

**Too Much Wrong**  
**REPORT ON THE DEATH**  
**OF**  
**EDWARD JAMES MURRAY**

*SECOND, UPDATED EDITION*

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## **PREFACE [TO THE FIRST EDITION]**

This report analyses the investigation of the death of a young Aboriginal, Edward James Murray, in a police cell. The authors have reviewed and analysed evidence presented to a Coronial Inquest and a Royal Commission about the circumstances surrounding the death, obtained an additional evaluation of the conduct of the autopsy, and considered the relevance of subsequent findings of the Independent Commission Against Corruption of corrupt conduct against a police officer who was present at the time of the detention of Eddie Murray in the cell and who prepared the initial report to the Coroner about the circumstances of this death.

It is the intention of this report to present a detailed examination of the evidence given to the Royal Commission and the Coronial Inquest and the key issues raised by that evidence. For those who wish to consult the full record of the Royal Commission, the transcript of evidence (cited as T page) and all reports and statements made to the Royal Commission and cited in this report are available at the Australian Archives in Sydney. Apart from these records of the Royal Commission, and the ICAC report (a document published as *Investigation into the Relationship Between Police and Criminals*, First Report, February 1994) this report relies only upon the medical opinion of Dr Duflou of the New South Wales Institute of Forensic Medicine, which was privately commissioned for the report and is included within.

It will be clear that the authors of this report believe that many serious questions remain to be answered in the case of the death of Edward James Murray. The most important conclusions reached by the authors are that:

- the Royal Commissioner's analysis of the evidence was flawed in many instances;
- the Coroner failed to recommend the direction of any additional investigations of the death, despite making an open finding and concluding that one of the four police officers on duty at the time of the death was shown to be an unreliable witness;
- the police investigation of the death was incompetent because many necessary steps were not taken and many important questions were not asked;
- the police documentation of the circumstances of the death was limited and unreliable;
- the autopsy conducted on the deceased was hurried and so poorly recorded that the cause of death is unclear;
- and a number of police officers gave testimony to the Coronial Inquest and to the Royal Commission which casts doubt on their reliability and which conflicts with the evidence of independent witnesses.

The Report of the Royal Commission inquiry into Eddie Murray's death cast doubt on the accuracy and frankness of some of Senior Constable Kevin Joseph Parker's evidence to the Commission. Parker was involved in the detention of Eddie Murray and in documenting the circumstances of his death in a report to the Coroner. A relevant new aspect for this case is that Parker, who was one of the key police witnesses in the Eddie Murray case, has recently (1994) been found by the Independent Commission Against Corruption to be corrupt and willing to manipulate police records.

Although some years have passed since Eddie Murray's death in custody the authors are of the view that further investigations may resolve many of the unanswered questions about the cause of this young person's death.

With the aim of answering relevant questions raised in the body of this report, the following recommendations are made:

- (A) That the investigation into the death of Edward James Murray be reopened;
- (B) That the remains of Edward James Murray be exhumed for the purpose of determining if relevant post-mortem procedures had been performed and to identify any injuries to him not observed at the original post-mortem; and
- (C) That the Director of Public Prosecutions review all the testimony at the Coronial Inquest and the Royal Commission in order to assist with the re-investigation of the death of Edward James Murray.

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## **Introduction**

### **EDDIE MURRAY'S LIFE AND FAMILY**

Edward James Murray (Eddie) was born in Coonamble on 6 December, 1959. He spent much of his short life in Wee Waa, a small town in north western New South Wales. Eddie Murray lived in Wee Waa for most of the last ten years of his life, which ended tragically in police custody on 12 June 1981 when he was 21 years old. For several years in the early 1970s Eddie Murray lived with his parents and eleven brothers and sisters in two old army tents on Tulladunna Reserve, about five kilometres outside Wee Waa. Together with other Aboriginal families living on this reserve in 1972 and 1973, the Murrays endured constant harassment from the local council, which had tried for many years to prevent Aboriginal people camping on this reserve but made no efforts to secure any housing for them. The Murrays carted water from the Namoi River to their campsite, and cooked food on the top of 44-gallon drums. They had to walk into town to get provisions, and their children had to walk there to attend school. In these awful conditions the children were often ill. There was no Aboriginal medical service in Wee Waa to care for them.

Eddie Murray's father Arthur was a leader in a campaign for better wages and conditions on behalf of Aboriginal workers in the cotton industry. Aboriginal seasonal workers were paid ten dollars a day for twelve hours work chipping weeds in the cotton fields throughout the summer. A major part of the campaign was to stop aerial spraying of the cotton with poisons while Aboriginal workers chipped in the fields. Eventually, the Aboriginal workers achieved through unionisation an improvement in conditions with award rates and an eight-hour-day.

Another focus of Aboriginal agitation which began to succeed in 1973 was obtaining some houses in the town for Aboriginal people living permanently at Wee Waa. The Murrays were the last Aboriginal family moved into town from the reserve in August 1975, when Arthur Murray was ill with pneumonia and pleurisy. It was only after Arthur had a heart attack and was in hospital that the Murrays finally got a house in town, after many years on the reserve.

While living in Housing Commission homes in Wee Waa, the Murrays and other Aboriginal families faced continued harassment from those in the town who resented their new presence. While Arthur Murray was on an invalid pension in 1976 he helped move some cattle away from floods, only to find his pension stopped shortly after as a result. Arthur Murray was regularly picked up by the police while he was walking a short distance home from the local hotels, and held in custody instead of being taken home. Leila Murray had to spend time in the local court and police station because of this, when she had a large family to look after.

On occasions the police would harass the Murray family by driving past their house in the early hours of the morning and shining a spotlight at the windows. Arthur Murray was elected as manager of the local Aboriginal Advancement Association in 1979. He also worked as a volunteer for the Aboriginal Legal Service and for other Aboriginal organisations. While he was regarded as a “trouble maker” by many whites in the town because of his leading role in improving Aboriginal conditions, some members of the white community assisted Arthur and other Aboriginals. Arthur Murray and other Aboriginals were barred from local hotels, and groups of Aboriginals were regularly harassed by the police when they would congregate and drink by the levee bank near the town.

Eddie Murray attended Wee Waa Central School until 1976 when he was sixteen years of age. For all but the last year of his schooling, Eddie Murray's studies were disrupted by the poor living conditions on the reserve. During his last year at school Eddie Murray was responding rebelliously to the harassment which his family was facing after having moved into town. Christine Stafford, a librarian at the school from 1974, recalls that:

“Eddie’s education history was marked by frequent encounters with staff and other students alike. He was, to my mind, a rebellious young man. He would certainly stand up and fight for what he believed in and when he perceived himself to have been aggrieved, his responses were immediate, vitriolic and articulate. It is my firm belief that Eddie’s behaviour stemmed from the social and economic circumstances in which he found himself as an Aboriginal youth in a town such as Wee Waa. In this sense he was little different from many Aboriginal youths in town and elsewhere in Australia.” (T 3881-2)

After a playground disturbance the deputy principal is recorded in a staff directive as having written, “An afterthought . . . please remove from rolls . . . quickly!” When Eddie Murray’s father Arthur said that the school was offering him little chance of improving his situation in life the deputy principal informed the staff, “How could we disagree?” (T 3882)

After leaving school Eddie Murray undertook a basic welding course in Newcastle, and then worked in various jobs as a cotton chipper in Wee Waa, a fruit picker in the Riverina, and a casual labourer in Sydney. Eddie Murray was well regarded as a good worker and excellent footballer. While in Sydney he played rugby league with the Redfern All Blacks, and had been chosen shortly before his death to go on a tour of New Zealand. Eddie Murray was very happy about this when he returned to Wee Waa for two weeks at the start of June 1981 to see his family and friends. During these two weeks he spent much of his time fishing. On the

day of his death he told his mother he was intending to return to Sydney, where he was living with his uncle and aunt. (T 2533) While in Sydney Eddie Murray drank a lot of alcohol on occasions at weekends but he was not victimised for this by police, in contrast to his family's experience in Wee Waa. Eddie Murray was only picked up by police in Wee Waa. (T 2502)

In the few years before his death Eddie Murray was arrested for drunkenness seven times, and detained under the Intoxicated Persons Act on three other occasions, as well as having two convictions for offensive behaviour recorded against him. One police officer at Wee Waa in 1980-81, Constable Kevin Brennan, had a practice of bringing Eddie Murray home whenever he was found drunk on the street, but this was unusual. In the months before Eddie Murray's death the Murray family was subjected to a continuation of the harassment by local police which they had experienced since moving into town. In March 1981 Arthur Murray says he heard Constable Rodney Fitzgerald say one night when Eddie Murray shaped up to fight him: "Don't worry, Murray, I'll get you in my own time" or "something similar to that". (T 2509)

Eddie Murray's family, with whom he had a close and loving relationship, describe him as a "happy-go-lucky" person who often helped around the house and looked forward to life. His mother fondly remembers him always bringing a cup of tea to her early in the morning before going to work. His father is worried that his son's death was a result of the animosity directed by members of the white community in Wee Waa at the Murrays after they had campaigned to get housing for Aboriginals in the town. Eddie Murray's family are still seeking to find out why he was not taken home by police on the day he died. That decision and the tragedy which it led to disrupted the Murray family's life terribly. While the Murray family have

asked many questions about what happened on 12 June 1981, they have not received adequate answers.

## **Chapter 1**

### **REASONS FOR REOPENING THIS CASE**

In Wee Waa at about 2.00 pm on 12 June, 1981, Eddie Murray was detained as an intoxicated person, after being picked up outside the Imperial Hotel. He was then aged 21. Police allege that he was placed in a police cell soon after 2.00 pm and was later found hanging from a bar above the cell door very soon after 3.00 pm. Eddie Murray was supposedly in preventative detention. He had committed no crime. He was in the care of the police for less than two hours before his death. His “crime” was that he had merely shown signs of intoxication at the wrong time and place.

Eddie Murray was the son of Arthur and Leila Murray who, from the time of his death, campaigned to have the full circumstances of his death revealed. They, along with other families of Aboriginal people who died in custody, sought to have established a Royal Commission to investigate the circumstances of the deaths of the many Aboriginal people who had died in police or prison custody.

A Royal Commission was eventually established by the Federal and State governments in 1987. However, the findings made by the Royal Commission in Eddie Murray's case left more unanswered questions than the family or many members of the general community expected. The failure of the Royal Commission to dispel the justifiable anxiety of Eddie Murray's family that their loved one may have died as a result of the intervention of police

who were holding him in “protective custody” is a situation which needs to be rectified. The passing of time has not reduced the pain suffered by Eddie Murray’s family nor lessened their ongoing demand that numerous issues related to his death which were not fully investigated by the Royal Commission should be properly investigated. The New South Wales Government through its offices and agencies clearly has the resources to do much more than it has done to dispel the doubts that continue to exist about the circumstances surrounding this Aboriginal death in custody.

This report endeavours to identify the failings of the Coronial Inquest and Royal Commission into the death of Eddie Murray and to make recommendations about how such failures can be remedied. This first chapter examines the methods of analysis employed by the Royal Commission and raises many questions it left unanswered. The report then sets out the police version of events and proceeds by investigating a series of major gaps in the police evidence. Particular attention is devoted to the way in which police in this case were able to influence the conduct of the autopsy, and to a careful consideration of the available medical evidence.

### **Serious failures of analysis by the Royal Commission**

Some of the serious failures of analysis of the evidence by the Royal Commission are these:

- (a) concluding that police officers were unreliable in their evidence on important matters, without attempting to explain why they were unreliable;
- (b) holding that there was no medical evidence to support a finding that Eddie Murray died by other than his own actions;
- (c) finding that no police officer could have been involved in the death of Eddie Murray, despite the absence of conclusive medical evidence to support a

finding that Eddie Murray died by hanging; and

- (d) suggesting that a particular motive needed to be identified before any police officer could be found to have played a part in Eddie Murray's death.

On 25 January 1989, Royal Commissioner J.H. Muirhead submitted to the Governor of New South Wales his *Report of the Inquiry into the Death of Edward James Murray*. This report was the result of an inquiry which commenced on 29 January 1988, and ended on 1 June 1988. This was one of the first inquiries conducted by the Royal Commission and the only inquiry into a death in New South Wales to be completed by Commissioner Muirhead, who resigned his commission on 12 January 1989. The Commissioner divided his report on Eddie Murray's death into the following chapters:

1. Introduction.
2. Background of Eddie Murray.
3. Temperament of Eddie Murray.
4. Delay - Standard of Proof.
5. Morning of Eddie Murray's Death - drinking by the Levee.
6. Apprehension of Eddie Murray by the police.
7. Arrival at the police station.
8. Police Personnel on Duty.
9. Alleged noises from the cell between 2 pm and 3 pm.
10. Police officers on duty at 3 pm.
11. The discovery of body in the cell.
12. Mechanics of hanging.
13. Was Eddie Murray physically capable of hanging himself in the manner described?
14. Events at the police station after Eddie Murray was found.
15. Viewing of Eddie Murray's body.

16. The autopsy.
17. Eddie Murray's clothing.
18. The lack of histological examination of organs.
19. Theory of murder presented by counsel for the family.
20. Post-death investigations.
21. Summary of findings.
22. Overview issues.

By and large, this report follows the chapter headings adopted by the Royal Commissioner, with some divergences for the sake of clarity. It includes an extensive analysis of evidence given to the Royal Commission and details new medical assessments requiring consideration. In summary, this report demonstrates that there are many reasons for reopening the case of Edward James Murray.

The Commissioner's findings are worth setting out in full. They identify the conclusions which he reached following the formal hearings, and they provide an overview, albeit flawed, of events surrounding Eddie Murray's death. The Commissioner made the following findings:

- "1. Eddie spent much of the morning drinking with a group of Aboriginal men down by the levee. At 1.00 pm he was seen outside the Imperial Hotel and was clearly very drunk.
2. In this condition he entered the Imperial Hotel and he was asked to leave by the publican. Eddie became abusive and tried with some persistence to gain access to the hotel. It was at this stage that the police were called by telephone.
3. Shortly before 2.00 pm the police arrived at the Imperial Hotel. Eddie was apprehended by Sgt Moseley and Senior Constable Parker, the two officers

who were rostered on morning shift at the police station that day. He did not resist his apprehension.

4. The police returned to the police station with Eddie immediately after his apprehension. No consideration was given to alternatives, eg, taking him to his own home. Before he was placed in the cells a loud and angry exchange took place between Eddie and Parker. Eddie then complained about 'being picked on'. He was probably angry and upset.
5. He was placed in the cell by Moseley and Parker. I am concerned that the officers have not been frank about what took place at this time but there is no evidence to justify a finding of a physical assault, let alone an assault capable of producing unconsciousness or death.
6. The noises of Eddie calling out and kicking the cell door, as described by Moseley and Parker, did not occur - nor did the subsequent attendances by Moseley and Parker in response to such noises.
7. At 3.00 pm Sgt Page and Constable Fitzgerald were rostered to commence duty on the afternoon shift. Sgt Page arrived a couple of minutes early. Constable Fitzgerald was late that day and did not arrive until approximately 3.10 to 3.15 pm after he had taken his wife to her parents' place because she was unwell. Fitzgerald's involvement in the events, on the day of Eddie's death was minimal.
8. At 3.00 pm Moseley and Page discovered Eddie's body hanging in the cell. They released him from the noose. Efforts made by Page to resuscitate him were, if any, minimal.
9. Eddie was found to have a blood alcohol level of .3 grammes per 100 millilitres. His history of drinking and his reported behaviour on the day of his death clearly support a finding that he was, to some extent tolerant of alcohol.

10. The actual level of this tolerance, measured in terms of behavioural capacities, cannot be determined. The scientific or medical evidence as to whether he was sufficiently tolerant to have carried out the acts necessary to hang himself is equivocal and, viewed in isolation, is insufficient to make a confident finding. All the circumstances and competing hypotheses must be considered.
11. After his body was found, Dr Ralte was contacted and attended at the police station almost immediately. He briefly examined Eddie and pronounced him dead. He arrived at the police station at approximately 3.10 pm and left not later than 3.20 pm.
12. Whilst the doctor was still at the police station the ambulance was contacted and Mr Lewis, the ambulance driver, attended. He attended at approximately 3.20 pm, about ten minutes earlier than the time indicated in the ambulance records.
13. Lewis transported Eddie's body from the cell to the hospital mortuary.
14. The hanging marks were present on the neck region before the body was removed from the cell.
15. There was no interference with the body or clothes by police officers before or after the body was taken to the mortuary.
16. Eddie Murray died by hanging. The evidence does not justify a finding that he died by any other means. The lump or bruise which may have been present on his forehead did not indicate an injury sufficient to cause his death. The marks on the neck were consistent with death by hanging. There is just no evidence to support the hypothesis raised that the marks were caused after death.

17. On the whole of the evidence and material now before me it is more probable than not that death resulted by Eddie's own actions. This does not justify a finding of suicide for reasons set out in my report concerning the death of Kingsley Dixon. There is no evidence to justify a finding that he was a person likely to suicide although the effects of a high level of intoxication are not predictable. As I said in my report following the death of Kingsley Dixon '... Such a finding should not be made merely because a person died by actions or circumstances initiated by his or her own hand; findings of intent and capacity to form intent must also be considered.' Assuming I am correct in my finding that Eddie's death resulted from his own actions, I cannot exclude the hypothesis that this was done by way of protest or in anger with neither an intent to put an end to life nor an appreciation of the swiftness with which death by such processes may occur. So also in examining allegations of criminal conduct and approaching its findings, a Royal Commission must not ignore what has been said in authoritative decisions as to the quality of evidence and its persuasive value (eg, *Briginshaw v. Briginshaw and Another* (1938) 60 CLR 336 at 361). When the research project I referred to earlier is available next year it will be made available to Counsel.
18. The autopsy was carried out by Dr Mulvey in the presence of Detective Sgt Lamey and Senior Constable Parker. At some stage Sgt Page attended. I find that there was no 'impropriety' in the conduct of the autopsy. There were several unsatisfactory features of the autopsy, its reporting, and above all the fact that histological examination were not carried out. [sic] An autopsy following a death such as this should have been performed by a specialist forensic pathologist.
19. The police investigation into Eddie's death was inadequate, based on assumptions that he had committed suicide and that the officers involved were 'reputable and dependable'. The combination of the autopsy, the police investigation and other factors including destruction of clothing, or its remnants, without consultation with the family inevitably gave rise to disquiet

and suspicion which are likely to persist.

