

INQUEST INTO THE DEATH
OF
BRIAN RAYMOND PETERS

Magistrate Dorelle Pinch
Coroner

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SECTION 1 - INTRODUCTION

Few events have become as poignantly etched into the Australian psyche as the deaths of five Australian journalists in Balibo, Timor-Leste (or Portuguese East Timor, as it was then known), who have become known in Australian folklore as “the Balibo Five”. It is more accurate to refer to them as Australian-based journalists. Brian Raymond Peters (29) and Malcolm Rennie (28) were British born. Gary James Cunningham (27) was a New Zealander. Only Gregory John Shackleton (29) and Anthony John Stewart (21) were Australian. Yet they all worked as journalists in Australia and, on 16 October 1975, they all sought protection by calling out to their Indonesian attackers that they were “Australian journalists.” For that reason I have used the phrases “journalists” and “Australian journalists” interchangeably depending on the context.

As a coroner in New South Wales, my jurisdiction extends only to the death of Brian Peters. At the conclusion of this inquest I have a statutory duty under section 22(1) Coroners Act 1980 to record a finding as to whether he has died, and, if so, the date and place of his death as well as the manner and cause of his death. However, to investigate the death of one of the Balibo Five was to investigate the deaths of all. It would have been artificial, and nigh impossible, to separate one from the others in terms of the parameters of the investigation.

It was possible to chart separately the movements of each of the television news teams up to the events of 16 October 1975. The Channel 7 Team comprising reporter Greg Shackleton, sound recordist Tony Stewart and cameraman Cary Cunningham arrived in Dili by chartered aircraft on 10 October 1975. The Channel 9 team consisting of cameraman Brian Peters and reporter Malcolm Rennie travelled to East Timor on 12 October in an aircraft chartered by Dr Whitehall representing the Australian Society for Inter-country Aid. Each team made its way separately to Balibo. However, from the time the teams arrived in Balibo, the Fretilin soldiers who observed them did not distinguish in any significant detail between the activities of individuals and what “the journalists” as a group or groups of individuals were doing. On the day of their deaths, there were some intermittent sightings of individuals because the cameramen could be

recognised by their equipment. But at the crucial moment when the Balibo Five approached the members of the Indonesian Special Forces in Balibo Square, I cannot be certain who was where and at what stage, although there is some evidence to suggest that Brian Peters may have been initially at the front of the group.

From a coroner's perspective, the other difficulty presented was that the remains of the bodies of the journalists, having been incinerated, were originally mixed together and then, subsequently, divided into four boxes. Even in death it was impossible to separate them.

In recognition of the indivisible nature of the evidence, the families of all of the journalists were invited to participate in this inquest and I was pleased to receive submissions in writing and in person from them.

While my formal finding under section 22(1) *Coroners Act 1980* can be given in respect only of Brian Peters, I can assure the families of the other four journalists that my findings in respect of the deaths of Messrs. Rennie, Shackleton, Cunningham and Stewart would be in exactly the same terms.

In a Cablegram from Jakarta to Canberra on 28 October 1975, Ambassador Woolcott wrote,

“.....the truth of this matter [the deaths of the journalists] may never be established. They [the Javanese] place a lesser value on human life than we do and may believe, wrongly, that the issue will die down. We are continuing to disabuse them of this.”

Hopefully, this inquest will demonstrate that the truth is never too young to be told, nor too old.

SECTION 2 – SOURCES

There have been quite a many official inquiries into the deaths, or particular aspects relating to the deaths, of the Balibo Five from October 1975 to the present, both within Australia and internationally. On each occasion there has been an ever-increasing volume of evidence from a greater diversity of sources. All of the available reports and transcripts from those earlier inquiries have become exhibits in these proceedings.

Witnesses from Timor-Leste, from opposing sides in October 1975, travelled to Sydney to give their evidence on oath in an open court setting with the assistance of a professional, and most proficient, interpreter in both Tetum and Portuguese. Some of these witnesses, from the UDT and Apodeti parties who had fought alongside the Indonesian Special Forces at Balibo, had previously participated in the campaign of disinformation orchestrated by the Indonesian military immediately following the deaths and continuing through to the present time. It was particularly helpful to be able to identify and discard previously fabricated versions of their evidence.

It was also important to hear from the former Fretilin fighters in Balibo who were the last persons to observe the journalists prior to the arrival of the Indonesian and Partisan forces. Their evidence was essential to evaluating the extent of fighting in Balibo before their withdrawal, including the low number of casualties.

Also for the first time, former Prime Minister Gough Whitlam and the former Minister for Defence, Mr Morrison, provided Statements and gave evidence on oath about their knowledge and actions relevant to the events of October 1975. Former Heads of the Department of Foreign Affairs, Mr Renouf and the Department of Prime Minister and Cabinet, Mr Menadue as well as the Head of the Prime Minister's Office, Mr Mant also contributed Statements and oral testimony. Other former senior Commonwealth officers also volunteered to provide their best recollections in writing and in person to the inquest. The Ambassador to Jakarta at the time, Mr Woolcott, was another important witness. I was impressed with the way that this group of

witnesses had prepared for their court appearances by researching diaries and other contemporary documents to assist their memories as to relevant dates and events.

Since the last full Australian inquiry by Mr Sherman, the Department of Foreign Affairs and Trade has released a compilation of documents entitled *Australia and the Incorporation of Portuguese Timor 1974-1976*. Published in 2000, this book is comprised primarily of cablegrams between the Australian Embassy in Jakarta and the Head of the Department in Canberra. These frank and detailed exchanges provided a rare insight into Australian-Indonesian diplomacy at official and unofficial levels. Specifically, they revealed the extent of advance knowledge gathered by the Department of Foreign Affairs about the plans for Indonesian covert operations in East Timor. They also disclosed the efforts made by Embassy personnel to obtain information about the circumstances of the deaths of the journalists after 16 October and the beginning of the dissemination of disinformation by the Indonesian military.

Perhaps the most eagerly awaited category of evidence before the inquest was the Signals Intelligence material. I have dealt with it in more detail later in Section 9. I am aware that many people believed that this evidence would demonstrate that the various Australian Governments since 1975 have known the circumstances of the deaths of the journalists but had not wanted to make that information public. I can indicate here, having viewed all the documents in this category, that the intelligence material has provided no assistance to me in determining how the journalists died. The most pertinent evidence for that purpose was the eyewitness accounts.

Important evidence came from the notes, tapes, videos, articles and books of journalists and authors. These primary and secondary documents were supplemented by oral evidence given to the inquest by Ms Jill Jolliffe, Mr David Jenkins, Mr Hamish McDonald and Mr Desmond Ball. Of invaluable assistance were the interviews with eyewitnesses who are now deceased.

What was apparent in the attitude of all of the witnesses who produced documents and/or gave evidence to this inquest was the desire to contribute as much as they could to try to ascertain the answers to the issues I had to determine. The amount of information provided was actually quite phenomenal.

The one category of witnesses who did not wish to participate in the inquest was the (then) members of the Indonesian military. Prior to the commencement of the Inquest, a request was made, through appropriate official channels, to the Indonesian Ambassador to Australia to invite various Indonesian citizens, who could be expected to provide relevant evidence to the Inquest, to attend. I was particularly concerned about issues of procedural fairness and wanted to ensure that these people had the opportunity not only to give evidence but also to cross-examine those who may give evidence adverse to their interests. On 27 February 2007 I wrote to retired Lt-General Yunus Yosfiah as follows,

“I am currently holding an inquest into the death of Brian Peters at the New South Wales State Coroners Court, Sydney, Australia. Mr Peters, a New South Wales resident, was one of the five journalists killed in Balibo, East Timor on 16 October 1975.

My role as coroner is to investigate the circumstances, and to make formal findings as to the manner and cause, of Mr Peters’ death. Although there have been previous inquiries into the deaths of the five journalists, this is the first time in Australia that witnesses have given their evidence in a public forum.

In the course of the inquest I have heard evidence that you were one of the commanders of the Indonesian forces that attacked Balibo on 16 October 1975. Furthermore, you were one of the first to enter the township and were there when the journalists died. It seems, therefore, that you may be able to provide important evidence about how Mr Peters and his colleagues died and what happened to their bodies subsequently.

Letters inviting you to attend the inquest have been sent to you previously via His Excellency Teuku Mohammad Hamzah Thayeb. There has been no response. Hence, I am now writing to you directly to invite you to give evidence to the inquest. You may be legally represented if you wish. I note that arrangements could be made for you to give your evidence by way of video link from Indonesia if that would be more convenient than travelling to Australia.”

I received no reply.

Just before the conclusion of the inquest my attention was drawn to the fact that Mr Sutiyoso, Governor of Jakarta was in Sydney. Evidence before the inquest indicated that Mr Sutiyoso was a former member of the Indonesian Special Forces and had been a member of Team Umi in East Timor at the time of the attacks on Balibo and Maliana on 16 October 1975 as part of Operation Flamboyen. I wanted to find out whether Mr Sutiyoso had been in Balibo on 16 October. Whether or not he was a witness to the events in Balibo, he would have been able to give evidence about the orders that had been given to the Teams in respect of journalists and other civilians found in the towns under attack. Hence, I invited Mr Sutiyoso to attend the inquest to give evidence. I was disappointed that he declined my invitation.

Brief of Evidence

The brief of evidence tendered at the inquest was made up of the following:

Part 1 consisted of three volumes containing Statements obtained specifically for this Inquest;

Part 2 consisted of four volumes of historical material that was known as the Chronological Tender Bundle;

Part 3 consisted of three volumes of previous witnesses' Statements and interviews;

Part 4 consisted of two volumes of reports and transcripts of previous investigations;

1. Investigation conducted by Mr Richard Johnson, the Third Secretary in Australia's Jakarta Embassy in 1975 (extracted from the Department of Foreign Affairs and Trade, *Australia and the Indonesian Incorporation of Portuguese Timor 1974-1976* ("the **Johnson Inquiry**"));
2. Investigation conducted by Mr Allan Taylor, Mr Colin Rutter and Mr Richard Johnson in April 1976 ("**Taylor Report**") including annotated photographs;
3. Mr Tom Sherman, "Report of the Deaths of Australian-based Journalists in East Timor in 1975", dated June 1996 ("**First Sherman Report**");
4. Transcript of Foreign Correspondent Report on the Deaths of the "Balibo Five" broadcast on ABC Television on 20 October 1998;

5. Mr Tom Sherman, “Second Report on the Deaths of Australian-based Journalists in East Timor in 1975” dated January 1999 (“**Second Sherman Report**”);
6. **CIVPOL** investigation 2000-2001 – Documents provided to the Coroner by the United Nations Transitional Administration in East Timor (**UNTAET**) in 2002;
7. Inquiry conducted by Mr Bill Blick, the Inspector-General of Intelligence and Security, entitled, “Balibo Killings 1975 and Intelligence Handling” dated September 2001 (“**Blick Report**”); and
8. Extracts from the “Final Report of the Commission for Reception, Truth and Reconciliation in East Timor”, January 2006 (“**CAVR Report**”)

Part 5 consisted of DVDs and video footage;

Part 6 consisted of a bound bundle of photographs of Balibo and other persons and items of interest.

This brief was tendered under cover of a Statement by Detective Sgt Steve Thomas containing an overview of the investigation conducted by police officers of the Coronial Investigation Team.

Additional Exhibits

In addition to the Brief of Evidence some ninety exhibits were tendered in the course of the inquest.

Code Names

Various witnesses, particularly those from East Timor, indicated that, for reasons of their safety and that of their families, they would prefer that their real names not be used in the course of their evidence. Hence, pursuant to applications by Counsel Assisting, I made non-publication orders under section 44 Coroner’s Act 1980 in respect their names and anything that would identify them. Some of the witnesses had given evidence under their own names in the course of previous inquiries and interviews. Nevertheless, in view of their concerns about retribution, I considered it was appropriate to make the orders sought. Some of these witnesses had been

assigned code names at the time of giving evidence to previous inquiries and, in those cases, the previous code names were retained for the purposes of this inquest. Where witnesses had not previously been identified by means of a code name, they were assigned a numeral after the word “Glebe”, eg “Glebe 2”.

As mentioned earlier in this section, I did not have the benefit of direct evidence from Indonesian military personnel. Hence, in order to address such pertinent issues as the knowledge of the Indonesian military about the presence of the journalists at Balibo prior to the 16 October 1975 and what orders may have been given in respect of them, the inquest relied on three major sources of information:

- a) communications between Indonesian military officers/citizens and Australian Embassy staff before and after 16 October;
- b) media interviews given after 16 October by Indonesians military officers; and
- c) intercepted internal communications between the members of the Indonesian military forces for the relevant periods before, on, and after 16 October.

It is the intelligence material in the last group that I am going to address here. During the course of the investigation I issued numerous subpoenae to Commonwealth Government Departments and agencies. Those subpoenae were subsequently collated and tendered as an exhibit at the inquest. Suffice to record here that they ranged from the broadest to the most specific of parameters and required the production of raw intercepts, end product reports – ie. the final processed document that was distributed by the Defence Signals Directorate (“DSD”) to its government clients – and secondary references to either the raw intercepts or end product reports in other documents, both hard copy and electronic. Those entities to which the subpoenae were directed ranged from the DSD, individual Receiving Stations and the Defence Intelligence Organisation to whole Departments such as the Army, Navy, Defence, Foreign Affairs and Prime Minister and Cabinet.

At the conclusion of the inquest I heard evidence from Mr Cameron Ashe, Assistant Secretary, Executive, DSD. He co-ordinated the search within the DSD for any documents within the terms of the subpoenae. He also liaised with those officers in the other Departments and agencies to order to assure the inquest that all documents

within the terms of the subpoenae had been produced. He explained that, over the past 23 years, the DSD had responded to requests to search for documents relating to the deaths of the journalists, including for the purposes of the Hope Royal Commission in 1984, an internal inquiry by Mr Thompson in 1986, the two Sherman Reviews in 1992 and 1996, and the Blick inquiry. Nevertheless, he caused fresh searches to be made in response to the subpoenae issued for the purposes of this inquest. Mr Ashe gave evidence that a taskforce of nine DSD personnel conducted searches of all relevant hard copy files, an exercise which entailed collating literally thousands of documents and reading them. The taskforce also searched through electronic files. Additionally, a general call was made to all DSD personnel to come forward if they had any information relevant to the terms of the subpoenae. He confirmed that other Departments and agencies had similarly checked all hard copy and electronic holdings. In total, the number of staff hours devoted to this task was estimated at 2,500. Hence, I am satisfied that the most thorough and comprehensive search has been conducted to ensure compliance with the subpoenae.

While all documents were produced to the Court, the Commonwealth, represented by Mr Robertson S.C., claimed public interest immunity and relied on section 44(5) Coroners Act 1980 to limit access to the documents. The basis of the application was that open access to the documents would have “serious adverse consequences for the defence and security of Australia”. I received affidavit evidence from Edward Clive Lines, acting Director, DSD, setting out the precise nature in which national security interests would be jeopardised if the material was publicly available. I also heard detailed legal argument on this point by all of those at the Bar table. Prior to making any decision I viewed all of the documents, together with my Counsel Assisting, to ensure the subpoenae had been complied with and to familiarise myself with the contents. It was obvious that the intelligence material had been sensitive in an historical context. But most importantly, in addition, the evidence presented by Mr Lines quite unequivocally demonstrated the sensitivity of the material. Hence, the jeopardy to national security was a real and present danger in 2007. My Senior Counsel, Mark Tedeschi Q.C. agreed with the Commonwealth’s submissions on this point. I was satisfied on this issue and ruled accordingly.

How to deal with the classified documents in an inquest setting was a matter in which there was little precedent. In recognition of the importance of all of the material to the inquest, the Commonwealth Government agreed that the classified documents could be inspected not only by myself, my Senior and Junior Counsel and their instructing solicitor, but also by Senior Counsel for Ms Tolfree, Mr Stratton S.C. Additionally, those Commonwealth officers – former Government Ministers and Departmental officials – who could give evidence of classified material were provided with the requisite authorisations by the Commonwealth Government under the Crimes Act 1914 and Intelligence Services Act 2001 to speak with my Counsel and instructing solicitor in order to provide Statements. Some parts of those Statements – usually a very small proportion – were redacted before being distributed generally. On the basis of the unredacted Statements, the witnesses gave oral evidence in Court in open session. In respect of the redacted segments of the Statements, ie those which referred to classified material, evidence was given in closed session. At the conclusion of the closed sessions, I summarised the evidence in general terms and read the summary to the Court in open session. It is important to note that the summaries were agreed beforehand not only by my Counsel Assisting and the Commonwealth, but also by Mr Stratton S.C. who was able, thereby, to assure his client as to their accuracy. It is also important to note that about 98% of the inquest was conducted in open session. Through the adoption of the process of providing feedback from the closed sessions in the form of summarising the evidence, I am satisfied that all matters of substance are now in the public domain, even if not the specific detail.

In terms of reaching my finding of facts as I am required to do pursuant to section 22 (1) Coroners Act 1980 I am able to take into account the evidence I heard in those sessions of the inquest that were closed to the public as well as the evidence in open session. **Most importantly, I can state that my findings are the same, whether based solely on the open session evidence or on the totality of the evidence before me. Indeed, the closed court evidence supports the conclusions that can be reached on the basis of the open court evidence.**

SECTION 3 – BACKGROUND TO ATTACK ON BALIBO

The evidence for the Section derives from the various articles and texts tendered at the inquest as well as accounts from former UDT and Apodeti witnesses about their experiences in the period 1974-1975.

It is not my intention to provide a detailed history of East Timor and the events leading up to October 1975. Rather I intend to set out a sufficient factual basis to provide a context for the events of 16 October 1975. But before turning to East Timor, it is important to recap briefly on the political situation in Indonesia and the international arena. Generally speaking, the 1970's was a period in which political leaders spoke of the world as being divided into communist and non-communist spheres of influence. The military regime under President Suharto, which governed Indonesia in 1975, was avowedly anti-communist, having come to power after the suppression of an alleged communist coup. Its concern for stability in the South-East Asian region was heightened by the success of the communist forces of North Vietnam in April 1975. Hence, communism was a malaise to be eradicated and anyone who was labelled as a communist was an enemy of the Indonesian State. This has significance for the purposes of this inquest because the five journalists were so labelled by the Indonesian military.

Since the sixteenth century, East Timor had been a Portuguese colony. On 25 April 1974 the Government in Portugal was overthrown, which heralded a change of policy in relation to its colonies. The new regime was committed to a process of decolonisation. Under the old Portuguese regime political activity had been banned in East Timor. In the months following the coup, various political parties emerged, each with a particular perspective on the future of the colony. Three of those parties, which featured prominently in the events of 1975, were:-

FRETILIN - the Revolutionary Front for an Independent Timor – which advocated self-rule;

UDT – the Timorese Democratic Union – which favoured independence but with strong links to Portugal; and

Apodeti – the Timorese Popular Democratic Association – which wanted integration with Indonesia.

Over time, the division became one of Fretilin and anti-Fretilin, with the latter comprising not only UDT and Apodeti but also other groups including KOTA and Trabalista.

Orchestrating a viable transition of sovereignty in East Timor was not a high priority with the new Portuguese Government. A timetable had been set providing for elections in October 1976 with a view to handing over sovereignty in October 1978. In the interim each of the internal political parties attempted to enhance its own prospects. On 10 August 1975 UDT occupied the police headquarters and other administrative buildings in Dili in a concerted bid for power. Portuguese and Timorese troops were confined to barracks. However, most of the Timorese troops were Fretilin supporters and by 20 August they had managed to leave their barracks, taking their weapons with them. Heavy fighting ensued and by the end of August 1975 Fretilin was in control of Dili and began moving westwards. Many refugees fled to Australia while UDT forces and their supporters moved progressively westwards until, after losing Batugade, they crossed into Indonesian territory.

Soon after the coup in 1974 Apodeti leaders had visited Indonesia to enlist the support of the Government to achieve its ambition of integration. In the latter part of 1974, the Indonesians launched Operation Komodo under General Ali Murtopo. A senior post in this operation was given to a person who featured in the events of 16 October 1975, Louis Taolin, a BAKIN agent. BAKIN was the Indonesian Intelligence Service. Operation Komodo was designed as an intelligence and propaganda operation within East Timor to be carried out by members of the Indonesian Special Forces, Kopassandha (later Kopassus). One of the officers of Kopassandha engaged in Operation Komodo was Captain Yunus Yosfiah.

By July 1975 the Australian Embassy in Jakarta had been advised that Indonesian policy was now firmly in favour of the incorporation of East Timor into Indonesia. (The topic of Australia's knowledge of Indonesian ambitions is covered in Section 8.) Shortly thereafter the scope of Indonesian operations changed to an increased

emphasis on covert military activity. This new phase was termed Operation Flamboyan and was under the direction of Major-General Benny Murdani, Head of Kopassandha and the senior intelligence officer within the Department of Defence and Security (“HANKAM”). As the Field Commander for Operation Flamboyan he appointed Colonel Dading Kalbuadi, whose headquarters were based in Kupang.

Members of the Special Forces who “volunteered” for Operation Flamboyan were divided into three teams – Team Susi, Team Tuti and Team Umi. Team Susi was under the command of Yunus Yosfiah. Major Sofian Effendi led Team Umi and Major Tarub, Team Tuti. One of the tasks of these teams was to train militia forces comprised of the anti-Fretilin groups, principally UDT and Apodeti, who had crossed the border. The idea was that any military activities in East Timor would be undertaken, nominally, by these Partisan militias under their own commanders so as to disguise the fact that Indonesian forces were involved. At this stage President Suharto, perhaps uncertain of international reaction, had not approved an outright military invasion. Hence, it was of paramount importance that the presence of Indonesian troops remained secret. After several hit and run raids, on 7 October 1975 the first major initiative to seize border enclaves in the name of the pro-integration Partisan forces was launched with a successful attack on Batugade. Fretilin forces withdrew into the hills towards Balibo and Maliana.

SECTION 4 – ATTACK ON BALIBO, 16 OCTOBER 1975

The evidence for this Section derives from the accounts of participants in the battle at Balibo, both from the Partisan attackers as well as the Fretilin defenders, as set out in detail in the following section. Additionally, I had before me evidence of separate interviews given by Colonel Dading Kalbuadi and Major-General Murdani to journalist David Jenkins and author Ken Conboy. While Colonel Dading Kalbuadi and Major-General Murdani, along with other Indonesian military figures, have always been reluctant to address what happened to the journalists at Balibo, they have readily spoken of the military strategy involved in Operation Flamboyan.

The interesting feature about the simultaneous attacks launched on Balibo, Maliana and Palaka on 16 October is the timing of the assaults. As Section 8 demonstrates, the Indonesian Government was sensitive to the advocacy in the Australian media and general community for self-determination for East Timor. Indeed, there were complaints raised with the Australian Embassy in Jakarta about the pro-Fretilin bias of media reports of the conflict engulfing the territory.

In October 1975 the Whitlam Government in Australia was under siege. First, there was the Loans Affair culminating in the resignation of the Minister for Minerals and Energy, Rex Connor on 14 October 1975. Then, after considerable speculation, on 15 October, the Coalition parties announced in both Houses of Parliament that voting on the Appropriation Bills, commonly referred to as “Supply”, would be deferred in the Senate, thus jeopardising the supply of funds to the Government and creating an unprecedented political crisis. At this time both the Australian Government and the Australian media were determinedly focused on internal rather than external affairs. It was against that background that Major-General Murdani brought forward the plan for the three-pronged attack to 15 October. (It actually occurred on 16 October.) Major-General Murdani had been having discussion with Ambassador Woolcott in Jakarta and would have received reports from the Indonesian Embassy officials as well as Indonesian intelligence sources in Australia about the travails of the Government. While pure coincidence cannot be excluded, it seems more likely that the Indonesian

military took the opportunity to exploit the Australian domestic political turmoil in selecting the date for the first major incursion of Operation Flamboyan.

For the purpose of the attacks, the numbers of the three Special Forces teams were supplemented by regular paracommandos in two companies comprising Rajawali. The force to attack Balibo comprised Team Susi, and Rajawali Company B. Team Tuti along with Rajawali Company A attacked Maliana while a marine battalion converged on the coastal town of Palaka. The evidence as to the exact composition of all of these strike forces is not all that clear. What is accurate is that Team Susi under Captain Yunus Yosfiah led the attack on Balibo, accompanied by Rajawali Company B. In accordance with the need to disguise the Indonesian presence, each of the Indonesian Special Forces officers had, as early as the training exercises, assumed a nom de guerre. Hence, Yunus Yosfiah was known as Captain Andreas. All of the members of Team Susi were dressed in civilian clothes, usually jeans and, according to some witnesses, wore distinguishing scarves. In contrast, members of Rajawali used their own names and wore their regular uniforms, but without any insignia. Rajawali Company B was under the command of Lieutenant Kiribiantoro.

All of the Partisan forces involved in the attack on Balibo had been told not to wear watches, so their estimates of time were given in relation to daybreak. Meteorological records showed that sunrise was at 5.17 a.m. on that day. Many estimates for the commencement of the attack were between 4 and 4.30 a.m., which is surprisingly accurate. The best evidence of the timing of the attack derived from Jose Martins who, as liaison officer between the Indonesians and the Partisan forces, was privy to the Indonesian plans. He stated that the attacks on all three towns were planned to commence at precisely 4.30 a.m. and they did. Colonel Dading in his interviews has also referred to 4.30 a.m. as the time for the commencement of the attacks.

Colonel Dading has commented that the “attack” on Balibo at 4.30 a.m. from Batugade was actually a decoy. He told both Messrs. Jenkins and Conboy in separate interviews that the obvious route to reach Balibo from Batugade was up the single narrow road providing a direct link between the towns. However, that would have placed the Indonesian forces at risk of succumbing to fire from Fretilin forces from the fortress on the hill directly overlooking the road. Instead he planned to attack from

the rear. In pursuance of this plan the attack force had marched during the night from Haekesek to the outskirts of Balibo. In the interim, in order to keep the focus of the Fretilin troops focused on the Batugade Road, four or five old tanks were driven around Batugade creating as much noise as possible. Indeed, several of the Fretilin witnesses mentioned the excruciating noise. Witness accounts refer to varying levels of naval and artillery bombardment prior to the attack by the ground forces.

