years, but it was considered appropriate to endorse Thomson's posting to their country by allowing them to accompany him. During World War 11 Thomson organised a highly-trained guerilla force among the Aboriginal men of the region. [11]

The Yolngu have become highly politicised themselves, since it was established that the thousands of hectares of little red pebbles around Melville Bay and Yirrkala constitute one of the biggest bauxite fields in the world. In the days before the land rights of Aboriginals were acknowledged, the Commonwealth Government gave permission to a succession of overseas mining interests to examine the feasibility of a huge open-cut project. The Superintendent of Yirrkala in the early 1960s, the doughty Edgar Wells, alerted the Yolngu to the fact that they were being 'sold out', and the famous Bark Petition was presented to the Commonwealth Parliament, whereby senior Yolngu asked that their ownership of the land be recognised. A Parliamentary Commission of Inquiry was set up in 1963, and the lines were drawn in Australia, those who believed in rights for Aboriginals, and those who didn't. [12]

In 1967 a referendum was passed, by an overwhelming majority, giving the Commonwealth Government the power to legislate nationally in respect of Aborigines. Previously this was an exclusive states' right. The Commonwealth Office of Aboriginal Affairs was established under the chairmanship of Dr H C 'Nugget' Coombs. I was at the time the District Officer in the north-east Arnhem Land region, and totally disenchanted with my employers, Northern Territory Administration, who were patting Aborigines on the head with one hand, and signing up with mining companies with the other. I transferred to Dr Coombs' office, and spent the next three years playing a minor role in an intriguing battle between two agencies of the same Commonwealth Government, the Office of Aboriginal Affairs taking the line that Aborigines should be recognised as the owners of the land, the Department of the Interior maintaining that the Arnhem Land Aboriginal Reserve belonged to the Crown, and that they would make decisions which would be good for Aborigines.

Eventually things came to a head via the Yirrkala Land Rights Case, heard in the Northern Territory Supreme Court in 1969/70. Originally the three Aboriginal plaintiffs were Munggurawuy Yunupingu, Daymbalibu Mununggurr (grandson of Wonggu) and Mawalan Marika. Mawalan died and his brother Mathaman took his place as a plaintiff. Then Mathaman died, and Milirrpum was the senior Riratjingu man, so the case eventually became *Milirrpum and Others v Nabalco and the Commonwealth of Australia*. [13] The irony was that the Office of Aboriginal Affairs paid the legal fees of the Aborigines, and the Department of Interior became, in effect, the defendant, along with Nabalco, the mining company, a subsidiary of the giant Alusuisse. Bitter inter-departmental battles took place, and it was obvious that eventually there would be some sort of administrative showdown.

The Aborigines lost the court case, and so it was reaffirmed that 'land rights', as claimed, did not exist under the British legal system. The NT Supreme Court Judge, Justice Blackburn, was very sympathetic to the moral and political rights of the Yolngu, however, and he made that very clear in his Judgment. As a result there was a Land Rights Royal Commission, [14] following the ALP electoral victory in 1972, and the principle of land rights was established by the Whitlam Government. The Northern Territory Land Rights Act was passed in 1976 by the Fraser Liberal Government. The Yolngu could now say they had a piece of

paper to verify the ownership of their land, which they had never relinquished in any case.

The Yolngu were quick to reinforce the 'outstation movement' the Methodists had always encouraged. They realised that they must be seen to be present in their actual homelands, rather than sit on mission stations deluding themselves that their unoccupied land was safe. They remain vulnerable, however, because they continue to believe that foreigners are to be welcomed. They probably delude themselves by thinking that if things go wrong the *Makarrta* can restore the peace. But the last *Makarrta* was held in the 1950s.

Question 8. What happened to the principal players in this drama?

Djaparri died in 1986 and is buried in her country at Garn Garn. Mirera made his own way back to his country after being acquitted in Darwin. He was killed in a fight with the notorious Binjarrbuma (Slippery). Warren was lost in an air crash. Dyer was killed in a car accident. Munggurawuy, Mau, Nanyin and Narritjan were proud patriarch figures when I knew them in the 1960s, and all died with full honours, in their country. I never met Natjelma and Narkaya, but they both died in their country. Judge Wells died in Darwin in 1954 after a stroke ended his legal career in 1950. Fred Gray lives on in Darwin, much-loved by all who know him. He worked in Arnhem Land, at Caledon Bay, and later at Umbakumba, Groote Eylandt, from 1934 to 1958, and then moved to Darwin.

But sadly, the spirit of Tuckiar, Dhakiyara Wirrpanda, has never been laid to rest in his country.