20. The initial coronial steps and arrangements were carried out by a junior clerk almost totally inexperienced in coronial practices. A coronial system which permitted a junior person to be in this position was unsatisfactory and was in part responsible for the inadequacy of appropriate post-autopsy procedures.
21. The Coroner who presided at the inquest approached the matter thoroughly and no criticism can be made concerning the Coronial inquiry.
22. I have no doubt that when he was left alone in the cell, Eddie Murray was seen to be intoxicated and he was probably angry. I do not know what was said when he was thus secured. Much has been learned since 1981 but to isolate a person in such a condition without close surveillance was, in my view, quite wrong and potentially dangerous." (Report pp 130-134)

One of the difficulties confronted in evaluating the Commissioner's findings is the fact that, in a number of instances, he incorporated multiple findings in what purports to be just 22 findings. For example, in point four, there are at least three potential findings, only one of which is not in dispute in this report. The three conclusions reached in point four are:

1. That the police returned to the police station with Eddie Murray immediately after his apprehension;
2. That no consideration was given to alternatives, e.g. taking Eddie Murray to his own home;
3. That before he was placed in the cells a loud and angry exchange took place between Eddie Murray and Senior Constable Parker. Eddie Murray then

complained about 'being picked on.' He was probably angry and upset.

The only part of this finding which is not open to doubt is that "no consideration was given to alternatives" such as taking him home. Even this clearly correct finding failed to provoke the Commissioner to conclude that the police involved did not have sufficient regard to the performance of their duties. Such a conclusion would have implied the necessity for appropriate counselling and censure of the police involved in Eddie Murray's detention. Indeed, there is little, if anything, in the way of recommendations from the Commissioner directed to either censure or counselling of any police officer involved in the case.

The third part of this finding, that Eddie Murray was probably angry and upset upon arrival at the police station, raises further questions which the Commissioner failed to pursue. The inconsistency between this part of finding four and the last part of finding three (that Eddie Murray "did not resist his apprehension" after resisting his ejection from the hotel) demands further scrutiny. It is highly improbable that Eddie Murray, after struggling fiercely to get back into the hotel, meekly accepted his detention by police, then became angry and upset only a few minutes later after being taken directly to the police station. It is more probable that the animosity began outside the hotel, and continued between the hotel and the police cell.

A logical problem exists with the Commissioner's tenth point. In the first part of this finding the Commissioner stated clearly that Eddie Murray's actual tolerance to alcohol "cannot be determined" to any significant degree. This conclusion is an insufficient basis for the overall finding made by the Commissioner that Eddie Murray was capable of hanging himself. For this to have been possible, Eddie Murray's tolerance level would have had to be the same as

that of chronic alcoholics assessed in clinical testing, the youngest of whom was nearly ten years older than Eddie Murray. The logical problem is that without a confident finding on this point, the Commissioner could not establish that the circumstances for self-inflicted hanging existed. This is important in view of the fact that a sober person of Eddie Murray's height could thread material for a noose through a small gap between mesh and a bar above the cell door (where police allegedly found it) only by standing on tiptoes facing the bars.

Another difficulty arises with the Commissioner's thirteenth point, concerning the taking of Eddie Murray's body from the police cell to the mortuary. This finding is incomplete in two respects:

- (a) Mr Harold Lindsay Lewis (the ambulance officer) says that a police officer assisted him in moving the body from the cell to the ambulance, but all police deny being involved in removing the body from the place of custody before the scene had been documented by scientific police. How is this to be explained?
- (b) There is no finding about who gave the authority for the body to be removed from the cell before the scientific police arrived. Sergeant Gary Malcolm Page acknowledges in his evidence to the Royal Commission that it would have been "proper practice" to keep the body unmoved in the cell until a police photographer had documented the scene. (T 3100)

The Commissioner's finding on the removal of the body ignored crucial questions about police conduct on the day of Eddie Murray's death, and failed to pursue why the police, on the Commissioner's own view, failed to give reliable evidence to the Royal Commission.

A further problem exists with the Commissioner's sixteenth finding concerning the cause of death. The last part of this finding, that there is no evidence to support the hypothesis that the marks on Eddie Murray's neck were caused after death, is misleading in at least two respects. First, expert medical evidence was given that it was not possible to determine from the neck marks whether they resulted from self-inflicted hanging or a simulated hanging soon after death. Second, the unusual presence of police outside the mortuary when Eddie Murray's body was delivered there is evidence to support the hypothesis of a simulated hanging after death. This hypothesis is supported indirectly by the fact that neither Dr Thavunga Ralte nor Mr Lewis, who both examined Eddie Murray's neck in the cell, observed the marks recalled by Page, who the Commissioner found did not remain in the cell with the body as he claims.

The central part of the Commissioner's eighteenth point, "that there was no 'impropriety' in the conduct of the autopsy", is open to question. The P79A Form prepared by the local police and given to Dr Eric James Mulvey immediately before he began the autopsy was inaccurate. Furthermore, the time of about one hour which Dr Mulvey says he took to conduct the post-mortem examination was inadequate considering his inexperience and lack of qualified assistance. The presence of local police at the autopsy in addition to the police photographer was unusual, as was the oblique nature of the photographs, all taken before the autopsy. Moreover, the disappearance of Eddie Murray's clothes from the mortuary in the few hours before representatives from the Moree Aboriginal Legal Service attended was also odd. These problems with the autopsy raise serious doubts about whether it was done properly.

A significant discrepancy exists between the Commissioner's seventh and twenty-first points concerning the Coroner's finding that Constable Fitzgerald was an unreliable witness. The evidence upon which the Commissioner concluded that Fitzgerald was not seen by Page at the police station at 3 pm was presented to the Inquest. The Commissioner's acceptance of Fitzgerald's evidence about arriving late for work on 12 June 1981 is remarkable in view of the Commissioner's statement that Fitzgerald's "lack of interest in what had occurred and lack of knowledge on some issues did not strike me as sincere." (Report, p 22) This is one of many points at which the Commissioner made improbable findings about significant events.

#### **The Commissioner's findings that are not disputed**

This report contends that a number of the 22 findings the Commissioner made are wholly or in part wrong. The findings or parts thereof which are not in dispute are:

- (a) That Eddie Murray had been drinking on the morning of his death and was very drunk. (part of finding 1)
- (b) That Eddie Murray was asked to leave the Imperial Hotel, that he tried to gain access to the hotel, and that the police were called. (finding 2, although it is unclear whether the call to the police referred to Eddie Murray specifically)
- (c) That no consideration was given to taking Eddie Murray to other than a police cell. (part of finding 4, although the reason for no consideration being given is open to doubt)
- (d) That there was reason to be concerned that officers Moseley and Parker had not been 'frank' about what took place at the time Eddie Murray was placed in the cell. (part of finding 5)

- (e) That Eddie Murray was found to have a blood alcohol level of .3 grammes per 100 millilitres. (part of finding 9)
- (f) That an autopsy following a death such as this should have been performed by a specialist forensic pathologist. (part of finding 18)
- (g) That the police investigation into Eddie Murray's death was inadequate. (part of finding 19)
- (h) That the initial coronial arrangements were carried out by a junior clerk almost totally inexperienced in coronial practices. A coronial system which permitted a junior person to be in this position was unsatisfactory and was in part responsible for the inadequacy of appropriate post-autopsy procedures. (finding 20)
- (i) That to isolate a person in such a condition without close surveillance was, in the Commissioner's view, quite wrong and potentially dangerous. (part of finding 22)

Issue is taken with the other findings and it is submitted that the method of reasoning adopted by the Commissioner in evaluating the evidence placed before him was inadequate.

### **Connection between Inquest and Royal Commission findings**

In November 1981 a Coronial Inquest was held into Eddie Murray's death, which produced an open finding as to the cause of death. As a starting point, the Commissioner had available to him the transcript of this Inquest. He stated in respect of the Coroner's findings:

"I have not of course, been influenced by his findings." (Report, p 129)

Nevertheless, the findings of the Coroner, L.R. McDermid, Stipendiary Magistrate, are of relevance, and evidence given at the Inquest was used in the examination of witnesses who gave evidence at the Royal Commission and for the purpose of questioning expert witnesses who appeared at the Commission hearings. Moreover, when evidence given by police witnesses at the Inquest was compared with their evidence at the Royal Commission, there were many instances in which the evidence varied to such an extent that the credibility of the witness was undermined.

It seems that the Royal Commissioner had strikingly similar views to those of the Coroner about how to treat police evidence. Both appear to have been unwilling to accept the possibility of a conspiracy to cover up the circumstances surrounding the death, and both concluded that demonstration of motive was a requirement before they could draw any adverse inferences from the conduct of the police or the evidence given by them on oath. Moreover, both do not seem to have analysed the evidence in its totality but rather to have followed an approach which suggested that each aspect of the detention of Eddie Murray should be viewed in a fragmented way, even though the processes of apprehension and detention occurred in a very short period of time and involved a small group of police officers, most of whom knew each other both professionally and socially. Certainly no consideration was given to the “generally accepted” practice of a significant proportion of the police service to support each other when confronted with potentially adverse personal consequences arising from failing to perform their duties. The Commissioner did not seem to be prepared to openly consider whether the effects of ‘police culture’ may have influenced the manner in which individual officers gave their evidence.

The principal finding of the Coroner was that:

"Edward James Murray on 12th June, 1981 in cell one at Wee Waa Police Station whilst detained as an intoxicated person died by hanging but as to whether by his own hand or the hand of persons or a person unknown the evidence adduced is insufficient to enable me to say." (Inquest, p 363)

The Coroner said that he reached this conclusion, which avoided an adverse finding for the police, because:

"To accept that the deceased was hanged by other persons one would have to ask why would that be so. There has been no evidence put before me as to motive for one or all of the police called to enter into collusion with civilian witnesses to depose to such a monstrous lie." (Inquest, p 363)

However, the evidence does not require collusion between any police officer and any civilian for there to be a finding that Eddie Murray did not hang himself, except insofar as police influenced the local doctor who conducted the autopsy to believe that he was examining a straightforward suicide. There is no doubt that the doctor who performed the post-mortem was so influenced.

Like the Coroner, the Commissioner viewed motive as a threshold matter. In a significant number of instances, the Commissioner cited the lack of evidence of motive to avoid drawing adverse inferences against police witnesses. The preference of the Commissioner was clear: unless a motive for police lying could be shown or there was direct civilian witness evidence

of a lie told by a police officer, then the police version of events should be accepted. It is trite to say that motive can be an important factor to be taken into account by an arbiter of fact. But it is by no means a decisive factor or indeed a necessary factor. If it were, then the highest standard of proof applied in criminal cases (beyond reasonable doubt) would require proof of motive before a verdict of guilty could be found.

Furthermore, the evidence given at both the Inquest and the Royal Commission does not suggest a logical necessity to draw the conclusion that all police must have colluded about all significant events, or that any civilian witness needed to have colluded with any police officer for there to have been findings that police officers were being untruthful about material particulars. A review of incomplete and unsatisfactory testimony given to the Royal Commission by the police officers on duty at Wee Waa on 12 June 1981 is provided in chapter 13 of this report.

### **Methods of analysis employed by the Commissioner**

It is a conclusion of this report that the Commissioner did not appropriately analyse the totality of evidence presented to him. Due to his approach to the evidence, many of his findings cannot be relied upon. An example of the Commissioner's reasoning processes, which is explored in greater detail in this report, is that he at one point (Report, p 120) described as "bizarre" the proposition by counsel for the family that the ligature marks later found on Eddie Murray's neck were placed there after death. Homicides often involve very bizarre actions on the part of the offenders. If rejection of the bizarre was a requirement of criminal proof, many offenders would never be brought to justice. Apart from this obvious point, the suggestion made by counsel was far from bizarre: expert evidence was given that

marks consistent with those found at post mortem on Eddie Murray's neck could have been caused after his death; there was opportunity for a police officer to have caused the marks after examination for signs of life in the police cell; there was evidence, despite denials by police, that at least one police officer was near the mortuary at the time when Eddie Murray's body was being admitted; and significant portions of the police evidence about events between 1.45 pm and 3.10 pm were not accepted as reliable by the Commissioner.

One of the reasons for the failure of the Commissioner to appropriately analyse the evidence may have been the fact that (apart from "a view" held at Wee Waa) he primarily relied upon police evidence generated at the time of Eddie Murray's death. His analysis was thus limited in a way that was not necessary, and could possibly have been overcome with additional information gathered as a result of the Commission's own investigations. Not enough was done to conduct investigations in a way designed to evaluate the veracity of police evidence or to collect fresh evidence. Efforts were made by the legal representatives to obtain fresh evidence and, in some instances, this was successful, but such efforts were restricted by limitations of resources and time.

There was another assumption embraced by the Commissioner which unnecessarily fettered the investigation of the death. This was that the death had occurred some years before the Royal Commission and that therefore there were going to be difficulties in arriving at the truth. This assumption was clearly stated by the Commissioner in Chapter 4 of his report when he said that:

"In this matter many documents have been produced and referred to, including the

transcript of the inquest which followed this death. One cannot expect all witnesses to be precise against such a background, but lack of precision is not, standing alone, necessarily a pointer to inaccuracy or dishonesty any more than dogmatic precision must lead to a finding of accuracy." (Report, pp 13-14)

Assuming that delay necessarily causes lack of precision was unfortunate as it could have caused the Commissioner, from the beginning of the Inquiry, to tend toward the conclusion that witnesses would necessarily be unclear about events because of the effluxion of time. An assumption that lack of precision is caused by delay rather than for example, dishonesty, fails to take into account the fact that some witnesses gave statements largely contemporaneously with the event of death. Further, it fails to take into account the fact that the event itself was so dramatic and personally involving as to cause witnesses to have sufficient recall and thus to reduce the possibility of false reconstruction. While memories may fade with time, the death of a young person in the police cells at Wee Waa was a dramatic event for a small country town and it can be properly concluded that it was highly unlikely that those who were involved would ever forget any connections with it.

The Commissioner unconsciously recognised this in that he accepted the evidence of some civilian witnesses, in preference to police evidence, despite the fact that some of those civilian witnesses on whom he relied were not formally required to recall the matters about which they gave evidence until seven years after the event. The Commissioner excused the lack of recall on the part of police witnesses, over many material matters, on the basis of fading memory, yet they were the very people who made formal records at or close to the time of the death of Eddie Murray.

Another assumption made by the Commissioner, conveyed at the time to representatives of the Murray family, was that the inquiry into this death would only take a few weeks as there were many more hearings to conduct and only one Commissioner then available. It is not being suggested that the Commissioner and his staff acted in bad faith. Nevertheless, the time and funding constraints imposed on the Commission by government had a significant detrimental impact on the design and development of the Inquiry; in particular, as previously stated, insufficient attempts were made to adopt a forensic investigatory approach. Had the Commissioner and his staff anticipated the extent of the discrepancies in the evidence, a more thorough approach may have been adopted from the outset.

An example of the pressure of time under which the Commissioner found himself is when one of the principal witnesses, Sergeant Page, was recalled to give further evidence arising from evidence given by ambulance officer Lewis. Counsel for the family, Kevin Coorey, attempted to question Page about a number of issues that highlighted differences between the evidence given previously by Page and that given by other police officers and civilian witnesses. A lengthy exchange occurred between the Commissioner and Mr Coorey which resulted in the Commissioner limiting cross examination and intervening, on one view, excessively. An example of the exchange between Mr Coorey and the Commissioner which reveals the Commissioner's thinking about time limits and the scope of questioning is this:

“MR COOREY: No, and, Mr Commissioner, confronting him therefore with what other - if two other people - if at least one person swears that he was there, then he may change his mind as he has done on occasions.

THE COMMISSIONER: I'll allow you to put Parker's proposition to him if you want

to and then you can put to him such matters as are relevant to your instructions but you must understand, Mr Coorey, that there are limits, there must be limits, in any inquiry as to where we go. I've got 100 other people out there waiting for inquiries and I'm very anxious that this be a thorough one - and it certainly has been and no one could suggest to the contrary. Put what Parker said and then put what your instructions require you to put to him." (T 6629)

This is only one of many exchanges which occurred. The Commissioner was concerned to deal with many other inquiries and to do so in a fashion which he considered to be adequate. Unfortunately, the Eddie Murray inquiry, in our view, was not as thorough as it needed to be both in terms of the investigation conducted and the analysis of the evidence available.

#### **Further examples of the Commissioner's failures in analysis of evidence**

There are a number of matters which are cause for real concern in the Commissioner's Report. They reveal serious gaps in his analysis and are apparent from even a cursory review of his Report. Some of these serious gaps are as follows:

1. The Commissioner was "concerned" that the police have not been "frank" about what took place when Eddie Murray was placed in the cell. (Report, p 131) Yet he did not adequately examine why the police were not frank, dismissing the issue as insignificant in terms of the evidence as a whole. (Report, p 35)
2. The Commissioner found that Eddie Murray did not call out and kick the door of the cell in which he had been placed. (Report, p 131) Yet Senior Constable Parker and Sergeant Alan Brian Moseley gave sworn evidence that he did. The Commissioner gave no convincing reason as to why he considered that the police were unreliable

about this matter.

3. The Commissioner found that Sergeant Moseley and Senior Constable Parker did not attend Eddie Murray in the cell in response to noise. (Report, p 131) Moseley and Parker gave sworn evidence that they did visit the cell. Although the Commissioner asked “why then should Moseley and Parker have fabricated this story about the noises?” (Report, p 42), he gave no convincing reason why, given this incorrect police evidence about events at the police station after 2 pm, police evidence of discovering Eddie Murray's body at 3 pm should be believed.
4. The Commissioner doubted whether Sergeant Page made any attempt to resuscitate Eddie Murray. "Efforts made by Page to resuscitate him were, **if any**, minimal.” (Report, p 131, emphasis added) The Commissioner does not seem to have fully analysed why Page would tell such a story and the Commissioner did not attempt to clarify the issue with Page, by exploring the inconsistency between this police officer's testimony and evidence given by a civilian witness in the police station and by the doctor who attended the scene.
5. The Commissioner found that Dr Ralte arrived at the police station to certify death at 3.10 pm. (Report, p 132) Yet the police Occurrence Pad entry records that the body was sent to the mortuary at 3.10 pm. How did the police make such a mistake? No explanation was given.
6. The Commissioner found that Sergeant Page attended the autopsy "at some stage".