It is not clear whether the diversionary manoeuvres continued through to 6 a.m. or, as some evidence suggests, ceased at 5 a.m., leaving an unnerving quiet in the town. At any event, the ground attack commenced at 6 a.m. with the combined Indonesian/Partisan forces entering Balibo from three directions, the Maliana Road, the Cova Road and the road between them. Skirmishes with the Fretilin troops were rather brief because they had never intended to hold the town. The last of the resistance came from the fort across the square. The fighting was over by around 6.45 a.m. according to both Jose Martins and Colonel Dading. In contradiction to the information originally released both by Partisans and Fretilin, casualties for the opposing sides were comparatively light. Accounts from witnesses estimated that one Fretilin soldier was killed and one was wounded. Two Partisans were wounded as were two of the Indonesian troops. One Indonesian soldier was killed, a friend of Glebe 11.

The Indonesian account that four of the journalists were killed in a house by mortar fire along with a dozen Fretilin soldiers is exposed for the lie it is simply by the number of actual casualties. The following section covers the evidence from witnesses at Balibo as to the circumstances of the deaths of the journalists.

SECTION 5 –WITNESS ACCOUNTS - 16 OCTOBER 1975

The major witnesses whose evidence I refer to in this Section are:-

Americo Ximenes - Commander of the Fretilin forces at Balibo. He had been stationed there for twelve days preceding the attack of 16 October.

Manuel Da Silva - a Fretilin soldier stationed at Balibo. He and four other Fretilin soldiers were the last to leave Balibo on 16 October.

Glebe 6 - A Fretilin soldier stationed at Balibo from 14 to 16 October.

Glebe 5 - a Fretilin soldier and medic stationed at Balibo. He accompanied the last of the Fretilin soldiers to leave Balibo.

Glebe 2 - Commander of the Apodeti forces that followed Team Susi into Balibo.

Glebe 3 - a member of UDT.

Glebe 4 - a member of UDT

Glebe 7 - a member of UDT

Glebe 8 - a member of UDT

Orlando Guterres - a member of UDT

Augusto Perreira - a member of UDT

I have set out the evidence of the following witnesses in the order in which the events of 16 October appear to have occurred.

Glebe 6

Glebe 6 gave oral evidence at the inquest. He stated that he was one of about 150 Fretilin troops who were stationed in Balibo from 14 to 16 October 1975 under the command of Sabika Besi Kulit, also known as Americo Ximenes. On the night of 15/16 October, he and four other Fretilin soldiers, who have since died, stayed in a room in the Chinese house where the troops kept their munitions. The Australian journalists also stayed in the Chinese house but in another room.

According to Glebe 6 the attack on Balibo commenced around 1 a.m. – 2 a.m from the border area near Nunura. This land bombardment preceded the naval bombardment. Glebe 6 estimated that the latter occurred around 4 a.m. to 5 a.m. and coincided with

the entry of Indonesian and UDT troops into Balibo. He stated that he woke the journalists just before 5 a.m. with the words, "Mister, mister, fire, fire." All five went on to the veranda before two went back inside to get their cameras. Glebe 6 indicated that because he was then engaged in fighting he did not pay much attention to the journalists' movements thereafter. However, he commented that he saw two of them filming in front of, and alongside, the Chinese house, capturing on film the landing of mortars and the advance of the attacking force. He saw the other three journalists on the other side of the house. From a photograph in the brief he was able to identify one of the men filming as Brian Peters. I note that Glebe 6 had spent some time with Mr Peters over the previous days, sharing cigarettes with him. Moreover, Glebe 6 remembered him as the man who wore a white cloth hat, although he was not wearing it on the morning of the 16th. There are several photographs in the brief that depict Mr Peters wearing a white cloth hat in East Timor. On one occasion that morning Glebe 6 observed Mr Peters filming a helicopter that was flying overhead. Glebe 6 also identified photographs of Mr Cunningham and Mr Stewart – they comprised two of the group of three.

Glebe 6 indicated that it was difficult to communicate with the journalists due to the noise but, as he was about to retreat, he signalled to them to come away with him. At the time that this occurred he was in the company of Americo Ximenes. He subsequently saw Ximenes near the journalists but could not hear any conversation. Glebe 6 stated that all five journalists were alive when he retreated to the north in the direction of Atabae. He left prior to the arrival of the Indonesian forces in the square.

Glebe 6 made several other pertinent observations of the journalists on the morning of 16th. First, they were all dressed in civilian clothes. Secondly, there was no firing coming from the Chinese house nor was there firing towards the Chinese house while he was in Balibo. Rather, fire from the advancing troops was directed at Fretilin forces some 100 metres away from the Chinese house.

Americo Ximenes

Americo Ximenes gave evidence at the inquest. Transcripts of his previous interviews with Jill Jolliffe in 1999 and 2000 were also tendered. He was the overall commander

of Fretilin forces in Balibo at the time of the attack on 16 October 1975. Estimates of the length of time the troops had been camped at Balibo prior to the arrival of the journalists vary but about a week would be an accurate summation. He himself stayed at the residence of the former Portuguese *chefe de posto* at the fort. His soldiers occupied various houses in Balibo, with advanced posts established on the outskirts of the town. There was also a machine gun within the town, which was eventually utilised to cover the withdrawal of Fretilin troops.

Mr Ximenes stated that in the days prior to the 16th, he spoke to the journalists on several occasions as they went about filming the activities of the Fretilin soldiers, including accompanying them on patrol. He commented that they were friendly and got on well with everyone. Mr Ximenes confirmed that on the night of the 15th the journalists stayed in their usual abode, the Chinese house, together with several of his soldiers.

According to Mr Ximenes, the attack on Balibo commenced with heavy artillery bombardment from the seven ships off Batugade at dawn around 4 a.m. on the 16th. This was supplemented by mortar fire from the surrounding hills and finally by the arrival of ground troops. Mr Ximenes recalled that when the bombardment started he went with a few of his troops to see the journalists. He estimated that this was around 4.20 a.m. or 4.30 a.m. He commented that he encountered three of the journalists in the Chinese house who were either filming out of a window or “communicating”. I note that Gerald Stone, in his evidence, expressed the view that to those unfamiliar with portable sound equipment, it would be difficult to distinguish from radio equipment. Hence, I have interpreted the reference at this time to mean that one of the journalists was speaking into a microphone, describing the events as the others filmed them.

Mr Ximenes stated that he said “Come on, come on”, inviting them to leave with him. The response was, “Aguenta, aguenta” (hang on, hang on) and “Um momento, um momento” (in a moment). Mr Ximenes also commented that at the time he spoke to the journalists, the attacking soldiers had not yet entered the town square. Indeed they had not yet occupied the surrounding hills. I am satisfied that these three journalists could have left with Mr Ximenes at that point if they had chosen to do so. As to the

other two, they were probably filming near the fort as set out in the following evidence of Manuel Da Silva. Certainly, at the time Mr Ximenes left Balibo all of the journalists were alive and well.

Manuel Da Silva

Manuel Da Silva attended the inquest. His oral evidence on that occasion was supplemented by transcripts of previous interviews in which he had participated, notably for the Second Sherman Report under the code name “Torrado”, with Ms Jolliffe in August 2000 and with Mr Tom O’Brien for the UNTAET investigation in December 2000. At the age of 16, Manuel Da Silva was one of the one hundred Fretilin troops (his estimate) stationed in Balibo. His recollection is that he arrived there on 1 October 1975 and that the journalists came on the 14th with Mr Ramos Horta and an interpreter named Pauline Gama aka Mauk Moruk. (It seems that Mr Da Silva has remembered the occasion when both teams of journalists had gone on a bush patrol with Mr Ramos Horta on the 14th. The Channel 7 had actually arrived in Balibo on the 11th but, for safety reasons, had slept outside Maliana before returning to Balibo with troop reinforcements on the 13th. The Channel 9 team were already in Balibo when they returned so it is likely that they spent the night of the 12th in Balibo.)

Mr Da Silva described the journalists as doing a lot of filming and talking into a “radio with a long antenna” in the days preceding the attack. I understand this to be a reference to the sound equipment since neither team of journalists was equipped with a radio. He stated that they had no weapons and wore no uniform. They stayed in the house described at inquest as the “Chinese house”, but which he referred to as the “China canteen”. Interactions between Fretilin and the journalists were friendly but actual communications were limited because of the language barrier. Significantly, Mr Da Silva described the importance that he and his colleagues on the ground at Balibo attached to the work being performed by the journalists. They saw this as a rare opportunity to reveal to the world what was actually happening in East Timor, namely, a military invasion by Indonesia. Hence, they had a vested interest in seeing that the journalists emerged safely from the attack on Balibo.

According to Mr Da Silva, the bombardment of Balibo started around 4 a.m. and the ground troops entered about 6 a.m. He and four other Fretilin soldiers, now deceased, were stationed at the fort, which he referred to as “the castle”. While they were at the fort two of the journalists came to the fort to capture on film the naval bombardment as well as the advance of the ground troops. Apparently they also spent some 30 minutes filming an Indonesian helicopter that was flying overhead. Mr Da Silva described one of the men as short and fat while the other one was tall and thin. He commented that both men were carrying big television cameras. If Mr Da Silva’s recollection of this point is accurate, then it is likely he observed Brian Peters and Gary Cunningham. On the other hand, if his recollection is not accurate and only one of the journalists was carrying a camera then it is more likely that this was the Channel Nine crew. That would mean that the three journalists who were seen by Americo Ximenes in the Chinese house were the Channel Seven team.

Manuel Da Silva stated that he saw Rosito Ximenes, another of the Fretilin soldiers, talking and gesturing to the journalists at the fort. Rosito Ximenes told Mr Da Silva later that he had invited the journalists to run away with them but had received the reply,

“We are international journalists, so they will not kill us.”

Manuel Da Silva gave evidence that after he saw the journalists at the fort, he saw Indonesian soldiers drag three journalists out of the Chinese house and into the street. They fell down and he does not know what happened to them afterwards. He could not be certain whether either or both of the two journalists he saw at the fort were in this group. I have chosen to treat this part of Mr Da Silva’s evidence with caution. His stated that his vantage point in the fort was 150 – 200 metres away from the Chinese house. When Ms Jolliffe conducted a video re-enactment and stood in the place nominated by Mr Da Silva as the location from which he made his observations she could not see the area in front of the Chinese house because the house itself obscured the view. Moreover, the distance between the fort and the area in front of the Chinese house was more in the range of 200 – 250 metres than Mr Da Silva’s estimate. One explanation is that Mr Da Silva’s recollection of his position in the fort is not accurate. The other explanation is that his recollection of this part of his evidence has become interwoven with something he has seen in the media.

Glebe 5

Glebe 5 gave oral evidence at the inquest. Additionally, I had before me transcripts of other interviews that he had given. He was first interviewed by Jill Jolliffe, Tony Maniaty and James Dunn in Dili on 27 October 1975. Being the closest in time to the actual events he was recounting, one would expect this account to be the most accurate. His oral evidence in court was consistent with it. Glebe 5 was a medic with the Fretilin forces. He was in Balibo the day before the attack and he was able to confirm that the journalists spent the night in the Chinese house. He further stated that they were in good spirits, drinking and singing.

Glebe 5 stated that the attack started around 5 a.m. with artillery fire. He confirmed the three-fold direction of the attack, from the Cova Road, Maliana Road and the road in between. There was sporadic firing but very little resistance from the Fretilin soldiers and the first line of the attackers were able to run into the square. Glebe 5, who was with the last group of Fretilin fighters to leave Balibo, was only 50 metres away near a banyan tree when he observed what happened to the journalists. According to his account, one journalist had walked down the middle road, presumably to film the advancing troops. The others were outside the CNRT house. They called to the fifth journalist to join them as they ran towards the Chinese house. All of them had their hands in the air shouting "Australia". Glebe 5 saw the fifth man fall down but whether he fell because he was shot or tripped, Glebe 5 was unable to say. The other journalists ran inside the Chinese house still shouting "Australia". (He did not hear the word "journalist".) However, the attacking force comprising Indonesian and Timorese soldiers kept firing at the house. Glebe 5 then ran to the fort to save himself and did not see what happened to the journalists from then on.

Glebe 5 described the man who had fallen as bald-headed. He also noted a resemblance when he was shown a photograph of Brian Peters. Glebe 5 did not see this man carrying a camera, although it may well have been discarded by that time.

Glebe 5 confirmed that the journalists were in civilian clothes and they were unarmed. In the two days he had been in Balibo he had not seen them with any weapons. Glebe 5 stated that as he ran away with the last of the Fretilin soldiers he could still hear

shooting and grenades exploding. He explained that the attacking forces were throwing grenades into all the houses and this was how they came to be set on fire.

Glebe 2

Glebe 2 gave evidence at the inquest. Additionally, I had transcripts of previous interviews with Ms Jolliffe, CIVPOL investigators, CAVR and Mr Thompson.

Glebe 2 lead the Apodeti troops in the attack on Balibo. Glebe 2 had been trained in the Portugese army. He joined the Apodeti party in May 1974 because it is supported integration with Indonesia and shortly afterwards was appointed secretary of the Atsabe Regional Committee. In August 1974 he went to Batugade and Atambua to meet with Indonesian authorities. In October 1974 he went to Jakarta where he met with senior Indonesian military personnel including Major-General Murdani. His object was to secure Indonesian training for Apodeti members. At a meeting with Colonel Dading Kalbuadi in November 1974 he discussed the formation of a Partisan fighting unit. This was the first of many meetings he had with Colonel Dading. The outcome was that the Indonesian army agreed to provide a Partisan force not only with training but also clothing, weapons, ammunition and provisions.

By December 1974, the Partisans comprised around 200 fighters. The Indonesian officer in charge of training the Partisan fighters was Captain Yunus Yosfiah. Glebe 2 knew him as "Andreas". From the December 1974 to October 1975, Yunus Yosfiah and his team of ten, known as Team Susi, trained the Partisans in guerrilla warfare generally and specifically in the handling of SKS automatic rifles. Most of this training was carried out in Nenok. Glebe 2 stated that he knew the names of two other members of Team Susi. They were both called Chris. However, Glebe 2 had limited direct communication with the members of the Team Susi because he could not speak Bahasa Indonesian. At some (unidentified) point in the course of training, Glebe 2 became aware that the Indonesians intended to invade East Timor.

Throughout September 1975 Partisan members, although not Glebe 2 personally, assisted Indonesian forces carry out guerrilla attacks in Atsabe, Atabae and Emera. On 14 October 1975, he and about 80 Partisans were ordered to deploy to Haekesak.

They arrived in Haekesak around 2 am on 15 October and at 10 pm that night left to launch an attack on Balibo. They joined forces with three companies of regular Indonesian soldiers and also met up with UDT fighters under the command of Joao Tavares. Glebe 2 estimated that there were around 350 UDT fighters and 450 Indonesian troops in addition to the Partisan fighters. At another stage of his evidence, Glebe 2 stated that there were about 700 fighters in total involved in the attack on Balibo.

I have elsewhere dealt with the structure of the force that attacked Balibo. Suffice to note here that there was a three-pronged attack. One company entered from the Maliana Road, another from Corva Road while the group of which Glebe 2 was a part entered along a road between them. Team Susi lead by Yunus Yosfiah was in the forefront of that centre force, followed by the red berets of Rajawali Company B and the Partisans. Team Susi members were not in uniform, nor were the Partisans. The Rajawali soldiers wore uniforms but no insignia of rank. Although the Partisans had been issued with guns, they were directed not to shoot except on specific orders. According to Glebe 2, no one from the Partisans used his weapon in the course of the attack on Balibo. However, they had been told prior to the attack that any person found in the border area was Fretilin and communist and should be shot. Additionally, everybody they encountered should to be considered an enemy and killed unless they were holding a white flag. Prior to the attack Glebe 2 was unaware that journalists were in Balibo.

Glebe 2 entered the square at Balibo just behind Team Susi. He heard yelling of words like "There's white people here." He then saw four white men, with their hands in the air in a gesture of surrender, emerge from the Chinese house. They were all wearing civilian clothing. One, a tall man with a beard, was in front of the others. Glebe 2 identified this man as Brian Peters in his UNTAET interview. Glebe 2 heard voices yelling "attack". Glebe 2 stated that he clearly saw Yunus Yosfiah about a metre in front of the rest of his team facing the bearded man when the shooting started although he did not see Yunus Yosfiah actually open fire. Nevertheless, he considered that the troops would not have opened fire without his orders. Furthermore, the troops would not have fired unless he did so first. Glebe 2 was definite that there was no

conversation between any of the Indonesians and the white men before the Indonesians fired. The shooting lasted only a couple of minutes.

Glebe 2 identified Yunus Yosfiah from a photograph projected on screen in court. He also nominated the following Indonesians as “taking part” and “being involved” in the shooting of the journalists: Chris Snu, Kiribiantoro, Marpaung and Ali Musa. However, Glebe 2 could not be sure whether they had actually opened fire. His reference was to the fact that they formed part of the group around the journalists at the time that the shooting occurred.

It is unclear what Glebe 2 saw in the aftermath of the shooting. He stated that he only had a glimpse of them as they fell. Apparently, an Indonesian soldier threw a grenade near him so he ran to his next assignment which was to ensure all Fretilin fighters were removed from the fort. According to Glebe 2 there was some shooting from Fretilin at the fort as the attackers entered the square. Fretilin fighters continued to fire sporadically as they retreated. Glebe 2 was part of the force that chased Fretilin and so he was absent from the town for some one and a half to two hours. When he returned Indonesian soldiers were collecting firewood to place on the bodies which had been moved inside the Chinese house. He saw the soldiers set fire to the bodies.

Glebe 2 recalled that sometime around 10-11 am, Colonel Dading Kalbuadi arrived in Balibo by helicopter accompanied by five other men, one of whom was the Indonesian journalist and BAKIN agent, Louis Taolin. Shortly afterwards, Glebe 2's father arrived in a car with Jose Martins and Francesco Lopez. He was about 20 metres away when Yunus Yosfiah gave a report to Colonel Dading. Yunus Yosfiah stated that five white men had been killed. However, since the remainder of the conversation was conducted in Javanese, he could not understand the content. Glebe 2 commented that this was the first time he realised there were five victims, not four.

Up to 1999 when he spoke to Jill Jolliffe, Glebe 2 had participated in the Indonesian campaign of disinformation. He admitted that he had deliberately showed Mr Taylor the wrong house ie. the Australia house, in the course of Mr Taylor's investigation in 1976 and also provided him with the erroneous explanation that the journalists had been part of a group comprising Fretilin soldiers in the Australia House when it had

been hit by mortar fire. He had stated that a total of 15 people had been killed in the house. It had been attacked by the Indonesian soldiers because Fretilin were firing from it. Also in the erroneous version, Glebe 2 had stated that the attacking forces had no knowledge that there were white people in the house before it was attacked. Glebe 2 admitted in his oral evidence that there was no truth in any of these facts and that what he said in court was the truth.

Glebe 4

In addition to the evidence given in court, I had access to the transcripts of previous interviews given by Glebe 4 to CIVPOL and Ms Jolliffe.

Glebe 4 had been a member of the Portuguese Army since 1969. Although he had not joined a political party after the revolution in Portugal, in September 1975, he fled with members of UDT and Apodeti to West Timor. He received three days of military training from the Indonesians in Haekesak. In Haekesak, he had to join one of two groups – UDT under the command of Joao Tavares or Apodeti under the command of Glebe 2. He chose UDT. He gave evidence that his leader, Tavares, was under the command of Lieutenant Kiribiantoro, an Indonesia soldier.

On 15 October 1975, Glebe 4 left Haekesak for Balibo. From his description, his UDT group followed the Indonesian soldiers in Rajawali Company B. He commented that there was a three-pronged attack on Balibo – each group being lead by the Indonesians in Teams Susi, Tuti and Rajawali. Glebe 4's group entered Balibo from the Maliana Road, and from his description, his group was one of the last to enter Balibo. Glebe 4 stated that there was very little resistance from Fretilin. He commented that Fretilin was shooting for only 5 to 10 minutes before they fled. Glebe 4 confirmed that it was light when he arrived in Balibo. Glebe 4 stated that the Indonesian soldiers were carrying AK-47s and that he heard the sound of AK-47s firing before he arrived in Balibo Square. When he was about 10 metres from the Square, he heard voices screaming out "There's white men".

Glebe 4 estimated that he was around 20 to 30 metres away when he saw three white men running, or walking quickly, towards a house followed by two Indonesian

soldiers. The house identified on a map by Glebe 4 was the Chinese House. Glebe 4 stated that he walked onto the veranda of the Chinese House and through a window saw two white men sitting on the ground and another standing. He described the man who was standing as short and strong. He was wearing a T-shirt and a camera was hanging on his neck. Glebe 4 described how the man raised his hands in a gesture of surrender and repeated the word “journalist” but nevertheless was shot by “Chris”, an Indonesian commander of the Red Berets. Glebe 4 saw another Indonesian soldier who had accompanied Chris inside the house shoot the two men sitting on the ground. According to Glebe 4 they were both dressed in civilian clothing. In his UNTAET statement, Glebe 4 stated that the second soldier had been referred to as “Marcos”.

At the time of the shooting, Glebe 4 estimated that there were about 20 people outside the Chinese House, consisting of both Indonesians and Timorese. Glebe 4 was unaware of what transpired immediately after the shooting because he was told by Lieutenant Kiribiantoro, the officer in charge of Rajawali company B, to “get out, get out”.

Glebe 4 was aware that Glebe 2 was in the first group that had entered Balibo. He did not see Glebe 2 in the town square when he arrived. He confirmed in evidence that Olandino Guterres and Glebe 3 were part of his group, but he did not know if either of them was in the vicinity of the Chinese house at the time of the shootings. He stated that Glebe 8 had been in Balibo on 16 October.

Glebe 3

Glebe 3 gave oral evidence at the inquest and in the course of that confirmed his UNTAET statement dated 26 October 2000. He spent three years in the Portuguese Army on compulsory National Service. He then went to work at the airport and it was there that he learnt to speak English and Bahasa Indonesian, linguistic skills much in demand by the Partisan forces. Although he professed little interest in politics, and declared himself, if anything, a Fretilin supporter, he joined UDT under duress. In mid-September 1975, he was one of 900 refugees from Fretilin who arrived in Maliana. From there he went to Haekesak where he lived with the refugees close to the military barracks. Glebe 3 identified Christoforus Da Silva, known as “Chris” as a

member of the Special Forces at Haekesak who was very active in giving orders and doing patrols. Glebe 3 considered that he was obviously someone of rank but was unable to identify anything further as he was always dressed in civilian clothes. At the inquest Glebe 3 identified Chris in a photograph as Christaforus Da Silva. Glebe 3 also identified Yunus Yosfiah as the leader of Team Susi.

Originally, Glebe 3 was to be part of the group led by Glebe 2. However, he was later ordered to join the group led by Kiribiantoro referred to as "Company B". He indicated that Glebe 8 and Olandino Guterres were in the same group as him when they entered Balibo. His group was one of the last to enter Balibo and they went on a road between Cova Road and Maliana Road. He estimated that there were around 500 people ahead of him.

Glebe 3 stated that he did not witness the killing of the journalists, but after entering Balibo, he was told that there were people dying in the Chinese house. He went to the house and saw five bodies in a room in the front of the house on the right hand side. He described three of the bodies as being in a sitting position against the wall under the front window. They were slumped over, obviously dead. The other two bodies were on their backs, side by side with their heads towards the front window of the room and their feet pointing towards the other wall. The heads of these two were only 50cm from the heads of the bodies slumped against the wall. Glebe 3 noted that all were white skinned and dressed in civilian clothes. While he could not see any specific injuries or gunshot wounds to the bodies, he did observe blood oozing through their clothes and onto the floor. Whatever camera equipment and other belongings had been in the room had been removed prior to the time that Glebe 3 saw the bodies. Significantly, Glebe 3 had been told prior to seeing the bodies that they were Australian journalists.

Glebe 3 did not see any of the bodies being burnt, but he did observe smoke coming from the Chinese house later in the afternoon of 16 October and he was told by others in Balibo at the time that the bodies were being burnt.

Olandino Maria Guterres

Olandino Guterres was aged 16 at the time of the invasion of Balibo. His presence at Balibo on 16 October 1975 was confirmed in oral evidence at the inquest by Glebe 2, Glebe 3, Augusto Perreira and Glebe 4. Glebe 4, who was Olandino Guterres' uncle, stated that Olandino was in his group at the time of the attack. Olandino Guterres passed away on 17 September 2005. Nevertheless, the following transcripts of previous interviews were tendered at the inquest:

- a) interview by Jonathan Holmes for the ABC television program *Foreign Correspondent* on 8 September 1998;
- b) interview conducted by Mr Tom Sherman on 25 November 1998;
- c) interview for UNTAET on 14 October 2000;
- d) interview incorporating a video re-enactment conducted by Jill Jolliffe in Balibo on 23 March 2000; and
- e) interview with CAVR on 7 June 2004.

While there are similarities, there are also differences in these interviews. That may well reflect the difference in emphases of the respective interviewers. Additionally, there is the overriding consideration that the interviews were conducted through interpreters, opening the possibility that some of the question or answers were misunderstood.

At the time of the invasion of Balibo, Olandino Guterres was a member of UDT who had been trained by the Indonesian forces at Haekesak. He identified the Indonesian officers who conducted his training as Chris, Simon and Marcos, all of whom reported to Yunus Yosfiah, also known as Andreas, who was the officer responsible for the training. He stated that there was general preparation for the invasion about two weeks prior to the attack on Balibo. In relation to the invasion itself, Colonel Dading was the general commander of all the Indonesian forces for the invasion of East Timor. Mr Guterres nominated Team Susi, lead by Yunus Yosfiah, and Rajawali Company B, under Kiribiantoro, as the main constituents of the force that attacked Balibo. Team Susi wore civilian clothes. The troops in Company B wore uniforms. Mr Guterres and others from UDT were attached to Company B.