Ngorra ga ngorra, djawulpa

ENDNOTES CHAPTER 13 AN APPRAISAL

- 1 Hon. Justice Dean Mildren *Administration of Justice in the Northern Territory During the War Years* 1992 (unpublished papers)
- 2 Tigger Wise *The Self-Made Anthropologist* p. 131
- 3 Interview with Malkari Amagula, Woodah Island, March 1957
- 4 Interview with Gerry Blitner, Darwin, August 1994
- 5 Interview with Djarparri Wirrpanda, Yirrkala 1976
- 6 Telephone interview with Dawson Daniels Kamarawara, Ngukurr, December 1994
- 7 Interview with Bangana Wunungmurra, Wagga Wagga, NSW, November 1994
- 8 Mickey Dewar *The Black War in Arnhem Land* Darwin 1992 p. 57
- 9 Telephone interview with Dawson Daniels Kamarawara, Ngukurr, July 1994
- 10 Wilbur Chaseling *Yulengor : The Nomads of Arnhem Land* London (The Epworth Press) 1957
- 11 See D Thomson *Donald Thomson in Arnhem Land: Compiled by Nick Peterson* Melbourne (Currey O'Neill) 1983
- 12 See *Report of the Select Parliamentary Committee of Inquiry into the Grievances of Yirrkala Aboriginals* Government Printer, Canberra 1963
- 13 *Milirrpun and Others v Nabalco and the Commonwealth of Australia* NT Supreme Court 1969
- 14 *Reports (2) of Aboriginal Land Rights Commission* Canberra: Australian Government Publishing Service 1973-4

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	33/814	Tribal Killings: Arnhem Land
	33/5423	Alleged Wrongful Conviction of Certain Aboriginals: Remission of Sentences 1933-1936
	33/7632	Caledon Bay Expedition 1933: Protests
	33/7639	Caledon Bay Expedition 1933: Press Cuttings
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A 5520	A 9178	Tuckiar (An Aboriginal) Appeal to High Court Against Sentence of Death
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APPENDIX A

MAPS AND PHOTOGRAPHS

(Reference is made by number in text when relevant)

Maps

- Map 1 Copy of Matthew Flinders' original map, compiled and drawn when he circumnavigated Australia in 1802/3
- Map 2 The Northern Territory of Australia 1994
- Map 3 North-East Arnhem Land, Northern Territory of Australia 1994
- Map 4 Caledon Bay (not to scale). Compiled after talks with Fred Gray and Mau Mununggurr, both present when five Japanese were killed there in September 1932
- Map 5 Blue Mud Bay and Woodah Island. Map drawn by A J Dyer during the Peace Expedition 1934
- Aerial Photograph 1 Woodah Island
- Aerial Photograph 2 Woodah Island (southern section)

Photographs

- 1 Dugout canoe (*libaliba*) probably introduced to the Aboriginals of north Australia by Macassans. Photo: Department of Aboriginal Affairs
- 2 Arnhem Land men in the days before flour, tea and sugar. Chest and shoulder development was enhanced by long, hard hours spent paddling canoes. Photo: Department of Aboriginal Affairs
- 3 Wonggu Mununggurr, patriarch of the *Djapu* clan in 1932-4. Ink and wash, based on old photographs: Jeanette Cook, 1984
- 4-5 *Makarrrta* c.1935 In photo 4 the man on the right is the notorious Binjarrbuma, called Slippery by white people. He had killed the husband of the (unknown) woman (centre), and her brother, Mangiri, accuses him of the killing before the spears are thrown. In photo 5, after dodging the spears thrown at him, Binjarrbuma presents his thigh, and is speared by Mangiri. Photos: Fred Gray
- 6 In this photo of a *Makarrrta* c.1940 at Groote Eylandt, the man in the foreground displays absolute contempt. He is painted as a crocodile, and has probably, in his mind, 'become' his totem, and feels invulnerable. He will then turn and invite his adversaries to throw their spears at him. Photo: Fred Gray
- 7 (Left to right) Joe (Pumeri) McGinness, an unknown man at rear, Fred Gray and 'Pangy' Corry, on the *Northam*, travelling to Arnhem Land, 1932. Photo: Fred Gray
- 8 Fred Gray's smokehouse, used for smoking trepang after it has been cleaned and dried. Caledon Bay 1932. Photo: Fred Gray
- 9 Fred Gray stands behind (left to right) Mau, Narkaya and Natjelma on *Oituli* at Darwin jetty, April 1934 after the three young *Djapu* men went to Darwin, after the killing of five Japanese at Caledon Bay in 1932. Photo: Eric Wilson

- 10 The scene at Caledon Bay after the killing of the Japanese, September 1932. The dead man on the beach is Tanaka. Japanese smokehouse in background. Photo: Fred Gray
- 11 The fruitless patrol undertaken by Constables Morey and Mahony from Arnhem Bay to Caledon Bay, November 1932. Photo: Jack Mahony
- 12 The Esplanade, Darwin, 1933. The police station (left) and the Court House. These buildings were taken over by the Royal Australian Navy in World War 11, and were damaged by Japanese bombing. After Cyclone Tracy (1974) they were restored, and are now used as the Administrator's offices. Photo: State Reference Library, Darwin
- 13 Anyone for tennis? Lt-Colonel Robert Hunter Weddell, Administrator of North Australia (as distinct from Central Australia, which was administered from Alice Springs by John Cawood) and his wife Flora, Government House, Darwin, 1927. Photo: Bleakley Collection, National Archives, Canberra.
- 14 The police party at Woodah Island on the day Constable McColl was killed, 1 August 1933. (Left to right) Hall, Big Pat, Reuben, McColl, Menikman, Lock, Dick, Roper Tommy, Morey. Photo: Jack Mahony
- 15 Photo taken in Jack Mahony's camera (probably by Mrs Sheridan) at Roper Bar Police Station, July 1933. Obviously the film was developed after McColl had been killed at Woodah Island. Note that Sheridan (OIC Roper Bar), Mahony, Morey and Hall have all signed the photo, in the obvious knowledge that it is historic. Someone has (incorrectly) printed W S McColl against the dead policeman's figure. His correct initials were A (Albert) S (Stewart) but each of the other four would by then have written letters to his brother in Melbourne, W (Walter) S (Stewart) McColl. Photo: Jack Mahony