(Report, p 133) Yet Sergeant Page denied that he was present at the autopsy. No explanation was given by the Commissioner as to why he gave incorrect evidence about this matter.

7. The Commissioner found that, "the combination of the autopsy, the police investigation and other factors including the destruction of clothing, or its remnants, without consultation with the family inevitably gave rise to disquiet and suspicion which are likely to persist." (Report, p 133) Yet the Commissioner did not provide a satisfactory analysis of these factors, including the presence of an unusual number of police at the autopsy.
8. The Commissioner said, "Moseley appeared to be a 'shattered' man but his lack of memory and apparent fear worried me." (Report p 21) Yet the Commissioner did not attempt to say what Moseley feared, despite being "concerned about the accuracy" of Moseley's evidence in some respects. Why would the Sergeant in charge of Wee Waa police station give inaccurate evidence? No attempt was made to explain this.
9. The Commissioner said, "Page denied involvement in a number of matters, whereas the evidence has led me to the opposite conclusion, eg, typing the Occurrence Book, attendance at the post mortem. His denials cause me concern and, making allowance for the passing of time, I have doubts as to his reliability. I found his apparent detachment from the events of the day unusual." (Report p 21) The Commissioner made no attempt to explain why Page was an unreliable witness about material issues.

10. The Commissioner said of Parker's evidence, "his testimony on some other issues led me to doubt his accuracy or frankness (eg, time of preparation of his statement, noises from the cell, conversations with Eddie, his whereabouts after Eddie's body was taken to the mortuary). I am particularly concerned as to what took place when Eddie was placed in the cell." (Report p 22) The Commissioner made no attempt to explain why Parker would not give accurate or frank evidence on these points.
  
11. The Commissioner said of Constable Fitzgerald's evidence, "his lack of interest in what had occurred and lack of knowledge on some issues did not strike me as sincere." (Report p 22) This comment raises two unanswered questions:
  - (a) What issues was the Commissioner referring to?
  - (b) Was the Commissioner saying Fitzgerald was insincere in the witness box?  
Why would a police officer be insincere about such an important matter?

Similar criticisms can be made of the Coroner who despite finding the evidence of police officer Fitzgerald to be unreliable did nothing to remedy the situation. Despite making an open finding he did not make any specific recommendations about the conduct of further investigations into the death. The Coroner's inquiry occurred within six months of Eddie Murray's death yet he did not ask for any additional information or investigations of witnesses who had not given evidence. He seemed to be content with simply saying that he did not know how Eddie Murray died and to refer the case generally.

The limitations of the Royal Commission Inquiry, especially its investigatory techniques and inadequate analysis, cause some difficulties but not such as would rule out the prospects for

success of a further inquiry. There is sufficient evidence available to provide a new inquiry with a substantial base for further investigation. Such an inquiry should take a different approach to previous inquiries, accepting the necessity to adopt the investigatory techniques which must be routinely adopted in thorough criminal investigations. Operating mainly on the basis of documents provided by police who were intimately involved in the matter clearly does not suffice, nor does questioning without the collection of further evidence using investigatory techniques adopted by other Royal Commissions.

It is submitted that a new inquiry is warranted in the Eddie Murray case, because the police version of events with which the Commissioner ultimately, on balance, agreed, cannot withstand comprehensive scrutiny. There is sufficient evidence to suggest that a further investigation is required to answer many questions outstanding in this case, and that it should be fashioned in such a way as to explore the submissions put to the Commissioner by counsel for the family.



## **Chapter 2**

### **POLICE VERSION OF EVENTS**

#### **AND ITS DOCUMENTARY EVIDENCE INADEQUACIES**

The police version of the detention of Eddie Murray outlined below is based largely upon the written statements of police officers on duty at Wee Waa Police Station on the day of his death, the Occurrence Pad entry in which the police summarise the events, and the P79A Form which was prepared by the police for the doctor who performed the autopsy. Evidence was also given by police officers at the Inquest held in November 1981 and at the Royal Commission hearing in 1988. Discrepancies between the documented police record of the detention and their later testimonies are examined in subsequent sections of this report.

#### **Detention and arrival at police station**

On 12 June, 1981 at about 1.45 pm Sergeant 2nd Class Moseley received a telephone call at the Wee Waa Police Station from a "female person" advising him that "Eddie Murray was drunk and causing trouble at the Imperial Hotel", Rose Street, Wee Waa. (Statements of Parker, 12 June 1981, and Moseley, 13 June, 1981)

With Senior Constable Parker, Moseley went in a Police Land Cruiser to the outside of the Imperial Hotel where Eddie Murray was seen "staggering from the main entrance" and "yelling out in a loud voice to someone inside the premises." (Parker Statement, 12 June, 1981). At this point in time Moseley says that Eddie Murray was observed to be intoxicated "and he was detained and placed in the rear of the Police vehicle and conveyed to the Wee Waa Police Station. On arrival at the Police Station he was placed in the dock and searched

by Senior Constable Parker, and then removed to the cell block and placed in cell No. 1 and detained as an intoxicated person." (Moseley, Statement 13 June, 1981)

The exact sequence of events up to the point of placing Eddie Murray in a cell is not provided in any police statement. The police Occurrence Pad entry, twice incorrectly identifying Eddie Murray as a "prisoner" rather than as someone in protective custody, states, inter alia:

"Murray was well affected by intoxicating liquor at the time and was conveyed to the Wee Waa Police Station. On alighting from the rear of the Police truck, he slipped on the wet pavement, falling to the ground and had to be assisted into the Charge Room. Murray was searched and entered into the Intoxicated Persons Register, vide 52902. He was then conveyed to Male Cell No. 1, placed inside and the door locked."  
(Occurrence Pad entry 4.20 pm, 12/6/81)

The detention of Eddie Murray and his return to the police station was estimated by Moseley in his evidence to the Royal Commission to have taken about 5 minutes. (T 2839) The formal procedures at the police station also took only a short time. There were no other people in custody at Wee Waa Police Station during the time when Eddie Murray was in detention.

### **Alleged visits to cell**

After Eddie Murray was placed in the cell, the next alleged sighting of him was "at 2.15 pm" when Moseley says, "I could hear the person 'Murray' calling from the cells, so I went to the cell and said 'What's the matter' He said, 'Nothing.' I said, 'Lie down be quiet and have a sleep.'" (Moseley, Statement, 13 June, 1981).

Senior Constable Parker corroborates Sergeant Moseley's claim to have visited the cell at

2.15 pm in his statement of 12 June, 1981. Parker also adds that "at about 2.30 pm" he independently visited the cell "and spoke to Murray in relation to his continual banging. At the time he was walking about the cell and on walking past the cell door he lunged out at it with his feet." (Parker, Statement, 12 June, 1981)

On this police version of events Parker was the last person to see Eddie Murray alive. The next attendance at the cell, where he was detained, allegedly occurred soon after 3 pm, at which time it is alleged that he was found hanging by Sergeants Moseley and Page.

### **Supposed discovery of body**

Sergeant Moseley says,

"At about 3 pm Sergeant Page commenced duty and I had a brief conversation with him and then went to the cell block to check on the detained person. I could see through the area of the cell flap a portion of the back of the head and a piece of grey coloured blanket secured to bars directly above the cell door entrance. I placed my right arm through the flap in an endeavour to lift the deceased, and at the same time, Sgt. Page opened the cell door and it was observed that the deceased was blocking a portion of the entrance to the cell. Sgt. Page lifted the deceased and I managed to remove the piece of blanket from around the neck of the deceased. Sgt. Page lowered the deceased onto a mattress in the cell." (Moseley, Statement, 13 June, 1981).

Sergeant Page provides a similar description of events, adding that upon opening the cell door he,

"found the deceased was blocking portion of the entrance.(sic) I moved the deceased to the side, put my arms around him and lifted him off the floor. At the time the blanket was knotted around the Deceaseds' (sic) neck and he was slumped with his

back towards the door. His feet were on the floor and his knees bent." (Page, Statement, 30 June, 1981).

These events according to the police occurred at about 3 pm, the time when Page came on duty. The records made by Moseley, Page and Parker do not mention times after 3 pm except in respect of the arrival of Eddie Murray's father at 3.30 pm, and Parker's recording of the identification of the body the next day at 8 am to the Government Medical Officer.

After allegedly removing Eddie Murray from the noose and lowering him to the mattress in the cell, Moseley says,

"Sgt. Page tried to find a pulse and performed an external cardiac massage and was unable to find a sign of life." (Moseley, Statement, 13 June, 1981)

Page says,

"I then attempted to find a pulse but to no avail and then performed external cardiac massage and was still unable to find any pulse."

....

"Upon finding the deceased hanging in the cell, I did everything possible within my capabilities to revive him"

(Page, Statement, 30 June, 1981)

The next relevant information provided in the statements of Moseley and Page is:

Moseley                    "Dr Ralte attended the Police Station a short time later and pronounced life extinct." (Statement, 13 June, 1981)

Page                        "Dr. Ralte attended the Police Station shortly after and pronounced life extinct."  
(Statement, 30 June, 1981)

Parker makes no reference to the attendance of Dr Ralte in his statement and simply says,

"Sergeant 2nd Class Moseley returned to the front office and informed me that Murray had hung himself and was apparently deceased." (Statement, 12 June, 1981)

The only other police officer possibly present at the police station at 3 pm when Moseley and Page went to the cell was Constable Fitzgerald. He did not provide evidence about the events on the day until an issue was raised, at the Inquest, about whether or not he was involved in the detention of Eddie Murray.

Apart from the problem of the police not having provided detailed individual statements about the events surrounding the death of Eddie Murray, they failed to be appropriately descriptive of events in any other documentary form. Their duty was not only to provide statements but to record the events of the day in two other official police forms. One, the P79A Form, is discussed in chapter 9: ADVERSE POLICE INFLUENCE ON AUTOPSY FINDINGS; the other is the Occurrence Pad which is a primary police document which records incidents.

### **Function of an occurrence pad**

Chief Inspector Charles James Jurd gave evidence at the Royal Commission about the procedures which should be followed and documents which should be completed by police. He says of the use to which an occurrence pad should be put:

#### **THE COMMISSIONER: What is the occurrence pad? Is it a record of happenings to individual officers during the day?---**

It's a record of occurrences, sir, that takes place, such as you might have an accident, you might have someone injured, dog bites, an occurrence that takes place in the main street.

**Very well?---**

Yes, just occurrences.

**And they would be entered in a station occurrence book by each officer?---**

Yes.

**What, before he leaves his shift?---**

Well, they should be. (T 2981)

An Occurrence Pad entry was made covering the events surrounding the death of Eddie Murray. There are a number of problems related to the entry which suggest an attempt was being made to avoid disclosing the full circumstances of Eddie Murray's detention.

**Who created the occurrence pad?**

The problems with the entry start with the difficulty in determining who in fact created the document. Moseley claims he did not type it but acknowledges that he read and signed it and that the entry was made one hour and twenty minutes after Eddie Murray was, on the police version of events, found hanging in the cell. Moseley gives this evidence at the Commission hearing about the production of the occurrence pad entry:

**MR COOREY: Have you seen that, sergeant?---**

Yes.

**All right. Now, when you made that on 12 June, that was when the events were all very fresh to you, weren't they?---**

I never typed it, but I signed it. (T 2839)

. . . .

**No, but you're giving - that's a statement that you made on the very same day at 4.20 pm, isn't it?---**

Yes.

. . . .

**THE COMMISSIONER: Well, sergeant, did you type that resume?---**

Well, I can't - I think it might have been delegated to type out those, Your Honour, because I notice that there's - my name's spelt wrong, not that it means anything. But I notice it's got M-o-s-s-e-l-e-y.

**Well, you appear to have signed it?---**

I signed it, yes.

**So I assume you read it then?---**

Yes. (T 2844)

At the Inquest Moseley's memory was clearer on the point of who typed the occurrence pad:

**Q. Who typed that document?**

A. That was dictated by me to Sgt. Page who done the typing and that is probably why he spelt my name with double-S all the way through, I wasn't particularly worried about it. (Inquest, p 222)

Page at first firmly denies that he typed the occurrence pad entry then says there is the "slightest possibility". He states:

**MR EAMES: Is there some way that you can say confidently that it wasn't you, apart from simply whether you recall doing it or not?---**

I did not type it, sir.

**Do you know who did type the occurrence pad entry for that day?---**

No, sir. (T 3076)

His position becomes somewhat less assured when he is confronted with the fact that Moseley had claimed he did type it. He states:

**MR EAMES: More specifically, who was the typist of the occurrence pad entry.**

**You told us then at 3075, 3076, that you were not the person involved in typing that occurrence pad entry. Since you gave your evidence it's been pointed out to Mr Moseley that when he gave evidence at the coroner's inquiry, his evidence then was that he dictated the occurrence pad entry to yourself; that you were the typist, he dictated it and that was how the occurrence pad entry was completed. Can I ask you whether it is your belief that that is in fact the way the occurrence pad entry was typed?---**

I've got no recollection of typing it sir.

**Are you saying that you are positive that you did not type the occurrence pad entry?---**

No, sir.

**Well, is there any possibility that you did type the occurrence pad entry at the dictation of Sergeant Moseley?---**

Slightest, sir. (T 6575-6576)

Parker denies a role in typing or otherwise creating the occurrence pad entry. (T 3590)

Fitzgerald also claims to know nothing about its creation and indeed to have had little if anything to do with the events generally.

The Commissioner commented on the occurrence pad in the following terms:

"The entries in the Occurrence Pad usually related to incidents other than those involving arrest or detention (see - Jurd 2981). There are a number of entries in which Eddie's name appears, indeed seven incidents between 31.12.76 and 12.6.81. Most relate to fights and brawls in which he was allegedly involved. Clearly he frequently came under police notice and the only finding open is that he was a young man who at times drank to excess. I doubt whether there is dispute as to this finding." (Report pp 57-58)

Apart from appearing to not understand the purpose of an occurrence pad, the Commissioner

did not fully examine the inconsistencies in the police evidence concerning the relevant entry in the occurrence pad. Importantly, the occurrence pad entry was the only police document created soon after Eddie Murray's death and it was used to question police witnesses. One reason the police may have wished to avoid being involved with the creation of the occurrence pad entry is that the times mentioned in it do not logically fit with evidence they had given or were prepared to give. Page in particular seems to have wanted to distance himself from knowledge of all events surrounding Eddie Murray's death other than the alleged rescue attempt. Page seems especially reluctant to be part of the removal of Eddie Murray's body from the cell soon after his death.

**Time 3.10 pm - a false entry?**

The occurrence pad recorded that, "At about 3.10 pm the ambulance attended and conveyed the body to the mortuary." This is the first record of the time when it is suggested that the ambulance attended the police station. None of the police statements record the time, although Parker gives evidence at the Commission hearing that he rang the ambulance at about 3.20, 3.25 or 3.30 pm. (T 3250) He states when being asked questions about the 3.10 pm entry in the occurrence pad:

**MR COOREY: Okay. If that was accurate there'd be no reason that you know of as to why there would be a 20-minute delay before you would ring the ambulance, is there?---**

No, there's no reason, no.

**There was nothing to be done before the ambulance came was there?---**

No.

**You didn't do anything in the cell?---**

No.

**Nothing had to be rearranged?---**

No.

**Do you accept or do you dispute that the ambulance was telephoned at 3.30 pm?-**

--

I telephoned the ambulance at approximately somewhere 3.20, 3.25 - somewhere around about that time. (T 3249)

Parker did not record the time of his calling the ambulance in his statement of 12 June, 1981 or in the P79A Form which he prepared for the Coroner.

The contacting of Dr Ralte and the movement of Eddie Murray's body is described in the police occurrence pad entry of 4.20 pm on 12 June, 1981 in the following terms:

"Dr. Ralte was contacted immediately and pronounced life extinct. At about 3.10 p.m. the Ambulance attended and conveyed the body to the Mortuary."

The P79A Form entry simply says:

"Dr. Ralte of Wee Waa was contacted and attended immediately and pronounced [sic] life extinct. The deceased was then conveyed to the Wee Waa District Hospital Mortuary."

A significant issue arises involving the time when Dr Ralte and the ambulance were called to attend the police station, and the time when Eddie Murray's body was removed from the cell.

The only police documentary evidence of the time of the removal of the body is in the occurrence pad, being "about 3.10 pm". There is no police record of the time when Dr Ralte was called. However, the ambulance records indicate the ambulance was called at 3.30 pm;

the ambulance officer, Mr Lewis, recalls being in the cell before Dr Ralte arrived. (T 6378-9)

Parker acknowledged to the Royal Commission that he told the Inquest he phoned for an ambulance "approximately around" 3.30 pm. (T 6544-5) He also told the Royal Commission: "I know it was getting towards the 3.30 mark when I did ring." (T 3250)

Given the ambulance record of attendance at 3.31 pm and Parker's evidence above to the Commission, it is more likely than not that the ambulance was called at 3.30 pm. Dr Ralte gave evidence at the Inquest that he completed his examination of Eddie Murray around 3.30 or 3.45 pm. (Inquest, p 30) These factors combine to suggest that the entry made in the occurrence pad of 3.10 pm may be false. If this is so, there is good reason why Page does not want to be associated with typing the entry, just as there is an explanation of why Moseley has such difficulty recalling any detail about its creation.

If it is to be believed that Moseley and Page attended the cell at 3 pm, then there is an approximately 30 minute time lapse before the ambulance was called. The police version of events does not provide sufficient detail of their activities to justify such a delay. It would be difficult to envisage any legitimate circumstances that could cause such a delay.