Mr Guterres stated that his group spent the night of the 15th on a mountain overlooking Balibo. Between 1 a.m. and 4-4:30 a.m., Balibo was bombarded not only from sea but also from Maliana. When he entered the square there was hardly any firing from Fretilin – they had all fled. The troops, lead by Yunus Yosfiah and Kiribiantoro, were already in the square and he was behind them. This part of Mr Guterres' account is consistent throughout the various interviews.

Mr Guterres has given conflicting accounts of his movements and the actions of the Indonesian soldiers leading up to the shooting of the journalists in the Chinese house, at least those who were located in the front room. What is common to all of the interviews is that Mr Guterres stated he was towards the back corner of the CNRT house near the Maliana Road when he heard Yunus Yosfiah shout, “Maju” (advance) and “tembak saja” (just shoot). However, there are different versions as to what happened at the front of the house.

In the **UNTAET interview** Mr Guterres stated that when this command was given there were three Indonesians, Yunus Yosfiah, Simon and Chris, standing opposite the Chinese house, very close to the veranda of the CNRT house. Mr Guterres continued,

“ After Yunus gave the instructions to attack and shoot, these three people advanced towards the Chinaman's house. They were shooting towards the house with AK-47 military rifles. They were shooting from the hip. They fired off many shots towards the house. They were still firing as they entered the room of the house. They stopped afterwards but I did not recognise the duration of time.

After they had advanced on the house firing their rifles, I moved from the back of the CNRT building to the front of the Chinaman's house. When I was there I stood and looked through the front window which was open and I saw three white skinned men sitting on chairs inside the house. They appeared to be dead. They were sitting slumped over on the chairs. Yunus then ordered me to go to the back of the house.”

In the **CAVR interview**, Mr Guterres again stated that it was Yunus Yosfiah who gave the command to advance and shoot. However, he nominated those involved in

the shooting as Yunus Yosfiah, Kiribiantoro, Simon, Chris and Mindos, who was Kiribiantoro's bodyguard. He stated that the Indonesians were outside the house and shot three of the journalists as they were walking forward. However, at another point in the interview he stated that none of the journalists were outside the house. When asked if he was sure that Yunus Yosfiah and Kiribiantoro had fired at the journalists his initial response is recorded as,

“They had weapons in their hands. But I know exactly that they were at the front of the house, probably they also shot.”

When the question was reiterated, his response is recorded as,

“Of course they did. They were armed. I know exactly that they were at the front of the house – Kiribiantoro, Andreas, Kiribiantoro's bodyguard, Mindos, Simon and Chris.”

In this interview Mr Guterres described how a fourth journalist was shot,

“He came out through the door, then he saw the shootings and he jumped into the house through the window. Then he got shot..... he got shot exactly at the window and fell into the house.”

In the **Holmes interview**, Mr Guterres nominated Chris as the person he saw shoot the journalists inside the front room of the Chinese house. In a **filmed interview with Jill Jolliffe** he said it was Andreas (Yunus Yosfiah) and Chris who did the shooting.

In the **March 2000 filmed interview**, Mr Guterres was interrupted when he started to list the Indonesians he saw outside house. He mentioned Andreas, Simon and a mumbled name that could be Kiribiantoro. His attention was then specifically drawn to the actions of Andreas. The following exchange ensued,

“Q. What was Andreas' position?

A. At that time, Andreas moved forward into the house with Chris.”

Q. And what did you see about the journalists in there..... what was the first thing you saw about the journalists and..... white people in there?

A. I knew there were dead journalists when I left this site where I am now and I went over there to the front of the building.

Q. But did you see them a fire?

A. Yes, for sure I saw it..... when I got there to the front of, what's it called, that building they had already fired..... they had fired on the men who were inside the house.

Q. Who was it who fired at the journalists?

A. The first two men to enter that building were Andreas and Chris.

Q. So you saw them fire at the.....

A. Yes, I saw it perfectly well, I saw perfectly well the two of them firing because it was that two of them were on the veranda of that building.

Q. But did anyone get out, from amongst the dead journalists, did you see one who got out or did all of them?

A. There was no one got out. There was one who was about to flee and he was even warned at the window that is there to the right of the building.”

In the **Sherman interview**, Mr Guterres stated that he heard Andreas yell “advance” and “shoot”. He stated that he then heard shots through the door and the two windows in the front of the house. He referred to Indonesian soldiers doing the shooting but there was no specific question to elicit the names of those soldiers. Towards the end of the interview, Mr Guterres mentioned one person involved in the shooting, Marcos, who was already deceased. However, at another point he named those Indonesians in the room after the firing - Andreas, Chris, Simon, Marcus and Salamat.

Perhaps the most significant interchange in the Sherman interview as to what Mr Guterres actually observed at the front of the house was,

“Q. So, the only white man he saw alive was the person who was in the bathroom?

A. Yes. I didn't know that there were already three deceased inside but then when I went to the front I saw them.”

Additionally, Mr Guterres told Mr Sherman that he did not know that there were foreigners in the house until he saw the white man emerge from the bathroom and speak in English.

Mr Guterres indicated to Jill Jolliffe a position where he was standing when he first observed the Indonesians shooting into the house. I am satisfied that he could not have

seen inside the house to witness the actual killing of those in the front room. However, I am satisfied that he saw the group of Indonesian soldiers enter the house as he described and that he heard shooting from within the house. I am satisfied that, when he moved to the back of the house, he did witness the killing of one of the journalists in the manner he described from that position.

Mr Guterres stated that he saw Chris banging on the door of a bathroom with the butt of his rifle while calling on the occupant to come out. Specifically, he recalled Chris saying,

“Open the door or I will throw a grenade.”

Mr Guterres saw a white man with reddish hair emerge through the doorway with his hands in the air repeating the words,

“I’m a tourist; I’m sorry.”

When asked whether the word could have been “journalist”, Mr Guterres stood by his recollection that he heard the word “tourist”. (In the circumstances this is most unlikely . I am satisfied that the word used was “journalist”). He then observed Chris remove a dagger from his belt and stab the man in the left side of his back near the shoulder blade. The wounded man fell in the corridor just in front of the bathroom. Chris removed his dagger and ordered several Timorese to remove him. Mr Guterres was not able to describe the man in any way that would assist to identify him.

Some 10 to 15 minutes later Mr Guterres moved round to the front of the house, en route meeting Glebe 4 at the side and telling him that one man had been killed at the back and, in turn, being told by Glebe 4 that three white men had been killed inside the front of the house. When Mr Guterres went to the front of the house and peered in at the window he saw three men on chairs slumped over a table. A fourth man was leaning against a wall nearby slumped to one side and a fifth man, who looked like the man who had been stabbed by Chris, was lying on the floor near the doorway leading to the bathroom. Only his head and shoulders were visible. Although Mr Guterres could not see any actual wounds, he could see blood oozing through their clothes and it appeared to him that they were all dead. The bodies were attired in civilian clothes at this stage.

Mr Guterres noted that Yunus Yosfiah directed activities within the room. With him were the Indonesian soldiers Chris, Simon, Marcus, Kiribiantoro as well as a few Timorese whom he identified in his UNTAET interview as Glebe 2, Glebe 3, Joao Tarvares and Glebe 8. In response to orders from Yunus Yosfiah, the five bodies were dressed in Portugese army uniforms hanging in the room while all of the cameras, other equipment and personal belongings of the journalists were loaded on to a jeep parked outside the house. Guns were placed beside the bodies and photographs were taken. Mr Guterres identified a person called Djumaryo, whose photograph appeared in the book *“Death in Balibo – Lies in Canberra”*, as the Indonesian journalist who took the photographs. However, in the Holmes interview Mr Guterres nominated Yunus Yosfiah himself as a person who photographed the journalists in uniforms with guns.

Mr Guterres saw Yunus Yosfiah leave the house and subsequently return in a military jeep with a drum of fuel on the back. He then ordered mattresses to be placed over the bodies in the front room and doused with fuel. Because he had at that time moved some distance away from the house Mr Guterres told Mr Sherman that he was not sure whether Colonel Dading arrived by helicopter before or after the bodies were set alight but it was very close in point of time. Mr Guterres estimated the time to be about 7.30 a.m. to 8 a.m. He indicated that as soon as Colonel Dading arrived he was taken to the Chinese house. In his UNTAET interview Mr Guterres stated it was Colonel Dading who ordered that the house be set on fire.

Mr Guterres stated that Yunus Yosfiah had told some of his companions who spoke Indonesian, including Joao Tavares, why all of the journalists had to be killed. He said,

“...because the journalists were Australian, if any were alive there would be future problems between Australia and Indonesia.”

The following day (17th) when Mr Guterres went to the square to get water from the fountain, Yunus Yosfiah called out to him and other Timorese in the vicinity to fetch more wood to assist the incineration of the bodies. Mr Guterres said that he did not assist in the collection of wood or have anything further to do with the bodies. He commented that others told him that the bodies had been moved further back in the

room when more firewood was placed on them. In the CAVR interview, he stated that there were parts of the bodies (or one of the bodies) that would not burn ie. the head and intestine, and that these were buried at the back of the house.

In the course of the UNTAET interview, Mr Guterres identified “Chris”, the person who stabbed the journalist towards the back of the house, as Christoforus Da Silva from the photograph contained in “*Death in Balibo – Lies in Canberra*”. Similarly, he identified Yunus Yosfiah/Andreas from a photograph in the book.

Glebe 8

Glebe 8 gave oral evidence at inquest. In preparation for his appearance, he participated in a lengthy recorded interview on 5 December 2005 with Detective A/Sergeant Thomas, in the presence Ms Sharp, junior Counsel Assisting the Coroner, with the assistance of an interpreter. A transcript of that interview was admitted into evidence. In addition I had transcripts of two previous interviews conducted by Mr Sherman on 5 December 1998 and 6 May 1996, in which the witness was identified by the code, P5. Also in evidence were handwritten notes prepared by Ms Jolliffe in the course of interviews conducted by her on 8 April and 22 April 1979 with the witness, known then as W1, as well as the final type-written version of the interviews. Ms Jolliffe also gave oral evidence to the inquest about those interviews.

In the interviews with Ms Jolliffe, Glebe 8 purported to be present in Balibo on 16 October and to witness the fate of the journalists in person. In the subsequent interviews and in his oral evidence Glebe 8 stated that he did not witness the events of 16 October 1975 first hand but was merely relaying what he had been told by others. There is some confusion in the Sherman interviews about when Glebe 8 actually arrived in Balibo. At one point, Glebe 8 clearly remarked that he arrived a day after the initial attack but then agreed with the date of the 16th. I am satisfied that Glebe 8 meant to convey in the Sherman interviews what he swore to subsequently, that he arrived in Balibo on the 17th. Glebe 8 explained his arrival on 17th by saying that he was with a group that were sent to Nunura to prevent the escape of any Fretilin soldiers fleeing from Balibo. He had been selected for this role because of his knowledge of the hill towns.

In order to account for the discrepancy between the Jolliffe interviews and his subsequent accounts, Glebe 8 indicated that perhaps Ms Jolliffe had misinterpreted his meaning because the interviews were conducted in Portuguese. However, Ms Jolliffe gave evidence of the process that she adopted to ensure the accuracy of the translations. She stated that, from the beginning of 1979, she was fluent in spoken Portuguese. However, she did not rely on that skill alone. She recorded the interviews in Portuguese with a tape recorder and, additionally, compiled handwritten notes in English. Later, she would write up her notes and provide them, together with the tape-recording, to a consultant who was a native Portuguese speaker. Ms Jolliffe was confident, therefore, that there was no confusion between the first and the third person in Glebe 8's narrative. She further stated that even in Portuguese she could not mistake "eu vi" meaning "I saw" and "ele viu" meaning "he saw".

Ms Jolliffe provided additional evidence of an unrecorded segment of an interview with Olandino Guterres in 1998 in Dili in which he stated that he saw one journalist come out of the house and was shot and he then saw Indonesian troops fire into the window. He further stated that Glebe 8 was standing beside him at the time. At the time of filming the re-enactment with Mr Guterres at Balibo, but not on camera, Mr Guterres told her that when the first journalist was shot, Glebe 8 soiled his trousers and later asked Mr Guterres to wash them. Mr Guterres did not mention in any of his other interviews that Glebe 8 was with him when he witnessed the killing. As noted earlier, Mr Guterres died before he could give an oath at the inquest.

I note that Glebe 3 also gave evidence that Glebe 8 was a member of the group he was in when he entered Balibo on 16 October. Glebe 4 as well nominated Glebe 8 as being present in Balibo on the 16th. Glebe 8 was questioned in the course of the Interview with Det A/Sgt Thomas as to what motive Mr Guterres, Glebe 3 and Glebe 4 could have for (incorrectly) alleging his presence in Balibo on 16 October. He responded,

"A80 Because I was a person of importance. They said this to give more credibility to their version. To name me would lend credibility to them.

Q81 During the Sherman report/interview, you were asked about Olandino Guterres. You said, 'You can believe what he said' about what occurred in Balibo. What did you mean by that?

A81 I did not know he was going to mention me, but I said this as I knew he was there.

Q82 Did you see the journalists alive in Balibo?

A82 No they were already dead. I only saw the bodies being burnt and smelt the stench.

Q83 You told Jill Jolliffe that you were at the house whilst they were alive and they were across the square?

A83 Perhaps Jill Jolliffe did not understand me because it was how it was described to me by this man who had seen....who was at the square from where it happened.

Q84 Why would Olandino Guterres say that you were standing beside him when this happened?

A84 There is no need at all for me to try and cheat.”

Glebe 8 was just as adamant in his sworn oral evidence at the inquest. However, he did provide an additional insight into the context of his evidence. He stated that at the time of his interview with Ms Jolliffe he had asked her not to reveal his identity because he had a brother in prison in Indonesia. A few months later his brother disappeared and there were rumours that he had been thrown from a helicopter. While requesting that his identity be kept confidential, Glebe 8 denied that he had changed his evidence from what he saw to what he was told because he was frightened of the consequences for himself or his family.

Glebe 8 joined the Portugese army in 1963 and spent a lot of his career stationed at the border posts at Atabae, Maliana and Balibo. According to Glebe 8, the top echelon of police officers in those days were drawn from the military. In 1974 he was the second in command of the police force at Dili. After the revolution of 11 August 1975, along with the majority of police officers, he joined the UDT political party. Some four or five days prior to the invasion, Glebe 8 was “recruited” by the Indonesians because of his knowledge of the border towns. He was taken to Builalo, on the Indonesian side of the border, then to Haekesak and placed in charge of a platoon comprising 30 East Timorese. He nominated Glebe 3 and Joao Tavares as Timorese leaders like himself who assisted the Indonesians. Glebe 3 spoke Bahasa Indonesian and was the conduit for communications between Glebe 8 and the

Indonesians. On another occasion he nominated Glebe 2 as a Timorese leader who assisted the Indonesians. He also stated that he was married to Glebe 2's cousin so knew him well.

As Glebe 8 understood the Indonesian army structure, Andreas (Yunus Yosfiah) was the "top man" like a battalion commander. In the Sherman interviews Glebe 8 indicated that he was attached to a platoon in company A, which company was under the command of Kiribiantoro. However, in his interview for the inquest he stated he was in company B and did not know the name of the company commander. Both companies were, however, called "RPKAT" and were comprised of parachute commandos who wore red berets. Later in that interview he stated that the Indonesians were dressed in civilian clothes and wore yellow ribbons or scarves to identify themselves. He confirmed that all of the Indonesian officers used nicknames. As to means of communication, Glebe 8 told Ms Jolliffe that Colonel Dading had a radio base in Batugade and that the commanders carried pack radios, a RACAL model but slightly different from the RACAL model used by the Portugese.

Ms Jolliffe asked Glebe 8 whether he thought that the Indonesian soldiers had orders to kill the Australians. He replied,

"I don't know, but my opinion was that they just came across them and killed them straight off, that it would have been the same whether they were Portugese, Dutch or anybody, but especially because they were white. Indonesian policy generally was to kill on sight, including Timorese civilians, children, etc."

However, in the interview with Detective A/Sgt Thomas, Glebe 8 indicated that although he was not aware of the presence of white people in Balibo prior to the attack, he assumed the Indonesians were aware because it was their usual practice to send out spies, dressed as Timorese, to mingle with the local inhabitants.

Glebe 8 referred to a "scorched earth" policy employed by the Indonesians whereby they destroyed entire towns and anyone found there. These were mainly villages and towns that supported Fretilin. As a general rule the bodies of those killed at these settlements were burnt – "burning was the normal practice."

As to the fate of the journalists, I quote from the account provided by Glebe 8 to Ms Jolliffe in 1979 because this is the version closest in time to the events of 16 October 1975. Essentially, the facts have not changed in later versions. The difference is between whether he observed the events first hand or was told about them a day later.

“the Australians were in a house on the square, some distance from this position. They were in a Chinese house, but not the one with the ‘Australia’ sign...

I was in a position across the square from their house. I was in the second wave of troops which entered. There were about 100 Timorese who entered with the Indonesians but they were poorly armed and mostly just carried Indonesian equipment. I was lying flat on the ground down from their house...between 50-60 metres away. I had an unobstructed view of the house.

I saw one Australian come out with his hands up, stating something like, ‘I’m an Australian, a journalist’. They killed him right there with a knife. They then killed all the others, shot them, inside the house.

Immediately after this I saw one of the journalists, wounded, come out the back of the house. He was trailing blood. Behind this house, at the hill was a palapa which used to be an Interpol post, staffed by PIDE. I saw this fellow run round to this house and tried frantically to get in the door, seeking refuge. But the door was locked and he couldn't get in. He then turned around, staggered a few yards and dropped dead.”

Glebe 8 clarified this information in relation to the first journalist. He stated that he could not be certain that he had been killed with a knife.... he just saw him fall after being hit with the knife. He also indicated that he could not see inside the house: he saw the Indonesian soldiers fire into the house.

In his interview with Det A/Sgt Thomas, Glebe 8 stated that (he had been told) all of the journalists had come out of the house and then were forced by the Indonesians to re-enter. As to the journalist who fled to the old police post, the Indonesians caught him and brought him back to the house with the others. In his evidence before the

court and in his Statement, Glebe 8 stated that when he arrived in Balibo on the 17th the bodies were already burning in the Chinese house.

I note that the version that Glebe 8 gave in court is consistent with the account that he gave to Mr Sherman, with the exception that, having originally nominated the 17th as the date he arrived in Balibo, he subsequently agreed to the suggestion it was the 16th. I accept Ms Jolliffe's account of the thoroughness with which she conducted and verified the translation of her interview with Glebe 8 in which he recounted events as an eyewitness. While it seems unlikely that there was a misunderstanding on such a fundamental point I cannot discount the possibility entirely. There is also the possibility that Glebe 8 gave his account in the first person to Ms Jolliffe in order to give it greater authenticity. Or perhaps he did not appreciate the need to make a rigid distinction between his own observations and what he was told. After all, he was not on oath at that time. The other possibility is that Glebe 8 was an eyewitness at Balibo and that he has lied on oath to the inquest and in his interview with Mr Sherman. There is evidence from several other witnesses that Glebe 8 was in Balibo on 16 October. However, all of them had other duties to attend to at the time and I question whether they would have taken much notice whether he arrived on the 16th or the 17th. I am hesitant to reach the conclusion that Glebe 8 lied on oath because he was so adamant that he was not an eyewitness, because he had provided a prior consistent Statement to another inquiry and because there are other possible reasons for the discrepancy. Hence, I have treated Glebe 8's evidence as something he was told the following day when he arrived at Balibo and accorded it the appropriate weight.

Augusto Pereira

Mr Pereira gave oral evidence at the inquest. Also in evidence was a Statement prepared following an interview with Det. A/Sgt Thomas and signed by the witness. Mr Pereira, codenamed C7, had previously been interviewed by Mr Sherman and the transcript of that interview was also before the court. It is apparent on the face of that document, ie. many of the answers were not responsive to the questions asked, that there were some difficulties with the interpretation. Notwithstanding those difficulties, all of the accounts are similar in substance.

Mr Pereira was born in Balibo. He joined the Portuguese army in 1973 but deserted in 1975. He was living in Dili when the Civil War started and he joined UDT. Shortly afterwards he moved to Atambua with other UDT members. He commented that he was approached by the Indonesians when they became aware of his military background and he became a member of Rajawali's Company B. They subsequently went to Haekesak where they met Teams Susi and Umi. Mr Pereira was part of the Timorese group lead by Joao Tavares. The Indonesian commanders of B Company were Lieutenant Tokiran and Sergeant Tohan. Mr Pereira confirmed that Andreas was the Indonesian officer in charge of Team Susi and that Glebe 2 and Domingos Maya were two of the Timorese contingent that entered Balibo with Team Susi. He also nominated Glebe 3, Glebe 4, Glebe 8 and Olandino Guterres as other East Timorese who went to Balibo.

Mr Pereira stated that the Indonesians who comprised Teams Susi and Umi as well as Company B (Company A went to Maliana) and the Timorese who accompanied them marched throughout the night. Arriving outside Balibo around 3 a.m., the Indonesian soldiers commenced the attack with mortar and cannon fire. Around 5 a.m. Team Susi and Team Umi entered Balibo followed by Company B. Mr Pereira commented that there was a small amount of resistance from Fretilin but this was limited to the vicinity of the fort and the church and did not last very long.

Mr Pereira commented that two of the journalists were still alive when he entered the square at Balibo, although he was unaware at that time that they were journalists. He identified them simply as white men in civilian clothes. They were the in the doorway of a house, which he called Aseu's house, with their hands raised. From a distance of 10 metres he saw them punched by Indonesian soldiers and forced inside the house. However, he did not see them killed. Significantly, the house nominated by Mr Pereira was to the left of where he entered the square between the roads to Maliana and Cova, immediately to the left of the house known as Australia House. His group kept moving across the square until they reached the police house. While resting there he was told that there with three more white men dead in "Afak's house", which he identified on a photograph as the Chinese house. Accompanied by some of his Timorese companions, he peered through the front door at the Chinese house and saw three white men in the shop area covered in blood, obviously deceased. They were

near the front door. Mr Pereira marked their position on a floor plan of the Chinese house.

According to Mr Pereira, Glebe 2 and Joao Tavares directed some of the Timorese to drag the bodies outside. They were taken to a position under a tree at the back of the Chinese house. There he witnessed firewood and kerosene placed on top of them and ignited. He commented that the bodies were not completely burnt on the first day and so they were burnt again the following day.

Although Mr Pereira can recall a helicopter arriving at Balibo around 10 a.m., there is no link in his evidence between the arrival of the helicopter and the timing of the burning of the bodies. He commented that there was a rumour that the bodies of the two white men from Aseu's house were loaded into the helicopter but he cannot confirm this from his own observations. He did not see the bodies being burnt with the others and he does not know what happened to them.

Glebe 7

Glebe 7 gave oral evidence at the inquest. Also before me was a transcript of his UNTAET interview dated 14 September 2000. Glebe 7 entered Balibo with a UDT group that accompanied the Indonesian soldiers of Rajawali Company B. According to his calculations he did not arrive in Balibo until 1p.m. and by that time the journalists had been killed and their bodies burnt.

Three days later, he was ordered by Domingos Bere and Chris to burn the bodies again. They told him that the order to re-burn the bodies had come from the top commander - Yunus Yosfiah. In his UNTAET interview Glebe 7 stated that he saw five badly burnt bodies in the large room at Afat's house (what has been called the "Chinese house" in the course of the inquest). However, at the inquest he commented that he could not tell how many bodies were present because of the state of their incineration. He moved the bodies from the large room to another room in the Chinese house prior to reigniting the fire, which he did using wood and kerosene. Once he lit the fire he was not allowed near the house. Hence, he did not know for how long the

bodies burnt on the second occasion. Nor did he know what ultimately happened to the remains.

Glebe 7 stated that he observed a camera, a radio and a gold chain near the bodies in the large room of the Chinese house. The item he described as a radio did not have a microphone but it was quite burnt by the time he saw it. Glebe 7 referred to placing the camera, together with the bodies, on the fire he lit. It is unclear what became of the other items.

According to Glebe 7, Bere and Chris gave him strict instructions not to reveal to anyone that he had burnt the bodies. Fearing he would be killed if he said anything, Glebe 7 did not mention what had occurred over the intervening years, including an interview with the Red Cross in 1998.

Glebe 11

In the course of the inquest, Glebe 11 approached the Court to give evidence on the basis that he was a member of the Indonesian Navy, on board a naval vessel in Atambua in mid-October 1975. On 18 October, he requested a marine on his ship who had a back-pack radio, to try to communicate with an Indonesian military radio operator in Balibo to find out what had happened to a friend of his who had taken part in the Balibo attack. Glebe 11 actually spoke on the ship's radio himself to the radio operator in Balibo and ascertained that his friend had been killed in the attack. In the course of the conversation, he was informed that the Indonesian Army had met with five Australian journalists, and they (the journalists) had shown their ID and they had been "completed" by them (the Indonesians). Glebe 11 stated that this was the only information that had been given to him about the journalists, and it had been provided as an item of interest. However, he was upset about the news of the death of his friend, and he did not inquire further. Hence, there was no context provided in relation to "the completion" of the journalists.

It is relevant that Glebe 11 gave evidence through an Indonesian interpreter, Mr Lee. Mr Lee indicated that the Indonesian word that had been used by Glebe 11 that he translated as "completed" was "diselesaikan". Mr Lee himself subsequently gave

evidence about the meaning of this word. The word could be used in the context of completing a task. On the other hand it could be a euphemism for killing a person.