- 16 Constable Albert Stewart McColl, taken at Coniston, Central Australia, probably 1931. McColl was based in Central Australia with the N T Mounted Police from 1927-31, and spent a period in 1931 at Brooks' Soak, Coniston, the scene of the 1928 massacre, after which the police mounted an outpost there. Photo: Stewart McColl Collection
- 17 Dhakiyara Wirrpanda, known to white people as Tuckiar, at Darwin jetty in April 1934, after he had volunteered to travel to Darwin for 'talks' about the killings of Traynor, Fagan and McColl. Photo: Eric Wilson
- 18 Djarparri Wirrpanda, aged about 16, at Blue Mud Bay, 1935. Presumably the child is Tuckiar's. Photo: Donald Thomson
- 19 Djarparri Wirrpanda, aged about 57, at Yirrkala, 1976, when Ted Egan interviewed her regarding her husband, Tuckiar, and the killings of Traynor, Fagan and McColl. Djarparri was an eye-witness to each killing. Photo: Ted Egan
- 20 Ted Egan, 1991, standing on the spot where Malkari Amagula said (1957) McColl was speared in 1933. Photo: 'Bunny' Dorilla
- 21 Ted Egan, 1991, at the place identified by Malkari Amagula in 1957 as the site of McColl's temporary burial, 1933. Sixty years later there is still an obvious depression. Photo: 'Bunny' Dorilla
- 22 Ted Egan, 1991, standing where Malkari Amagula said (1957) that Constable Mahony was standing when the spear, probably thrown by Tuckiar, hit Mahony's hat in 1933. According to Malkari the spear was thrown from the pandanus trees - about fifty metres away. Photo: 'Bunny' Dorilla
- 23 Mounted Constable Ted Morey about to leave Darwin by train for Mataranka, thence Groote Eylandt, September 1933. Photo: Eric Wilson
- 24 Photo in Melbourne *Herald* 19 September 1933 of (left to right) Constables Mahony, Morey and Graham, as they left Darwin to join Hall (extreme right) at Groote Eylandt. Photos: Eric Wilson

- 25 Mirera at Darwin jetty, April 1934. He and Tuckiar were acquitted of the charge of killing Traynor and Fagan. Mirera made his own way back to Arnhem Land, and was later killed in a fight with Binjarrbuma. (see photo 4) Photo: Eric Wilson
- 26 Trackers Lock (left) and Big Pat (right) at Groote Eylandt, late 1933. Note that Big Pat stands 'at attention' in the two photos of him (see also photo 14)
- 27 Brodie Mack's cartoon in the Sydney *Daily Telegraph* 16 September 1933
- 28 (Left to right) Fowler, Warren and Dyer at Thursday Island, October 1933, before travelling by CMS lugger *Holly* to Groote Eylandt. Photo: Anglican Diocese, Darwin, Alf Dyer Collection
- 29 Fowler (left) and Warren questioning Aboriginals aboard *Holly*, probably March 1934. Photo: Alf Dyer
- 30 The little St David's chapel, built by Warren, Dyer and Fowler with assistance from Wonggu and his people, at Trial Bay, March 1934. Photo: Alf Dyer
- 31 *Holly* sailing down the Roper River, probably early 1934. Photo: Alf Dyer
- 32 The cutter *Oituli* arrives at Darwin jetty, April 1934. Fred Gray hired the cutter from Lousada, a CMS missionary at Groote Eylandt, and was paid £150 by the Government for bringing the Aboriginals to Darwin. Photo: Eric Wilson
- 33 Reverend Alf Dyer with some of the 19 Aboriginals brought to Darwin on *Oituli*, April 1934. Photo: Eric Wilson
- 34 Fred Gray talks to Natjelma, Darwin jetty, April 1934. Mirera at rear. Photo: Eric Wilson
- 35 Narritjan Maymuru in charge of the dish-washing, Darwin jetty April 1934. Mirera assists. Tuckiar at rear. Narritjan, aged about fourteen, had already undertaken a hazardous task for Gray, taking a message in a sealed treacle tin by canoe, from Trial Bay to Groote Eylandt, to announce that Gray was shipwrecked on *Llyris* in March 1934. Photo: Eric Wilson