The occurrence pad indicates that a post-mortem was arranged for 8 am on 13 June, 1981. This was done within an hour of the transfer of the body to the mortuary, before investigating and scientific police arrived at the scene. There is no police record of who arranged for the local Government doctor to perform a post-mortem within 20 hours of death, though Parker

says that he rang Dr Mulvey, the local Government doctor, "later on that evening". (T 3649)

### **Issues of concern about the detention of Eddie Murray**

Some of the significant problems with the police version of the apprehension and detention of Eddie Murray and the events after his death which are examined in this report are these:

1. Who apprehended Eddie Murray? There is evidence pointing to Constable Fitzgerald being involved although this is denied by police witnesses and by some civilian witnesses with a distant or obscured view of the scene.
2. How much force was used when Eddie Murray was detained? The police claim it was uneventful but the closest witness, Mr Noel Louis Collett, says Eddie Murray was thrown into the police van by two police officers in a very quick apprehension.
3. Whether Eddie Murray was injured when he was taken from the police van into the police station, and how he was taken into the cell. The police claim he walked and slipped on wet concrete soon after 2 pm, but the cleaner of the police station, Mr Joseph John McKnight, says the relevant area was not washed until after he looked at a clock at 2.30 pm.
4. Whether there was animosity towards Eddie Murray by the police at the time of his detention in the cell. The police denial of this is contradicted by the cleaner, who heard an angry exchange between Senior Constable Parker and Eddie Murray at the police station.

5. Did the police hear noises from Eddie Murray's cell and check on him as they claimed? The Commissioner found that they did not.
6. Did the police find Eddie Murray hanging in the cell as they claimed and did they enter the cell in the way described? The alleged manner by which Sergeant Moseley removed the noose from Eddie Murray's neck with one arm placed through the flap in the cell door is inconsistent with the evidence of an expert in knots, Mr Frank Charles Brown, about how a noose can possibly be removed.
7. Did Sergeant Page attempt to resuscitate Eddie Murray as he claims? The Commissioner found this to be unlikely.
8. When were the doctor and ambulance called? A precise contemporaneous record of timing was made by the ambulance officer and was not disputed by counsel at the Commission, but the Commissioner rejected it in preference not to the occurrence pad made that day, but to subsequent recollections by the doctor and others who had no reason to make precise records of time.
9. Why did the police at Wee Waa not secure the cell area after Eddie Murray was pronounced dead, pending arrival of the scientific police photographer?
10. Were there "obvious" marks on Eddie Murray's neck as claimed by Sergeant

Page, or no marks as recalled by Dr Ralte and ambulance officer Lewis?

11. Was the alleged noose hanging from above the cell door upon Eddie Murray's death as claimed in the police evidence (and later photographed) or not there, as recalled at first by Dr Ralte and consistently by ambulance officer Lewis when they entered the cell?
  
12. Why did the police provide in the P79A Form limited and in some instances inaccurate information to the doctor before he performed the autopsy?  
  
Why, unusually, were three police present at the autopsy?

These and other issues of significance about the circumstances surrounding the death of Eddie Murray are analysed in this report. The analysis begins in the next chapter with the arrival at the police station (point three above) then proceeds to assess the evidence about what happened after Eddie Murray was placed in the police cell; concentrates on clarifying the timing of the arrival of the doctor and ambulance officer in the cell; examines the key issue of the removal of the body from the cell before the arrival of scientific police; and reviews the failure of post-death investigations. Then the conduct of the autopsy (including the presumption made by Dr Mulvey about the cause of death) is carefully assessed. Then three possible scenarios for the creation of hanging marks on Eddie Murray's neck are scrutinised, before the analysis focuses on how Eddie Murray was apprehended by police. While the Commissioner's finding about the manner of Eddie Murray's detention is the most unconvincing part of his Report, it is clearer to start by assessing his analysis of events at the police station because less witnesses gave evidence about this than about the apprehension.



### Chapter 3

#### ANIMOSITY UPON ARRIVAL AT THE POLICE STATION

Police officers Parker and Moseley state in their evidence to the Commission that their arrival with Eddie Murray at the police station was without incident. Parker says this was unusual:

**MR EAMES: Mr Parker, you say that on this day there wasn't effectively a single word issued between yourself and Mr Murray prior to him being placed in the cell except perhaps his middle name and his date of birth?---**

That's about all, yes.

**Now, that was unusual in terms of what you expected to be the situation on that day, was it not? ---**

That's correct, yes.

**He'd not been told, to the best of your knowledge, why he was being placed in the cell?---**

I can't recall.

**Nor had he even asked?---**

Not that I can recall, no. (T 3208)

Moseley's evidence is consistent with that of Parker:

**MR EAMES: You've told us last time of the detention of Eddie Murray in the main street at Wee Waa and how he was brought back to the police station. You went into some details about the various books that had to be completed at that time relating to the Intoxicated Persons Act. When you returned to the police station after Eddie Murray had been detained, were there any words exchanged between Senior Constable Parker and Eddie Murray?---**

I don't know.

**In particular did Eddie Murray say words like this, 'Why do you always pick on me? Why don't you pick on the white people'?---**

I don't remember him talking to me at all.

**Do you recall Constable Parker saying this, 'Sit down and shut up or I'll charge you with something more serious. I'm only charging you with drunkenness'?---**

No, I don't remember saying that at all. (sic)

**When you say you don't remember it, is it possible that there were words exchanged that way between Senior Constable Parker and Eddie Murray?---**

If there was, I didn't hear them.

**THE COMMISSIONER: Were you in the dock - I think it's suggested in other evidence that this conversation probably took place in what you know as the dock?---**

Yes.

**Do you remember Eddie being in the dock?---**

No, not particularly, No, not at this stage.

**You really have no memory?---**

No.

**It was suggested that Eddie was kind of talking very loudly when he suggested, 'Why do you pick on me?' and that Parker more or less yelled back at him. You don't remember that?---**

I don't remember that at all.

**MR EAMES: If you leave aside any words, what the words might have been, do you recall Eddie Murray talking in a loud voice or shouting out?---**

Eddie Murray calling out?

Yes.---

No.

**Did Senior Constable Parker say to you, 'I've told him to sit down and shut up or I'll charge him with something else'?---**

No, I can't remember Constable Parker saying that to me at all.

**Can you recall, Mr Moseley, did there appear to be any hostility between Senior Constable Parker and Eddie?---**

Not that I can recall. (T 6432-3)

The evidence of the police officers that there was no hostility between Parker and Eddie

Murray at the time of their arrival back at the police station is contradicted by evidence of the police station cleaner, Mr McKnight. The version of events given by McKnight is as follows:

**MR EAMES: And you heard some voices and conversation, and in which room - were you in the same room when you heard the conversation take place?---**

Yes, I only had the one room to finish. That was Second Class Page's office.

**Was the door of the room that you were in open or closed?---**

Opened.

**Could you tell where the sound was coming from, where they appeared to be talking?---**

From around the dock area I'd say.

**When they were talking, could you tell us how loudly the voices appeared to be?---**

Yes. The prisoner was yelling out and screaming out, 'Why do you always pick on me? Why don't you pick on the white people?'

**THE COMMISSIONER: Could you tell me whether this was before or after you looked at the clock?---**

It was before, this was about 10 minutes - between 5 and 10 minutes after I got back to work.

**MR EAMES: Again if I could just take you back. You said he was yelling out, 'Why do you always pick on me? Why don't you pick on white people'?---**

That's right.

**Was he saying anything else?---**

No.

**Did he say that on just the one occasion or on more than one occasion?---**

On more than one occasion. (T 4540-41)

....

**MR EAMES: When you heard these voices, did you recognise either of the voices?---**

Only Constable Parker's.

**How did Constable Parker sound?---**

It was in a loud voice. He said to the prisoner, 'Sit down and shut up or I'll charge you with something more seriously' (sic)

**Did he sound angry?---**

He sounded angry, yes.

**Did the other person's voice sound angry?---**

Yes. (T 4542-3)

There is no evidence that Mr McKnight had any reason to lie about the words exchanged between Eddie Murray and the police. On the other hand if the police were involved in the death of Eddie Murray, there would be a strong reason for them to deny that there was any animosity between themselves and Eddie Murray.

The Commissioner stated:

“I find that the exchange between Parker and Eddie as overheard by McKnight took place and that Eddie was shouting at Parker. I doubt whether Parker would have forgotten this exchange. . . .

I am concerned that I have not been given an accurate account as to what took place when Eddie was placed in and locked in the cell. I doubt whether it was as quiet an episode as the evidence of the officers depicts.

I am satisfied that words were exchanged between Parker and Eddie and, whilst Parker conceded the possibility, I think he was well aware that such an exchange in fact took place.” (Report, p 34)

A reasonable conclusion which can be drawn from the Commissioner's finding is that the Commissioner had formed the view that Parker misled the Coronial Inquest and him. It is also possible that if Parker misled the Royal Commission on this matter, so did Moseley.

An apparent explanation for Parker wanting to withhold evidence of animosity between Eddie Murray and himself required the Commissioner to draw an inference adverse to the police officers. This the Commissioner was reluctant to do. He stated:

“Had there been medical evidence consistent with Eddie's death having been caused by a third party, Parker's evasiveness would assume significance and sinister overtones. But whatever was said between he and Eddie, it is quite clear that Eddie was not forcibly hanged by a third party.” (Report, p 35)

The conclusion that Eddie Murray was not forcibly hanged by a third party was, and remains, premature. All the medical experts agreed that the marks on Eddie Murray's neck could have been made by a simulated hanging after his death. (See Chapter 10: EFFECT OF AUTOPSY ON MEDICAL EVIDENCE.) Further, while the Commissioner found that relations between Eddie Murray and the police were antagonistic and that the police were misleading in respect of this evidence, he then stated:

“It is possible that Parker did or said something which precipitated a decision by Eddie to stage a suicide attempt.” (Report, p 35)

Such a statement does not evaluate the evidence in a comprehensive way. In particular, there was ample evidence before the Commissioner suggesting that Eddie Murray was not suicidal. (Report, p 10) To simply state that it is possible Parker did or said something to precipitate a suicide attempt avoids other possibilities as to why Parker was evasive about the manner of Eddie Murray's detention.

## Chapter 4

### ALLEGED NOISES FROM THE CELL AFTER 2 PM

Police officers Moseley and Parker informed the Commission that they placed Eddie Murray in the cell at about 2 pm without incident. This evidence is contradicted by that of the station cleaner, Mr McKnight, who heard angry words exchanged between Parker and Eddie Murray on their arrival at the station (see previous chapter). The Commissioner found McKnight to be a reliable witness. Indeed he accepted McKnight's evidence that **no** noises came from the cell into which Eddie Murray had been placed, while rejecting police evidence that noises did come from the cell.

The section of the statement of Parker, dated 12 June 1981, concerning noises from the cell, reads:

"...At about 2.15 pm Sergeant Second Class Moseley visited the cells and spoke to Murray in relation to his continual yelling. At about 2.30 pm I visited the cell and saw and spoke to Murray in relation to his continual banging. At the time he was walking about the cell and on walking past the cell door he lunged out at it with his feet..."

The relevant section of Moseley's statement dated 13 June 1981 reads:

"...At about 2.15 pm I could hear the person Murray calling from the cells, so I went to the cell and said, 'What's the matter?' He said, 'Nothing.' I said, 'Lie down, be quiet and have a sleep.' "

Moseley and Parker gave evidence to the Commission which was consistent with their statements: their evidence is that they heard noises coming from the cell in which Eddie

Murray was placed between 2 pm and 3 pm and that they both visited the cell during this period. Importantly, Moseley alleged that he heard yelling for 8 to 10 minutes before 2.15 pm, while Parker alleged that he heard those same noises, and further noises for 8 to 10 minutes before 2.30 pm and for a short while thereafter.

On Moseley's evidence there was only one period of noise. In describing that period, Moseley's evidence is this:

**MR EAMES: Now, whilst you were upstairs you heard a noise and could you just describe it? What sort of noise did you hear?---**

I could hear persons calling out - a person calling out. (T 2820)

On Parker's account, there were three separate sets of noises. First, there was what Parker calls a "muted yelling" (T 3636) noise of 8 to 10 minutes duration, in response to which Moseley attended the cell at about 2.15 pm or on the evidence given to the Inquest, 2.15 to 2.20 pm; secondly, there was a banging noise of similar duration in response to which Parker himself attended the cell at about 2.30 pm; and thirdly, there was a continuation of the noise after 2.30 pm.

**Parker's evidence of "muted yelling"**

**MR EAMES: Now, when Mr Moseley appeared had you heard anything?---**

Prior to him appearing, yes, I heard yelling coming from the cell area.

**How long had that been going on for?---**

Approximately 5, 8 minutes.

**So is this the situation, that Mr Murray had been almost completely silent up**

**until the moment he was placed into the cells and then within a minute or so of him being placed in the cells he commenced yelling?---**

That's correct, yes.

**And that yelling continued for something like 8 minutes?---**

Approximately 8 - 8, 10 minutes.

...

**Do you recall Mr Moseley coming back?---**

Yes.

**Did he say anything about what had taken place in the cells?---**

Not that I can recall.

**When he returned was the yelling still continuing?---**

It had stopped for a little while and then he continued again.

**Did Mr Moseley remain with you or go elsewhere after he'd come back from the cells?---**

I can't recall.

**Well, you said that the noise started up again. Can you recall approximately how long after Mr Moseley had been to the cell that the noise started up again?---**

It was only a matter of a few seconds. (T 3209-10)

#### **Parker's evidence of banging noises**

**MR EAMES: What sort of noise was it on that occasion?---**

Well, first up there was a yelling noise and then a few minutes later there was a banging noise of something banging on the cell door.

**Was it a sharp banging noise of a thumping noise?---**

It was a thumping noise.

**How long did that continue for?---**

For a few minutes.

**What did you do?---**

I then walked down myself to the cell to see what the banging noise was.

**Were you annoyed at all?---**

No, I wasn't, no.

**When you went back to the cells was the door to the exercise yard locked?---**

It was, yes.

**Did you have to unlock it?---**

I did, yes.

**Did you enter into the area near cell number 1?---**

I did, yes.

**Did you go into the cell?---**

I did not, no.

**What did you do?---**

I come up towards the door with the open flap down and had a look in first to see what I could see, what the banging noise was, and as I was looking in Eddie had been walking past the door and lunging out with his foot kicking against the door.

**On one occasion or more than one?---**

Just on that one occasion while I was there.

**Did you have any conversation with him?---**

I did, I asked him what was wrong and he replied, 'Nothing' and I believe I said to him then, 'Well look, just try and settle down and have a bit of a sleep'.

**Did you say anything else to him?---**

I believe I may have said something about the lock-up keeper having a sick child there also to him.

**Was that in fact the case?---**

Yes (T 3210-11)

. . . .

**Well, you told him to be quiet and have a sleep. Did he say anything in response to that?---**

Not in relation to that, no. (T 3212)

#### **Parker's evidence of third noise**

**MR EAMES: So how long did you remain outside the cell?---**

I was only there for a matter of a couple of minutes - 2 or 3 minutes.

**Did you go back to the counter area?---**

I then proceeded back down to the office area, yes.

**And did any noise continue to come from the cell?---**

I think there was, yes a little more banging then after I'd gone back to the office.

**How long did that continue for?---**

That I don't recall.

**Did you consider going back there again?---**

Not at that stage because when I returned to the office area there was a gentleman at the counter, who I then attended to.

**Yes. Now, approximately what time then would that have been that you came back to the counter?---**

Approximately 2.30.

**At that point the gentleman was there. Was the banging still continuing?---**

At that stage, yes.

**Yes, and how long did it continue for?---**

I can't recall.

**Was it quite audible to you from where you were at the counter?---**

Yes, it was, yes.

**Did it appear to stop?---**

I can't recall. (T 3212-3)

Moseley and Parker disagree not only on timing, duration and number of noise related incidents, but also on the volume of the noises allegedly coming from the cell. On the volume of the noises, Moseley describes the calling out as "loud" (T 2821), whereas Parker describes it as "muted". (T 3636). Moseley's evidence under examination is this:

**MR EAMES: How loud was the noise that you heard?---**

Loud enough for me to hear it upstairs but - - -

**Was it a noise of a voice or was there any accompanying noise, like banging or sounds of that sort?---**

I can't remember any banging, but I'm not saying there wasn't any; I just can't

remember.

**You said it was a noise loud enough for you to hear upstairs. Normally would you be able to hear people in the cells from downstairs from your office?---**

No.

**Does that suggest to you how loud the person must have been calling out?---**

Yes, I agree he was calling out loud for me to hear him, yes. (T 2820-1)

Despite the fact that Moseley reports the volume of the noise as louder than Parker does, on Moseley's own evidence to the Inquest and the Commission he was better able to hear than Parker would have been. He was also better placed to have heard the incident of banging which Parker alleged occurred between 2.15 and 2.30 pm. At the Inquest, Moseley stated:

I went back to my own office which was upstairs, then I come back down again, I was up and down to the office and back.

**Q. A couple of times?**

A. Yes.

**Q. Do you remember between 2.15 and 3 o'clock noticing what Snr Const. Parker was doing?**

A. He was in the police station. I didn't take much notice of what he was doing.

**Q. In the general office?**

A. In the general office, yes.

**Q. Do you remember some civilian being there conducting some transaction with Snr. Const. Parker?**

A. Yes, but what time that was I wouldn't particularly know really.

(Inquest, pp 237-8)

On Parker's evidence, the last noise should have been corroborated by the civilian witness in the police station, Mr Dennis Gordon Cronin. The noise was allegedly audible to Parker while he was processing a motor vehicle registration for Mr Cronin. Yet Cronin's statement

makes no mention of any noises while he was at the station, although on his evidence at the Inquest he may have returned to the station as late as 2.45 pm or 3 pm. (Inquest, pp 341-2)

Corroboration of the noises from the cell, however, should have come from Mr McKnight if they occurred, since it was accepted that McKnight was present at the relevant time and was situated such as to hear such noises if they occurred. On his evidence there were no noises from the cell while he was there:

**MR EAMES: You said you didn't hear any more, you continued on with your work?---**

That's right.

**You then went on to say (in your statement), 'I come downstairs about half an hour later?---**

Yes. (T 4543)

....

**THE COMMISSIONER: So you were pretty close to the cell area when you walked along there?---**

That's right, yes.

**MR EAMES: You would have walked past the door which opens into the cell passage?---**

Into the cells, that's right, yes.

**Can you remember if that was open or closed?---**

I can't remember.

**During the time that you were walking along that journey, did you hear any sound coming from the cell area?---**

No.

**Had you heard any sound coming from the cell area before that time, apart from what you've told us about?---**

No.

**Did you at any time hear banging?---**

No.