Conclusions:

Based on the eyewitness accounts there are several possible scenarios. It is like fitting pieces of a jigsaw together because no one witness saw every aspect of what happened. There are, however, several common strands which I will list shortly. Suffice to note at this point that the only account that appears not to fit at all with the others is that of Mr Perriera. He recollected that two of the journalists were located in a house next to the Australia House. This does not appear to fit either with the account of Glebe 5, who was with the last of Fretilin forces to leave, or that of Glebe 2, who was the first of the Partisan witnesses to arrive. Both of these witnesses placed the journalists either going into or coming out of the Chinese house, which is on the other side of the square from the house nominated by Mr Perriera.

There are two scenarios that appear to be the more likely than any other interpretation of the evidence. Both scenarios start with Glebe 5's observations that all five journalists were outside when the first of the soldiers of Team Susi entered Balibo. Four of the journalists were alongside the CNRT building while the fifth, who had been filming the advance of troops along the road between the Maliana and Cova Roads, ran back to join them. The Indonesian soldiers started firing and all five ran towards the Chinese house, some at least with their arms in the air, and some yelling "Australian". The man who had been on the road fell down. In the first scenario, he stayed down, while the others gained the safety of the Chinese house.

When Team Susi had entered the square, the four journalists inside the house emerged with their hands up, repeating the words, "Australian" and "journalist". They were confronted and surrounded by a group of some 20 soldiers including, at the forefront, Yunus Yosfiah. The journalist in the front was shot or stabbed, or both, and the others herded into the house. One ran out the back at this time, trying to get into the building next door before hiding in the bathroom and the scene as described by Olandino Guterres unfolded.

In the second scenario, the man who fell managed to get up and reach the Chinese house. One journalist immediately tried to escape out the back way and only four went out the front to surrender. One was killed in the manner described above, the other three were herded back inside the front room and killed, while the fifth journalist was subsequently discovered in the rear of the house and dealt with as in the previous scenario.

It is important to note the strands common to the accounts:-

- 1. The journalists were basically all together in or outside the Chinese house at the time they died, not scattered about the town, such that they could be mistaken for members of Fretilin;**
- 2. The journalists clearly identified themselves as Australians and as journalists;**
- 3. They were not with any Fretilin soldiers;**
- 4. Most of the Fretilin soldiers had left Balibo or were about to leave when the Indonesians entered;**
- 5. The last area of Fretilin resistance was from the fort, some considerable distance from the Chinese house, and that was the only place from which Fretilin shooting occurred when the attacking force entered the square;**
- 6. The journalists were not killed in any cross-fire between Fretilin and Indonesian soldiers;**
- 7. The journalists were not in the Australia House and killed when a mortar shell hit that building;**
- 8. They were not armed;**
- 9. They were dressed in civilian clothes;**
- 10. All of them at one time or another had their hands raised in the universally recognised gesture of surrender;**
- 11. They were not killed in the heat of battle;**
- 12. They were killed deliberately on orders given by the field commander, Captain Yunus Yosfiah.**

SECTION 6 – WARNINGS AND OPPORTUNITIES TO ESCAPE

Actions of the Australian Government

It is important to remember the background against which each of the news teams embarked on the trip to East Timor. In mid-August the Australian Government, concerned with the prospect of an increasing conflict between the warring factions, sent two aircraft to Dili to evacuate those Australians prepared to leave the country. On 10 August the Australian Government had placed a ban on aircraft flying from Australia to Timor. This prohibition provoked considerable clamour from the media whose representatives wanted to be in situ to cover the unfolding conflict. From a legal perspective the ban was initially justified on the basis that Portugal had withdrawn permission for any travel to East Timor. Towards the end of August, however, Portugal reversed its stance to the point of encouraging the presence of Australians. For the next fortnight, the Australian Government tried to maintain the travel ban unilaterally but then, according to Mr Morrison, Former Minister of Defence, and Mr Renouf, former Head of the Department of Foreign Affairs, the Government received legal advice that the Government could not legitimately prevent people travelling overseas except in a situation where Australia had declared war with the country of intended destination. Hence, the embargo on travel to East Timor was lifted on 12 September. In lieu of banning travel, the Government charter flights leaving Darwin were given formal warnings that the Government could not guarantee their safety.

Warnings prior to leaving Australia

Gerald Stone stated that no specific warning from the Government had been given to Channel 9. However, all journalists enquiring from Department of Foreign Affairs about travel to East Timor were advised that the situation there was uncertain and dangerous. Additionally, the Australian Government might not be able to assist them should the need arise. In relation to the warnings given to the Channel 7 and Channel

9 teams, the following is recorded in an extract from *Australia and Indonesian Incorporation of Portuguese Timor 1974-1976*,

“.....since 15 September, under a standing instruction of the Department of Transport, pilots and passengers of all charter flights from Darwin to Portuguese Timor were warned that they would be travelling at their own risk. Pilots were shown the warning when they lodged flight plans, and the Airport Director endeavoured to warn passengers orally, although this was not always possible. The Channel 7 team of three left Darwin by SAATAS flight on 10 October having being delayed by one day by a temporary suspension of SAATAS charter. It had been confirmed that the pilot received the warning, and that Shackleton, at least, was warned during negotiations leading up to the flight clearance. The Channel 9 crew travelled by private aircraft on 11 October organised by Dr Whitehall of the Australian Society for Inter Country Aid. The pilot, Sydney businessman Milton Grant, was shown the warning, as was Whitehall, but the aircraft left without Customs clearance or visa check, and passengers were not warned.”

As to the Channel 7 team, in addition to the formal warning given to the pilot and the Team prior to departure, the former Prime Minister, Mr Whitlam gave evidence that he spoke to Greg Shackleton on two occasions. The first was on 18 September 1975 when Mr Whitlam was being interviewed in relation to the Budget and Mr Shackleton informed him of his intention to go to East Timor. Mr Whitlam responded that the situation was dangerous and that the Government had no way of protecting him or his colleagues. He conveyed a similar message to Mr Shackleton on 22 September when he spoke privately with him in the course of a constitutional convention. Mr Whitlam's impression was that Mr Shackleton had made the decision to go to East Timor and was determined to continue with this plan irrespective of any advice he had to offer.

There is no evidence before me to indicate that either the Channel 7 or Channel 9 crews anticipated that they could or would receive assistance from the Australian Government and programmed their movements accordingly. The question has been raised as to whether the warnings provided were sufficient. In relation to this it seems to me that the journalists went to East Timor to see if they could find proof of

Indonesian involvement in the factional fighting. Their movements were fluid. While the Government was aware of Indonesian intentions to infiltrate East Timor and, after 13 October, the plan to attack Balibo, none of the key political figures was aware that the journalists were in Balibo (see Section 10). Moreover, the ferocity of the attack on Balibo was unexpected. As Mr Cameron told Mr Sherman,

“We weren’t surprised by the timing, but mind you, they put a lot more into it than we expected.”

Advice and Instructions from Gerald Stone

Gerald Stone, who was the National News Director for the Channel Nine Network at the relevant time and was the person responsible for sending the team of Mr Peters and Mr Rennie to East Timor, gave evidence about his advice to them and his expectations of what he expected of them professionally. Brian Peters had in fact travelled as a cameraman with Mr Stone and Kerry Packer to East Timor in late August 1975. In order to avoid the ban on travelling to East Timor at that time they chartered a boat. On arrival they moored off the coast of Dili, a large part of which was in flames and shooting could be heard. Mr Stone recalled speaking to Mr Peters that night about the danger inherent in “crossing the line”. This meant that, in the civil war situation that confronted them, whatever military force they met up with they would stay with that group and not try to make contact with the opposing force. Hence, if your group retreated, you should retreat with them: it would be most unwise to await the arrival of the advancing troops.

Mr Stone stated that he did not have a similar conversation with Mr Rennie prior to their departure for Dili in October but assumed that Mr Peters would pass on their previous discussion. He could, however, recall his joint briefing to them in Melbourne in which he instructed them,

- a) not to wear uniforms, or any gear that might be mistaken for a uniform,
- b) not to carry arms, and
- c) that their first duty was to get footage back and not put their lives at risk.

Mr Stone indicated that he considered that situation into which he was sending the journalists to be calmer than when he went in August but fraught with tension. There had been rumours that the Indonesians were providing logistical support to factions in

the border area, so ascertaining the degree of Indonesian involvement was one aspect on which he expected his team to report. There were no particular plans in place for them to travel to the border region – they were to go where they needed to in order to obtain the story. Mr Stone commented, however, that “the feeling” in the media was that Indonesia was not expected to invade at that stage. While the unstable situation was perceived as posing an added risk to the assignment, Mr Stone commented that Mr Peters and Mr Rennie were excited about going because “it’s what many journalists would consider to be a high point in their careers to cover a conflict situation of significance to the country that they’re living in”.

James Dunn was the Head of the Foreign Affairs group in Parliament House from 1969 to 1985. In 1975, however, he had taken leave from the Department in order to lead a small humanitarian aid mission to East Timor. He told the inquest that Greg Shackleton rang him from Darwin prior to leaving for East Timor and, in the course of that conversation, he warned him that he considered an attack by the Indonesians was likely in the border area and that the situation was quite dangerous.

Subsequently, on 15 October Mr Dunn stated that he tried to get a message to the journalists by getting someone, whose name he cannot now recall, to telephone a contact stationed on the border to urge them to leave Balibo. There is no evidence before me as to whether the message reached the journalists. If it did, they did not act upon it.

Warning from Jose Ramos Horta

I did not hear evidence from Jose Ramos Horta in person but I did have a copy of the document signed by the Channel 7 team waiving responsibility for Fretilin which they signed at Mr Ramos Horta’s request. James Dunn, in his evidence, commented that Mr Ramos Horta had warned the Channel 7 team against going to the border region but they elected to act against his advice. On 11 October, Messrs. Shackleton, Cunningham and Stewart signed a document stating,

“We absolve Fretilin for any responsibility for our safety while in border areas.”

Warning from ABC Journalists

Tony Maniaty, reporter, Alex Henderson, cameraman, and Roger Doyle, sound man, comprised the ABC news team that went to cover the events in East Timor in late September/early October. On Thursday, 9 October 1975 they travelled to Balibo in the company of Chris Santos, a local journalist who was acting in a media liaison role with Fretilin, and some 20-40 Fretilin soldiers. The intention was for the newsmen to film an attempt by Fretilin soldiers to recapture Batugade. However, the attacks over the next 36 hours were unsuccessful, which led Mr Maniaty to assume that the UDT forces were being backed by the Indonesian military. His group left Balibo hurriedly on 11 October when artillery shells rained on the town. Mr Maniaty commented that at that time he was very worried about their chances of survival. Shortly after leaving, a helicopter, which he assumed to be Indonesian since the East Timorese did not possess one, hovered overhead. He was even more concerned that their movements were being spotted. He commented,

“At this point I felt that as journalists and camera crew we were being targeted, if not to kill us at least to move us away from the area.”

After crossing the Nunura River, the ABC convoy met the Channel 7 team travelling in the opposite direction. Mr Maniaty described the artillery barrage in Balibo and told them it was “extremely dangerous” to go up there. He also ventured his conclusion that his group had been targeted because they were journalists. The team, nevertheless, decided to continue.

On 12 October Mr Maniaty spoke to Malcolm Rennie in the courtyard of the Hotel Turismo in Dili. Mr Maniaty’s evidence was that he relayed the ABC’s experience of being shelled and his concern for the safety of journalists going to Balibo. He urged the Channel 9 team to wait a day or so before travelling to the border. Nonetheless, Mr Rennie stated that he and Brian Peters would leave for Balibo as soon as possible. Mr Maniaty had no recollection of talking to Brian Peters.

Observations of the Balibo Five

I am satisfied that the journalists knew the potentially dangerous situation in which they placed themselves in going to Balibo. They were aware of Mr Maniaty's opinion that the ABC group had been followed and targeted by the Indonesians. They were also aware that they would not be able to rely on receiving assistance from the Australian Government. It was with this knowledge that journalists travelled and remained in the border area and became front line observers of the build-up of Indonesian military forces. They were also in daily communication with the Fretilin forces in Balibo and were able to assess the relative strengths of the respective forces. The Channel 7 crew at one stage travelled to Maliana to seek reinforcements for Balibo. As a result of that contact, they were aware that it was not the intention of Fretilin to hold Balibo and no additional support would be forthcoming. Indeed, assessing the chances of Fretilin to hold Balibo, Brian Peters wrote in an unfinished letter dated 15 October,

“If the Indonesians stage an all-out attack, the Fretilin troops here would not stand a chance.”

By 15 October it was quite apparent that the Australians realised an Indonesian attack was imminent. Mr Shackleton mentioned in one of his reports that in the period that the Channel 7 crew were absent from Balibo there had been a build-up of Indonesian naval vessels off the coast of Batugade. He also noted in one of his reports that a helicopter suspected to belong to the Indonesian military had flown overhead. In his unfinished letter dated 15 October, Brian Peters described his perception of the danger confronting the journalists,

“The main worry for the Fretilin forces at the moment (and me) is the fact that the Indonesians have 6 ships just on their side of the Border, a couple of Destroyers, a few patrol boats and what looks like supply boats. We can quite clearly see them signalling to Batugade, but if the Indonesians decide to get really involved and they start shelling from a ship there will be no chance for this place. Our main worry if that happened (apart from being blasted apart) is how to get out of Balibo (there are five Aussie persons here) because of the shortage of transport, if the Indonesians start shelling I am sure that these Fretilin troops would panic and head straight back to Dili.”

These observations about the Fretilin troops were no doubt based on his appreciation of the differences between groups within the Fretilin military. As Tony Maniaty pointed out in his Statement to the inquest, there were two distinct groups of soldiers within the Fretilin military. One group had gone through the process of national conscription within the Portuguese military. They were professional fighters and were well armed with modern weapons. The second group were young Timorese nationals who, although ardent and enthusiastic, were poorly trained, inexperienced and armed with whatever was available. It was from the second group that the troops to defend Balibo had been drawn. It was obvious that they would be no match for the Indonesian Special forces. Hence, if the journalists intended to leave Balibo they were aware that they needed to do so in the early stages of the fighting because the battle would not be prolonged. Yet it would appear from what Mr Peters wrote that, as of 15 October, they had no definite evacuation plan.

In one of his broadcasts Mr Shackleton was filmed painting the Australian flag and the word “Australia” on the house that was, thereafter, referred to as the Australia House. He explained that he did this in the hope that it would give him and his companions some protection in the event of an attack. As Mr Taylor, Counsellor, Australian Embassy in Jakarta, noted at the time of his visit to Balibo in April 1976, “Australia” and the Australian flag were painted on two of the outside walls. The house was on the corner of the road from Batugade and assuming that the attackers entered from that direction, the signs should have been visible before entering the square.

Opportunities to Leave

There were three opportunities for the journalists to leave Balibo safely on or before 16 October. First, they could have withdrawn to Maliana with the Portuguese team of journalists on the afternoon of the 15th. (I should add that it is not absolutely clear that the Portuguese team withdrew because of the perceived danger. In an interview with Mr Sherman in April 1996, Manuel Patricio gave safety reasons as the motivation for leaving. Adelino Gomes on the other hand cited professional reasons and the better facilities at Maliana.) Secondly, they could have left Balibo at the time when the

bombardment commenced as they invited to do by “Glebe 6” and “Sabika” (Americo Ximenes) at around 4.30 or 5.00am. Thirdly, they could have left with the last of the Fretilin soldiers as invited by Rosito Ximenes who was at that time at the fort. At that time they knew that they were the last persons in Balibo and that nothing stood between them and the Indonesian attacking forces.

Although on each of those occasions the journalists declined to accompany the Fretilin soldiers, they never indicated to those men that they intended to remain in Balibo to encounter the attacking force. Rather they indicated that they wanted to stay a little longer in order to secure as much film as possible prior to leaving as proof of Indonesian involvement. To do so indicated not only a professional commitment but also, perhaps, a rivalry between the two news teams or what Gerald Stone described as “pathology” – no one wanted to be “scooped” by the other. Evidence from the Fretilin soldiers is that by the time they left Balibo the Australians had already filmed the naval bombardment and the overhead flight of helicopters. According to Gerald Stone, this film footage would have been a world first. Given that one cameraman, probably Brian Peters from the description given by Fretilin witnesses, filmed Indonesian Special Forces entering Balibo, the question is raised as to whether the teams stayed in Balibo precisely for the purpose of capturing unambiguous evidence of an Indonesian-led attack. The alternative explanation is that, realising they had left their departure too late to receive assistance from Fretilin in their departure, they kept recording as much as they could.

There is also the factor that Mr Shackleton, speaking on behalf of the Channel 7 crew, said in a recorded interview that they were deeply affected by the plight of the East Timorese and were committed to bringing their fight for independence to world attention. Indeed he told a group of Fretilin soldiers that while Australia would not intervene in the fighting it could raise the situation at the United Nations. Hence, by 16 October, it is probably correct to say that, in addition to a professional commitment, the journalists also felt a personal commitment to the people of East Timor to highlight the Indonesian invasion of their country on the international stage.

Given what Brian Peters wrote about the Fretilin troops being faint-hearted, the journalists may have considered the withdrawal of Fretilin troops as premature.

Indeed one of the comparisons between the Australian journalists in Balibo and the Portuguese journalists in Maliana was that, as the Indonesians closed in on the respective towns, the latter were advised as to the timing of their departure by a priest, Father Bruno, whose judgment they obviously respected. When the ABC team was at Balibo, they had the benefit of the local knowledge of Chris Santos, who advised them to leave when the shelling started. It was unfortunate that the Balibo Five did not place the same faith in the judgment of the Fretilin troops who urged them to leave on 16 October because all of those Fretilin soldiers reached Dili safely.

In an interview in 1995 with David Jenkins, journalist, Colonel Dading Kalbuadi emphasised the success of his strategy in attacking Balibo from the rear. He stated that the Fretilin soldiers had prepared for an Indonesian attack coming up the road from Batugade. He stated that troop movements in Batugade had been feigned to distract Fretilin from the real attack from the direction of Maliana. The direction of the attack would have compounded the logistical problem that Brian Peters had averted to in his letter. It would have taken time for the journalists to secure their equipment. Then they would have had to carry it into the bush because all of the roads out of Balibo were under Indonesian control.

While I do not consider there is evidence to suggest that the journalists intended in advance to “cross the line” and place themselves at the mercy of the attacking forces, they, nevertheless, conveyed to the retreating Fretilin soldiers that their status as international journalists would afford them protection in the event that they were captured. Adelino Gomes told Mr Sherman that this was the view of both the Australian and the Portuguese teams.

In addition to their professional status, the journalists also considered that identifying themselves as “Australians” would afford them protection. After all, the relationship between Indonesia and Australia had been portrayed to the Australian public as “friendly”. Indeed, that was the word Mr Renouf, Secretary of the Department of Foreign Affairs used in his evidence to describe the relationship. **As the evidence from eyewitnesses attests, the journalists approached the Indonesians with a gesture of surrender accompanied by the words, “Australian journalist”. This identification was not sufficient to afford them protection – it ought to have been.**

According to Mr Renouf,

“It is a normal practice in international affairs and international relations that a country not only protects the lives of its own citizens but also of such foreigners that may be present on its soil and one does not expect that those particular foreigners will be dealt with cruelly or even killed by another country with whom we had friendly relations.”

The position of the journalists at law is considered in Section 13.

Conclusion:

Prior to going to Balibo each team of journalists had been warned that they were heading into a risky and unstable situation from which neither the Australian Government nor Fretilin would be able to protect or rescue them. They were told personally of the experience of the ABC journalists who left Balibo hurriedly on 11 October because they had come under fire. In particular, they were aware of Tony Maniaty’s opinion that the ABC team had been targeted by the Indonesians because they were journalists. Irrespective of any previous warnings or opinions, the Balibo Five were in the best position to appreciate the build-up of Indonesian naval forces off Batugade and the fact that the Fretilin troops would be easily overpowered in the event of an attack on Balibo. Indeed, Brian Peters’ unfinished letter of 15 October appreciated the danger of their position. They could have left Balibo in relative ease and safety with the Portuguese journalists who went to Maliana on the afternoon of 15 October. The following day they had the option of leaving with some of the Fretilin troops when the bombardment of Balibo commenced at 4.30 a.m. They were invited to join the last of the Fretilin troops to leave Balibo around 6.45 a.m. but wanted to stay “un momento” longer. They misjudged the timing. On the basis of the evidence before me the journalists themselves bear the responsibility for being alone in Balibo at the time the Indonesian and Partisan military forces entered.

SECTION 7 – INDONESIAN KNOWLEDGE AND PLANS IN REGARD TO THE BALIBO FIVE

In order to sustain the myth that there were no Indonesian troops in East Timor, it was imperative for the Indonesian military to ensure all that the activities of Operation Flamboyan were covered by “friendly” members of the media. To control reporting in the Indonesian domestic media, only those journalists who had been carefully vetted were allowed near the action. As far as foreign journalists were concerned, the Indonesian military would have preferred that they were kept out of East Timor entirely. After the Australian Government had lifted the embargo on travel to East Timor, Mr Harry Tjan, whose role as conduit between the Indonesian military and the Australian Embassy in Jakarta is set out in section 8, raised with the Australian Embassy the possibility of prohibiting charter flights from Darwin to Dili. While the Australian Government would have preferred that the embargo remained in place, it was on the basis of legal advice that the ban had to be lifted and could not be reinstated. Mr Tjan was informed that there would be no ban on members of the Australian media travelling to East Timor, although the Government would warn against it. From the Indonesian perspective, if the Australian media could not be kept out of East Timor, then at least they had to be kept away from the border areas from which they could witness the build up and movement of Indonesian troops.

There was ample evidence that the movements of journalists in East Timor were being monitored. A classic example of this was what happened to the three ABC journalists when they travelled to Balibo. In Tony Maniaty’s opinion, their team was tracked within hours and kilometres of their actual position. Artillery fire had been used to turn them away from Balibo on 11 October and their departure was monitored by an Indonesian helicopter flying overhead.

While there is evidence to indicate that the Indonesian military would try to turn back any journalists to prevent them from accessing the border area, including firing warning shots, there is no evidence prior to 16 October to suggest that they would kill them. In one of his reports, Greg Shackleton stated that the Channel 7 team had remained in Maliana by themselves one night after all the Fretilin soldiers had vacated

the town. This would have afforded the Indonesian Special Forces or Partisans a perfect opportunity to kill them if they had so desired. Yet they passed the night uneventfully.

The fact that the Channel 7 team were headed for the border to see firsthand what was happening was public knowledge in Australia – a report from Mr Shackleton setting out their intentions had been aired on the evening news in Melbourne and Canberra on 14 October. Moreover, within East Timor the presence of the Australian journalists was a *cause celebre* and their progress towards the border was openly referred to on Radio Maubere, a public radio station that had been taken over by Fretilin.

Spies

The Indonesian forces in Batugade had access to more immediate sources of knowledge of the movements of the journalists. I note that Mr Shackleton mentioned in one of his tapes that recorded the team's return to Balibo that they had passed an unidentified soldier along the route. I have no doubt that the movements of the Channel 9 and Channel 7 teams were closely observed on the ground by Partisan soldiers and/or sympathisers, particularly as they neared the border area. Both Americo Ximenes and Manuel da Silva gave evidence that on 15 October two East Timorese arrived in Balibo. Both assumed at the time that the men were spies who had come to assess the Fretilin troop numbers and positions. In light of the attack the next morning, it appears as if this was a final reconnaissance mission. The presence of the journalists in Balibo at that time was sure to have been noticed and reported back to Indonesian military commanders.

This conclusion is borne out by the late Joaquim Estornho, a member of the UDT forces, whose evidence came to the inquest by way of an interview conducted with him by Jill Jolliffe in Lisbon on 13 April 1979. He stated that two scouts had been sent to Balibo on 11 October. The scouts apparently reported back to Captain Lino and other Indonesian officers that they had seen some foreigners talking to Fretilin commanders. Additionally, Olandino Gueterres told Mr Sherman that Joao Tavares, a UDT leader, had sent a boy named Daniel into Balibo to ascertain whether there were any foreigners present.

Fretilin Intercepted Radio Communications

There were many East Timorese witnesses who gave evidence at the inquest that the Indonesians were monitoring radio communications between Fretilin military forces. Included in this group are witnesses identified as “P1” and “M4” as well as Fernando Mariz, Antonio Sarmanto and Lourenco Hornai.

In addition, I had before me evidence from a witness identified as “L1” in the form of a transcript of an interview conducted with this witness by Jill Jolliffe. L1 was one of two Timorese radio operators working with the Indonesian military forces in Batugade. He had previously been interviewed by Mr Sherman. In the course of that interview he denied that the Indonesians were aware of the presence of the journalists in Balibo. However, he later told Jill Jolliffe that he had intercepted a Fretilin radio communication that revealed the presence of Australian journalists in Balibo and that he communicated this information personally to Colonel Dading Kalbuadi.

The other radio operator was Jorge Fernandes who, like L1, spoke both Portuguese and Tetum. Despite the best efforts of the coronial investigators, Mr Fernandes could not be contacted in respect of giving evidence at the inquest. Hence, I had to rely upon notes of previous interviews conducted with him in Lisbon by Jill Jolliffe on 23 April 1978 and 22 April 1979. Mr Fernandes told her that it was his task to monitor Fretilin radio broadcasts and report the contents to the Indonesians. In the 1978 interview he commented that he was aware prior to the attack on Balibo and Maliana that there were journalists in the vicinity but he denied passing this information on to the Indonesians - he did not think it was of sufficient importance. In the 1979 interview, however, he went a step further and stated that the Indonesians would have known the movements of the journalists because they were aware of all Fretilin radio communications. Presumably, other radio operators, such as L1, did not share his reticence.