- 36 'Smile, good boy'. Reverend Alf Dyer encouraging Tuckiar to pose for the camera, Darwin jetty, April 1934. It was common, up to about 1960, for male CMS missionaries to address Aboriginal men, of any age, as 'Good Boy'. Photo: Eric Wilson
- 37 If looks could kill. April 1934. Mirera (left) must have had an inkling that Dyer, like St Peter, was about to betray him. Dyer (centre) would soon tell the Supreme Court that 'Mirera was the biggest scoundrel in Arnhem Land'. Dyer had not met Binjarrbuma. Tuckiar (right) seems fed up with posing for cameras. Photo: Eric Wilson
- 38 Mau, Natjelma and Narkaya on a police truck to be taken to Fannie Bay Gaol, after being arrested at Darwin jetty, April 1934, for the killing of the Japanese at Caledon Bay in September 1932. Photo: Eric Wilson
- 39 Police officers (no identification) collect McColl's remains at Darwin railway station, April 1934. Photo: Eric Wilson
- 40 The head of McColl's funeral procession, Gardens Road Cemetery, Darwin, 22 April 1934. It was one of the largest funerals held in Darwin to that time. Photo: Eric Wilson
- 41 Harold Nelson MP, delivers the eulogy at McColl's funeral, Darwin, 22 April 1934. At far right is Walter Allwright. Next to him (fawn suit, holding hat) is Judge Wells. Behind them is Marsie Ahmatt. Next to Marsie Ahmatt is Harold Flynn. Next to Flynn (small man in shirt sleeves) is the famous Darwin footballer Put Ahmatt. Unable to identify any others. Photo: Eric Wilson
- 42 Harold Nelson MP at left. The woman is Jessie Litchfield. Next to her (right) is Put Ahmatt, an unknown boy, Harold Flynn, Marsie Ahmatt (father of Olympic basketballer Michael Ahmatt), Judge Wells, Walter Allwright, unknown man, unknown policeman, Reg Leydin, Town Clerk (obscured, at rear), Constable Sheridan, Constable (later Commissioner) Graham. Photo: Eric Wilson
- 43 Police constables prepare to lower McColl's coffin into grave. Darwin cemetery, 22 April 1934. Superintendent Stretton in white helmet. Photo: Eric Wilson

- 44 (Left to right) Harold Flynn, Judge Wells, Walter Allwright, unknown man, unknown policeman, Reg Leydin (at rear), Constable Sheridan, Constable Graham, Constable Hall, unknown man at rear, J A Carrodus (bow tie), Superintendent Stretton, Constable Mahony. Photo: Eric Wilson
- 45 Judge Wells, listening to the Melbourne Cup at the Star Theatre, Darwin, probably 1936. Photo: Tom Harris
- 46 Judge Wells, enlarged from a photograph taken at McColl's funeral, Darwin, 22 April 1934. Photo: Eric Wilson
- 47 Norman Lindsay's cartoon, *The Bulletin*, 8 August 1934
- 48 Joseph Wesley (Fatty) Nichols, Sheriff, Clerk of Courts, Judge's Associate, Darwin 1934, later a Special Magistrate. Photo: Eric Wilson
- 49 Clara Dilyera, a Mara woman captured by the Djapu in the 1920s, in 1935. On 16 September 1932, the night before the Japanese were killed at Caledon Bay, she told Fred Gray, 'That Caledon Bay boy, him properly cheeky bugger'. Photo: Donald Thomson
- 50 Munggurawuy Yunupingu, lifelong friend of Fred Gray, and father of Galarrwuy and Mandawuy Yunupingu. Munggurawuy taught Gray how to harvest trepang. At Yirrkala 1968. Photo: Ted Egan
- 51 Fred Gray returns to Caledon Bay, late 1934, to tell Wonggu that his three sons have been sentenced to twenty years imprisonment for killing the Japanese. Photo: Fred Gray
- 52 Fred Gray in Darwin, 1991, aged 92. Photo: Clive Hyde
- 53 Mau Mununggurr at Yirrkala 1968, aged about 55. Photo: Neil Stewart

- 54-8 The life of Narritjan Maymuru. In 1934, aged about 14, he went to Darwin on *Oituli* with Gray. (see photos 54,55) Photos: Eric Wilson For the next twenty years he worked with Gray at Caledon Bay, and then at Umbakumba, Groote Eylandt. (see 56) Photo: Ted Evans. From 1956 until his death in 1976 he lived mainly at Yirrkala, where he was renowned as a conciliator and as a bark painter. His representation of the Southern Cross (see 57) shows Yingalpia, the crocodile, (the Southern Cross) , the two 'pointers' which are the hunters Munaminy and Yikawanga, changed into stars, and the 'river of stars', Milmuya, the Milky Way, painted in earth ochres on bark 64 cm x 45 cm. (Ted Egan Collection) Photo 58 was taken in 1968. Photo: Neil Stewart
- 59 Narritjan's older brother, Nanyin Maymuru, at Yirrkala, December 1968. It was Nanyin who insisted that Gunguyuma be subjected to the Makarra because 'he fired the gun at our friend Mr Gray'. Nanyin personally speared Gunguyuma in the thigh. Photo: Neil Stewart
- 60 Constable McColl's grave, Gardens Road Cemetery, Darwin, 1991 photo: Clive Hyde
- 61 Almost certainly the last photograph of Tuckiar (right), at Kahlin Compound, Darwin, 9 November 1934. I am unable to identify the man on the left. Fred Gray said in October 1994 that he did not know the man, and was sure it was nobody directly involved in the trials in 1934. Reverend Alf Dyer took the photograph, and arranged to meet Tuckiar the next night to go to the pictures, but Tuckiar disappeared on 10 November 1934, and has never verifiably been seen since. It is sad to see how seven months imprisonment affected Tuckiar's demeanour, by comparing this photo with number 17. Photo 61: Alf Dyer