**If someone was banging or kicking the cell doors, have you ever been upstairs, whilst doing your cleaning work, when someone was kicking up a ruckus in the cells?---**

Yes.

**Have you been able to hear the - - -?---**

Yes quite plainly.

**At the time that you were upstairs in the half an hour after you'd returned from lunch, is there any reason why you would not have heard the sound of a person kicking hard against the door of the cell?---**

No, I would have heard it.

**You told us that you were using the vacuum at some time in that half hour?---**

Yes.

**Do you know how long you used it for?---**

It would have been only between 5 and 10 minutes.

**Would the sound of the vacuum block out any noise from downstairs?---**

No, not if they were banging and kicking the cell door.

(T 4546)

. . . .

**THE COMMISSIONER: Can I just ask you this: getting back to this kicking and yelling, but not on this day, have you been working when prisoners have yelled and kicked from the cells?---**

Yes.

**And is it something you can hear pretty easily?---**

Yes it is. Yes they're very heavy steel doors.

**And you can hear it right throughout the complex?---**

Yes, you can hear it right throughout. (T 5939)

. . . .

**MR COOREY: Now at 2.30, when you were coming down, if there had been any kicking or yelling in the cell, you would have had even a better chance to hear - an opportunity there, wouldn't you?---**

Yes.

**From then on you're downstairs in the car park area, you would be even closer still, I suppose?---**

I'd be still close to the cell block, yes.

**Yes?---**

That's right.

**And you swear that you never heard any yelling or screaming at 2.15 or 2.30?---**

No. (T 5945)

In cross-examination of Parker, counsel for the family suggested that Parker was giving false testimony, as he simply could not have heard noises through three closed doors between the cell and the front of the police station. Parker's evidence on this point is this:

**MR COOREY: You've got three doors. I beg your pardon; you may have more. But you've got at least three doors between the cell and the office, haven't you?---**

That's right, yes.

**You've got two heavy steel doors; you've got the cell door?---**

Yes.

**And you've got a wooden door?---**

That's correct.

**And plus, you may have swinging doors?---**

There's two double swinging doors which go out of the dock area down into the passageway.

**Right?---**

They were open at the time.

**You're sure?---**

Yes.

**The three cell doors were closed, weren't they? I beg your pardon. The three other doors were closed, not the swinging doors. They were closed?---**

The two steel doors were, yes.

**Plus the wooden door?---**

I can't recall about the wooden door. (T 3264)

Reasonably loud noises from the cell could have been clearly heard throughout the police station, yet the station cleaner Mr McKnight, who was closer to the cell than Parker at the time, heard no noises.

### **Inconsistency of police evidence**

There are a number of problems with the police evidence in relation to the alleged noises from the cell. To recapitulate: first, there is the police evidence that there was no apparent animosity between themselves and Eddie Murray, which seems inconsistent with their evidence of Eddie Murray making noises that would apparently be directed at antagonising the police. Second, there is the inconsistent evidence between the officers about the type of noise, the noise intensity and the duration of the noise intervals. Third, there is the lack of corroboration of police evidence by independent witnesses who were apparently in the vicinity at the time of the incident. These inconsistencies are matters of concern.

The probability that this evidence is unreliable is highlighted through counsel for the family obtaining the concession that the difference in evidence about the noises could not be due to any understandable confusion with other incidents. This establishes that it was not simply a matter of Moseley not registering the banging noise because it was common place:

**MR COOREY: You were at Wee Waa for some years, weren't you?---**

A couple of years I think; probably 3.

**In your time in the town, did you ever hear a kicking from the - I am talking about when you were in the office and it's coming from in there?---**

I don't know.

**You've got no memory about that?---**

No.

**The only thing you can tell us is that you did hear yelling from upstairs?---**

Yes, I heard yelling.

**On 12 June. Is that right?---**

Yes. (T 2869)

The Commissioner found:

"The noises of Eddie calling out and kicking the cell door, as described by Moseley and Parker, did not occur - nor did the subsequent attendances by Moseley and Parker in response to such noises."

(Report, p 131, finding 6)

The Commissioner based this finding on three grounds. First, the evidence of Mr Cronin, who stated that he attended the police station on the day, arriving between 2.30 and 2.45 pm (perhaps a few minutes after 2.30 pm) and remained there for about 30 minutes, during which time he did not hear any sound consistent with someone kicking a cell door or yelling.

(Report, p 41). Second, the evidence of the cleaner Mr McKnight, who did not hear any noises. He was present in the police station (upstairs) when Eddie Murray was placed in the cell, and was cleaning the garage area near the cell after 2.30 pm. (Report, p 41) Third, the Commissioner's participation in a view of the police station in Wee Waa and a demonstration which involved listening for prearranged sounds being made in the cell where Eddie Murray was detained. While these sounds were being made the Commissioner and others listened for them from different parts of the station. The Commissioner stated that he was influenced "in some measure by the demonstration conducted from the cell in question." He concluded, "This is not a scientifically oriented test, but the noises then emanating from the cell were

clearly to be heard throughout the police station complex." (Report, p 41)

It is not surprising that the Commissioner made the finding that the noises did not occur.

What is surprising is that he did not then draw the conclusions which are supported by this part of the evidence and his findings on other matters relevant to the death of Eddie Murray. For instance, if the police officers lied in relation to the noises and their attendance on those noises, then it was surely open for the Commissioner to find that they lied in relation to their supposedly good relations with Eddie Murray during his detention.

The Commissioner proceeded to avoid drawing adverse inferences by canvassing but not supporting various suggestions put forward by counsel at the hearing as to why the police may have wanted to "fabricate" their story. The Commissioner did not suggest what he considered to be the best explanation for any false police testimony, but seemed content to simply list the alternatives which were put forward and to reject the hypothesis posed by counsel for the family. He provided the following commentary:

“Counsel Assisting suggested the evidence of Eddie making noises from the cell would demonstrate that Eddie was both conscious and active after being placed in the cell. Presumably what follows from this is that Eddie's condition was such that he was likely to be capable of the physical acts involved in hanging himself. An alternative is that Parker and Moseley wished to demonstrate that they kept proper surveillance over Eddie after placing him in the cell.

“Another possible explanation is that Parker and Moseley knew that Eddie had been physically or verbally abused by one or both of them and rather than highlight that possibility they attempted to convey by their evidence that Eddie was active and was not demonstrably suicidal.

“A further suggestion posed during the hearings was that Eddie may have been killed either at the time of his placement in the cell or thereafter and that to disguise that fact the officers asserted that he had been very much alive up until shortly before 3.00 pm. For reasons which I later explain, this theory suffers from the absence of such a cause of death. No injury which was observed would have killed Eddie save for the hanging. If he had been hanged by the police then there were no injuries consistent with a struggle. If he was unconscious, perhaps due to a blow, why would police hang him when there would have been no less difficulty in asserting that any blow struck was done inadvertently or in self defence?”

“This theory runs directly counter to the theory finally advanced by Mr Coorey on behalf of the Murray family. It was his submission that Eddie was not hanged in the cell at all but that a hanging was simulated at the hospital mortuary. The cause of death was not suggested and none is obvious apart from an improbable assertion of vaso-vagal inhibition due to pressure on the neck (which left no mark of fingers).”  
(Report p 42)

It is our view of the evidence that the Commissioner, in rejecting the hypothesis put forward by counsel for the family, did so by way of a flawed analysis which misconceived significant parts of the evidence before him. Specifically, the suggestion that Eddie Murray was capable of hanging himself given his extreme level of intoxication is disputed (see scenario 1 section of Chapter 11: HOW WERE THE HANGING MARKS CREATED?).

The proposition that Parker and Moseley kept proper surveillance is not supported by the police officers' own evidence. Indeed, Parker's evidence shows a breach of police practice:

**MR CAVANAGH: You said that you and Sergeant Moseley locked Eddie**

**Murray up a few minutes after 2 o'clock. That's right, isn't it?---**

Into the cell?

**Into the cell?---**

Yes.

**On the day - and that Sergeant Moseley attended the cell some 8 to 10 minutes after he was locked into the cell?---**

Right, yes.

**You also said that you heard yelling which required Sergeant Moseley to go to the cell?---**

Right.

**And that you heard that yelling going on approximately 8 to 10 minutes?---**

It could have been that long. It might have been a bit shorter but somewhere around that period.

**So on that Eddie Murray would have been yelling from about the time he was placed in the cell?---**

Not actually from the exact time. It was - could have been 3, 4, 5 minutes after.

**But you've said that he was yelling for 8 to 10 minutes?---**

Somewhere around about that, yes. I can't give the exact- - -

**Right. Do you have many people that are detained at the time under the Intoxicated Persons Act who'd yell from the cells?---**

We have on occasions, yes.

**And Eddie Murray was yelling for some time but you didn't go to see what was wrong with him, did you?---**

Not at that time. I can't recall why not. I must have been doing something otherwise I would have gone down myself. (T 3635-6)

Parker cannot recall what he was doing before Mr Cronin came in:

**MR CAVANAGH: Was it a very loud yelling?---**

Not over loud, no.

**It wasn't over loud?---**

No.

**You could hear it clearly?---**

You could hear it, yes.

**And you don't recall any words?---**

No.

**Just a muted yelling?---**

That's right, yes.

**It's possible, isn't it, that at that point of time Eddie Murray could have been in distress?---**

That's possible.

**And you didn't think it necessary to go and see what was wrong?---**

Well, as I said, I can't recall why I didn't go down. As I said, the only thing I can put it down to, that I was doing something at this stage and that's why Sergeant Moseley's gone down.

**And you've said that you've had other people who were under the Intoxicated Persons yelling from the cell?---**

A few, yes.

**How long do you normally leave it before you go and check on those people?---**

Myself, not doing anything, I would go straight away.

**Go straight away but on this occasion you left it for some 10 minutes?---**

Well, as I said, I can only put it down that I was doing something and that's why I didn't go down immediately.

**Yes, but you've placed yourself, haven't you, in the office area behind the counter at the time?---**

That's where I was, yes.

**Were you on the phone?---**

I could have been I don't recall.

**Yes, and there was no one else there at the time?---**

Not at that particular time, no.

**And you left him yelling for 10 minutes. (T 3636-7)**

By finding that the police had not heard noises from the cell, the Commissioner rejected the police evidence relating most closely to the circumstances of Eddie Murray's death. This

pattern of dissimulation to the Royal Commission by police about a significant number of matters regarding this crucial part of the events points to police consciousness of their need to hide their role in relation to the death.

By contrast, the suggestion canvassed by the Commissioner that Parker and Moseley attempted to show that Eddie Murray was not 'demonstrably suicidal' is not plausible, because succeeding in doing so would not necessarily have been to their advantage. If it was accepted that Eddie Murray was not suicidal at 2.30 pm, then it would be necessary to find another explanation for his death. Another hypothesis is that he died at the hands of a third party, and the evidence shows police officers were the only third parties with access to Eddie Murray from the time of his detention. The conclusion that in less than 30 minutes he became suicidal and performed all the necessary acts to result in death is an unlikely scenario.

The Commissioner's question as to whether if Eddie Murray was unconscious, "why would police hang him when there would have been no less difficulty in asserting that any blow struck was done inadvertently or in self defence?" is not particularly insightful. The police were in control of the investigation, and therefore the police knew and controlled what information the Coroner was to receive. They also had a significant role at the autopsy. It is perhaps more realistic to think that the police did not foresee the extent to which the family of the deceased and others would agitate, and that a Royal Commission would be established to investigate the death. It was obviously easier to establish the suicide scenario than to have to face possible criminal charges or an inquiry at which it may have been accepted that they, or one of them, had been involved in contributing to the death of a person in custody. Facing a judicial review in such circumstances would open the possibility of penal sanctions, loss of

employment and public admonition.

The Commissioner's most important comment about why police were misleading concerning the alleged noises was that, "If he had been hanged by the police, then there were no injuries consistent with struggle". This comment ignored the fact that, firstly, the autopsy was poorly recorded and possibly so poorly performed that any signs of a struggle could have been easily overlooked. The autopsy report does not enable others to evaluate the evidence in order to supply relevant expert opinion. It also failed, secondly, to acknowledge what appeared to witnesses who saw the body before and after the autopsy to be a serious injury to Eddie Murray's forehead. The Commissioner erred in failing to put aside the unreliable autopsy findings for the purpose of analysing evidence about what happened after Eddie Murray was detained in the police cell.

The Commissioner's conclusion that the police were not frank about their activities during a relevant period of time goes much further than just exposing their lack of credibility. It goes directly to the issue of how Eddie Murray died. A reasonable explanation for any fabrication of evidence about a harmonious arrival at the police station and noises from the cell may be to show that Eddie Murray was alive and well at the time of his apprehension and detention, and thus to obscure any suspicion of foul play that may have alerted Dr Mulvey to the need for an experienced forensic pathologist to perform the autopsy. Instead, he proceeded to conduct the autopsy based on a presumption of suicide.

Once the Commissioner rejected the evidence of Moseley and Parker concerning what happened when Eddie Murray was detained in the police cell, it followed that it was open to

him to find that Eddie Murray may have suffered some injury at their hands (or at the hands of another police officer on duty) either prior to being placed in the cell, or when detained there. No other reasonable explanation appears to have been open to the Commissioner.

## Chapter 5

### ALLEGED DISCOVERY OF THE BODY IN THE CELL AT 3 PM

#### **Alleged method of entry**

The evidence of both Moseley and Page is that soon after 3 pm they went together to check Eddie Murray in his cell and found him hanging. They claim to have made a rescue attempt, having observed that Eddie Murray was suspended by a "blanket" attached to a bar above the cell door. Yet the method which they say they adopted to gain entry into the cell for their supposed "rescue attempt" was not just "clumsy" as suggested by the Commissioner (Report, p 49) but extremely improbable. The questioning of Page and Moseley on this issue was insufficient on the part of all counsel appearing before the Royal Commission to make this very clear.

Moseley describes the event in the following way:

Sergeant Page opened the door, the door come back and I could see and I had my right arm through the plait and I had hold of - tried to support the deceased by holding a piece of his clothing. I forget what he was wearing, but a piece of clothing or something - pardon me - and by that time Sergeant Page had got into the cell and he was supporting. I couldn't see because I was between the bar [sic] and he was supporting the deceased and I was trying to lift the blanket from round his neck.

**Did you succeed in doing that?---**

Yes.

**THE COMMISSIONER: Did you lift the noose through the trap door while you were still outside?---**

Yes.

**MR EAMES: When you lifted the noose from around his neck, did it appear to be tight against his neck?---**

I can't remember, no.

**Did you have any difficulty lifting it off over his head?---**

No.

**When you did that, were you actually on the opposite side of the door with your arm through?---**

Yes.

**Having lifted the noose off, was the door pulled completely open at that point?---**

I don't know. (T 2826)

Page gives the following version of this scenario:

**MR EAMES: As you approached cell number 1, can you recall whether the trap on that cell was open or closed?---**

The flap was open.

**As you got to the cell, did you observe something?---**

I did.

**What did you observe?---**

I saw the back of a person's head.

**At that point could you observe anything to indicate what the problem might have been then ?---**

Yes.

**What could you see?---**

I could see a section of blanket leading from the head directly to the second bar in from the southern side directly above the door.

**At that point, as you've said in your statement, did Mr Moseley appear to put his arm through the hatch in the door?---**

He did.

**You've said in your statement that you opened the door. Is that right?---**

That's correct.

**The door, I think we've been told, swings outward towards where you were**

**standing. Is that right?---**

It does.

**You've said in your statement that there was some portion of the deceased blocking the entrance. As you swung the door back, was Mr Moseley moving in some way with the door?---**

Very slightly.

**Can you recall now how the door was blocked?---**

The door was blocked by a person attached to the rope, attached to the blanket.

**As you swung the door open, did you get it open some distance until you could step inside?---**

I opened it only a matter of 10 inches or a foot. I then squeezed between the cell door and the back of the person concerned.

**Did the person concerned, Eddie Murray - did he appear to be on some sort of angle to the door, if you can follow what I mean? That is, did part of his body seem to be to the right or to the left rather than completely central to the door?--**

It was towards the left of the door.

**THE COMMISSIONER: That's your left as you go in?---**

Left-hand side of the door, sir.

**MR EAMES: When you say he was towards, is that his feet that were towards the left or some other portion of his body?---**

The whole body was virtually straight up and down the left-hand side of the door as I walked in - or as I got in behind him.

**As you got in, did his feet appear to be resting on the ground?---**

They did.

**Was it the balls of his feet or the whole of his feet that appeared to be resting on the ground - or any other portion of his feet? If you can't say, just say so?---**

It appeared to be the front or the ball of his feet. Yes, the ball of his feet were touching the concrete, his knees bent outwards.

**You'd said that Mr Moseley had put his arm in through the flap on the door.**

**Did Mr Moseley appear to - as you got inside, appear to be moving the body in some way?---**

He was attempting to take the weight of the body off the blanket.

**Did you also make some attempt in that direction?---**

I did.

**What did you do?---**

I faced the person in the cell, put my arms completely around him and lifted him off the floor.

**As you were doing that you were facing him, as you say, and as you raised him, what did Mr Moseley do?---**

Sergeant Moseley undid a knot in the blanket and slipped it over his head.

**When you say he undid a knot in the blanket, could you be a bit more precise about that? Do you mean literally untied a knot in the blanket or what?---**

No, he loosened a knot. (T 3063-4)

During cross-examination Page gives this evidence about entering the cell:

**MR CAVANAGH: Now, you said at 3 pm you went to the cell with Sergeant Moseley; that Sergeant Moseley put his right arm, is it, through the door flap?---**

Right arm, yes.

**That the door was open some 10 inches and that you squeezed in behind Eddie Murray. Is that correct?---**

That's correct.

**And that you went to the right in doing that?---**

Yes.

**Now, Sergeant Moseley's arm would have been in your way at that time?---**

On the top half of the body, yes.

**So you went under the arm. Is that what you're telling us?---**

I went more or less behind the hip area and leg area.

**THE COMMISSIONER: You actually crouched, did you?---**

I got down low sir, and went in behind him.

**MR CAVANAGH: Did you make any attempt, when squeezing behind Eddie Murray to lift him up or- -?---**

No, sir.

**I think you told us that you pushed back on the door and also pushed onto Eddie**

**Murray?---**

Yes, sir.