Interviews with Indonesian military commanders

In an interview with journalist David Jenkins in 1995, Major-General Murdani candidly admitted that the Indonesian military were aware that the Australian journalists were in Balibo. Colonel Dading, on the other hand, denied in an interview with Mr Jenkins on 12 October 1995 that he was aware of the journalists' presence. However, Colonel Aloysius Sugiyanto, whom Mr Jenkins interviewed on 3 September 1997, admitted that Colonel Dading had sent men into Balibo to gather intelligence, although he (Sugiyanto) was unaware of the outcome. **I am satisfied on the totality of the evidence that Colonel Dading Kalbuadi was aware that the journalists were in Balibo prior to the attack on 16 October and that he subsequently disclaimed any knowledge of their presence in order to distance himself from his actions based on that knowledge, including orders to kill them, to destroy their bodies and to engage in an orchestrated cover-up of the circumstances of their deaths.**

Plans of the Indonesian Military forces

Fernando Mariz

Mr Mariz, who gave oral evidence at the inquest, was a member of UDT. In October 1975 he was based in Batugade where he was trained by Indonesian soldiers under the command of Major Leo, the commander of Team Umi. Mr Mariz gave evidence that about two days prior to the attack on Balibo he heard via Radio Maubere, a public radio station that had been taken over by Fretilin, that there were five journalists in Balibo. **He approached Major Leo and asked him if he was aware of this. Major Leo's response was,**

“Don't worry. We know already that they are in Balibo. We have good medicine for them.”

Mr Mariz indicated that he was in no doubt of the meaning of this response – the journalists were to be killed.

I note that when Mr Mariz entered Balibo the following day he was told (by a person whom he cannot remember) that the Commander of the Balibo operation had ordered

the journalists to be killed and that their bodies were in the process of being burnt. This confirmed his interpretation of Major Leo's comment.

Lourenco Hornai

Mr Hornai gave evidence at the inquest via video link from Portugal. He was one of two UDT commanders, along with Manuel Carrascalao, whose troops were stationed in Batugade for about a month prior to the 16 October 1975. He stated that his immediate Indonesian superior officer was called "Major Leo" and the overall Commander of the Indonesian forces in East Timor was Colonel Dading Kalbuadi. Mr Hornai indicated that, although he could not speak Bahasa, he was able to communicate with Indonesians soldiers with the assistance of an Indonesian soldier called Gabriel who spoke Tetum. Gabriel told him that the Indonesians were monitoring radio broadcasts and were well aware of presence of journalists. Mr Hornai was under the impression that there were 8 journalists in all, three or four Portuguese and the others foreigners.

Mr Hornai gave evidence that several Indonesian soldiers and, significantly, Colonel Dading himself told him that the Australian journalists were communists who were in East Timor to assist Fretilin. Mr Hornai stated that neither Colonel Dading nor Major Leo personally expressed to him any plan to eliminate the journalists. **However, soldiers under Major Leo's command, including a Lieutenant Marcos, told him that they planned to eliminate the journalists in order to ensure that they could not report on the Indonesian attack.**

Antonio Sarmiento

Antonio Sarmiento gave oral evidence at the inquest. He stated that he was a member of UDT who had gone to Batugade on 14 October 1975 in order to witness the sale of a coffee plantation by a friend, Manuel Babo, to Colonel Dading Kalbuadi. That night he stayed in the same house as Major Leo, Captain Fernando and Captain Yoannis, all of whom were members of the Indonesian Special Forces. **Mr Sarmiento recalled that Captain Fernando told him over dinner that they (the Indonesian forces)**

were aware that the journalists were in Balibo, that they intended to locate them, arrest (capture) them and, if possible, kill them.

Jose Martins

The late Jose Martins was the founder of the KOTA party that subsequently joined with Trabalista, Apodeti, and UDT in an anti-Fretilin alliance he referred to as MAC but which others have describes as Partisan. Mr Martins became the liaison officer between the Indonesian forces and the Partisan forces. He was close to the Indonesian officers and even shared a room with Colonel Dading in Batugade within the Indonesian compound. He had access to the intelligence/communications room and heard reports from field commanders to base. Mr Martins provided six accounts between 12 November 1975 and 7 May 1976 about his role and knowledge of the events of 16 October 1975 by way of interview, press conference and affidavit, designed primarily to counteract the false Statement dated 22 October 1975 about the events in Balibo on 16 October that he had co-signed at the instigation of the Louis Taolin, (see Section 11).

I had the benefit of all of these documents being tendered at the inquest. These accounts were provided within seven months of the relevant events and his recollection of those details that can be corroborated from other sources is reliable. However, all of his accounts were given with the assistance of interpreters and this may account for some of discrepancies between the various versions.

Mr Martins confirmed that the Indonesian military base at Batugade had been intercepting Fretilin communications prior to, and in the course of, the fighting at Balibo. Of greater significance was the fact that Batugade was receiving messages from helicopters and commanders in the field about the progress of the fighting at Balibo. He recalled receiving a message from the Indonesian commander at Balibo about the Australians. Unfortunately, the contents of that message were described differently in the various accounts of Mr Martins. In a signed and sealed affidavit of 7 May 1976 he simply cited the message from the Indonesian commander at Balibo as, "some Australians were at Balibo". In a transcript of a press conference held on 5 May 1976 he said, "We received information in the command post 'Australians are up

there, shoot them.’ ” He added that he did not know who gave the order. However, in an interview with Mr G.J. Price, Assistant Secretary, Department of Foreign Affairs, and others in Melbourne on 10 May 1976, Mr Martins stated that he personally did not hear the radio message but was told about it by one of the Portuguese radio operators around 7.30 a.m. Nevertheless, he recorded in his diary that a message arrived at 6.45 a.m. which indicated that some Australians had been killed or shot. Mr Price has added a note that the Portuguese word “abatidos”, used by Mr Martins, was better translated as “slain”.

A comparison of the transcripts showed that the Price interview was much more detailed and structured than the others. Hence, I consider the most reliable version is that Mr Martins did not himself hear the radio report from Balibo or any response from Batugade but received the evidence second hand.

Mr Martins stated that Indonesian helicopters observed the fighting in Balibo and reported back to Batugade. Since there is evidence from Fretilin witnesses that two of the Australians were filming at least one helicopter overhead, it can be assumed that they were visible to the helicopter crew and that their activities were reported back to Batugade. **Mr Martins was told subsequently by Louis Taolin that the Australians had to die because they had taken photographs that showed that the Indonesian army was fighting Fretilin.** Mr Martins commented that, immediately on receipt of the message from the Indonesian commander in Balibo, Colonel Dading, Louis Taolin and one Djumaryo, an Indonesian photographer, went by helicopter to Balibo.

I should note for completeness that, when interviewed by Messrs. Alan Taylor, Colin Rutter and Richard Johnson in April 1976, Jose Martins stated that he had been told by Glebe 2 that the five journalists had been shot by Indonesian soldiers **because they had previously been seen taking photographs of Indonesian helicopters and other war equipment.**

Adelino Gomes, one of the Portuguese journalists who were with the Australian journalists in Balibo prior to their departure on 15 October, told Mr Sherman that, in

his opinion, they were killed because they filmed the proof that Indonesia was intervening in Timor.

General approach

As noted previously, one of the functions of Operation Komodo was the dissemination of propaganda. One of the lies perpetrated was that any white person found in East Timor was a communist who was assisting Fretilin. This explanation was used by the Indonesians to describe the journalists after their deaths. However, the general usage pre-dated 16 October. For example, Jorge Fernandes, who was Portuguese and member of UDT, had difficulty persuading the Indonesians of his bona fides because he was white and well-dressed, so entrenched was the equation between white, communist and Fretilin. Once white people had been designated as supporting Fretilin, the groundwork had been for dealing with them in the same way one would deal with Fretilin. Hence, Glebe 2 gave evidence that he received orders that anyone discovered in the border area should be considered as communist and Fretilin and, as such, should be shot. Leaving aside any specific order to kill the journalists, given this situation it would have taken a direct order for the journalists not to be harmed in the course of the attack on Balibo if their safety was to be ensured. Major-General Mudani, in the Jenkins interview, confirmed that he gave no such order.

In his 1978 interview with Jill Jolliffe, Jorge Fernandes referred to the Indonesian strategy for the attack on Balibo,

“The Indonesians encircled Balibo with the plan of catching and killing whoever was in Balibo. Maybe they didn’t know who was there beforehand, but the plan was to kill everyone inside.”

As the evidence set out above attests, the Indonesian Commander in Batugade as well as his officers was aware that Australian journalists were in Balibo prior to the 16 October. Any plan to catch and kill everyone inside Balibo at the time of the attack necessarily contemplated that they would be killed unless they had withdrawn before Indonesian Special Forces entered the town.

There is strong circumstantial evidence that Major-General Murdani authorised the killings. He was the senior military officer responsible for achieving the goals of Operation Flamboyan. The achievement of those goals required military success in destroying Fretilin strongholds. Of equal importance was the achievement of those military objectives while keeping the role of the Indonesian Special forces secret. Major-General Murdani spent about a week in Batugade to oversee personally the final preparations for the assaults on 16 October. He returned to Jakarta on 14 October. He has admitted that he knew the journalists were in Balibo at that time. Their presence must have been factored into the plans for the attack. It is inconceivable that he did not give instructions about what should happen to them if they witnessed the attack. Indeed there is the evidence of the Timorese witnesses about their conversations with the some of the junior officers to the effect that plans were in place to kill them. This is supported by the information provided to Ms Jolliffe by Mr Fernandes that everyone inside Balibo was to be killed. There is also the admission of Major-General Murdani to Mr Jenkins that he gave no orders for the protection of the journalists.

On the night of 15 October Major-General Murdani had dinner with Ambassador Woolcott. He discussed with him the plans for the attacks the following day. However, he made no mention of the fact that the journalists were in Balibo. Mr Woolcott gave evidence that had the issue of the presence of the journalists been raised with him, he would immediately have asked for a guarantee of their safety. No doubt in an effort to avoid such a request, Major-General Murdani did not raise the topic.

Based on their knowledge of the Indonesian military hierarchy, various witnesses expressed opinions as to whether the journalists would have been killed if not on orders from the top. James Dunn, retired foreign affairs consultant and the leader of a humanitarian aid mission in East Timor in October 1975, gave evidence that he doubted that troops on the ground would have taken the initiative on such a matter. Based solely on his knowledge of the workings of the Indonesian military in the context of the necessity of keeping the Indonesian military involvement in East Timor

secret, he considered that a calculated decision had been made to kill the journalists and that the order emanated from as high as General Murdani.

In contrast, Mr Jockel, former director of the Joint Intelligence Organisation expressed the following view,

“ I believe it is unlikely that the orders were issued by the senior Indonesian military authorities. This could have been inconsistent with the Indonesian governments carefully conducted political strategy of neutralising Australia by informing us in advance of the attack plans and policy interventions. It would not have been in their interest to antagonise us with a premeditated order to kill and dispose of the bodies. It is more likely that other steps would have been taken. Our Ambassador could have been told by the Indonesian authorities that they understood there were Australian journalists in the attack area and we had to get them out.

I consider it conceivable that an order to kill the journalists could have been given by the local commander without reference to a higher authority. Having said that, I also consider that the killings could have taken place without any orders.”

(I note in a Cablegram to Canberra dated 27 November 1975 Ambassador Woolcott referred to the fact that Major-General Mudani had warned him of the dangers to journalists in Bobonaro and Atabae, but there is no indication when this occurred and neither Balibo nor Maliana, the targets on 16 October, were mentioned.)

All of the Foreign Affairs personnel who gave evidence stressed that the deaths of the Balibo Five had dealt what was described by Mr Woolcott as “a massive blow” to the Australian-Indonesian relationship. In particular, General Yoga and Major-General Murdani were perceived as placing great store on that relationship and, for that reason, would be unlikely to jeopardise it by ordering the killing of the journalists. Yet as the evidence above discloses, while the Australia-Indonesian relationship may have been of on-going importance, the immediate imperative as far as Indonesian foreign policy was concerned was to conceal the fact that the attacks within East Timor were lead by Indonesian forces. Yet, as Mr Renouf commented in his evidence,

there was an alternative to killing the journalists – simply capturing them and holding them incommunicado with their equipment until the end of hostilities would have accomplished the same end. It would appear that Major-General Murdani wanted a more permanent guarantee of their silence. The fact that he later expressed his regret at their deaths to Ambassador Woolcott is not inconsistent with the fact that he ordered them to be killed if they were still in Balibo when the Special Forces captured the town.

There is strong circumstantial evidence that Colonel Dading Kalbuadi gave orders to his field commanders that anyone found in Balibo was to be killed, including the five journalists. There is also strong circumstantial evidence that the orders emanated from Major-General Murdani.

SECTION 8 - AUSTRALIAN FOREWARNING OF THE ATTACK ON BALIBO

In 2000, documents held by the Department of Foreign Affairs as well as the Department of Prime Minister and Cabinet that were relevant to the deaths of the Balibo Five were consolidated and published in a book entitled *Australia and the Indonesian Incorporation of Portuguese Timor 1974-1976*. In summary, cablegrams within that book from the Australian Ambassador in Jakarta, Mr Woolcott, to the Department of Foreign Affairs in Canberra demonstrate quite clearly that there was knowledge within the Australian Government that Indonesia planned to attack Balibo along with Maliana on 15 October, 1975. (Those plans were a day early and as set above, the actual attack occurred on 16 October 1975). I note that here the evidence of Mr Renouf that he, as Secretary of the Department, received all Cablegrams from Jakarta and that the Minister of Foreign Affairs, the late Senator Willesee, received his own set of Cablegrams.

In order to understand how Australia became aware of these plans, it is necessary to refer to Australian foreign policy in relation to East Timor. There were before the inquest many documents in which the foreign policy was set out and additionally, I heard oral evidence from various witnesses on this topic including the former Prime Minister and the head of the Department of Foreign Affairs. It is not my intention to set out that policy in detail, nor is it my intention to provide a critique of that policy in light of possible alternatives. Rather I intend to address those aspects that are necessary to provide a background context in which the relevant interactions between Australian and Indonesian officials occurred.

The basic policy as outlined by Prime Minister Whitlam in his talks with the President Suharto in Jogjakarta on 6 September 1974 could be summarised as “integration through self-determination”. Mr Renouf, who had earlier secured Senator Willesee’s agreement to a policy of self-determination for East Timor, explained the new policy in his book *The Frightened Country*,

“Australia’s primary concern was self-determination in East Timor but voluntary union with Indonesia through an internationally acceptable act of

self-determination would best serve the objectives of decolonisation and regional stability.”

Mr Renouf further commented that, from the beginning, Australia had warned Indonesian officials that Australia would not condone force and that the use of force would inflame public opinion and necessarily damage the bilateral relationship. The importance of that relationship was succinctly set out in a submission prepared by W. B. Pritchett, First Assistant Secretary, Department of Defence on 9 October 1975 as quoted in *Documents on Australian Defence and Foreign Policy 1968–1975*,

“It is submitted that what is ultimately, and most importantly, at stake with relations with Indonesia is the defence interest. Apart from PNG, Indonesia is the territory through and from which any non-nuclear attack against Australia would be most readily launched..... A secure, united and well-disposed Indonesia is therefore a basic and enduring desideratum of our strategic policy.”

By mid-1975, it had become abundantly apparent with the emergence of the adversarial political parties in East Timor, that there was going to be no unified East Timorese voice promoting integration with Indonesia. It was also apparent that Fretilin’s advocacy of independence had struck a chord with the Australian media and the Australian public, much to the chagrin of the Indonesian Government. In addition to official bilateral communications, Australia was kept apprised of developments in Indonesian policy by one Harry Tjan. Mr Tjan was the Head of the Centre for Strategic and International Studies (“CSIS”) – an organisation closely connected with key Indonesian military figures. Richard Woolcott, Ambassador to Jakarta, described the role and importance of CSIS as follows,

“A year before I arrived in Jakarta, the embassy had early in 1974 correctly identified CSIS as the most important source of accurate information on Indonesia policy and plans in relation to the future of Portuguese Timor and on a range of other sensitive issues. CSIS was able to provide us with intelligence not available from the Indonesian Foreign Ministry (DEPLU) or other Indonesian ministries. Such information was not handed out by our contact in CSIS easily: embassy officers over a long period had to gain the trust and confidence of key CSIS personalities.

The information gained from CSIS was so sensitive that the embassy had to take special care not to compromise its sources in CSIS in case those sources had not been specifically authorised to pass such information to us. Thus at no time did the embassy tell General Benny Murdani, for example, or other key Indonesian figures involved in Portuguese Timor, that CSIS had provided such intelligence to us.”

On 10 July 1975, Mr Tjan told officials at the Australian embassy that the Indonesian Government had made a final policy decision that East Timor would be incorporated into Indonesia. He also commented that the only matters that remained to be determined were procedural, that is, when and how the objective would be achieved. Mr Tjan indicated that, prior to reaching that decision, Indonesia had undertaken a study of likely international reaction to Indonesia intervention. That study concluded that only two countries would protest vigorously – China and Australia. Whereas China’s protest would be routine and stereotyped, Indonesia recognised that certain groups and the press would create a commotion and that the Australian Government would feel compelled to protest. “But it would all die down in due course”. Mr Tjan stated that the incorporation would probably take place sometime in 1976.

On 30 September 1975, Mr Tjan informed the Australian embassy that President Suharto had agreed that up to 3,800 Indonesian soldiers would be put into East Timor gradually to assist the anti-Fretilin forces. At this time it was thought that the Raja of Atsabe would be the figurehead for the anti-Fretilin side. Mr Tjan acknowledged that Indonesian assistance of this magnitude would not go undiscovered. On 13 October, Mr Tjan provided more details of Indonesian “assistance”. He indicated that the timeframe had been changed so that the main operation – the occupation of Dili – would have occurred by mid-November. He further indicated that the operation would begin on 15 October and that the initial thrust would be through Balibo and Maliana.

On 15 October, Mr Tjan confirmed that the Operation would commence that day. He stated that all Indonesian Special Forces troops operating in East Timor would be in civilian clothes and that initially, an Indonesian force of 800 would move through

Batugade – Balibo – Maliana – Atsabe before progressing toward Dili through Ermera. He acknowledged that the presence of Indonesian forces of this magnitude would necessarily become public. However, he reaffirmed that it was Indonesian policy to deny the presence of any Indonesian forces in East Timor.

Mr Tjan was not the only source who divulged Indonesia's plans. On 15 October Ambassador Woolcott dined with General Murdani who basically confirmed the plans as outlined by Mr Tjan. He also provided the information that all of the Indonesian military personnel who operated in East Timor would be "volunteers". By the time this conversation was reported to Canberra, the attack on Balibo had concluded and the Balibo Five had been killed.

Those witnesses from the Department of Foreign Affairs, whether in Jakarta or Canberra, readily agreed that they knew on 13 October of the plan to attack Balibo on 15 October. However, all denied knowledge that the five journalists were present in Balibo at that time. Indeed, in light of the foreshadowed progress of troops towards Dili, the Department had started to address the issue of ensuring the safety of the Australians both in Dili and elsewhere.

I consider that it is relevant to note the contents of a Cablegram that was sent to Jakarta from Canberra on 1 December 1975,

"For your own information, we are considering what might be done to warn Australians in Portuguese Timor about possible further action. Meanwhile you should make it clear to Mr Tjan (and others if you think it desirable) that we expect the Indonesians to exert effective influence to see that the lives of Australians are not endangered. Any repetition of the experience of the five journalists would have a grave effect on public opinion in Australia and could damage relations far more severely than that episode. In the circumstances, we look to the Indonesians to get guarantees from the Timorese parties, Fretilin aside, that they will respect the lives of Australians, who will be readily identifiable. (You will appreciate that we do not find persuasive the Indonesians' arguments about their lack of influence with the non-Fretilin parties.)"

The Cablegram then went on to list the names of 26 Australians.

I was concerned to ascertain why such a guarantee of safety had not been sought in relation to those present in East Timor when Australia was informed of the invasion plans on 13 October. Mr Renouf commented that such a guarantee had never been sought before from any country and what had sparked the request on this occasion was, in fact, the fate of the Balibo Five. I note that there was no response from the Indonesians to this request and the Australian Embassy did not expect one. In any event the guarantee of safety did not afford universal protection for those named. One of the journalists on the list was Roger East, who was killed in Dili on 8 December 1975.

SECTION 9 – SIGNALS INTELLIGENCE (SIGINT)

The importance to the inquest of Sigint material is primarily to ascertain:

- a) Whether there were any communications prior to 16 October about instructions in relation to the journalists that would demonstrate conclusively that they had been killed on orders; and
- b) whether there were any subsequent communications that would further elucidate the manner and cause of their deaths.

Jorge Fernandes, as one of the radio operators listening to Fretilin communications within the Indonesian communications base at Batugade, was well-placed to observe the workings of the base generally. He told Jill Jolliffe that Colonel Dading Kalbuadi communicated with his field commanders by way of RACAL back pack radios, a different, and larger, model from that used by the Portuguese. This evidence is supported by that from Fernando Mariz and Antonio Sarmento. Of particular significance is Sarmento's evidence that around 6 a.m. on 16 October 1975 he heard through the "microphone" that the bombardment had ceased and that the infantry was advancing on Balibo. Hence, not only were there the technological means to communicate between Batugade and troops in the field, there were actual communications between Balibo and Batugade in the course of the attack on the 16th. A more detailed account of the extent of the communications is provided by the evidence by Jose Martins in section 7. It is also important to remember that, according to Messrs. Martin and Fernandes, Colonel Dading Kalbuadi flew to Balibo in a helicopter as soon as he received the news that Balibo was in Indonesian hands.

In terms of the line of reporting through the military hierarchy, Mr Fernandes stated that the radio communications went directly from Batugade to Kupang. Fernando Mariz gave evidence that he believed there were also direct radio communications between Batugade and Jakarta. It is important to remember the various potential lines of communication when assessing the evidence in respect of Indonesian communications intercepted at Australian bases.

Defence Signals Directorate

The Defence Signals Directorate (“DSD”) was a statutory agency within the Department of Defence that had been established to gather overseas intelligence and to communicate this intelligence to nominated government agencies and persons. It was described by one of its former Assistant Directors, Mostyn Williams, as a “collection agency”. It was not the function of DSD to analyse intelligence but rather to distribute the end intelligence product to its various “clients” ie the authorised recipients within Government. DSD had a liaison office in Canberra to ensure its product could be easily disseminated to its clients in the capital.

Two of the most important clients of DSD were the Department of Defence and the Department of Foreign Affairs. In particular, the Joint Intelligence Organisation (“JIO”) within the Defence Department was charged with preparing analytical reports for senior public servants and government Ministers. Briefings and reports on current events, some on a daily basis, emanated from a section within JIO called the Office of Current Intelligence (“OCI”). Historically, the head of the OCI was drawn from the Department of Foreign Affairs rather than the Department of Defence.

Shoal Bay Receiving Station

In 1975 the Defence establishment in the Northern Territory, Shoal Bay Receiving Station (“SBRS”), was the principal receiving station intercepting overseas signals communications in relation to the events in Timor. Although in the course of the inquest I viewed sigint material that had been gathered by receiving stations in other States, the main focus was on the material gathered at Shoal Bay because it was at SBRS that, allegedly, two of the most controversial intercepts were received.

Evidence from those familiar with the operations at SBRS indicated that there were three categories of officers employed there. First in the sequence of receiving material were the intercept operators who prepared running transcripts of intercepted communications. This material was then passed to the linguists who undertook the translations. Finally, processors or reporters formatted the material into end product reports that were sent to DSD headquarters in Melbourne. According to various

witnesses at the inquest, the volume of material being received around October 1975 was so consistently heavy that SBRS was staffed on a 24 hour basis. It would appear that this usual pattern of processing was sometimes bypassed and intercepted material went directly to DSD Headquarters in Melbourne for translation and processing.

In the course of the inquest I heard evidence from witnesses in the following categories to ensure that all possible sources of information were thoroughly canvassed:

- a) linguists
- b) processors/reporters
- c) Commonwealth officers, principally in the Departments of Foreign Affairs and Defence, who received flimsies and reports and, in turn provided briefing notes and reports to their superiors;
- d) Senior members of staff of Cabinet Ministers, who may have reviewed relevant classified material; and
- e) The former Prime Minister and the Minister of Defence who may have formed part of a very restricted circle to view the most sensitive of classified documents.

The classified documents that were tendered in evidence in closed court were raw product, end product reports and various compilations or secondary reports. As noted previously, given the breadth of the subpoenae that I issued, the extensive process of cross-referencing that was undertaken and the sworn evidence of Mr Cameron Ashe about the searches undertaken to ensure compliance with the subpoenae, I am satisfied that that all extant classified material of possible relevance to the inquest was made available to myself and those authorised to view it. This does not mean that classified material has not been destroyed in the past. For example, there is evidence that material relating to the events in East Timor in 1975 was destroyed when DSD moved its headquarters from Melbourne to Canberra in 1994. However, the documents destroyed were only DSD holdings. Copies of the same documents that had been distributed to DSD clients should still have been held by those organisations. Additionally, references to any such primary documents could be expected to be found in secondary sources. Failing that, evidence of the existence of a discarded intercept could be given by any of those persons in the abovementioned categories of

handlers or recipients who saw it. Hence, if a document was discarded, deliberately or accidentally, it could be expected someone at some time had either read or saw it and could attest that it had existed.

In the course of giving their evidence, witnesses, formerly employed either at SBRS or in other areas of the Commonwealth public service, would mention the names of colleagues whom they considered might be able to assist the inquest. Similarly, those authors and journalists who gave evidence were asked to provide details of anyone whom they considered might be able to provide evidence of intercept material. Wherever possible those persons who were so identified were located and interviewed by the investigating officers and those who could add to the evidence before the inquest were subsequently authorised to give evidence.

There are some things to be borne in mind about the sigint evidence. The value of the intercepted communication depends first on the accuracy of the information that is being conveyed by the original sender and secondly, on the accuracy of the translation at the receiving station. An additional problem is the passage of time. Some witnesses were putting their recollections to the test for the first time at the inquest, some thirty years after reading a document. Others had provided evidence to Tom Sherman but his inquiries were over twenty years after the event as well. Within that time much has been written about the events at Balibo and, in particular, there has been considerable speculation about how the journalists met their deaths. Therefore, the prospect that witnesses' memories may have been unconsciously "contaminated" by numerous accounts which they had subsequently read or viewed on television is a distinct possibility. Hence, the greater the corroboration of a witness's evidence, the more reliable it was likely to be.