NORTH WEST SIDE

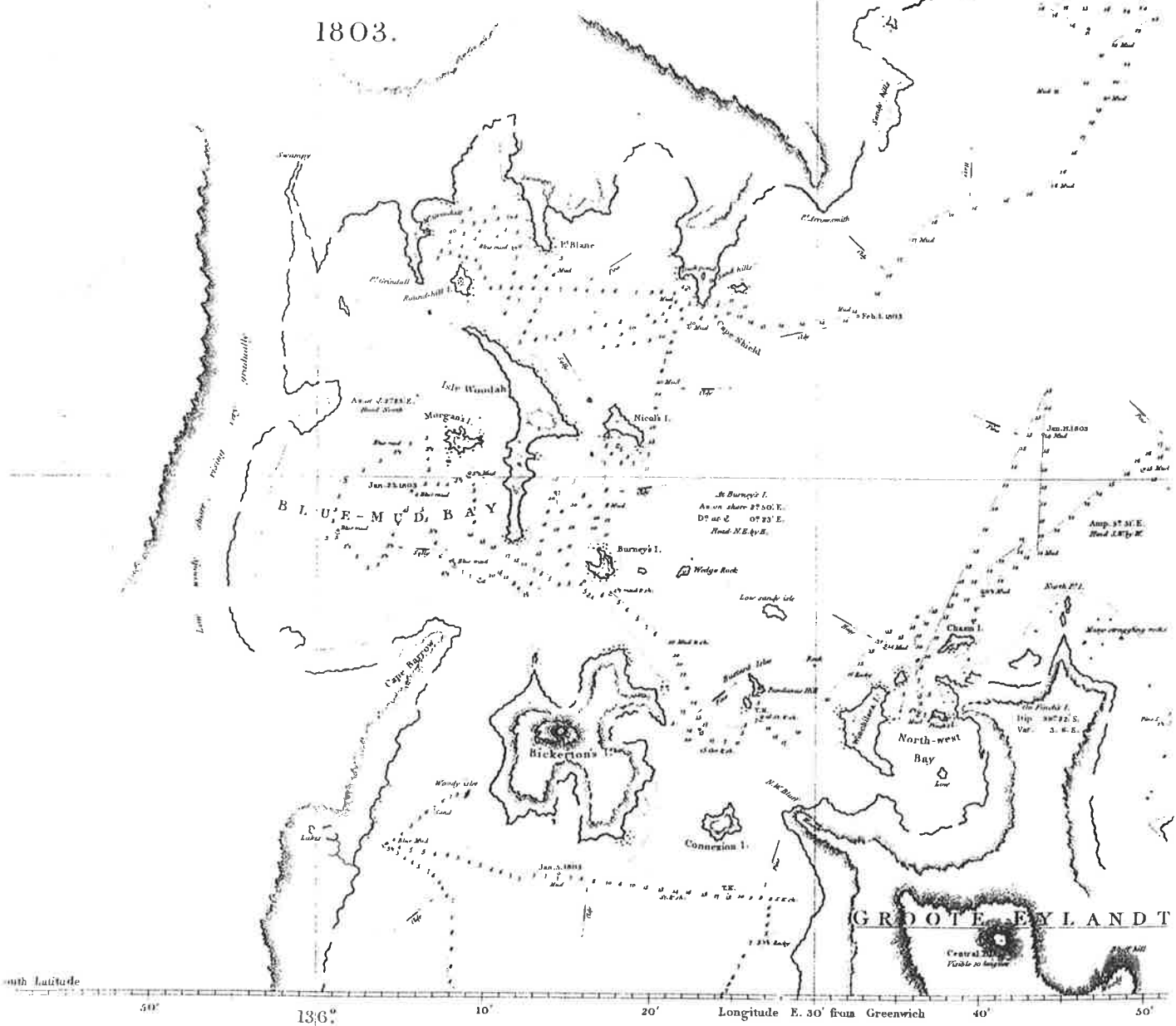
of the

GULF OF CARPENTARIA

BY M. FLINDERS

COMM^R of H.M.S. INVESTIGATOR

1803.