**Now, did you notice at that time the noose tightening around his neck as a result of your pushing on him?---**

No, sir.

**Wouldn't it have been an automatic response, having got inside the door, to lift him up?---**

No room to move, sir.

**You were in between him and the door with Sergeant Moseley on the outside.**

**Why didn't you pick him up then?---**

In the position I was in, I was - it couldn't be done.

**Instead you pushed him further into the cell?---**

Only his legs - in the leg area.

**Yes, and I'd suggest to you that would have tightened the blanket further around his neck?---**

It's possible, sir.

**Yes. You didn't say to Sergeant Moseley, "Let go of him. I've got him now," did you?---**

No, sir.

**So you went through, around under the arm and around again to face him before you lifted him. Is that what you're saying? Was that the sequence of events? You went under Sergeant Moseley's arm and around the front of Eddie Murray before you lifted him?---**

That's correct.

**And at that time, having lifted him, what did Sergeant Moseley do?---**

He slackened the first slip-knot and slid it over the back of his head.

**Now, I think you told us that you, at the time, may have weighed about 15 stone.**

**Am I correct?---**

Somewhere around that.

**Did you have any difficulty lifting Eddie Murray up?---**

No, sir.

**You had no difficulty, and you also told us that there was a 10-inch gap between**

**the cell door and the inside - and the wall of the cell?---**

Approximately.

**Outside wall of the cell, all right. You're suggesting to us that you fitted through that 10-inch gap to get into the cell?---**

Yes, sir. (T 3124-5)

....

**MR CAVANAGH: When you went down to the cells with sergeant Moseley you said that he put his arm through the open flap and got hold of Eddie Murray.**

**What was he holding onto? Was he holding onto the blanket or what?---**

He had his arm around the chest area of the deceased.

**He had his arm around the chest area?---**

The chest.

**So are you saying that he had his whole arm in and around the chest area?---**

I don't know whether it was under his arms or over his arms. He appeared to be holding him around the chest area.

**Did you see how far his hand went around the body?---**

No, sir.

**Do you recall which arm his hand was under?**

**THE COMMISSIONER: If it was under any arm.**

**MR CAVANAGH: If it was under any arm?---**

It was in the chest area around the front of him.

**So you could see his hand around the front of his chest, could you?---**

Yes, sir.

....

**THE COMMISSIONER: Sergeant Moseley I think told me that he thought he was grappling or trying to hang onto the deceased's clothing to elevate him. Do you remember that?---**

Well, I know he had his arm around the front of him somewhere - around the chest area, sir.

**MR CAVANAGH: With his hand around to the chest area when you got into the cell, were you pushing the lower part of the body to get in?---**

Yes, sir.

**In effect, you would have had to push the whole of the body, would you, forward?---**

No, from the buttocks down I'd say, roughly.

**Were you crawling when you were getting in?---**

I was a long way down.

**Were you on your hands and knees?---**

It would be close to it if I wasn't - I don't know.

**You don't know if you were on your hands and knees?---**

Dived down low, that's all.

**Do you recall having your hands on the floor?---**

I would have had to. (T 3134-5)

The Commissioner said of this evidence:

“I agree that the steps taken by these officers to gain access to the cell were confused and perhaps clumsy, but I do not believe their evidence on this issue has been concocted. One may reasonably ask, whatever may have earlier occurred in the cell, what would have been the purpose of fabricating their evidence as to entry into the cell at the time they allegedly found Eddie's body and released it? I find it was Moseley and Page who released Eddie's body from the noose, that they did so hurriedly in manner broadly described and that the clumsy entry I referred to probably resulted from the urgency of the moment.” (Report, pp 49-50)

The question posed by the Commissioner, about what purpose could be served in fabricating this police evidence can, on one view, be simply answered. The Commissioner suggested that the police officers involved were acting in a “clumsy” way because of the urgency of the situation. The alternative answer is that they gave evidence of a most improbable method of entry because they wanted the method purportedly used to suggest urgency.

Page alleged that he went through a 10-inch gap between the door and its frame, then moved behind Eddie Murray's body and came around to face him. Eddie Murray was supposedly positioned to the left of the door, which would have obstructed entry by this means. More significantly, Page is a big well-built man, his size making it virtually impossible for him to have gained access through a 10-inch gap with his hands on the floor and Moseley's arm around Eddie Murray's chest. In this scenario, Moseley had his hand through the flap in the door, which turned back on an adjacent wall at a 90 degree angle so that Moseley could not have stepped to the side to enable Page to create a wider gap between the door and its frame. (See photo number 14 showing the middle cell door opening outwards back against a wall.)

The Commissioner noted that “as the cell door opened outwards it was a very clumsy way to proceed when they could have simply opened the door, entered the cell and attended to Eddie.” (Report, p 48). The Commissioner did not consider whether Page's size made this clumsy scenario in fact impossible. No re-enactment of this method of entry was attempted.

### **Loosening the noose**

Moseley stated that he loosened the noose and lifted it over Eddie Murray's neck with his right arm which he had placed through the flap of the cell. At the Inquest Moseley said this:

**Q. Page succeeded in getting through the door?---**

A. Yes.

**Q. And it was you who undid the knot on the blanket strip?---**

A. The knot was never undone, it was just lifted over the head. (Inquest, p 241)

....

**Q. The knot which still forms part of the exhibit, where was that in relation to his neck and his ears. First of all was it on the left or right hand side?---**

A. I can't say because you have got to bear in mind that I was on the outside of the cell door. I was directed by Sgt Page because, inside I put my finger in to get it out so his neck was released prior to me getting inside.

**Q. When you got into the cell do you remember whether the knot which I show you was on the left or right hand side of the neck?---**

A. No I don't remember.

**Q. Do you remember whether or not the noose was hard and tight about his neck or was there some air?---**

A. I can remember that I tried to get my fingers around from the collar of the neck to loosen it and then sort of pull it.

**Q. So it was tight around his neck?---**

A. Yes. (Inquest, p 248)

At the Inquest Page gave this recollection of what happened when he entered the cell:

**Q. What did you do?---**

A. I went into the cell, put my arms around him, lifted him completely off the floor and Sgt Moseley removed the noose from around his neck from the top?

**Q. From the top?---**

A. From the top. (Inquest, p 94)

Moseley's evidence at the Royal Commission is inconsistent with his previous evidence

about the difficulty of removing the noose. He says the noose was not difficult to lift off:

**THE COMMISSIONER: Did you lift the noose through the trap door while you were still outside?---**

Yes.

**MR EAMES: When you lifted the noose from around his neck, did it appear to be tight against his neck?---**

I can't remember, no.

**Did you have any difficulty lifting it off over his head?---**

No. (T 2826)

An expert in knots, Mr Brown, was asked at the Royal Commission about removing a noose:

**MR COOREY: Is it fair to say this, that if there is a turn anticlockwise or indeed either way, does that have the effect of making it harder to loosen that particular part, that noose? Would you have to retwist then to loosen it is what I'm saying?---**

Depending on the - I think on the - when the loosening was required.

**Yes, say with the weight there?---**

One would imagine that you'd just - you'd try to get your fingers in and just heave on the rope and the nature of either, as the thumb knot or even as the slip-knot, just the loosening action just by grabbing hold and pulling would tend to loosen it.

**I see, yes, and you could do that?---**

Everything's so simple.

**Yes. Are you able to say this: if you assume for this argument that it's around the neck of a body?---**

Yes.

**Would you have to get your fingers inside the noose?---**

I would expect so, yes. You couldn't do anything from above.

**That's what I mean?---**

You'd have to come below.

**Yes, you've put it better than I have. You couldn't do it from just holding above the noose, you have to get your fingers inside the noose?---**

Yes, you'd have to at least get to the knot, maybe by taking the weight off and pulling. There is again a tendency to lock. I think you would necessarily have to work the knot or below the knot.

**I see, it tends to lock when there's any weight there?---**

Yes. (T 6521-2)

The Commissioner did not consider the vital question of whether Moseley could possibly have “lifted” the noose “from the top” with one hand placed through the cell door, loosening a tight noose while operating only from above it because of the restriction of the cell door, not being able to get at the knot from below. If Page was already in the cell facing Eddie Murray's body from below, and Moseley had initially put his arm through the flap in the cell door in order to take the weight off the blanket, then Page would have been in a much better position to loosen the tight knot and release the body. Page would not have been obstructed by the cell door and would have had direct access to the noose from below, whereas Moseley would have had neither clear access to the knot nor the clear vision needed for loosening it.

At the Inquest Moseley could not recall which side of the neck the knot that he purportedly loosened was on, saying he could not say “because ... I was on the outside of the cell door”. (Inquest, p 248) In his assessment of this issue the Commissioner merely commented that:

“It is difficult to understand how Moseley loosened the noose and removed it while he was standing on the opposite side of the door to Eddie's body, but Moseley and Page are firm in their evidence on this point.” (Report, p 48)

The Commissioner was prepared to accept that the police officers gave misleading evidence

about Eddie Murray's arrival at the police station and about the alleged noises made by Eddie Murray in the cell after 2 pm, yet he was unable to draw an inference that they were wrong about discovering the body. The Commissioner's findings on the alleged discovery of the body lack cogency, relying entirely on affirmations from police witnesses who he found were unreliable on related matters. The adherence of police witnesses to their story about finding and releasing Eddie Murray's body at about 3 pm should not have been accepted by the Commissioner, except insofar as it indicated that the police had a powerful reason for asserting that Eddie Murray's death had already occurred by about 3 pm.

## **Chapter 6**

### **ARRIVAL OF DOCTOR AND AMBULANCE OFFICER AT THE POLICE CELL**

The presence of Dr Ralte and the ambulance officer Mr Lewis at the police cell is important for these two reasons: they were the first civilian witnesses to see Eddie Murray's body, and the only witnesses other than police to attend the police cell on the day of his death. They provide the only means of checking the reliability of the police version of the events, with regard to timing and to the appearance of the body before it was transferred to the mortuary. The reliability of civilian evidence about timing is considered in this chapter, particularly the conflicting evidence given by Dr Ralte and Mr Lewis. The significance of what Dr Ralte and Mr Lewis did and did not see when attending the police cell is assessed in Chapter 11 about the most probable scenario for the creation of hanging marks on Eddie Murray's neck.

#### **Recording of precise times**

Mr Lewis gave evidence that he received the call to go to the police station at 3.30 pm and

arrived at 3.31 pm. The ambulance station was very close to the police station. Of all the witnesses before the Royal Commission, the **only** witness who made a contemporaneous note of times was Mr Lewis. Moreover, he was the only witness who was trained to record times precisely, had procedures in place to do so and had synchronised time pieces available at his place of work, where he recorded times. His evidence was accepted in this regard by the five counsel appearing at the Royal Commission. The Commissioner said of these factors:

“The evidence of Lewis as to times was not really disputed by Counsel, so it is only after careful consideration that I find that Lewis was in error as to the times he recorded in relation to his first attendance at the police station.” (Report, p 83)

The Commissioner's finding that:

“Whilst the doctor was still at the police station the ambulance was contacted and Mr Lewis, the ambulance driver, attended. He attended at approximately 3.20 pm, about ten minutes earlier than the time indicated in the ambulance records.”  
(Findings, Point 12, p 132)

is difficult to reconcile with the evidence of the ambulance driver, Mr Lewis, not least because the Commissioner gave no cogent reason why Mr Lewis might be incorrect.

It is also of concern that the Commissioner made no comment about the fact that the police occurrence pad entry (dictated by Moseley and typed by Page) recorded the time that the ambulance conveyed the body to the mortuary as “about 3.10 pm”. The Commissioner found the ambulance did not arrive at the police station until 3.20 pm (the estimate given by Page, who said he did not know when the ambulance was called; T 6589, 6614). The Commissioner

should have had significant doubts about the accuracy of the police evidence about times, as the occurrence pad was the most contemporaneous police record of time, apparently created at 4.20 pm, only 35 minutes after the ambulance first departed according to Mr Lewis.

The evidence given by Mr Lewis about keeping a precise record of times first arises in his answers to questions from Counsel Assisting. Mr Lewis states:

**MR BELLEAR: If we can just go back to the times. You said that in the log sheet you placed the time, 1530, at the time you received the phone call?---**

That's right, yes.

**Just tell me what happens when you fill out the case sheet as regards the time-book?---**

Well, the case sheet - as I say, there's certain parts of the log sheet that are filled out at the time you receive the call. That's sitting in front of you and that more or less becomes your telephone message pad for the times if it is a job. There's no particulars so far as names, so you can't put that in till later. But the practice is - or my practice was to put the times booked and time out on the log sheet at that time. The times on the case sheet, they would be normally done later back at the police station - that dispatch time would be and the time out. The other times would be put onto the case sheet while I'm out in the car, either at the police station or at the hospital.

**If we go from there, "dispatch" means what - you left the ambulance station?---**

That's leaving the ambulance station, yes.

**THE COMMISSIONER: Is there a station clock or do you use your own watch for checking times?---**

No, there is always a station clock, sir, plus my own watch.

**MR BELLEAR: And do you synchronise those, your watch and the clock?---**

Yes. (T 6377)

Mr Lewis gives the following evidence when questioned by counsel for the police about his recording of the time he received the phone call about Eddie Murray from the police station:

**MR WILLIAMS: You have no independent recollection at all of making a note on the log sheet of the time you received the phone call to go to the police station?---**

As I said before, I can only tell what my practice was. That was the log sheet was directly under my hand where the phone is and my practice was to put the time of the call directly onto that log sheet. (T 6420)

. . . .

**Well, just looking at that document now, some 7 years after the event, how is it that you're able to say that the annotation 1530 represents the time you received the phone call rather than some other way of drawing your attention to the necessity to embark upon the job relating to Edward Murray?---**

Because I can recall receiving the telephone call from the police station.

**There's nothing else there on that log sheet though, apart from you say your recollection?---**

No, there's nothing there to say how I got it. No.

**THE COMMISSIONER: Have you ever been asked to attend a hanging before?---**

This is the first hanging that I've been to, yes.

**MR WILLIAMS: I suppose it's the last too, is it?---**

Hopefully.

**COMMISSIONER: Do you think that's why it remains in your memory?---**

Yes, sir. (T 6422-3)

The Commissioner observed about Lewis's time recording that:

“Lewis said that in Eddie's case he may have recorded times straight onto the case sheet when he filled out the first part of the case sheet at the police station when he recorded Eddie's name and his observations.” (Report, p 83)

The conclusion the Commissioner seemed to be drawing (although from the Commissioner's

comments there is no certainty about it) is that Mr Lewis may have in fact recorded his first time at the police station rather than at the actual time that he received the call.

Thus, the Commissioner suggested that Mr Lewis made an entry error. In fact the evidence that Mr Lewis gives is this:

**MR BELLEAR: Mr Lewis, if we can go to the day, 12 June, 1981 - first of all, what's your memory like of that day?---**

Quite good.

**Quite good, all right. On that day you recall receiving a phone call from the Wee Waa Police Station?---**

Yes.

**As you say in your statement, you don't recall who it was. Did you subsequently find out who it was that phoned you?---**

No. I still wouldn't, to this day, know who it was. From memory it was just, "It's the police station. A bloke has hung himself around here. Can you come around?"

Something to those words.

**When you receive such calls you record those calls on a form?---**

On the log sheet, yes.

**On the log sheet, all right. When you received that call did you record the time on that log sheet immediately you received that call?---**

I would have recorded the time, yes, of the call. I would have recorded that immediately, yes.

**Other times that arise - for example, time out of the ambulance station, time arriving at whatever the destination is - are they recorded in the log immediately?---**

No.

**They're not. Are they recorded at all?---**

If you're working, as normal, with two men then one person does all the work on the time-sheet so he is able to do that exactly then; the other person drives. But in the case of a one-man station you do things as you can when you get the time to do them.

I used to carry a small notebook to keep such information but there was no such thing as an official ambulance notebook and I don't have that there today.

**Do you recall logging the times in the notebook that you had?---**

I can't recall. I only say that that was my practice - was to carry a notebook. If I did put the times in the notebook, I may have put the times straight onto the case sheet at the police station when I filled out part of the form.

**All right. Those times that were in - if on this occasion you had placed the times in your notebook - you would have transferred those to the log?---**

To the time-sheet - to the case sheet, yes.

**Where would that have been done? At the police station or at the ambulance station?---**

The first part of the case sheet - that's the gentleman's name - and my examination would have been done at the police station. Other parts of it, the end parts, would have been done at the back of the ambulance station when I completed the job, sir.

(T 6373-4)

. . . .

**MR COOREY: On page 1 you said - and just going down five lines - "I walked into the cell and saw a person who I later was told was Edward Murray, lying on his back on a bed." Right? Can you remember - and if you can't just say so - when you were told that that person was Edward Murray?---**

I'm sorry, no, not definitely when it was.

**All right. It may have been when you left the cell or it may have been while you were in the office or anything?---**

It could have been before I walked into the cell. It could have been while I was in there or it could have been after I left but my recollection is that I filled the first part of that case sheet out at the police station, so it would have been during that time.

(T 6399)

As can be seen from the above extract of the transcript, Mr Lewis is not saying that he "may have recorded times straight onto the case sheet" at the police station with the implication that the time of receiving the call may have been so recorded. He is in fact referring to other

details and other times, recorded first on a case sheet or a notebook because the log remains at the ambulance station. He logically would therefore have to record detail which was later to become available initially on the case sheet or in his notebook. He did not know it was Eddie Murray who had died and he would not have known his arrival time at the police station until he had in fact arrived there.

No question was put to Mr Lewis which elicited an answer suggesting that he might have recorded the time of receiving the telephone call on a case sheet or in a notebook at some point of time after he left the ambulance station or indeed after doing the job and returning to the ambulance station. Hence the Commissioner simply misconceived the evidence. What he did was to speculate about possibilities and draw unwarranted inferences from the evidence. He purported to adopt the authoritative decisions in Briginshaw v Briginshaw and Another (1938) 60 CLR 336 as to the quality of evidence and its persuasive value, but he did not apply those standards in respect of the evidence on this issue.