Office of Current Intelligence ("OCI")

Evidence relating to the sigint material is probably best understood in the context of the organisational structure and functions of the Joint Intelligence Organisation (JIO") and, in particular, one of the Branches within it, the Office of Current Intelligence ("OCI"). On this topic I quote directly from the Statement of the Head of the OCI in October 1975 – **Rowen Frederick Osborn,**

“ 6. The function of the OCI was to bring it to the attention of senior Ministers, senior policy officers and senior armed forces persons key developments in foreign affairs.

7. The OCI obtained material from a range of sources including foreign affairs cables, press reports, scholarly works, signals intelligence (sigint) from DSD and the Australian Secret Intelligence Service (ASIS), and on the basis of that information would prepare a number of publications including:

a) *Highlights* - this document was prepared early each morning by the OCI duty officer and I saw it as an internal working document of the OCI. The duty officer would review new source material which had come into the OCI and in consultation with analysts would prepare *Highlights*.

b) *Daily Bulletin – Daily Bulletins* were generally prepared and circulated each weekday to a limited number of persons with a high security classification (including the Prime Minister, ministers for Defence and Foreign Affairs and the permanent heads of those Departments). The function of the *Daily Bulletins* was to draw to the attention of those persons significant developments in international affairs. The *Daily Bulletin* was around one to two pages in length. There was not a *Daily Bulletin* each day.

c) *Weekly Report – Weekly Reports* were generally prepared and circulated once per week to the same persons who received the *Daily Bulletins*. The *Weekly Report* was a more in-depth consideration of issues and would sometimes cover issues of less than immediate interest.”

The positions of the relevant witnesses within JIO and OCI were as follows:

Gordon Jockel – Director of JIO;

Rowan Osborn – Head OCI;

John Bennetts (deceased) – Deputy Head of OCI;

Gary Klintworth – Intelligence Analyst, China Desk, OCI and Duty Officer on 17 October 1975;

Geoffrey Cameron – Intelligence Analyst, Timor Desk, OCI

Jennifer Norvick (formerly Herridge) – Intelligence Analyst, Indonesia Desk, OCI

Edward Howes – Administration, OCI

Rowan Osborne

Rowan Osborne was the Head of the OCI. He provided the systems evidence that I quoted earlier in this Section. He recalled that prior to 16 October he was aware that there was a prospect that there would be an invasion of East Timor and that there was a high probability that the Indonesian military would be involved. However, he was unaware of a specific date or place for the invasion to occur. Prior to 16 October Mr Osborne was aware from the public media that Australian journalists were in East Timor and that they were moving about in dangerous areas near the border. He may also have gained this knowledge from OCI material.

Mr Osborn read the initial report on the 17 October after it was drawn to his attention by his deputy, the late John Bennetts. He recalled thinking that it was the journalists who had been killed. He agreed with Mr Bennetts that the information was too sensitive for the daily *Highlights*. They had been withdrawn by Mr Bennetts. Furthermore, future material on the deaths would not to be subject to general distribution. Rather a special series of reports would be circulated to a group whom I have termed the “inner sanctum”. This was the only time that Mr Osborne could recall this happening.

As to Mr Osborne’s recollection of the texts of the intercepts he saw, he indicated that he did not see anything that would lead him to believe that the journalists were killed on orders. His opinion was that at least some of the journalists had been accidentally

killed in cross-fire. The others were then executed because the Indonesians wanted to eliminate witnesses.

Mr Osborne could not recall seeing any document with the contents of the Brownbill/Cunliffe intercept.

Gary Klintworth

Gary Klintworth, a Chinese analyst in OCI, had been performing the function of Duty Officer since 15 October. He explained that the function of the Duty Officer was to arrive at work at 6 am and draft a one page summary of the critical events that had been reported in the various types of intelligence material received overnight.

He recalled that when he arrived at work on the morning of 17 October he saw sigint material carrying the message,

“Among the dead are four white men. What are we going to do with the bodies?”

Mr Klintworth immediately concluded that the persons who had been killed were Australian journalists whom he knew to be in Balibo. In his evidence he could not recall the source of his information, whether it was from the public media or he had seen something officially. In any event, he wrote in the *Highlights* that the Australian journalists had been killed and gave them to Mr Howes to print and distribute.

However, the Deputy Head of OCI felt the matter was too sensitive for general distribution and so the *Highlights* were withdrawn. Mr Klintworth was aware that further material about the journalists was received but he, as a Chinese analyst, was not on the limited distribution list.

Mr Klintworth was one of the few people who could place the journalists at Balibo and at the same time was aware that the Indonesian invasion was headed in that direction. It is ironic that he was on the China Desk, meaning that it was not within his sphere of expertise, to follow events and write reports on either Indonesia or East Timor.

Brownbill/Cunliffe Intercept

In March 1977, George Brownbill, then Secretary to the Royal Commission inquiring into Australia's Security and Intelligence Services, and Ian Cunliffe, Assistant Secretary, accompanied the Commissioner, Justice Hope, on a visit to Darwin. In the course of that visit the three attended SBRS for an inspection tour. Mr Brownbill and Mr Cunliffe, who both provided Statements and gave oral evidence at the inquest, have similar recollections about the subsequent sequence of events. Following a briefing in a conference room, they walked through into an operations room lined with telex machines and other communications equipment. Justice Hope had not yet joined them when Mr Cunliffe was approached by one of the operators who handed him a document uttering words to the effect, "You people should know about this." He also said, "This was obtained at the time of the deaths of the journalists."

Mr Cunliffe drew the document to Mr Brownbill's attention and they read it together. Neither drew the document to the attention of Justice Hope nor did either of them mention it subsequently until Mr Cunliffe approached Mr Sherman in the course of his second inquiry. When questioned as to the reason he had not raised the matter earlier, Mr Cunliffe said that the intercept had not appeared relevant to the terms of

reference of the Royal Commission and that he considered he had discharged his duty by drawing the document to Mr Brownbill's attention. Mr Brownbill also commented that it was not relevant to the systemic issues being investigated by the Royal Commission and that, in any event, he had assumed that the document had been appropriately dealt with by DSD at the time it had been received, irrespective of whether its contents had been made public. Unfortunately, despite extensive investigation, including official appeals through the media in the course of the inquest, the identity of the person who handed the intercept to Mr Cunliffe remains a mystery. The same applies to the provenance of the document itself. Where it was found and where it was placed in 1977 after Messrs Brownbill and Cunliffe had perused it are questions that remain unanswered.

As to the contents of the document, Mr Brownbill gave evidence both to Mr Sherman and to the inquest that he had a good recollection of three components of the message:

- a) as directed, or in accordance with your instructions, the journalists have been shot;
- b) the journalists were shot in the back of a shed (or room);
- c) orders were sought as to what to do with the journalists' bodies and effects.

When he spoke to Mr Sherman Mr Cunliffe did not have the same detailed recollection of the substance of the message as Mr Brownbill. However, he could recall clearly his conclusion drawn from the text namely, "the circumstance of their (the journalists') deaths was not cross-fire in the heat of battle but rather they were taken and executed." After he had refreshed his memory from Mr Brownbill's account Mr Cunliffe recalled that it was the text quoted above that led him to the conclusion that the journalists had been executed. Both Mr Brownbill and Mr Cunliffe were under the impression that the message was sent from a commander in the field to his military superior in Jakarta.

Given the eyewitness accounts set out in section 5, the contents of this intercept as to the circumstances of the deaths of the journalists could be accurate. Additionally, the evidence of Jose Martins indicates that the Commander of the forces at Balibo was in radio communication with Colonel Dading at Batugade. One message of which he was told was that the Australian journalists were present in Balibo when the

Indonesian forces entered. The following communication, which Martins thought was from the field but, logically, must have been from Colonel Dading, was the order to shoot them. It is logical that the next communication would have been from the field commander to Colonel Dading, reporting back in the terms set out in the Brownbill/Cunliffe intercept. I emphasise that this is purely speculation and is not in accordance with the recollections of Messrs. Brownbill and Cunliffe that the message was sent to Jakarta.

The problem with the Brownbill/Cunliffe intercept from an evidentiary perspective is that no one else has ever seen it or heard of it. Pamela Gadd was a linguist at Shoal Bay. Her evidence outlined the system for recording and translating intercepted messages. She stated that the operators would provide messages to the linguists for translation. She recollected that it was the usual practice for a linguist to show his or her translation to another linguist for checking before it was provided to the reporting section for production as a formal report to users. It is possible, therefore, that the document shown to Messrs. Brownbill and Cunliffe was the first translation of an intercept that was later amended by another linguist and it was the later version that was subsequently processed and disseminated to clients. This is the conclusion reached by Mr Sherman in his second report. It is certainly a possibility. However, if there is a later version, the substantive message has changed beyond recognition. There is no extant end product report or secondary reports in which such substantive content has been mentioned. No one else, including operators, linguists, reporters who produced the end product reports and recipients of those reports, could recall reading such a message.

If the translation is accurate, the communication was sent after the journalists had been shot but before their bodies had been burnt. Since the latter process commenced later on the morning of the 16th after Colonel Dading's arrival at Balibo and the propaganda photographs of the journalists in Portuguese army uniforms had been taken, the intercept would have been if not the first, then one of the first received in Australia. Yet as will become apparent from the evidence of witnesses who were the initial recipients of the Sigint material, this was not the content of the first document they saw.

The prospect that there could be material received within DSD in terms of the Brownbill/ Cunliffe intercept that was not distributed to OCI was addressed by Mr Mostyn Williams. As part of his duties as one of the three Assistant Directors of the DSD, Mr Williams saw all end product reports produced by the Branch. Unfortunately, Mr Williams was too ill to appear personally at the inquest. However, he prepared three Statements that were tendered in evidence. He recalled seeing only two end product reports. The first was to the effect that “Four Europeans were killed” and a later one that stated that their bodies had been “reduced to ashes”. He had no recollection of a report that recorded that the journalists had been killed on instructions. He commented that, although he believed that the journalists had most probably been deliberately killed, he had never been sure because he had never seen any signals intelligence to support that conclusion. If he had seen any report that the journalists had been killed on instructions he would not have been in any doubt.

Mr Williams did refer to on-going tension between the linguists at Shoal Bay and DSD Headquarters in Melbourne but whether that has any relevance to the Brownbill/Cunliffe intercept is again speculation.

I accept that Messrs. Brownbill and Cunliffe saw the English translation of which they have given evidence. But they cannot authenticate the translation itself. Fortunately, there is evidence from other sources about orders within the Indonesian military hierarchy so that the existence or otherwise of this intercept is not crucial.

Communications within the Indonesian Military Hierarchy

Given what is now known about the communications between the Field Commander in Balibo and Colonel Dading in Batugade from witness accounts rather than intelligence sources, the text of the sigint material appears, at first reading, strange. According to Mr Klintworth, the Duty Officer at OCI on 17 October, the text of the first intercept he saw was ,

“Among the dead are four white men (or Europeans). What do we do with the bodies?”

Ms Jennifer Norvick’s recollection of the same intercept was,

“Among the casualties are four white persons. What do we do with the bodies?”

After reading through the sigint material in evidence Ms Norvick concluded that she had conflated two messages and that the first text she had read said simply,

“Among the casualties there were four white men/Europeans who had been killed.”

Geoffrey Cameron recalled that the first intercept was in accordance with Ms Norvick’s revised evidence, namely,

“Four Europeans have been killed”.

All former OCI officers who viewed the intercepts agree that it was only in subsequent intercepts that there was a reference to “Five Australians” having been killed.

Adrian Bishop, who was a signals analyst and reporter with DSD, was at a language-training course throughout 1975. However, when he returned to DSD in December 1975, he read all of the files relevant to the events in East Timor, including specifically the events in Balibo, in order to carry out his responsibilities. I consider his impressions are important because he had the totality of the intercepts before him and he was able to peruse them from an, albeit recent, historical perspective rather than something that required his immediate attention. He formed the impression that at the time the journalists were killed, the Indonesians did not realise they were journalists or Australian, hence the description “four” or “five Europeans”. From a factual perspective, this cannot be accurate. Both Yunus Yosfiah and Colonel Dading were well aware of the identity of the journalists, yet for some reason that fact was not communicated in the reports initially intercepted.

Mr Bishop also recalled a message (from someone in the military hierarchy) between 18 and 20 October 1975, ordering that the bodies be moved to Kupang. The destination is not important. What is important is the fact that this senior military figure was unaware of the fate of the journalists ie. that their bodies had already been destroyed. Hence, the response to this request was that it was not possible to move the bodies because they had been reduced to ashes.

Geoffrey Cameron recalled being somewhat perplexed about the information as it was coming to hand. It appeared to him as if those in the field were covering their tracks. It was at that stage that he asked DSD to re-check the translations of the sigint product. He recalled that some days after the initial message, a senior Indonesian military figure called for a report on the circumstances of the journalists' deaths. However, if a report was provided, it was provided via other channels and Mr Cameron did not see it.

Lance Joseph, Assistant Secretary, South East Asia, Department of Foreign Affairs also recalled that he saw an intercept that was a request from someone high in the military hierarchy for a full report on the deaths of the journalists. He could not remember the exact words of the intercept but thought that it clearly expressed "alarm, dismay and consternation" about the news of the deaths. He stated that he and others in his Division considered that this intercept provided strong circumstantial evidence that the killing of the journalists had not been pre-authorised by Jakarta.

In 1986 Alan Thompson was the First Assistant Secretary, Policy Co-ordination in the Department of Defence. Subject to a request about sigint material in the period prior to 16 October 1975, he was tasked by the then Minister of Defence, Kim Beazley, to conduct a review of the relevant files. In the course of this task Mr Thompson read all of the sigint material pertaining to the journalists. He commented on the degree of agitation, if not panic, from a senior military figure to whom the deaths of the journalists had been reported.

It certainly appears from the text and tenor of these messages that information about the circumstances of the deaths of the journalist was not being provided as required by the military hierarchy. As to why the deaths of the journalists produced, on the one hand, reticence from the field and, on the other, consternation in senior ranks, is not really explicable. In the series of communications noted above, the deaths appear to have been unexpected in some senior echelons. One explanation is that there may have been an expectation that the journalists would flee at the beginning of hostilities and that their presence, some 90 minutes later, caught the attacking force by surprise. The other explanation is that the senior officers needed to know the details of the

circumstances of the deaths as soon as possible because Australian Embassy officials were becoming impatient at the lack of response.

JIO Investigation

Mr Cameron was tasked by Mr Jockel in October 1975 to review the sigint material to ascertain first, the identity of the field commander in Balibo and, secondly, if the material revealed whether the journalists had been killed on instructions. Mr Cameron stated that his inquiries revealed that Yunus Yosfiah was the field commander in charge of the attack on Balibo. However, there was nothing in the material reviewed by him to suggest that the journalists had been killed on orders.

Mr Thompson stated that officers in the Department of Foreign Affairs had already examined the sigint files prior to his review in 1986 and they had concluded, as did he, that there was no material prior to 16 October that revealed any order or intention to kill the journalists.

A Murdani-Dading Intercept of 15 October?

The existence of an intercept between General Murdani and Colonel Dading in which the former gave an order for the journalists to be killed was raised by Messrs. Ball and McDonald in their book, *Death in Balibo, Lies in Canberra*. They asserted that communications between Colonel Dading and Major-General Murdani were intercepted at SBRS and Cabarlah late on 15 October, some hours before the killings, in the following terms,

“Col. Dading reminded Gen Murdani of the presence of foreign journalists in the Maliana-Balibo area. There was some discussion about what should be done about them, given the covert nature of the Indonesian involvement. According to a former Australian intelligence analyst who saw the intercept some years later, Murdani said: “We can’t have any witnesses”.

Dading replied in words to the effect of: “Don’t worry, we already have them under control”.

The existence of this intercept has been confirmed by several members of the intelligence community.”

The authors concluded that this was the intercept that had been shown to Messrs. Brownbill and Cunliffe at SBRS. However, both prior to, and at the inquest, each of these witnesses emphatically asserted that he had no knowledge of such a document. It was further stated by the authors that a copy of this alleged Murdani/Dading intercept was obtained by Geoffrey Cameron and was kept in a file called the Blue Book for some two to three years. Mr Cameron gave evidence at the inquest and he also denied that he had seen such an intercept.

The Blue Book

As to the Blue Book described by Professor Ball and Mr McDonald as a bound loose-leaf folder with a blue cover containing about 200 pages, a folder answering that description was tendered in closed session at the inquest. However, the contents relate to Indonesian activities in East Timor generally and the only reference to the journalists is a footnote to the effect that five Australian newsmen were killed during the attack on Balibo. There is evidence from several witnesses that, following the deaths of the journalists, all relevant material relating to their deaths was kept in folders within JIO and was given very limited distribution. This material was available to the inquest.

Blick Report

In 2001, in light of the assertions about the existence and suppression of a Murdani – Dading intercept, the Inspector-General of Intelligence and Security, W.J. Blick conducted an inquiry specifically into the handling of intelligence in relation to the Balibo killings. The results of this inquiry were published in the Inspector-General's Annual Report 2001-2002, which was in evidence in the inquest. Since the report is available publicly it is not my intention here to recite the conclusions in detail. Suffice to note that Mr Blick found no evidence that such a Murdani-Dading intercept had ever existed. As to an allegation that a JIO officer had visited SBRS shortly after October 16 1975 and removed records, the Inspector-General found no evidence of

such a visit or removal of records. He provided the following possible explanation for the rumours of the Murdani-Dading intercept,

“27. The inquiry identified various intelligence reports referring to the journalists in Timor before 16 October 1975. None of these could have given rise to any apprehension that hostile interests knew of the presence of newsmen in the vicinity of Balibo, or that there was any intention or plan to harm these or any other journalists.

28. The inquiry concluded that the most likely explanation for the informant’s concerns was misinterpretation of the intelligence material that related to journalists in Timor.”

Sigint Material in evidence

I have not seen any Sigint material, received prior to 16 October, in which the Indonesians indicated any knowledge of the presence of either team of the Australian journalists in Balibo. Nor have I seen any intercept in which the Indonesians referred to an intention of killing the journalists. Perhaps more important than my review of the extant material in 2007 is the fact that none of the witnesses who gave evidence at the inquest about sigint material they saw from 1975 onwards saw any material in terms of the alleged Murdani-Dading intercept. In summary, therefore,

- a) there is no extant intercept or report referring to it;
- b) no witness has ever seen such an intercept or report; and
- c) those nominated as being able to validate its existence, namely, Messrs. Brownbill, Cunliffe and Cameron have specifically given evidence to the contrary.

Hence, there is nothing before the inquest to indicate that such a documents ever existed. Perhaps it is salient to note that Major-General Murdani had been in Batugade for about a week prior to the attack, returning to Jakarta on 14 October. It is reasonable to assume that all plans for the attack had been discussed in detail with Colonel Dading at that time.

There are other intercepts of which I heard evidence that warrant particular mention.

Adrian Bishop

Reference has already been made to the information that had been disseminated to Partisans about the identity of any white person whom they encountered in East Timor. This is confirmed by an Indonesian intercept dating from late September or early October 1975 of which Adrian Bishop gave evidence. He recalled viewing an intercept with words to the effect,

“When you are engaged in operations in East Timor you will come across white people. Do not worry about this as they will most likely be white Portuguese Communists who are supporting Fretilin.”

Edward Howes

Edward Howes informed Mr Sherman that the sequence of intercepts that he saw while engaged in his administrative duties within OCI indicated to him that there was a period of time between when the journalists were captured and when they were killed. While I have no doubt that Mr Howes genuinely held that belief, all of the evidence, not simply the sigint material but all of the eyewitness accounts as well, is to the contrary.

Robin Dix

Robin Dix worked at SBRS from 22 September 1975 to 15 December 1975 as an Indonesian translator. On 16 October he recalled a colleague, Mr Hicks, showing him an “item of interest” – an intercept that said,

“Telah dibunuh lima orang wartawan Australia dan mayat mayat semuanya terbakar”.

Dix translated this as,

“Five Australians have been killed and all of their corpses have been incinerated, burnt to a crisp.”

There are three points of interest about this evidence. First, Mr Dix gave evidence that the receipt of the intercept provoked an immediate response from someone in the Prime Minister's Department who called on an "open line" asking whether the report was true. Mr Dix declined to answer because standard security procedures had not been followed and he heard nothing further about the intercept.

The second aspect is the timing. The text of this intercept is very similar to that of which other witnesses gave evidence, namely, that the bodies of the five Australians had been reduced to ashes. However, the evidence from other witnesses consistently placed that intercept **after** the original intercept referring to "four white men/Europeans" which was received on 17 October. I am satisfied that the intercept of which Mr Dix gave evidence reached SBRS on 17, not 16 October.

Potentially, the most important aspect of this intercept was having evidence of the original Indonesian words rather than the end product translations. The question was whether the word "dibunuh" shed any further light on the circumstances of the journalists' deaths. According to Mr Dix, "dibunuh" means "executed", not 'accidentally killed'.

Ms Pamela Gadd was also a linguist at SBRS but she had no knowledge of the intercept as described by Mr Dix. While she could not authenticate the intercept per se, she was willing in the course of her evidence to render the following translation of the Indonesian message provided by Mr Dix,

"Five Australian reporters/journalists have been killed and all their bodies have been burned."

According to Ms Gadd, the prefix "di" indicates the passive voice and "bunuh" means "killed", hence "dibunuh" means "have been killed". She further explained that "dibunuh" means killed by a person rather than, for example, a falling rock. While "dibunuh" could mean "murdered", she would not ascribe that meaning to it in a combat situation. In her experience of military signals traffic, the word was frequently used to report combat losses and casualties.

Mr Lee was the Indonesian interpreter used when Glebe 11 gave evidence. He then gave evidence about the word “dibunuh”. He expressed the opinion that the word “dibunuh” meant “murdered” because the prefix “di” was used to indicate something that had been done deliberately. Mr Lee could not of course express any view on how the word was used in the context of military communications. Mr Norton, another of the Indonesian linguists at Shoal Bay, gave evidence that “dibunuh” could mean either “murdered” or “killed” – it all depended on the context.

I do not consider that the evidence about the use of “dibunuh” throws much light on the deaths. Ms Norvick’s evidence is that the reference to four white persons having been killed was in the context of “among the casualties”. Hence, I cannot accept unequivocally the translation as “murdered” if, as Ms Gadd asserted, the word is frequently used to describe casualties in military reports.

Raymond Arthur Norton

A member of the Royal Australian Navy since 1961, Raymond Norton worked at Shoal Bay in October 1975 as an Indonesian linguist. This entailed translating raw intelligence which was in Indonesian into English. He confirmed that the other linguists who were at Shoal Bay at that time were Margaret Gadd, Robin Dix, Paul Gillis, and Ossie Osbourne.

Mr Norton gave evidence that when an intercept was translated by a linguist, that translation would then be checked by another linguist, except where a caveat had been issued. He explained that caveats would be issued to restrict the number of persons who had access to documents in particular instances. Once such instance was if intelligence material mentioned Australian nationals. He was under the impression that a caveat had been issued in relation to the Balibo Five and he understood that Ms Gadd was the linguist who had the clearance to view documents relating to the journalists. He himself had no recollection of seeing any material. However, he said that if he had seen intelligence that the journalists were killed deliberately, he would have remembered.

Mr Norton, who had been identified as a recipient of the telephone call, had no memory of taking a telephone call from anyone in the Prime Minister's office during the entire period that he was at Shoal Bay. He commented that such a call would be most unusual and that he would have expected to have remembered it, if it had occurred for that reason.

Susan Bridget Ahmat

Susan Ahmat worked as a Radio Supervisor-General and a reporter. She produced end product reports from raw signals intelligence. She recalled that on one occasion in October 1975, one of the SBRS linguists showed her a raw intercept that had been translated as either "five Australians dead" or "five Australians killed". This intercept was drawn to her attention out of interest, not because she was required to write an end report relating to it. She can recall someone, probably a linguist, mentioning an intention of forwarding it to the Prime Minister's Department. She cannot recall who it was nor was she aware if the message was actually sent. She did not hear anyone subsequently refer to receiving a telephone call from the Prime Minister's office. Ms Ahmat could not remember seeing any other intercept in relation to the journalists.

Considering the evidence of Ms Ahmat and Mr Dix, it seems likely that a call did come from the Prime Minister's Office, but the identity of the caller remains a mystery. One thing is certain – the intercept was not given to the Prime Minister.

Roger Paul Gillis

Roger Gillis was originally the only linguist at Shoal Bay. He can recall seeing radio traffic prior to 16 October that referred to the Australians being in Balibo. He recalled that he also saw intercepts after that time but cannot recall their contents. He was certain that he did not see any message that led him to conclude that the journalists had been deliberately killed by the Indonesian military.

Peter Neil Gibson

Peter Gibson was the Indonesian Army Desk Officer within the Directorate of Joint Service Intelligence (“DJSI”) from February 1974 to March 1977. He explained that DJSI was a Directorate within JIO similar to OCI. He explained the difference between the OCI and the DJSI as being a matter of focus – DJSI focused in more detail on the military aspects of the intelligence. Mr Gibson was under the impression that the DJSI had access to the same information as the OCI. He was not aware of any restriction of the flow of information about the deaths of the journalists because at no time did he get the feeling that he had been excluded from access to such information. On the contrary, he considered that he saw all the pertinent information that came into the JIO because he had the primary responsibility for briefing senior officers of the DJSI about the events in East Timor including the deaths of the journalists.

Mr Gibson gave evidence that prior to 16 October, he saw raw intelligence material, (not necessarily sigint) which indicated that the Indonesians were monitoring the movements of Australians within East Timor generally. However, he could not recall seeing any material that indicated that the Indonesians were aware that the journalists were in Balibo before the attack. Mr Gibson can remember that he saw sigint material containing the following information,

- “a) that four bodies had been found in Balibo; and
- b) the journalists’ bodies were burnt.”