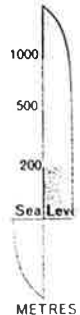
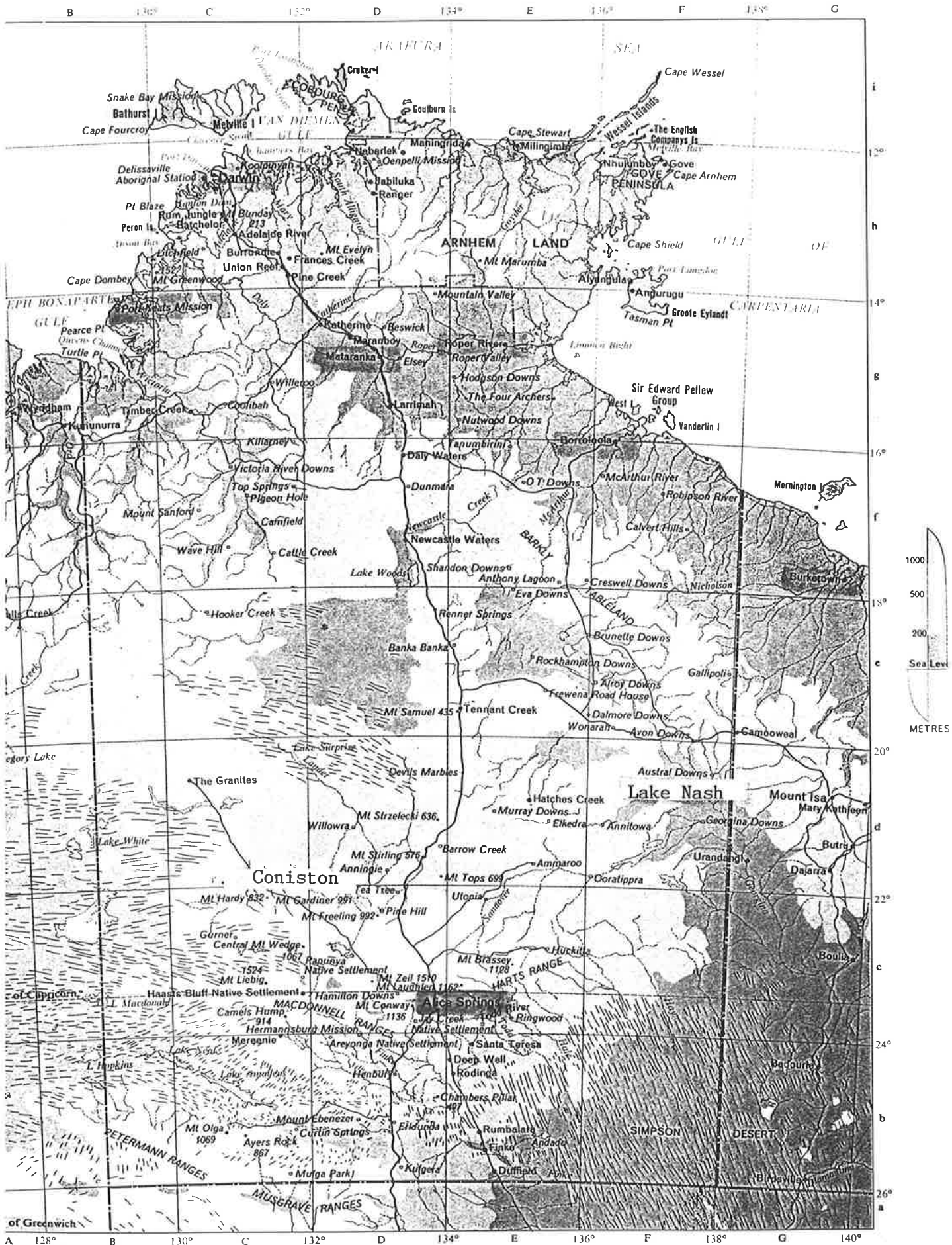


Some parts of this Coast appear to have been discovered in 1623 by the Dutch Yachts *Pera* and *Amhem*, from *Ambolin*

At the Tides Dip of the Needle 307.38 S. Var. of the Needle 3.30 E.
At Burney's I. As on Shore 2750 E. D^r at 2 05 35 E. Head N.E. by S.
At the Tides Dip of the Needle 307.38 S. Var. of the Needle 3.30 E.