### **Reliability of other times**

The Commissioner attempted to justify his finding about timing on the basis of the evidence of other witnesses who acknowledge, in many instances, their inability to recall accurately the time sequences. The most remarkable witness in this respect is Dr Ralte, of whom the Commissioner observed near the end of the Royal Commission hearing:

"I don't think he really can be very precise" (T 6947)

Dr Ralte did not make a statement until 15 July, 1981, in which he recalled attending the police station on 12 June, 1981 at 3.10 pm (the time the entry in the police occurrence pad

records him as attending). However, at the Inquest when questioned soon after reading his statement, Dr Ralte said he may have completed his examination of the body in the police cell as late as 3.45 pm, and that he was away from his surgery for only “about ten minutes, fifteen minutes”. (Inquest, p 118) The fact that he did not make a record of 3.10 pm as the time of his alleged arrival at the police station until over a month after the event, plus the coincidence of this time with what appears in the police occurrence pad, makes his evidence about timing not only less precise than Mr Lewis, but less reliable.

The Commissioner also suggested that reliable evidence of when Dr Ralte attended the police station was given by a patient waiting in his surgery, Mrs Helen Rae Cathcart, who made her first statement on the day she appeared before the Royal Commission nearly seven years after the event. Yet Mrs Cathcart at one point suggested that Dr Ralte could have returned from the police station by 3 pm. (T 6831) She clearly cannot be relied upon to improve Dr Ralte's lack of precision or reliability about timing.

The other civilian witness upon whom the Commissioner relied in disputing Mr Lewis's timing was Sister Elizabeth Hutton Cruckshank, who recorded the arrival of Eddie's body at the mortuary as occurring at 3.30 pm, which is inconsistent with Mr Lewis's precise time of 3.47 pm. Sister Cruckshank did not make a contemporaneous record of this event and even suggested that she may have got the time off Mr Lewis. (T 6883-4) It is possible that Sister Cruckshank got the wrong time from Mr Lewis (3.30 pm being the time he was called to attend the police station) but in any event she is no more certain of her timing than Dr Ralte.

Once these other civilian witnesses are put aside, the only recording of times at odds with

that of Mr Lewis is the police version of events, which is incomplete as well as inconsistent about timing, as discussed in Chapter 2. Upon a critical evaluation of the reliability of the evidence of different witnesses about timing, it becomes clear that only Mr Lewis made a precise and contemporaneous record. There is no reasonable basis on which to doubt Mr Lewis's evidence about timing.

Reliable evidence of the timing of events at Wee Waa police station on 12 June 1981 can be determined only through a careful assessment of the relative precision of different witnesses. The only precise times are provided by Mr Lewis, who recorded that the ambulance was first called to the police station at 3.30 pm, arrived there at 3.31 pm, departed from there for the mortuary at 3.45 pm and arrived at the mortuary at 3.47 pm. The first time is corroborated by Parker, for what his evidence may be worth. At the Inquest Parker said that he rang for the ambulance at “approximately around” 3.30 pm, although he “wouldn’t know the exact time”. (Inquest p 191) When last giving evidence to the Commission (when recalled after Mr Lewis had given evidence) Parker acknowledged this time would be “right”. (T 6544-5)

The Commissioner disputed Mr Lewis's recording of times without any real foundation, yet he accepted as accurate the recollection by Mr Lewis that Dr Ralte attended the police cell shortly after Lewis arrived there. (Report, p 83) This is consistent with Dr Ralte's evidence at the Inquest, which was that he attended the police station for 10 to 15 minutes and may have left about 3.45 pm. Dr Ralte agreed at the Commission that Mr Lewis may have been in the police cell at the same time as him (T 6932-3). If Dr Ralte and Mr Lewis were in the police cell together, then the conclusion must follow that Dr Ralte attended the police cell soon after 3.30 pm, not between 3.10 and 3.20 pm as the Commissioner found.

Apart from Mr Lewis and Dr Ralte, Mr Cronin was the only civilian witness at the police station before Eddie Murray's body was taken to the mortuary (excluding Mr McKnight, who left the area after hosing down the concrete soon after 2.30 pm). Mr Cronin initially went to the police station soon after 2 pm, when he expected it to have reopened after the lunch break. Upon finding the police station closed Mr Cronin went away for between half an hour and one hour before returning to register a motor vehicle. (Inquest, p 342) Thereafter Mr Cronin was inside the police station for at least 20 minutes before he was told to "shoot through" shortly after Dr Ralte left the police station. (T 3020; also 3017, 3018, 3019, 3024 and 3025.) Cronin later returned to the police station for a third time, when the registration of his motor vehicle was completed.

Mr Cronin made no record of times, and did not make a statement until five months after the event, shortly before the Inquest. At the Inquest Mr Cronin said he returned to the police station after 2.30 pm and probably before 2.45 pm, but he acknowledged that he could not recall times for any other event five months previously with such specificity. (Inquest, p 345) His other evidence at the Inquest (p 342) of being away from the police station for "between half and one hour" after first going there around 2 pm means that he may not have returned until about 3 pm. He gave no evidence of looking at any clock while he was in the police station. His evidence of times whilst in the police station is approximate only, and cannot be relied on in any way to dispute the precise timings recorded on the day by Mr Lewis.

What Mr Cronin does recall with some certainty is being left alone for two significant periods in the police station, after Page and Moseley returned from visiting the cell. The first occasion was while the police were talking before the doctor was contacted, and the second

was when the doctor was at the police station after attending the cell to examine the body. While Mr Cronin suggested that the second of these periods lasted for "about 10 minutes", this was his only estimate of time for any period when in the police station. (T 3017, 3024).

If Mr Cronin did not return to the police station to start registering his motor vehicle until close to 3 pm, and if he stayed in the police station for over half an hour waiting for the registration to be completed until being asked to go, then he would have been there until shortly after 3.30 pm, observing Dr Ralte arrive and leave within about ten minutes, and noticing Fitzgerald for the first time around about 3.30 pm. In this case Fitzgerald, who served Cronin when Parker became busy phoning for the doctor and ambulance to attend, would have been in the police station for at least 20 minutes (if he arrived at 3.10 pm) or for 30 minutes (if he was already there at 3.00 pm) before the doctor was called to the scene.

Once Mr Cronin's estimates of timing are made consistent with the precise times recorded by Mr Lewis, then the Commissioner's conclusion that Fitzgerald was not in the police station at the time of Eddie's death may be seen to be premature. According to Page, Fitzgerald was at the police station when he came on duty at 3 pm, giving Fitzgerald half an hour in the police station before being sighted by any civilian witness. During this time Cronin observed that when Page and Moseley returned apparently from the cell, they joined with Parker and all seemed "very flustered until they made the phone call". (T 3018, 3025). This observation would most probably have occurred just before the doctor and ambulance were contacted by phone. According to the precise records of Mr Lewis, this was at 3.30 pm.

Furthermore, according to the most reliable times recorded by Lewis with the other witnesses

verified for precision against his evidence, the checking of the cell by Moseley and Page, if it occurred, was significantly later than 3 pm, perhaps as late as 3.25 pm. Even if Fitzgerald arrived at the police station as late at 3.10 pm (a doubtful finding as discussed in Chapter 12), he was probably there for 15-20 minutes before Dr Ralte and Mr Lewis arrived to examine a warm body, whose death was clearly very recent, though they could not be precise about this.

### **Interpretation of police times**

Because Mr Cronin is so vague about the timing of his return to the police station and about how long he spent there, his evidence on this issue cannot be interpreted as giving credence to the police version of events largely accepted by the Royal Commissioner. If Mr Cronin did not return to the police station until soon after 3 pm, he could have been served by Parker either at the end of his morning shift or the start of his afternoon shift. Even in the former case, Mr Cronin's evidence does not exclude Fitzgerald's involvement in the circumstances of Eddie Murray's death. On the contrary, when Mr Cronin's evidence of events in the police station is seen from the clear perspective of the precise times recorded by Mr Lewis, then Fitzgerald's whereabouts within the police station at the crucial time requires explanation.

Significantly, while the Commissioner rejected the time recorded by Mr Lewis for his first visit to the mortuary with Eddie Murray, he concluded his approximate chronology of events by accepting Lewis's evidence for the timing that Arthur Murray was taken by ambulance to the hospital. (Report, p 89) Thus the Commissioner's reasoning was simply inconsistent. The recording of times by Lewis that afternoon should be either accepted as fully accurate, or rejected as always incorrect by, say, 10 minutes (the margin of error which the Commissioner found Mr Lewis must have made for the timings given by other witnesses to be accurate).

If the times recorded by Lewis are accepted, and Cronin's evidence is considered compatible with these times by his arriving just before or just after 3 o'clock, then there remains a basic problem with the police evidence of timing. Whereas the evidence of civilian witnesses such as Dr Ralte and Mr Cronin, who did not make any records and did not give statements for some time later, can be doubted on the basis of vagueness not of dishonesty, such a view appears difficult to take of the timings recorded on 12 June 1981 in the police version of events, particularly the occurrence pad entry concerning the ambulance. Once that version is considered as at odds with the most reliable record of timings made by Mr Lewis, another explanation for the inaccuracies in the police records made on the day is necessary.

The Commissioner, having disputed without proper reason some but not all the precise times recorded by Mr Lewis, accepted a hodgepodge of timings apparently without assessing the reliability of the witnesses. In the case of Dr Ralte, the Commissioner even disregarded his own finding about the poor recollection of this witness, by placing greater trust in Dr Ralte's memory than in Mr Lewis's records. (Report, pp 80, 83) Consequently, the Commissioner never asked a crucial question: why did police record (on the occurrence pad and police reporting sheet) times for significant events which, when compared to those of Mr Lewis, appear wrong by half an hour? The Commissioner's approximate sequence of events simply combined different evidence about timing without regard for crucial issues of precision and reliability, instead of drawing a reliable sequence together around the strong documented evidence of Mr Lewis, the only witness trained to make exact recordings of a series of times. (Report, pp 88-9)

In the Record of Police Reporting for 12 June 1981 Parker was said to be in the police station

from 2 pm “to 3.20 pm” then on “patrol to 3.45 pm” when he returned to the station. (T 3182) This conflicts with Parker’s evidence to the Inquest when he agreed that the ambulance was first called at “approximately around” 3.30 pm, though he “wouldn’t know the exact time”. (Inquest, p 191) Parker told the Commission that “I know it was getting toward the 3.30 mark when I did ring” for the ambulance. (T 3250, 6541) He also said the police reporting record was meant to be accurate to within 5 minutes. (T 6554) When stating that he had gone out of the police station at 3.20pm, Parker does not recall where he went, or why he had left the police station so soon after a death had been discovered:

**THE COMMISSIONER: You’ve got no memory of this patrol now?---**

No, Mr Commissioner, I haven’t, no.

**MR COOREY: And, Constable Parker, nothing happened at that time to call you out of the police station that you can remember?---**

No, I can’t recall as to why I went out at that particular time, no. (T 6555)

At one point Parker told the Commission that he did not leave the police station straight away after handing the registration of Mr Cronin’s vehicle to Fitzgerald:

**MR COOREY: Constable Parker, I’ll just ask you to comment on this, that Constable Fitzgerald - this was put to Constable Fitzgerald and I just want you to comment upon it and see if you agree with it or not:**

**“Between 3.10 and 4.30 you were there for the whole time. How long was Mr Parker there? ---As far as I know, he left straight away, as soon as he said he was going out.”**

**Would you agree that you may have left at about 10 past 3?---**

No.

**Would you agree that you may have left as soon as - almost as soon - I use the words there - straight away when Constable Fitzgerald arrived?---**

No.

**You say that he must be mistaken?---**

He would be, yes. (T 6566)

This evidence is more consistent with Parker ringing the ambulance at around 3.30 pm and then leaving the station soon after, than it is with Parker being out on an unspecified patrol between 3.20 pm and 3.45 pm, as recorded in the police reporting sheet.

Parker says when he did leave the police station he left Fitzgerald there on his own, Moseley and Page having already departed also “on patrol”. Fitzgerald recalls that “Parker said to me to look after the station” when “He said he had to go.” (T 4031, 4032) Fitzgerald says that he “didn’t ask” Parker where he was going. (T 4031) Fitzgerald can not remember seeing either Page or Moseley leave the station any time between 3.10 and 4.30 pm, though he says it was possible they had done so without him noticing it. (T 3988) He was not told that other police were going out to find Arthur Murray in the “hour or so” after he arrived. (T 3989)

Fitzgerald denies assisting the ambulanceman remove Eddie Murray’s body from the cell to the ambulance shortly before 3.45 pm. (T 3993) He initially says he was the police officer who asked Mr Cronin to leave, but then changes his evidence to “Someone asked him to leave. I don’t know if it was me”. (T 3993) Only Fitzgerald could have done this if Parker had left the station, asking him to take care of it. The most likely explanation for why Cronin was asked to leave the station before completing the registration of his motor vehicle seems to be that Fitzgerald had to assist the ambulanceman with the removal of the body from the cell. Page says that Fitzgerald was alone in the police station between 3.31 and 3.45 pm when a police officer assisted the ambulanceman to remove the body. (T 6634)

The Commissioner found that Page and Moseley left the police station, ostensibly “to locate Arthur Murray to advise him of his son’s death”, at a time “shortly before the attendance of the ambulance at the police station” on the first occasion. (Report, p 82) Page says that he and Moseley were away from the police station for “approximately quarter of an hour”, and that he noticed the ambulance parked in the back lane when they returned. (T 3069) Initially Page says he knew that the body had been taken from the cell to the ambulance because of something he “saw”, but later he says that he can not recollect “seeing anyone removing the body from the police station to the ambulance or the ambulance to the morgue or anything like that”. (T 6594) Page can not recall where he and Moseley had gone on patrol after not finding Arthur Murray at his home, and can not give a reason why both sergeants would leave the station together at the same time as Parker went out on a separate patrol, leaving the most junior officer, Fitzgerald, at the station by himself. (T 6634-6)

Moseley was said to be out on patrol with Page but there is no record of this on the police reporting sheet, because as the officer in charge of the station Moseley did not make such reports. At the Inquest, Moseley said that when Arthur Murray collapsed after being told of his son’s death, Moseley “could see the ambulance at the hospital” from his office, and that it “then returned” to take Arthur Murray to the hospital. (Inquest, pp 242, 276) According to the ambulanceman’s recording of precise times, the ambulance was at the hospital for only four minutes (from 3.47 to 3.51 pm) before being asked to return to the police station. If Moseley saw the ambulance at the hospital then, after taking Arthur Murray upstairs to his office to tell him of his son’s death, Moseley must have been at the police station soon after the ambulance left with Eddie Murray’s body at 3.45 pm. Moseley can not remember whether or

not he assisted the ambulanceman remove the body from the police cell. (T 6456) The Commissioner concluded that Moseley was back at the police station “at about 3.40 pm”, which is precisely when, according to Mr Lewis, the body was being removed to the mortuary. (Report, p 89)

An explanation of police movements that is consistent with the precise timings recorded by Mr Lewis is that Page left the police station on patrol with Parker, while Moseley remained behind with Fitzgerald. Moseley does not dismiss the possibility that he assisted with the removal of Eddie Murray’s body from the police cell, but rejects the suggestion that he went to the mortuary at about 3.45 pm on 12 June 1981, saying “I think Constable Parker may have but I’m not sure.” (T 6456) Sister Cruckshank saw two police officers standing near the mortuary when Eddie Murray’s body arrived in the ambulance. (T 6871, 6896) If Moseley was not there and Fitzgerald was also back at the police station, the police officers near the mortuary could only have been Page and Parker. Both were out on patrol at the time, and were not seen at the police station when Arthur Murray was being taken from there to the hospital. Mr Lewis recalls seeing Moseley at the police station when he returned to collect Arthur Murray, but not when he removed Eddie Murray’s body, although he recalls seeing more than one police officer there then, when he first attended at 3.31 pm. (T 6382)

The only independent evidence given to the Commission about Moseley going to the Murray household in Wee Waa at about 3.30 pm on 12 June 1981 was in statements made in August and November 1981 by John Murray, who had been drinking heavily with Eddie Murray that morning and who had just woken up from a sleep when the police arrived. (T 2544) He was not asked whether he might have been mistaken about this identification of Moseley, though he was not sure about identifying Fitzgerald at an earlier incident in 1981. (T 2577) Page

suggests that the reason for Parker going out on patrol might have been that “he could have been looking for Mr Murray too.” (T 6634) If this was the reason for Parker leaving the police station, it is possible that he went with Page. There was much for the officer in charge Moseley to take care of back at the police station, and it would have been most unusual for the two sergeants to leave the junior constable at the station by himself.

### **Timing of cell inspection**

The Commissioner based his approximate chronology of events on the assumption that Page and Moseley inspected the cell and found Eddie Murray dead soon after Page came on duty at 3 pm. The Commissioner did not make a finding about whether it was standard practice for the cells to be checked when the relieving sergeant came on duty (3 pm) or when the senior sergeant ceased duty (4.30 pm). Page maintains it was a “practice” for cells to be checked at the earlier time, but he said the practice might vary at different stations and acknowledges that Moseley would remain responsible for prisoners until 4.30 pm, so it would be “wiser” for the joint inspection to occur then. (T 3083-5)

Page had been at Wee Waa for only a few weeks when Eddie Murray died on 12 June 1981. Moseley suggests that having the inspection at the earlier time would allow the relieved sergeant to go home early if the relieving sergeant was “the senior man”. (T 2856) Moseley’s predecessor as senior sergeant at Wee Waa was Jurd, who was there from July 1977 until June 1980. He says the joint inspection could occur at any time when both sergeants were on duty, but he agrees there would be “little point” doing it until responsibility was transferred when the senior relieved sergeant left. (T 2984-5)

It was not established at the Royal Commission that it would have been normal practice at Wee Waa for a joint inspection of the cells to take place when Page arrived at 3 pm. Indeed, the Divisional officer at Moree in overall charge of stations in the area including Wee Waa, Chief Inspector Lloyd Alexander Goddard, states that the joint inspection would normally occur at 4.30 pm:

**MR COOREY: Mr Goddard, if the position was that a police sergeant was on duty from 8 am in the morning to 4.30 pm that day - do you understand?---**

Yes.

**He would be responsible for the safety, etcetera, of prisoners in the police cells during that period. Is that right?---**

Yes.

**And would the usual thing be that when he left duty - that is when he finished his shift - that there would be a joint inspection, and that when he left the person who replaced him would then take responsibility?---**

Yes.