Mr Gibson commented that the time when he first recalled seeing sigint was on the afternoon of their deaths. Although on the basis of the totality of the material that he saw, he concluded that the Indonesian military were involved in the deaths of the journalists, he saw nothing to indicate whether it was the Indonesian troops or the militias associated with them that were responsible for the killings. Nor did Mr Gibson see any sigint to suggest that the journalists had been killed on orders or had been killed deliberately.

Glebe 1

In October 1975, Glebe 1 worked as an intercept operator at SBRS. The important qualification about the accuracy of her evidence is that she herself did not transcribe any intercepts about the Balibo Five but rather relied on information she was told by her colleagues. Because I have heard evidence directly from those colleagues, I have looked at Glebe 1's evidence as potentially corroborative of their accounts. Hence, I found the most salient part of her evidence related to the period prior to 16 October when she was told by colleagues they had intercepted communications which indicated that,

- a) foreign journalists were in East Timor;
- b) the Indonesian army were following the foreign journalists;
- c) the Indonesian army was aware that journalists were in the area of Balibo.

Glebe 1 stated that she was not working on 16 October and recalled being told on 17 October that the journalists had been killed. She could not recall specifically what was said. Her recollection was that the Indonesians were just reporting the fact that they were dead rather than specifying how they died. Glebe 1 left SBRS on 18 October. She was under the impression that the journalists had been shot and that their bodies had been burnt. However, she acknowledged that her view could have been formed as much by media reports and other reading on the subject as much as by what she was subsequently told by her colleagues.

Mostyn Allen Williams

I have referred previously to Mr William's evidence and in particular to the fact that he believed that Australian journalists were present in the border area of East Timor before 16 October 1975 because he had seen an intercept of an Indonesian military communication to that effect. He also commented that he was aware of the presence of journalists because of television broadcast information. However, in a Statement dated 23 May 2007 Mr Williams stated that he did not see any intelligence material which allowed him to draw an inference that Indonesia intended to invade East Timor or that there would be an attack on Balibo or the border region generally, let alone on 16 October. Nor was he privy to any Foreign Affairs cablegrams that referred to forthcoming attacks on Balibo and Maliana because they had a very restricted distribution. In summary, Mr Williams was aware that the journalists were in the

border area but not that the border region was going to be subjected to an attack, Indonesian-lead or otherwise.

Mr Williams indicated in his Statement of 4 May 2007 that his best recollection is that the first sigint material he saw in relation to the deaths of the journalists was Friday 17 October 1975. He considered that he saw all end product reports that came into DSD. As noted previously he had no recollection of seeing anything to suggest that the journalists had been shot on orders.

In light of the prospect raised by Mr Brownbill in his evidence that key intelligence documents may have been withheld from senior politicians, Mr Williams specifically addressed the issue of whether he had at any time given any orders to withhold intelligence material about the journalists' deaths from senior politicians. He commented that he did not give such an order nor was he aware that any such order had been given. Further, he expressed the view that no intelligence material had been withheld from senior politicians.

Exhibit 87

Exhibit 87 contained a series of proposition derived from the closed court material.

- i. The "intelligence material" includes the following documents:
 - i. All classified material which has been located and which falls within the scope of the subpoenas issued by the Coroner to the Department of Defence and produced to the Court.
 - ii. The following conclusions can be drawn from the documentary intelligence material produced to the Court:

- i. The intelligence material does not refer to any knowledge by Indonesia of Mr Peters or the other journalists being in Balibo on 15th or 16th October 1975.
- ii. The intelligence material does not contain any reference to orders being given to any Indonesian soldier (regular or irregular) to kill any of the five Australian journalists.
- iii. The intelligence material does not contain any direct reference to communications on 16th October 1975 between soldiers in Balibo and headquarters elsewhere.
- iv. There is nothing in the intelligence material that details how the journalists died in the sense of whether for example, they were shot or stabbed and whether the journalists were deliberately or accidentally killed.
- v. The intelligence material shows that from early October the Indonesians were concerned to prevent any foreign journalists venturing into the border area.
- vi. The intelligence material provides corroboration for the fact that the Indonesians were aware of the movements of some of the Australian journalists.
- vii. Other intelligence material shows that the Indonesians were highly sensitive to the presence of any journalists (both foreign and domestic) in the border area.

- viii. The intelligence material confirms evidence given by some witnesses that they first became aware of the deaths of the five journalists on 17th October 1975.
- ix. Other intelligence material confirms evidence from other witnesses that they were first told that four Europeans had been killed.
- x. The intelligence material confirms evidence by witnesses that they were told that all evidence of the Australian journalists' deaths had been destroyed and their bodies reduced to ashes.
- xi. The intelligence material confirms that the Indonesians were involved in the dissemination of false facts about the attack on Balibo.
- xii. The intelligence material confirms evidence of witnesses that the Indonesians were creating and providing disinformation about the deaths of the journalists.
- xiii. The intelligence material confirms that the Indonesians were concerned to portray to the world that the Australians had been killed in a combat situation.
- xiv. There is no evidence in closed or open court that the Indonesian military were following the journalists by air and on foot.

xv. There is no extant intercepted message containing a request as to what to do with the bodies or seeking instructions how to dispose of them.

xvi. In a JIO report dated 31 October 1975 provided to the Prime Minister, the Minister for Foreign Affairs, the Minister for Defence, Mr Menadue, Mr Renouf, Sir Arthur Tange and Mr Jockel, it is stated:

“reply supports earlier indications that the journalists are dead that their bodies were burned, but still does not enable us to reach firm conclusions about either the circumstances and manner of their deaths, or the circumstances in which their bodies were burned.”

xvii. There is no evidence in the intelligence material that supports the existence of an intercept as described by Brownbill and Cunliffe.

SECTION 10 – INNER SANCTUM

The *Highlights* of 17 October that were produced by Gary Klintworth and carried the news about the journalists' deaths were withdrawn from distribution at the initial instigation of John Bennetts. Following that, all information and situation reports had a limited circulation on a strict "need to know" basis. According to Mr Jockel, the primary concern was to protect the source of the information, lest any disclosure reveal Australia's intelligence capabilities. Put another way, it was not the fact that the journalists had been killed that required suppression, rather it was how the government agencies acquired that knowledge.

Those on the limited distribution list included the Prime Minister, Mr Whitlam, Minister for Foreign Affairs, Mr Willesse, Minister for Defence, Mr Morrison, the Heads of the Departments of Defence (Sir Arthur Tange), Foreign Affairs (Mr Renouf) and Prime Minister and Cabinet (Mr Menadue). Also included were Messrs. Feakes, Joseph and Peachey from Foreign Affairs, Mr Jockel (JIO) and Mr Osborn (OCI).

I decided that in order to ensure that there was no material that had gone to this "inner sanctum" and was not otherwise available to the inquest, it was necessary for those persons to be interviewed and to appear to give evidence at the inquest. In reaching that decision I was conscious that the recollections of the key political and bureaucratic figures had not hitherto been recorded and examined in any of the previous inquiries.

Gordon Jockel C.B.E.

Mr Jockel gave evidence that he did not necessarily see all of the intercepts which came into JIO but he did see all of the important ones. The OCI usually decided which intercepts were to be referred to him. Mr Jockel stated that, although he knew in the broad terms that there was going to be an incursion by the Indonesians into East Timor, he did not have precise knowledge that there would be an attack on the Balibo on 16 October 1975. He also gave evidence that he did not know that the journalists

were in Balibo. He could not recall seeing any intercept material about this nor could he recall seeing any thing in the public media either. He pointed out that it was not an intelligence function to know the whereabouts of the journalists.

The first he knew of the journalists' deaths was an intercept brought to him by a senior member of DSD on 17 October, indicating that five Australians had been killed. He immediately took the intercept personally to the Defence Minister, Mr Morrison, who reacted with shock and horror. He recalled that there was little discussion about what to do with the intercept because there was tacit agreement that the role of DSD as the source of the material could not be revealed publicly.

Mr Jockel indicated he did not, at any time, see any intercept to the effect that the journalists had been killed in accordance with instructions or orders. Nor did he see any intercept or report that specifically stated that the journalists were deliberately killed. However, he commented that both he and his staff had no doubt that the killings had been deliberate. He added that the way in which the Indonesian government subsequently handled the issue confirmed in his mind the deliberate nature of the killings.

The Honourable Edward Gough Whitlam AC QC

Mr Whitlam, Prime Minister of Australia from 5 December 1972 until 11 November 1975, provided a Statement to the inquest and gave oral evidence as well. It could be expected that if anyone had been briefed fully about the deaths of the journalists, whether on the basis of Sigint material or other information from other sources, it would have been the Prime Minister. Whatever may have been the situation in normal times did not pertain because, in the month leading up to 11 November 1975, the Whitlam Government was faced with an unprecedented political crisis, with the Senate threatening to block Supply, and the Prime Minister's attention was firmly focused on internal, not external, affairs.

As a general practice, the Prime Minister received oral briefings about sigint material rather than seeing the actual reports. However, he thought that he was shown all of the cablegrams from Mr Woolcott in Jakarta, although he commented that he did not

necessarily note the contents of all of them. Nevertheless, he cannot recall seeing, or being told of, the Cablegram of 13 October which referred to the Indonesian invasion planned for 15 October. Indeed, while Mr Whitlam was aware that there was always a possibility that Indonesian troops would intermix with Apodeti and UDT forces and participate in an attack on either Balibo or Maliana, he stated that this was based on speculation rather than knowledge. Even at the time of the inquest, he seemed unaware that Indonesian Special Forces had participated in the attacks on Balibo and Maliana on 16 October. Rather, he was of the impression that the first time Indonesian soldiers invaded East Timor was the attack on Dili on 7 December 1975.

As to the time he learnt of the deaths of the journalists, Mr Whitlam gave evidence that he was briefed for the first time on 21 October. He stated that he was certain of the date because he was able to check his movements in his Official Diary. Mr Whitlam commented that it was on the 15th that Senator Cotton in the Senate and Malcolm Fraser in the House of Representatives announced that the Senate would withhold Supply and he was fully occupied with that issue in the course of the day. On 16 October, he was in Parliament in the morning and the remainder of the day was largely taken up with functions for the visiting Malaysian Prime Minister, Tun Abdul Razak. Being a Friday, Parliament did not sit on 17 October. After various media interviews in the morning and a ceremonial farewell for the Malaysian Prime Minister in the afternoon, Mr Whitlam himself flew to Sydney, staying at Kiribilli House. On Monday, 20 October he flew to Melbourne to address a public rally before returning to Canberra for a Cabinet meeting that afternoon. No one mentioned anything to him about the journalists at the Cabinet meeting. It was not until the following day that he received an oral report from officials from the Departments of Foreign Affairs and Defence, he cannot recall who, advising him that DSD had intercepted a message from East Timor. The message was that there were “four white bodies” in Balibo. Those providing the message assumed it referred to the five missing Australian journalists, although he was unaware of the basis of that assumption.

Specifically, Mr Whitlam stated that the message of 21 October was the first time he had been made aware of any intercepted communications in relation to the journalists in Balibo. By way of explanation he stated that there was no “secure” telephone line to him either in Sydney or Melbourne. Mr Whitlam also stated that he did not see, or

hear, of any report that suggested the Indonesians were monitoring the movements of the journalists in Balibo or the Balibo area. He did not see, or hear, of any report that the journalists had been killed on orders or instructions. Nor did he have any knowledge that the journalists may have been deliberately targeted for execution.

As noted in Section 6, Mr Whitlam had advised Greg Shackleton on two occasions in September 1975 that his Government would be unable to provide any assistance or protection if the Channel 7 team went to East Timor. From that time onwards, Mr Whitlam had no information about the movements of the journalists in East Timor. Nor was he aware of the plan for the clandestine incursion by Indonesian Special Forces into East Timor on 15 or 16 October. In the circumstances of the crisis surrounding the resignation of the Minister for Minerals and Energy on 14 October and the heightening drama of the Supply crisis with the announcements in both Houses of Parliament on 15 October, it is understandable that those around the Prime Minister would brief him selectively on other matters. I note that none of the other witnesses indicated that they had briefed or spoken to the Prime Minister about the deaths of the journalists before 21 October. That was the day after he returned to Canberra for a Cabinet meeting and it was the first opportunity that Defence officials in Canberra had to brief him. While it may seem odd in hindsight that it took officials four days to brief the Prime Minister, due to the fact that he was without a secure communications system from Friday evening to Monday afternoon and his absorption in the political crisis, the delay is explicable.

William Lawrence Morrison

Mr Morrison was the Minister for Defence in the Whitlam Government from June 1975 until November 1975. He provided a Statement for the Inquest and also gave oral evidence. During his time as Minister he received oral reports, including DSD information, from the Head or Deputy Head of JIO once or twice per week but he saw no raw intercept documents. He also saw some Cables from Mr Woolcott. He was not familiar with the contents of the Cable of 30 September but he did see the Cable of 13 October advising of the intended Indonesian attack on Balibo on 15 October. Mr Morrison commented that he had not discussed this information with Mr Whitlam

because “he had enough on his hands”, a reference to the political crisis facing the Government.

Mr Morrison stated that prior to receiving information that the journalists were missing, he was not aware there were any journalists in East Timor, let alone in Balibo. He described the situation in East Timor at that time as “toxic” because no one was in charge. It was his understanding that there was a total embargo on Australians travelling to East Timor. It was only after the Balibo attack that he was told that the embargo had been lifted on legal advice and that the Government was relying on travel advice to deter visitors to the country. Mr Morrison rejected the suggestion that the motive for deterring travellers to East Timor was to hide movements of Indonesian troops. He reiterated that the overriding concern of the Government was for the safety of travellers.

According to Mr Morrison, Mr Jockel came to see him in his Parliamentary Office around midday on 16 October to tell him that Balibo had been overrun and that four Australian journalists were missing or unaccounted for. He was shocked because he had no idea they were in Balibo. Later that afternoon the late Sir Arthur Tange, Head of the Defence Department, advised him that, while there was still no news about the journalists, four white bodies had been located. The main problem as outlined by Tange was obtaining verification that the bodies were those of the journalists. It was suggested to Mr Morrison that it was on the 17th, not the 16th, that the visits of Messrs. Jockel and Tange occurred. He stood by the 16th because he recalled the meetings had occurred in Parliament House and there was no reason for him to be there if Parliament was not sitting (as it was not on Friday 17 October). Mr Morrison recalled that he flew to Brisbane on the Friday, then to Sydney the following day, returning to Canberra for a Cabinet meeting on the afternoon of the 20th.

Mr Morrison was asked the following series of questions,

“Q. Did you ever see any report or document or receive any information indicating that the five Australian journalists had been executed or murdered or killed and that their corpses had been incinerated?

A. No.

Q. Did you ever see any document or receive any briefing suggesting that the journalists had been killed on orders or on instructions?

A. No.

Q. Or that they had been deliberately targeted by the Indonesian military?

A. No.

Q. Or that the Indonesian military were following them or monitoring them?

A. I received no such advice but it wouldn't surprise me if they were.

Q. Would you care to elaborate on that?

A. Well, all military forces have their intercept equipment and I don't want to speculate, but I'd presume the Indonesians also had it."

Mr Morrison recalled that it was about a week later that he received confirmation that five Australian journalists had been killed, although it was still difficult to obtain information about how they died. He stated that there was a lot of propaganda from both the UDT/Apodeti side as well as the Fretilin side.

Mr Morrison was asked why the Government felt it necessary to maintain the charade of asking the Indonesian Government to approach UDT and Apodeti for information about the fate of the journalists when Harry Tjan had provided a very detailed briefing on the involvement of Indonesian Special Forces in the attack on Balibo. He replied that the Australian Government had received too much detailed information, thus creating a situation that the Australian Government knew more about these events than the Indonesian Foreign Minister or the Indonesian Ambassador. Hence, as a matter of protocol, they kept up the pretence of not knowing.

It was suggested to Mr Morrison that the reason the families were not immediately notified of the deaths was that DSD capabilities would be compromised if that was the only source of the information. However, Mr Morrison pointed out that Kompas, an Indonesian newspaper, carried headlines on 20 October that Australians had been killed in East Timor and the text reported that four bodies had been found. From that time, the article provided collateral for the DSD signal and it was not the protection of that source that caused further delay. He stated that Indonesian obfuscation about confirming the identification of the bodies was the real reason for the delay thereafter.

While I understand that Mr Morrison considers that the day he was visited by Mr Jockel was the 16th, other evidence from Mr Jockel and Mr Klintworth as well as the intelligence material point to the 17 October.

John Laurence Menadue

Mr Menadue was the Secretary of the Department of Prime Minister and Cabinet from August 1974 to around October 1976. He provided a Statement for the Inquest and also gave oral evidence. Although he had a high level security clearance and from time-to-time saw intelligence material, he saw very little from August 1975 onwards because his attention was devoted almost exclusively to the Supply crisis. He stated that he was aware that some material that would normally go to him went instead to the Deputy Secretary, Don Munroe, or the First Assistant Secretary, the late Alan Griffith. He stated that if they had considered any of the intelligence material to be significant, they would have drawn it to his attention, and he would have briefed the Prime Minister. Mr Menadue was aware that there were occasions when Messrs. Munroe and Griffith would approach the Prime Minister directly. Similarly, staff from the Departments of Foreign Affairs and Defence would also go directly to the Prime Minister.

Mr Menadue had no recollection of seeing any intelligence information regarding the deaths of the Balibo Five in October 1975. He further stated that he appreciated how significant that information would have been to the Australian Government, and he considered that he would have remembered if he had seen it. Mr Menadue could not remember how he became aware that the journalists had died, or when he became aware that they had died. Nor did he see anything as to what happened to their bodies afterwards, or any material that would indicate whether their deaths were pre-mediated or pre-planned.

Mr Menadue commented that although he personally may have been named on a distribution list, classified documents would not necessarily go to him personally but could be seen by others of his staff who had the relevant security clearances. However, Mr Menadue considered that if anyone in his Department had seen a report

that the journalists had been killed on orders, they would have drawn it to his attention immediately.

John Mant

John Mant was the Principal Private Secretary to Mr Whitlam from July 1975 until 11 November 1975. Mr Mant's evidence was that, for the purpose of his role, he received high level security clearances and from time to time he saw intelligence material. However, it was not his role to analyse or to brief the Minister on such material – that was the role of the Department of Prime Minister and Cabinet.

Mr Mant stated that during October 1975 he did not see any intelligence material that indicated the Indonesians were aware of the presence of the Australian journalists in or around Balibo. Nor was he aware of any material that indicated the Australians were being monitored by the Indonesians. He could not recall seeing any intelligence material about the deaths of the Balibo Five and he considered he would have remembered if he had seen such material. Mr Mant could not recall having any discussion with the Prime Minister either about the deaths themselves or intelligence material in relation to the deaths. In summary, Mr Mant's evidence confirmed that very little information about the events in East Timor in October 1975 was provided to the Prime Minister.

Alan Phillip Renouf O.B.E.

Alan Renouf was the Secretary of the Department of Foreign Affairs from 1973 until late 1975. The emphasis of his evidence at the inquest was in relation to the formulation of Australia's foreign policy in relation to East Timor and, in particular, the forewarning of the attack on Balibo. I have dealt with these aspects of his evidence in Section 8. At this juncture I simply wish to record his knowledge of the sigint, or any other, material that related to the movements of the Balibo Five.

While Mr Renouf can recall that from time to time he received sigint material as well as briefings based upon it, he has no specific recollection of sigint material in relation to the journalists. However, in light of the information of the impending Indonesian

invasion Mr Renouf, on 16 October, wrote a submission to the Foreign Affairs Minister, Senator Willesee that included the following paragraph,

“Another serious matter for consideration is the presence of Australian journalists in Portuguese Timor. There are a number of journalists, some outside Dili and the ACFOA team arrived in Dili on 16 October.....”

Mr Renouf agreed that this passage indicated that he was aware of the presence of journalists but he also stated that his knowledge was general and he was not aware of specific details of their movements. Earlier in his evidence he had indicated that he did not know the journalists were in Balibo at the time of the attack.

In the course of his evidence Mr Renouf expressed the view that the journalists had been killed deliberately, for the following reasons:

- The Indonesians had a clear reason for disposing of the journalists – they obviously did not want journalists around to see that they were up to;
- Those who did the killing did not ask for orders beforehand;
- Nor did they appear to contemplate any alternative course such as capturing them and holding them incommunicado;
- Historically, military regimes that embark on illegal invasions, such as the Suharto regime, have shown little concern for the safety of civilian populations – they are inclined to take the obvious way out and shoot them or get rid of them in some other way.

Geoffrey Briot

Mr Briot was Chief of Staff for the Minister of Foreign Affairs, the late Senator Willesee. He had the requisite security clearances to see classified material that came into the office. However, he cannot recall seeing any intelligence material prior to 16 October. He was not aware that there were journalists in Balibo. Although he was aware that an invasion was very likely, he was not sure when.

Mr Briot first became aware of the deaths of the journalists on the day of their deaths or the next day. (On the basis of other evidence I have determined that the first message was received on 17 October). Mr Briot stated that Senator Willesee received the message at the same time. The latter then went to try to see the Prime Minister. From other evidence it is apparent that he did not see him at that time. However, he did see the Minister for Defence, Mr Morrison as well as Mr Jockel and Sir Arthur Tange. Mr Briot recalled that Senator Willesee returned from that meeting angry and upset. He had wanted to inform the families immediately but he had been “persuaded” that to do so at that time without any information in the public arena would reveal that the information came from intelligence material and would thus jeopardise the Defence capability. As I have noted in section 12, irrespective of any Defence considerations, it would be contrary to standard practice to notify families of a death on the basis of an uncorroborated report and with no body. It would be usual and appropriate to attempt to obtain some corroboration of the circumstances and identification first.

Mr Briot stated that over the next few weeks he would have seen a few intercepts. What remained in his memory was probably a conflated version, namely, that four or five Europeans had been killed, their bodies had been burnt and instructions were sought about what to do with the passports.

SECTION 11 – INDONESIAN COVER-UP AND DENIAL

Colonel Dading Kalbuadi arrived in Balibo by helicopter on being told of the deaths of the journalists, accompanied, inter alia by Bakin agent, Louis Taolin and photographer, Dyumaryo. The cover-up and dissemination of false information started from that time. As the East Timorese leaders attested, they were called together by the Colonel and Captain Andreas (Yunus Yosfiah) and told that the truth about the circumstances in which the journalists died must be kept secret. In particular, the role of the Indonesian Special Forces could not be revealed, or else Indonesia's clandestine infiltration of East Timor would be jeopardised. The other essential element of the cover-up was that the Australians had to be portrayed as actively involved in the fighting ie. combatants, not civilians.

The cover-up entailed the following components:

- a) completely destroying the journalists' bodies to eradicate all signs that they had been shot with AK – 47 assault rifles, which were used by Indonesian but not UDT or Apodeti forces;
- b) portraying the journalists as communist combatants who were supporting Fretilin;
- c) to add verisimilitude to that portrayal, dressing the bodies in Portuguese army uniforms and photographing them with (defunct) weapons;
- d) orchestrating official statements from the leaders of the anti-Fretilin factions as to their responsibility for the deaths in the course of combat;
- e) utilising false media reports in the Indonesian press;
- f) prevaricating about providing details of the deaths to the Australian Government;
- g) deliberately misleading investigators sent by the Australian government in the first six months following the deaths; and
- h) continuing to deny any Indonesian involvement in their deaths at the time and even up to the present time some thirty years after the event.

The first attempt at portraying the Balibo Five as combatants fighting alongside Fretilin occurred as soon as Colonel Dading, Mr Taolin and Mr Djumaryo arrived by

helicopter. According to witnesses there were old Portuguese uniforms hanging up in the Chinese House. At least four of the journalists were dressed in these uniforms, old non-functioning Portuguese guns were placed alongside them and photographs taken. Those who saw the bodies at this time knew that the uniforms had been placed on the bodies after death because there were no visible bullet holes or blood from their wounds. These pictures were never used, perhaps because it was obvious that the guns were non-functional. Evidence from the Fretilin soldiers who saw the journalists in the days prior to, and on the morning of, their deaths pointed overwhelmingly to the fact that the journalists had been dressed in civilian clothes. Any suggestion to the contrary was malicious propaganda.

According to Glebe 2 he was engaged in chasing Fretilin soldiers for about one and a half to two hours after he saw shooting at the journalists. By the time he returned to the square in Balibo Paraco (ie paracommando) members were placing firewood on top of the journalists' bodies in the Chinese house. He then observed them set fire to the bodies. Glebe 2 could not recall precisely how many bodies he observed. Furthermore, he was unaware that the journalists had been dressed in Portuguese uniforms and photographed. He described the arrival of Colonel Dading by helicopter and how, accompanied by the four Indonesian commanders involved in the Balibo attack, Yunus Yosfiah, Kiribiantoro, Marpuang and Ali Musa, as well as the photographer (and BAKIN agent) Louis Taolin, he inspected the Chinese house. The group were gone about 10 to 15 minutes.

On their return, Colonel Dading addressed Glebe 2, Joao Tavares and the four Indonesian commanders, ordering them not to tell anyone about the deaths of the foreigners – this event had to be kept top secret. As to the Chinese house where the bodies were burnt, they were ordered to give an account that a mortar had been fired into the house, causing it to burn. However, later in his evidence, Glebe 2 stated that Colonel Dading told him to say that the journalists had died in the house with the word “Australia” and the Australian flag painted on the outside wall. Hence, when Glebe 2's father and Lopes da Cruz arrived in Batugade on 17 October 1975 he told them that the journalists had died in the Australia House.