South Latitude 50° 13.6° 10° 20° Longitude E. 30° from Greenwich 40° 50°

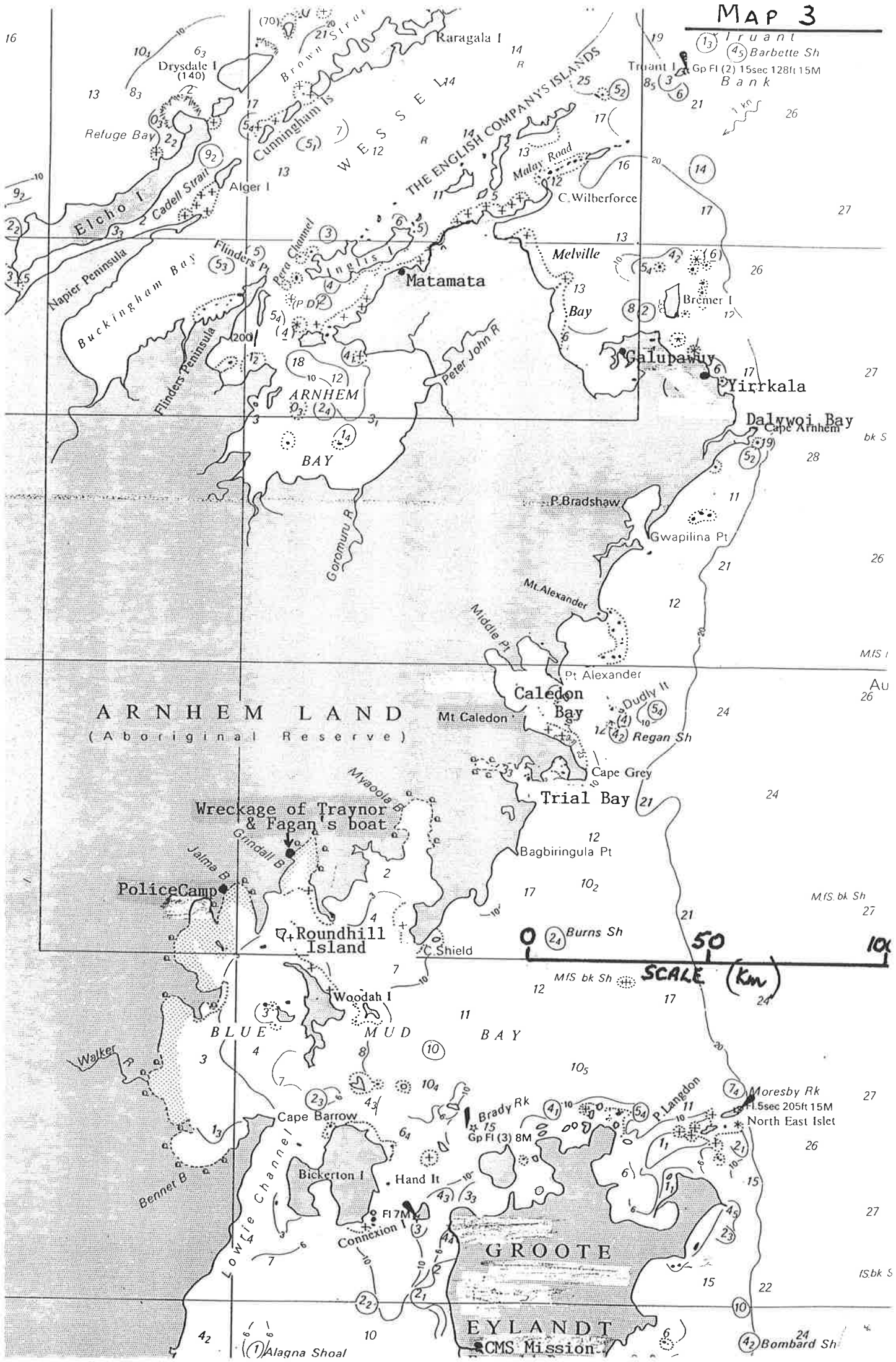
MAP 2. NORTHERN TERRITORY Physical



1: 7 500 000; 1 centimetre to 75 kilometres
Simple Conic Projection
Heights and depths in metres