I have no doubt that the bodies of the journalists were burnt to conceal how they died, and perhaps initially, in the hope of concealing their identities. The subsequent efforts of the Indonesians were directed at creating a scenario in which the journalists were depicted as combatants who were incidental casualties of the fighting in Balibo. Hence, the killings were portrayed as justifiable. For example, on 19 October 1975, Indonesian Foreign Minister Adam Malik in a meeting with Ambassador Woolcott furthered the insinuations that the Australians had worn uniforms. He said a number of Australians in East Timor reportedly wore Fretilin uniforms. He went on to express the hope that the journalists who were with the Fretilin forces had not been so dressed because they could easily be mistaken by UDT forces as Portuguese supporters of Fretilin.

Inquiries by Australian embassy officials to find out the circumstances of the deaths, to find their bodies and to recover their personal effects were frustrated at every turn. As First Assistant Secretary of the Department, K.H. Rogers wrote to Foreign Minister Peacock on 13 November,

“The Australian Embassy in Jakarta has made approaches to the Indonesians virtually every day and at numerous and various levels. Virtually, each day they have promised something positive; and each day the Embassy has been disappointed.”

It is not my intention to review all of the efforts made by the Australian Embassy to obtain information from the Indonesians. Those attempts are adequately set out in the collated documents *Australia and the Indonesian Incorporation of Portuguese Timor 1974-1976*. Suffice to note that in addition to attempting to obtain information through official Indonesian channels, the Embassy attempted to gain first hand information by sending the Third Secretary, Richard Johnson, into East Timor. He got no further than Kupang where he was effectively quarantined and was not given permission to go beyond the border. In addition to official channels, the Australian Embassy also sought information from those who had previously been only too willing to provide unofficial information, such as Mr Tjan and Major-General Murdani, to no avail. The records show that the purported remains of the journalists were eventually handed over by General Yoga, together with some personal effects, on 12 November 1975. However, details about the circumstances of their deaths

remained unclear and the Indonesian government remained singularly unforthcoming. Indeed, on 16 March 1976, Major-General Murdani remonstrated with Ambassador Woolcott that it was “improper” for the Australian Government to continue to direct questions about the deaths of the journalists to the Indonesian Government because it was not involved in the matter; the appropriate entities to address the issue were the political parties in East Timor and the Portuguese Government.

On 22 October 1975, allegedly in response to a “request” from the Indonesian Government, a joint Statement was released by the leaders of Apodeti, UDT and KOTA, quoting information ostensibly received from the military commander at Balibo, Glebe 2. The account recorded that the anti-Fretilin forces were on their way up to the Balibo fortress when, suddenly, there was a counter-attack launched from the rear. They responded with heavy fire as a result of which the house burst into flames. When they entered the house, they found that 15 people had been killed, including some white people.

On 3 November, a further Statement was sent from the Raja of Atsabe, Guilherme Maria Goncalves, indicating that the initial investigation had discovered four white men burned in the house. In order to ascertain whether the bodies were those of the Australian journalists, further investigations were undertaken and as a result, some documents assumed to be the property of the journalists were found. (How they survived a fire of such ferocity that fifteen bodies were destroyed was unexplained.) The Statement contained the further information that on 27 October, Apodeti soldiers found a camera and some documents lying beside two decayed corpses in the middle of a wood, on one of the escape routes used by Fretilin. The discovery of the camera and documents beside the corpse of a white man raised the possibility that this was one of the Australian journalists. The Statement concluded with the information that both corpses had been burnt but there was no indication of what happened to the remains.

On 25 October, Colonel Sunarso spoke to Ambassador Woolcott. He reiterated that the five missing journalists died in a house in Balibo that had been hit by mortar fire. He added that because there had been a sizeable amount of kerosene in the house, the ensuing conflagration had burned the bodies. This version was repeated again by

General Yoga on 28 October 1975. On this occasion, the house in which the journalists died was described as a Fretilin command post.

Yet even at this early stage, there was reason to doubt these accounts. Portuguese journalist, Adelino Gomes, indicated that the Australians had not actually been living in the house that had been painted with the Australian flag and the word “Australia”. Moreover, the “Australia House” was a poor vantage point and not likely to be chosen as a position from which to film any military activity. In his opinion, if the bodies of the journalists had been found in the Australia house, it was because they had been taken there at a later time.

Similar doubts were expressed by Jose Ramos Horta. On 28 October he told Foreign Affairs personnel that when he had stayed with the journalists in Balibo on 11 October they had set themselves up in a house opposite the Australia house (ie. the Chinese house). He added that the Australia house had been used by Fretilin for storing fuel and was not the sort of place in which the journalists would have taken refuge. His personal view was that the journalists had been shot.

The campaign of disinformation continued through the Indonesian media. According to Mr Ramos Horta, Radio Kupang broadcast on many occasions that the Australians had been “taught a lesson” because they were communists who had sided with Fretilin. The Age correspondent in Singapore, Michael Richardson, was told by a “very reliable Indonesian source” that heavy fire had come from a house in which the journalists had been staying, it had been mortared and most of the occupants, including four of the journalists, had been killed. So far there was nothing new in this scenario. However, the description of the fate of the fifth journalist was different. He apparently jumped out of a window of the house with his arms raised saying, “Australian, Australian”. He was shot. But not, according to this account, in cold blood but in the heat of battle, before what he was saying could be understood. According to Mr Richardson’s source, one of the cameras had been found intact and had ended up with the newspaper *Berita Yudha*. It seems likely that this version had originated from one of the hand-picked Indonesian journalists allowed to cover Operation Flamboyan or from someone who was familiar with what had actually transpired because, for the first time, in the description of the death of the fifth

journalist as he tried to identify himself, there is some resemblance to the evidence given to this inquest.

The investigation by Messrs. Taylor, Counsellor, Rutter, Consul, and Johnson, third Secretary, of the Australian Embassy in Jakarta, which culminated in a report dated 26 May 1976, was conducted with the “assistance” of the Indonesian Government as well as the leaders of UDT and Apodeti. There was the usual denial of the involvement of Indonesian troops in conjunction while the familiar narrative that four of the journalists perished in a fire at the Australia house and the fifth died in the woods was recounted. The investigating team inspected the Australia house and found some corroboration for this story in that it had obviously been damaged by fire. So, also, but to a lesser extent, were the houses alongside of it. It is important to note that the house referred to in this inquest as the Australia house was called the “Chinese” house in the 1976 report. From the contents of the report it does not appear as if the investigators inspected the house that has been referred to in this court as the “Chinese” house ie. the house in which the bodies were burnt. (Many of the houses in Balibo were owned by Chinese traders, hence the references).

Contemporary Indonesian accounts

In his interview with journalist David Jenkins on 26 July 1995, General Murdani emphasised that the journalists had been killed in the heat of battle (a “firefight”). He also stated that Mr Shackleton had compromised his status as a journalist by transmitting radio messages for Fretilin to Dili and Australia. Colonel Dading, in an interview with Mr Jenkins on 12 October 1995, reinforced the combatant status of the journalists by stating one of them had operated a sub-machine gun. He also stated that they had been killed in cross-fire.

In his book *Kompasus – Inside Indonesia’s Special Forces*, published on 2003, American author Ken Conboy claimed that he had interviewed eight members of Team Susi, six of whom had been in Balibo on 16 October 1975. He wrote,

“None of these sources denied the fact that Susi fired the fatal shots, nor did they offer apologies. They denied, however, having advance knowledge that any foreigners were in the town; if Jakarta knew about the newsmen, which is not at

all apparent, they apparently did not pass prior word to Susi members in the field.....They (members of Team Susi) also insisted that the assault on the Chinese house was conducted by automatic weapons through the windows, that the incident took place after the first wave of commandos had already moved up to the fort and that they were drawn to the house after gunfire came from the inside.”

While the description of firing of automatic weapons through the windows of a house is in accordance with some of the eyewitness’ accounts that were adduced in evidence at this inquest, this was the first time it had emanated from an Indonesian source. Since it has been independently corroborated, the description of this aspect of the events is probably accurate. Other aspects of this rendition bear the same inaccuracies as earlier versions. Notably, the wrong house (the Australia house) had been identified as the scene of the shooting and the journalists were depicted as actively engaged in firing on the Indonesian forces.

SECTION 12 – IDENTIFICATION AND BURIAL

Where a person has died in suspicious circumstances it is standard practice in coronial jurisdictions to conduct both a post mortem examination of the body and a thorough investigation of the circumstances of the death. If a question of identification is raised, then other forensic specialists, such as dentists, are called upon to assist the forensic pathologists. It is understandable that the families of missing persons want to know as quickly as possible whether a loved one has died. Nevertheless, the desire for a prompt resolution has to be balanced against the need to ensure the information provided is accurate. The need for caution is even greater where bodies have not been recovered. In such cases an additional emphasis is placed on the investigation of the circumstances of the deaths. A bald report of a death in a newspaper or, even, in an intelligence intercept would provide the impetus for an investigation but would not supplant the need for an investigation in order to confirm the details.

I am aware that there has been a suggestion that there was a delay in informing the families of the journalists about their deaths and that this delay was occasioned because to do so would necessarily mean revealing the Sigint material referred to in section 9. That was not the explanation given in court by the former Defence Minister, Mr Morrison. He stated that the problem arose in trying to confirm the identities of those who died. That also is my conclusion based on the evidence.

As the evidence in section 9 demonstrates, the first Sigint report that four Europeans had been killed in Balibo was received in Australia on 17 October, followed later by another asserting that five Australians had been killed. It is important to remember that the Sigint material did not give any information about how the journalists had died. It was necessary to obtain this information through the Indonesian Government. That same afternoon the ABC broadcast the news that five Australian television journalists were missing. Also that afternoon someone from Channel 9 on behalf of Mr Gerald Stone rang the Australian Embassy in Jakarta seeking information about the journalists. As set out in documents contained in *Australia and the Indonesian*

Incorporation of Portuguese Timor 1974-1976, the Australian Embassy reacted that afternoon and sought information about the journalists by utilising its contacts both at the official level through the Indonesian Embassy and also its unofficial contacts through Mr Tjan.

At that stage Embassy officials did not refer to the fact that they knew that the Indonesian military had mentioned in internal communications that the journalists had died. Any reference to that information would have revealed the existence of the Sigint material. But it was not long before the suggestion of the journalists' demise was made via another source that could be quoted openly, namely Fretilin soldiers. On 19 October Fretilin provided information that the Australian journalists took shelter in an old fort at Balibo which was later subject to a direct hit by a military shell. This information was helpful, even though it subsequently turned out not to be accurate. It meant that, henceforth, the Australian Embassy could make reference to a report of the death of the journalists without risk of revealing the Sigint material. Hence, the Australian Embassy immediately sought information from the Indonesian Government on the basis of that report. The fact that the Indonesian newspaper, *Kompas* reported on 20 October that four white men's corpses had been found in the ruins of a Chinese trader's house meant yet another source was in the public arena. It too was used by the Australian Embassy as a lever to obtain further information about the circumstances of the journalists' deaths.

In the face of the stonewalling tactics of the Indonesian Government, the Australian Embassy announced that it would send its own investigator to East Timor. A reading of the Cablegrams for the week following the attack on Balibo indicates that the Embassy kept up the daily pressure on the Indonesian Government to provide more information. However, the Embassy considered that it could not reveal that it was aware of the Indonesian involvement in the attack on Balibo without jeopardising the roles played respectively by Major-General Murdani and Mr Tjan. Indeed, Major-General Murdani was out of the country at this time and attempts to contact him in New York proved unsuccessful. Hence the charade, in which Australia participated, that Indonesia had no direct knowledge of the fate of the journalists but rather had to rely on information from its Partisan allies.

As noted above, a Statement dated 22 October and released on 23 October on behalf of UDT, Kota and Apodeti confirmed the deaths of “some white people”. That communiqué was still inadequate as a basis for identifying the deceased persons as the journalists. The first time that the Australian Embassy was given proof of identity of the journalists was on 25 October when Colonel Sunarso produced the passports of Messrs. Shackleton and Rennie and two notebooks that were in good condition. He also produced the (erroneous) explanation that these items had been in a container that had been blown clear of the house in which the journalists had died. It was on the basis of the proof of identity provided by these documents that the next-of-kin were informed of the deaths on 26 October. These documents had been taken from the journalists’ possessions in Balibo on 16 October, on the orders of Colonel Dading who personally supervised the dispositions of the journalists’ bodies and personal effects. The responsibility for the delay in producing them can be attributed squarely to the Indonesian Government.

It was not until 12 November that General Yoga handed over four boxes containing the remains of the journalists. He stated that actually there had been one box of remains that had been divided into four. He added that the remains of the fifth journalist had not been recovered. The evidence before me is that the bodies of all five journalists were burnt together. However, one skull was buried at the rear of the building. Additionally, here is some evidence that bones were removed from the Chinese house close to the time the bodies were incinerated.

The remains were not viewed by a forensic pathologist prior to being buried. They were examined by Dr Will, a General Practitioner. The only thing he could say was that they appeared to be human. In the circumstances where the remains have been effectively cremated and intermixed, an examination of the remains would not provide any greater insight into how a particular individual died beyond that contained in the eyewitness accounts before the inquest.

I note that in submissions to this inquest, many of the next-of-kin have expressed dissatisfaction that the remains are buried in Jakarta. They stated that they had agreed to this course because Australian Government representatives informed them that the other families had given their consent for this internment. Mr Stratton S.C. for Mrs

Tollfree stated that it was “utterly offensive” in view of the history of this matter that the journalists are buried in Indonesia and they should be returned to Australia. I intend to recommend to the Australian Government that contact should be made with the families to ascertain their wishes at this time and that if they wish for the remains to be brought to Australia then the Australian Government should exercise its best endeavours to accomplish this end.

SECTION 13 – LEGAL CONSIDERATIONS

Protection of Journalists under International Law

The evidence of the Fretilin soldiers in Balibo confirmed that the journalists were convinced that their status as international journalists would be sufficient to protect them in any encounter with Indonesian military forces. In order to ascertain whether that belief was accurate I sought and received detailed legal advice from my Senior Counsel, Mark Tedeschi Q.C. Additionally, a submission from Christopher Warren, President of the International Federation of Journalists included a legal opinion on the same topic by Dr Ben Saul of the Sydney Centre for International and Global Law that was admitted into evidence. Both of those opinions acknowledge that the position of journalists under international law is much clearer after 1977. However, even prior to 1977, the journalists were protected under humanitarian law governing international armed conflicts in certain circumstances. It is not my intention to set out here the intricacies of the relevant law. However, I consider it is important to refer to some of the basic tenets so that I can emphasis my findings of fact on particular issues.

Under article 4(A)(4) of the 1949 Third Geneva Convention, journalists who were authorised war correspondents were accorded the status of prisoners of war if they were captured by the opposing military force. The emphasis in this definition is on the fact that the journalists must have received written authorisation in the form of an identity card from the armed forces that they accompanied. The Balibo Five were not authorised war correspondents. Nevertheless, they were entitled to be treated as any other civilian non-combatants under international humanitarian law, ie. military attacks may be directed only against military combatants and military objectives, not civilians.

Article 2 of the 1949 Geneva Convention applied “ to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them. The

convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets no armed resistance.”

In examining this definition in question arises as to whether Indonesia and Portugal were engaged in armed conflict on 16 October 1975. From the time that Indonesian military forces assisted the Partisan forces to drive Fretilin out of Batugade in early October, there was a large identifiable Indonesian military presence in East Timor engaged in armed conflict. It does not matter that the members of the Indonesian Special Forces had “volunteered” for Operation Komodo and Operation Flamboyan, they were still under the command of senior Indonesian military figures such as General Yoga and Major General Murdani. I have no doubt on the facts before me that Indonesia, as one of the High Contracting Parties, was engaged in an armed conflict in East Timor.

The point could be raised, however, that Indonesia was not engaged in an armed conflict with Portugal, another High Contracting Party, but rather with Fretilin. Since 1960, the international status of East Timor as recognised by the United Nations was that of a non-self-governing territory administered by Portugal. As at 16 October 1975 Portugal remained the “administering power”. This was recognised by Resolutions passed in United Nations Security Council and General Assembly in December 1975. Hence, the Indonesian covert military activities in East Timor, including the attack on Balibo, were an attack on Portuguese territory. It mattered not that there was no resistance from Portugal but from a group within that territory. Additionally, from the time the Indonesian military forces set up a base at Batugade on 7 October 1975 Indonesia had “partially occupied” Portuguese territory. For these reasons, the actions of the Indonesian military at least from 7 October can reasonable be categorised as an international conflict.

The significance of the classification as an international conflict is that the journalists would have protections, under the Fourth Geneva Convention (Geneva Convention relative to the Protection of Civilian Persons in time of War 1949). Serious violations of the Convention are designated as “grave breaches” under Article 147 and may be prosecuted as war crimes. The “wilful killing” of persons protected by the Convention is classified as a “grave breach”.

Not every killing of a civilian by a member of an armed force is designated as a war crime. The killing must be “in the context of and associated with” the armed conflict itself. The phrase “associated with” has been interpreted as meaning that, in addition to a physical (locational) nexus between the killing and the armed conflict, the killing must have been intended by the perpetrator to advance the interests of one of the parties to the conflict.

Commonwealth Criminal Code

Under the Commonwealth *Criminal Code*, any grave breaches of the Geneva Conventions can be prosecuted in Australia regardless of when the alleged breach occurred. The offence provision is now contained in Article 268.24(1) of the Code. It provides that a person commits an offence if:

- “ (a) the perpetrator causes the death of one or more persons; and
- (b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol 1 to the Geneva Conventions; and
- (c) the perpetrator knows of, or is it reckless as to, the factual circumstances that establish that the person or persons are so protected; and
- (d) the perpetrator's conduct takes place in the context of, and it is associated with, and international armed conflict.”

Article 268.115 extends criminal responsibility to commanders and other superiors.

I note that proceedings under Division 268 may be commenced only by the Attorney General for the Commonwealth.

Factual Consideration

There is little doubt that the disinformation disseminated by the Indonesian military was designed to depict the Balibo Five as “combatants” who were actively assisting Fretilin both beforehand and at the time of their deaths. In that context I want to emphasis my findings of the following facts:

1. Although some of the Fretilin soldiers were under the impression that one or more of the journalists were using a radio, the journalists did not have any radio communication equipment. They conveyed no radio message at all after leaving Dili. It would appear that the witnesses mistook sound equipment for radio equipment. Gerald Stone, in his evidence, remarked that portable sound equipment was fitted with a microphone of the purpose of eliminating background noise. I consider it was probably the aspect of the microphone in conjunction with the size of the portable sound recorder that caused the misperception. It seems likely that spies for the Indonesian military forces also erroneously reported back that the journalists were using radio equipment. There could be no evidence that the journalists were communicating messages to Fretilin because it did not happen. As the evidence discloses, Fretilin had its own radio communications out of Balibo.
2. There is no doubt that Mr Shackleton personally carried a message to the Fretilin commander in Maliana to send more troops to Balibo. He said so himself in a televised report. I note, however, that the report had not been aired prior to 16 October. In any event, unwise though it may have been, it happened prior to the 16th and did not affect his status as a civilian on that day.
3. On 16 October the journalists were not armed. They were dressed in civilian clothes.
4. On 16 October the journalists were some considerable distance away from the location of the shooting by the Fretilin soldiers at the fort.
5. At the time of their capture, the last of the Fretilin soldiers were on their way out of Balibo.
6. The journalists were not incidental casualties in the fighting: they were captured then deliberately killed despite protesting their status.

Coroners Act 1980

There is provision under section 19(1) *Coroners Act 1980* for a coroner to refer a matter to the Director of Public Prosecutions (“DPP”) in the event that the coroner has formed an opinion about the evidence in accordance with the tests set out in section 19 (1)(b), namely,

“(i) the evidence is capable of satisfying a jury beyond reasonable doubt that a known person has committed an indictable offence, and
(ii) there is a reasonable prospect that a jury would convict the known person of the indictable offence.”

There are certain consequences that flow if the coroner forms that opinion. First, the depositions and a coroner’s Statement must be forwarded to the DPP pursuant to section 19(2). Secondly, the coroner’s finding is then limited to determining the person’s identity and the date and place of the person’s death. A finding as to the cause and manner of death is specifically excluded under section 22(1)(c). Thirdly, in accordance with section 22(3) any record of the finding cannot indicate, or in any way suggest, that an offence has been committed by any person.

Sections 22(1) and 22(3) are in the following terms:

“(1) The coroner holding an inquest concerning the death or suspected death of a person shall, at its conclusion or termination, record in writing his or her findings or, if there is a jury, the jury's verdict, as to whether the person died and, if so

- (a) the person's identity;
- (b) the date and place of the person's death; and
- (c) except in the case of an inquest continuity or terminated under section 19, the manner and cause of the person's death.

(3) Any record made under the provisions of subsection (1) or (2) shall not indicate or in any way suggest that an offence has been committed by any person.”

I have come to the conclusion that section 19 refers only to matters that can be referred to the DPP of New South Wales. It is quite clear that section 20 envisages that any cases referred to the DPP will be prosecuted within the NSW court system. Hence, the definition in section 4 that the “Supreme Court” means the Supreme Court of NSW. This means that the offence that is prosecuted must be an offence under the criminal law of this State and the prosecuting authority will be the NSW DPP.

I have taken the view that if the provisions of section 19 do not apply, then the restrictions as set out in section 22(1) do not apply and, therefore, I may make

findings in relation to the manner and cause of death. On the other hand the prohibition contained in section 22(3) against indicating or suggesting that a particular person may have committed an offence is not limited to cases falling within section 19. Rather the prohibition derives from the role of the coroner. The coroner's role is to make factual findings, not to determine criminal liability by applying the relevant law to the facts.

The Coroners Act 1980 contains no provisions about what to do if the coroner forms the opinion that the evidence before the inquest is sufficient to meet the test in section 19(1) in relation to offences under Commonwealth legislation. I have taken the view, therefore, that there is nothing to preclude my referring the matter to the Commonwealth Attorney General for consideration of potential breaches of Division 268 of the Commonwealth *Criminal Code*. I intend to do so.

SECTION 14 – JOURNALISTS' CODE OF PRACTICE

I was pleased to receive a submission from Mr Christopher Warren, President of the International Federation of Journalists and Federal Secretary, Media, Entertainment and Arts Alliance. Mr Warren noted that the results of a global survey published this year found that 1,000 news workers had died in the course of duty in the last decade. He also pointed out that Asia is the most dangerous region for journalists in the world, accounting for 25% of all news deaths in the last 10 years. A disturbing trend was that many journalists were killed precisely because they were journalists.

The facts in this case reveal that the journalists had no risk management training prior to undertaking this assignment. Nor was there a mix of experience and inexperience – the Balibo Five were all relatively inexperienced. Training courses are now available but, according to Mr Warren's evidence, commercial television networks were the organisations least likely to have their staff trained.

The other aspect that emerges from the facts of this inquest is that the journalists appeared to be unaware that their legal status could be jeopardised if they became involved in tasks that were linked to a combat role.

It was outside the scope of this inquest to undertake a detailed comparison between the preparedness of journalists then and now

to enter armed conflict zones. However, from the information available to me it seems as if the problems are on-going and need to be systemically addressed. While it is true that one cannot teach judgment, nevertheless risk assessment can be taught and that can be used to better inform journalists in the field when they have to make split-second judgments, such as when to withdraw and when to stay.

I accept the Media Alliance submission that there is scope for a national industry-wide safety code of practice which should be developed in conjunction with, and endorsed by, Australia's media organisations. I will make the appropriate recommendation.

FINDING – SECTION 22(1) CORONERS ACT 1980

Brian Raymond Peters, in the company of fellow journalists Gary James Cunningham, Malcolm Harvie Rennie, Gregory John Shackleton and Anthony John Stewart, collectively known as “the Balibo Five”, died at Balibo in Timor-Leste on 16 October 1975 from wounds sustained when he was shot and/or stabbed deliberately, and not in the heat of battle, by members of the Indonesian Special Forces, including Christoforus da Silva and Captain Yunus Yosfiah on the orders of Captain Yosfiah, to prevent him from revealing that Indonesian Special Forces had participated in the attack on Balibo. There is strong circumstantial evidence that those orders emanated from the Head of the Indonesian Special Forces, Major-General Benny Murdani to Colonel Dading Kalbuadi, Special Forces Group Commander in Timor, and then to Captain Yosfiah.

RECOMMENDATIONS

1. In light of the dissatisfaction about the status quo expressed by some of the families in the course of the inquest, I recommend that, as a matter of priority, the Australian Government liaise with the next-of-kin of the Balibo Five to ascertain, and facilitate, their wishes in respect of the continued internment of the remains of the journalists in Jakarta, Indonesia.

2. A national industry-wide Safety Code of Practice for journalists should be developed in conjunction with, and endorsed by, Australia's media organisations.

Magistrate Dorelle Pinch

Coroner

16 November 2007

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- Other police officers attached to Strike Force Shore

2. Counsel Assisting Team

- Mr Mark Tedeschi, S.C., Barrister at law
- Ms Naomi Sharp, Barrister at law
- Dr Julia Quilter, Solicitor

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- Mr Ian Linwood, Assistant Crown Solicitor, Criminal Law Team
- Ms Sophie Callan, former Solicitor
- Mr Jarrod Whitbourn, former Paralegal
- Ms Sashi Deep, legal Secretary

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- Dr Ivo Jorge Valente, Deputy Prosecutor General of Timor-Leste
- Ms Fabia Tilman, Assistant to the Prosecutor General of Timor-Leste
- Ms Janelle Saffin, Senior Policy Advisor – Office of the Prime Minister, Timor-Leste
- His Excellency Hernami Coelho da Silva, Timor-Leste Ambassador to Australia
- Mr Abel Guterres, Consul General of Timor-Leste in Australia
- Mr Alexander Weilsmann, Principal Advisor to Consulate General of Timor-Leste
- Ms Elisa Da Silva, Consul of Timor-Leste in Australia
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- Mr Brent Hall, Counsellor, Australian Embassy in Timor-Leste
- Ms Penny Hall, Counsellor, Australian Embassy in Timor-Leste
- Ms Robyn Scott-Charlton, Counsellor for Development, Australian Embassy in Timor-Leste
- Ms Jill Jolliffe, journalist and author

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