MAP 3



bk S

MIS I

AU

MIS. bk Sh

27

27

ISbk S

MAP 4

GRAY
No 1 CAMP

X □ SMOKEHOUSE

JAPANESE KITCHEN &
SMOKEHOUSE
X

Myrtle Olga 00 Raff

X WONGGU'S
CAMP

SANDBANK

TREPANG

GRAY'S BAY

Northam 0

X GRAY No 2
CAMP

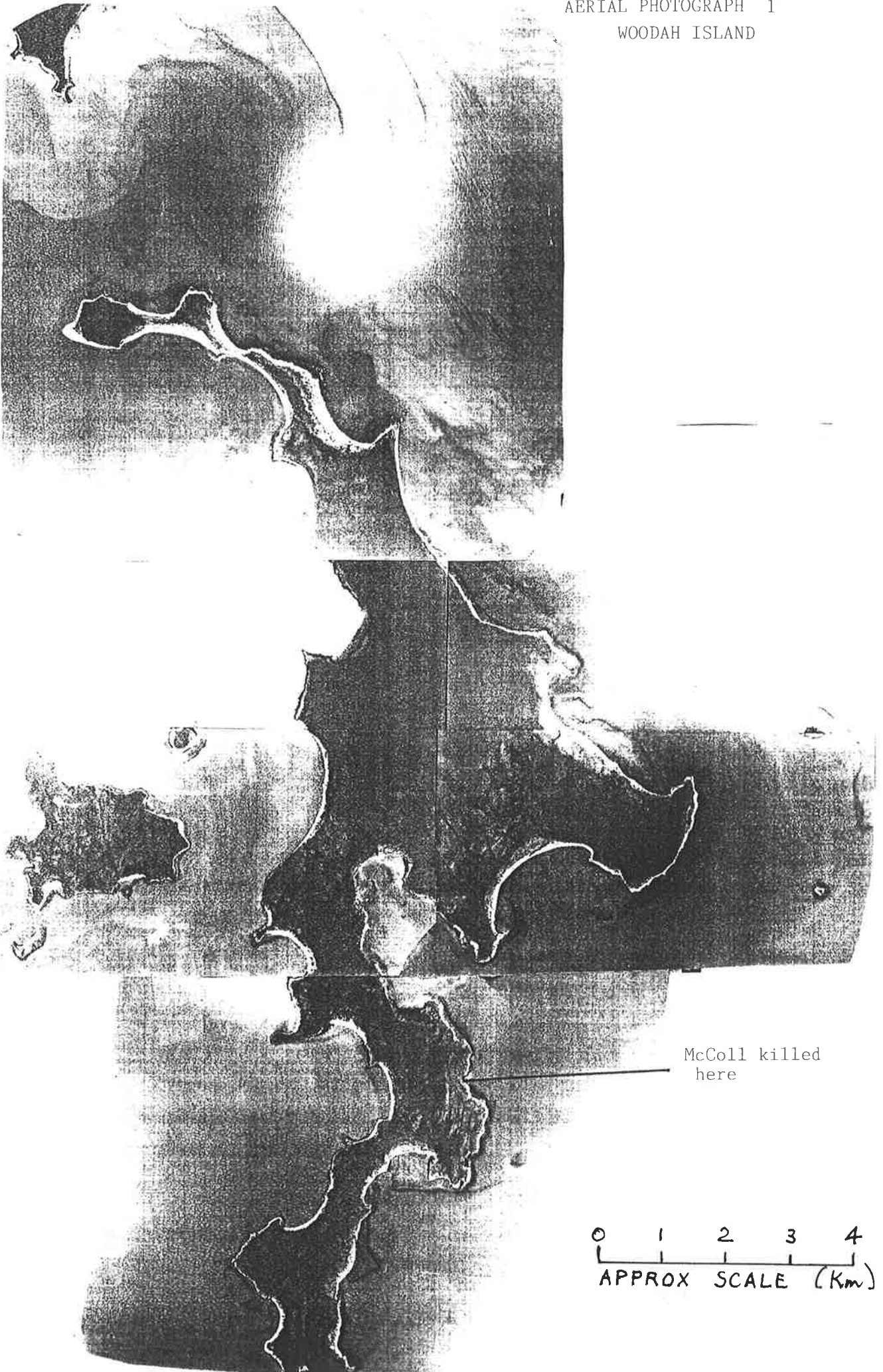
CALEDON BAY



MAP DRAWN 1934 BY ALF DYER



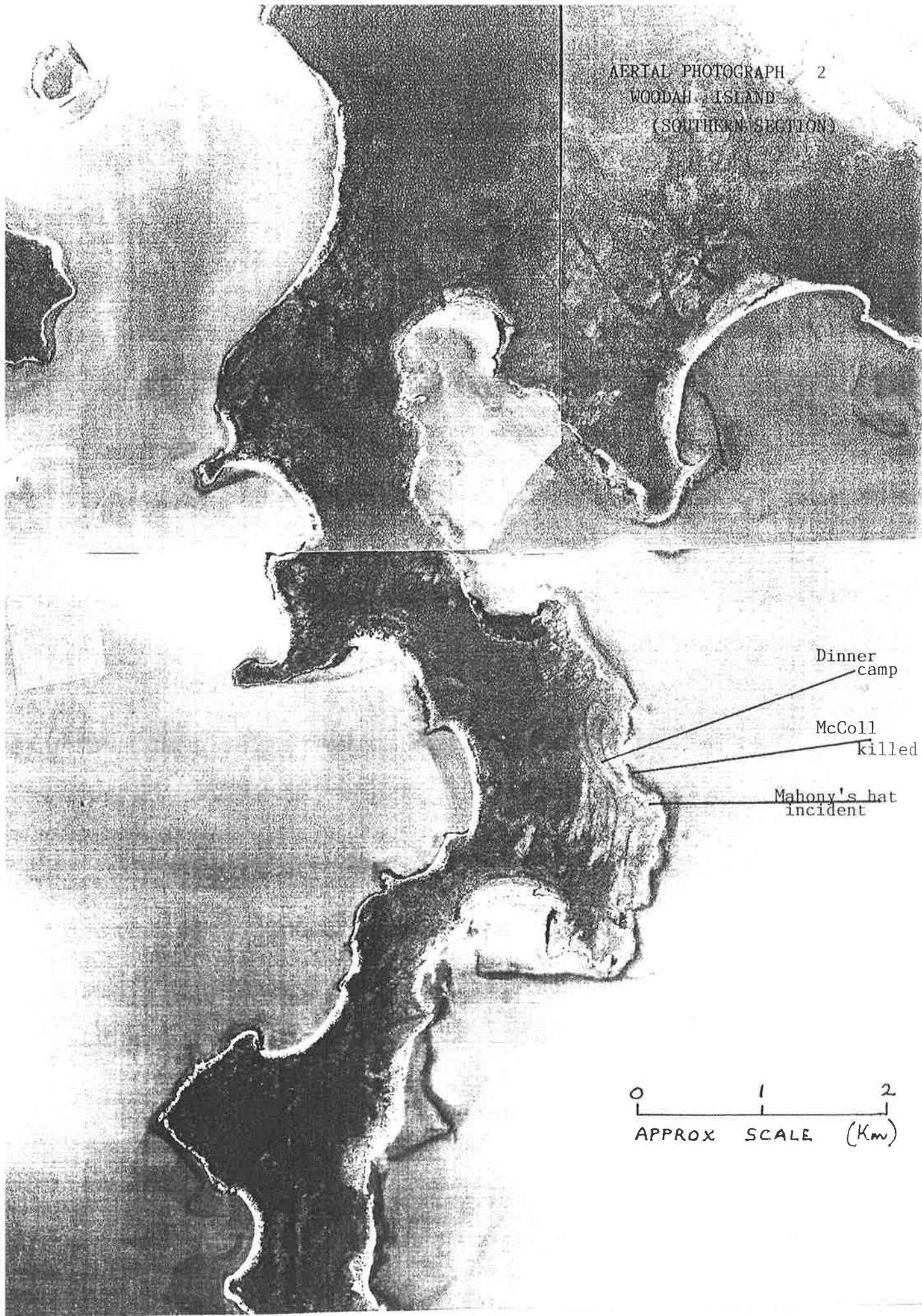
AERIAL PHOTOGRAPH 1
WOODAH ISLAND



McColl killed here

0 1 2 3 4
APPROX SCALE (Km)

AERIAL PHOTOGRAPH 2
WOODDAH ISLAND
(SOUTHERN SECTION)



Dinner
camp

McCull
killed

Mahony's hat
incident

0 1 2
APPROX SCALE (Kw)

**Appendix A photographs have been removed.
They are available in the print copy of the thesis which
is held in the University of Adelaide Library.**