**Is that right, and in this case here, if Sergeant Moseley was rostered on shift from 8.00 to 4.30 pm, Sergeant Moseley would be the person responsible for Eddie Murray - if I can put it that way?---**

Yes.

**Up until 4.30 pm. Is that right?---**

Yes.

**And you'd expect that at 4.30 pm, if Eddie Murray had still been alive, there would have been a joint inspection when Sergeant Moseley was about to leave the police station?---**

Yes.

**Is that right?---**

Yes.

**Would it be the usual thing to adhere to that rule in a country town?---**

As near as practicable.

**And in your experience, is the practice followed in country towns; that is, that there is that joint inspection when the senior officer is leaving? Is that the usual practice?---**

Yes. (T 6012-3)

Assuming Goddard knew the practice of stations in the area under his control, his evidence on this point raises a serious concern about the evidence of Page and Moseley about a regular joint inspection at 3 pm. If the practice was for the joint inspection to occur close to 4.30 pm not 3 pm, it follows that the joint inspection conducted by Page and Moseley would have been specifically occasioned and not routine, and that it may have occurred later than 3 pm.

If the ambulance was contacted soon after Page and Moseley found Eddie Murray's body in the cell, then the only conclusion consistent with the precise times recorded by Mr Lewis is that the joint inspection of the cell occurred closer to 3.30 pm than to 3 pm. Mr Cronin was present at the police station before the inspection occurred, since he heard the words "Well, let's go and have a look at him", but he can not say how soon after Page's arrival this conversation between Page and Moseley occurred, because Page had entered the police station through the back door. (Inquest, pp 343, 344; T 3014, 3023)

Cronin's evidence does not corroborate the claim by Moseley and Page that their inspection of the cell occurred at 3 pm, because Cronin did not know precisely when he returned to the police station for the first time. The evidence did not establish that it was a practice at Wee Waa for the joint inspection to occur when the relieving sergeant arrived rather than when the senior sergeant being relieved left. The 3 pm time of the inspection alleged by Moseley and Page appears no more reliable than the evidence from Moseley and Parker about alleged

noises at the police station between 2 pm and 3 pm, which the Commissioner disbelieved.

The Commissioner's chronology of events was based on a very dubious foundation, and was inconsistent with other evidence that the Commissioner accepted. Even if the cumbersome way in which Moseley and Page claim to have entered the cell and released Eddie Murray from the noose could have been done in the three minutes allowed in the Commissioner's chronology, there are other areas of inconsistency. The Commissioner's chronology has the ambulance arriving at the police station 10 minutes earlier than Mr Lewis recorded at the time. This is apparently to make Mr Lewis's arrival coincide with Dr Ralte's presence in the cell, yet the chronology says Dr Ralte left the cell 5 minutes before leaving the police station, that is 5 minutes before Mr Lewis's arrival according to the Commissioner. (Report, p 88)

The Commissioner suggested "it is possible that Dr Ralte returned briefly to the cell when the ambulance arrived" (Report, p 84), but Dr Ralte emphatically denies this:

**MR WILLIAMS: Doctor, is it possible that you were in and out of that cell more than once during the course of your trip over to the police station? I mean could you have gone into the cell and gone out and gone back in? Is that possible?---**

No, I just went in once, examined the body and I came out.

**No doubt about that?---**

No going back. (T 6951-2)

The Commissioner preferred Dr Ralte's lack of precision about timing to the specific records made by Mr Lewis, yet the Commissioner questioned by implication Dr Ralte's memory on a particular matter about which he was much more certain than he was about timing.

The Commissioner acknowledged that the times which he reconstructed were "approximate

only”, but he did not attempt to assess whether any of these times were more reliable than any others. (Report, pp 88-9) Consequently, the Commissioner’s chronology is only as good as its weakest link, which is the uncorroborated timing of the cell inspection by Moseley and Page at 3 pm. Another weak link is that the time given by the Commissioner for when Parker phoned the ambulance, either at 3.15 or 3.20 pm, is significantly earlier than the time of “approximately around” 3.30 pm that Parker himself gave at the Inquest and repeated to the Commission. This evidence by Parker substantially corroborates the records of Mr Lewis stating that the ambulance was called to the police station at 3.30 pm and arrived at 3.31 pm.

Parker’s evidence is also at odds with the Commissioner’s time of 3.30 pm (given by Sister Cruckshank) for when Eddie Murray’s body was admitted to the mortuary. This time simply could not be accurate in view of the 14 minutes which Mr Lewis says he spent at the police station, from 3.31 to 3.45 pm. Since Sister Cruckshank says she got the time from Mr Lewis, it can be explained as a misunderstanding, if Mr Lewis told her the time the ambulance was called. Having rejected the precise times recorded by Mr Lewis, the Commissioner could only incorporate Sister Cruckshank’s mistaken time by reducing the time which Mr Lewis spent at the police station from 14 to only about 5 minutes, which is highly improbable.

The Commissioner stated, at the end of his chronology according to which Mr Lewis arrived at the mortuary with Eddie Murray’s body at 3.30 pm, this final sequence of events:

“At about 3.40 pm the deceased’s family arrived at the police station. They were taken upstairs and Moseley informed them of their son’s death. Arthur Murray collapsed, the ambulance was summonsed and he also was taken to hospital, being admitted soon after 4.00 pm.” (Report, p 89)

This calculation that Mr Lewis was at the mortuary for at least 10 minutes before being called again to the police station is inconsistent with Lewis's recollection that he had "only just walked out of the mortuary when I was told that I was required at the ambulance - back at the police station." (T 6383; see Chapter 11 for analysis of Lewis's limited time at the mortuary.)

The Commissioner's finding that the ambulance first arrived at the police station at 3.20 pm, 10 minutes before Mr Lewis's recorded arrival time of 3.31 pm, has the effect of distorting significant other evidence. The Commissioner's chronology has Mr Lewis spending more time at the mortuary after delivering Eddie Murray's body than he spent at the police station inspecting the body in the cell and returning to the ambulance to get the stretcher upon which Eddie Murray's body was removed from the police station. This is highly improbable, even though Mr Lewis was assisted by one police officer to remove Eddie Murray's body from the cell before members of his family arrived at the police station to find that he was dead.

## Chapter 7

### FAILURE OF POLICE TO SECURE A POSSIBLE CRIME SCENE

The police, on their version of events, removed Eddie Murray from the noose and attempted to resuscitate him. They then attempted to ring the Government Medical Officer in Wee Waa, Dr Mulvey, but were unable to contact him. Dr Ralte was then contacted and later the ambulance officer. The police claim that Dr Ralte arrived first, followed by the ambulance, and Eddie Murray's body was removed very shortly thereafter. No attempt was made to secure the death scene when there was no medical reason to remove the body. Furthermore, if all the police are to be believed, no police officers were present when Eddie Murray's body was removed from the cell and no attempt was made to exclude the possible entrance of police officers or civilians into the cell before the investigating and scientific police arrived.

The description provided by the police of events after Eddie Murray's body was found is limited and ambiguous. The sequence of events and the reasons given for the actions taken by the doctor, the ambulance officer and the police officers are outlined below.

#### **Role of Dr Ralte**

The evidence about what precisely occurred after Dr Ralte was contacted is somewhat unclear. Dr. Ralte is of the view that his only role was to determine whether or not life was present. He states:

"What I did was that I examined him and when I know that he's dead I didn't examine him - I didn't examine him for any marks or anything any further."

(T 4312)

An issue arose at the Commission hearing about who directed that Eddie Murray's body be removed from the death scene. This issue was of particular importance, although not noted as such, because the removal of Eddie Murray's body materially changed the death scene. Eddie Murray's body was the main part of the scene, and there were later to be allegations of police tampering with the body. The security of the death scene, however, seemed to have little significance at the Commission hearing, the main emphasis being placed on Dr Ralte's recall of which police officers were in the cell with him and the inconsistency between his evidence and the police evidence about marks on Eddie Murray's neck and what he did while he was in the cell.

At the Inquest on 9 November 1981, Dr Ralte stated the limit of his role in having the body removed:

**Q. Did you suggest to the police that it would be fairly important to have the body removed to the mortuary?**

A. I didn't say it was fairly important I just said that now he is dead to take him to the mortuary. (Inquest, p 118)

At the Commission he suggests that the removal of the body was not a matter of great moment to him. He states:

**THE COMMISSIONER: Doctor, just assume for the moment you said to the police officers, "Take him to the mortuary" - just assume you said it to the policemen?---**

Yes.

**If they had said, "No, we've got to leave him here, we've got to investigate this," that wouldn't have concerned you, would it?---**

That wouldn't have concerned me.

**I mean, the body could have remained in the cell for an hour or an hour and a half without threatening the efficiency of the post-mortem?---**

If it had changed the efficiency of the post-mortem - I think if somebody is kept in a hot temperature rather in a refrigerator. But at the time I was not even thinking about the possible post-mortem or the investigation. Therefore I just instructed to take him to the mortuary which is the normal place for everybody who is dead.

(T 6945)

Dr Ralte made no mention about authorising removal of the body in his statement of 15 July, 1981. Further, he did not specify either at the Inquest or the Commission what authority he had to give instructions to remove the body.

Fitzgerald and Parker claim not to have been near the cell or given any instructions about the removal of the body. Moseley claimed at the Inquest that he only instructed Parker to ring Dr Ralte. (Inquest, p 241) Page says about his understanding of directions for the removal of the body:

**MR COOREY: Sergeant, you said in this royal commission - I'll just put it to you. This was asked of you: "He examined the body. Is that right?" You said, "Yes, sir." That's referring to Dr Ralte. Do you understand?---**

Yes, sir.

**Sorry, 3114. Question: "He saw that he could do nothing. Is that right?" You said, "Yes, sir." Question: "Then he gave a direction for the ambulance to be called for the body to be taken away to the mortuary." Answer: "Yes, sir"?---**

Excuse me, who said that?

**This is your evidence. This is what you said to this royal commission a few weeks**

ago?---

I can't recollect saying that he said to go and get the body.

**Well, I'll just repeat it for you: "Then he gave a direction for the ambulance to be called for the body to be taken away to the mortuary." Answer: "Yes, sir"?--**

I don't recall saying he gave a direction. I don't recall saying that, sir.

**But you agreed that Dr Ralte - at least on the evidence as it seems there - had examined the body, it appears had found there was no life and then in effect was asking for the ambulance to be called and the body taken away - on that evidence, doesn't it?**

**MR EAMES: I think the next question should be put, Mr Commissioner.**

**MR COOREY: Yes, I'll put that.**

**"Is that right?" "Can I just mention one thing vaguely again? Vaguely I remember the doctor requesting something for him to carry out an examination.**

**I got an idea he turned up there with very little equipment and he requested a - whether it be a torch or whether it be a spatula or something, I'm not sure. I can only remember vaguely." "You didn't ring the doctor, did you?" "I don't think I did no." "You didn't hear what the doctor was told when he was telephoned, did you, or not?" "No, I think I stopped out the back in the cell." "You did tell us you stayed in the cell." Answer: "Out the back." "You said, 'I was still in the cell.' Is that right?" "Yes, sir." "From where you were you wouldn't be able to hear what was said to the doctor?" Does that refresh your memory?---**

Yes, sir, but I don't recollect ever saying anything about the doctor directing that we do certain things, no.

**It would be the sequence though in accordance with your evidence, wouldn't it, that the doctor made an examination, found life extinct and it would be within the sequence that somebody then telephoned and the ambulance came over and took the body to the mortuary?---**

That would be the chain of events, yes.

**In that sense there would be nothing unusual for the doctor giving a direction for the ambulance to be called and the body taken away, would there?---**

I don't need the doctor to give a direction on that, sir.

**When you were asked, "Then he gave a direction for the ambulance to be called**

**for the body to be taken away to the mortuary," why did you say, "Yes, sir"?---**

Like I said, I don't ever recall that being the case. (T 6580-6582)

The ambulance officer, Mr Lewis, who removed Eddie Murray's body from the cell with the assistance of a police officer, states that Dr Ralte gave him authorisation about where to take the body, although he says nothing about who decided when this was to be done:

**MR BELLEAR: Did Dr Ralte say anything to you?---**

He gave me authorisation to take him back to the hospital - to take him back to the mortuary. (T 6379)

Lewis did not mention this authorisation in his statement of 28 April, 1988. Whether or not Ralte indicated in some way that the body **could** be removed is largely irrelevant, as the fact remains that the police were in charge of the scene. Indeed, Page was aware at the time that it was normal police practice not to disturb such a scene until scientific police had arrived. He states:

**MR COOREY: Sergeant, it would be proper practice to keep the cell and the body as far as possible in an unmoved condition until police scientific officers arrived. Would that be so?---**

Yes, sir. (T 3100)

Parker was also aware of this practice:

**MR COE: I put this to you: that Police Instruction 78(10)(c), there was an obligation not to allow the body or any articles which could in any way be connected with the death to be removed or altered until full investigated [sic] - is**

**completed?---**

Right. (T 3644)

The scientific police were not contacted by Detective Sergeant Kenneth Edwin Callaghan, the police officer in charge of the investigation into the death, until 4.50 pm, an hour after the body had been removed from the cell to the mortuary. (T 2456) No evidence suggests that either the investigating or the scientific police were consulted about whether the body should be removed.

#### **Method of removal of the body and involvement of police**

Ambulance officer Lewis and police officer Fitzgerald were, it would seem, the only people at the police station at the time the body was removed, since all the other police are recorded in the police reporting sheet to be on patrol elsewhere from 3.20 pm till 3.45 pm. Fitzgerald denies assisting Lewis with the removal of the body. (T 3993) In fact, all the police present at the police station that day in effect deny assisting Lewis to remove Eddie Murray's body.

Moseley acknowledges that he was still the officer-in-charge of Wee Waa police station at the time when Eddie Murray's body was removed from the cell to the mortuary. (T 2896) He does not remember assisting Lewis but Lewis, who knew Moseley, says he did not see him when he first attended the police station. (T 6456, 6382) Page is unclear about whether he had seen Eddie Murray's body being removed, but he says that he did not help the ambulance officer carry Eddie Murray's body to the stretcher. (T 6619-21, 6624, 6626) Parker does not recall assisting the ambulance officer, nor seeing any other police officer do this, nor even seeing the ambulance leave the police station on that day. (T 6534)

Yet Lewis says that a police officer definitely assisted him remove Eddie Murray's body:

**THE COMMISSIONER: The stretcher you refer to you brought from the ambulance into the cell where you saw Eddie's body. Was that an elevated stretcher on wheels or was it just a manual - - -?---**

No, it's an elevated one. The wheels do collapse when it goes into the ambulance station but as it's brought out they do - the wheels go down.

**When you carried Eddie out to the ambulance were you kind of holding him or was he being wheeled?---**

He was wheeled to a certain distance and then you lift it - then we lifted it down to the back of the ambulance.

**Can you remember - there may be procedures for this - can you remember in what way he was lifted from either the mattress or the bed, wherever he was lying, onto the stretcher?---**

Yes, I - from memory, sir, I assisted or one of the police officers assisted me, just the two of us, both hands underneath and then straight up.

**Yes. I mean if you have a body and you're putting it in an ambulance and assuming there's nothing offensive about it, do you just grasp it by the feet and the hands and put it on the stretcher or do you support the body?---**

No, there'd be two - my arms or the police officer's arms would go under the shoulder, one under the shoulder area near the neck, the other just around the lower spine area and the other one, one under the buttocks and one under the knees.

**You wouldn't grasp him by the arms or the legs?---**

No way, not me, no. (T 6383-4)

The position of the body and the difficulty for one person to remove it to the ambulance supports the evidence of Lewis that a police officer did in fact assist him with its removal.

Moseley says it was not unusual for a police officer to assist in such circumstances:

**MR COOREY: Would it be the normal thing for a police officer to give the**

**ambulance officer a hand in something like that?---**

Yes, yes. (T 6456)

An inference that can properly be drawn is that police denied assisting Mr Lewis because they knew that the body should not have been removed from the scene. Obviously, the removal of a body in such circumstances has the effect of reducing significantly the forensic evidence that could later be identified.

**Police activities at the time of the removal of the body**

The ambulance officer Mr Lewis says that Eddie Murray's body was removed from the cell at 3.45 pm, and arrived at the hospital at 3.47 pm. Parker wrote in the police reporting sheet that he was out on patrol between 3.20 and 3.45 pm, yet this is inconsistent with his evidence of ringing the ambulance from the police station at about 3.30 pm. (T 6536, 6539) Parker says that "there was a fair bit of activity" in the police station soon after Eddie's death, so it would have had to be a very good reason for him to leave the police station as stated in the reporting sheet. (T 6536) Parker is inconsistent about whether he went out on patrol between 3.20 and 3.45 pm, stating alternatively that "I don't think I left the station", and that "I can't recall as to why I went out at that particular time, no", and then saying that "I returned to the police station at - what was it - 3.45." (T 6536, 6555, 6565) Parker does not recall going to the mortuary, though he says he "might have" seen the matron at the hospital "possibly to get it opened." (T 6536, 6558) Moseley suggests Parker may have gone to the mortuary. (T6456)

While Moseley at the Royal Commission hearing appeared to be suffering from ill health so much that he had difficulty recalling events, both he and Page claim to have been attempting unsuccessfully to find the deceased's father from 3.20 - 3.45 pm. Fitzgerald says he was the

only police officer left at the police station at this time, when the body was removed, having been told by Parker to stay and look after the station:

**MR COOREY: Would it be necessary for both you and Constable Parker to stay there for the telephone?---**

As far as I know Constable Parker said to me to look after the station.

**Which way did he go off, if he left at all?---**

I've got no idea at all now. I sat down at the desk where the main switchboard is.

**Do you actually remember him saying that to you?---**

What's that?

**To stay there and look after the station?---**

Yes.

**You remember that?---**

Yes.

**Where was he when he said that?---**

He would have been behind the counter where I would have been.

**Where did he go after he said that?---**

I don't know. I didn't ask him. (T 4031)

One view of this evidence is that it allows for three police officers to be with the body at the mortuary, and allows another to be at the death scene. If the evidence of Parker, Moseley and Page that they were all away from the police station for nearly half an hour after 3.20 pm is not believed, this suggests concern about the activity of police and the reliability of their evidence about where they went in the period before contacting the scientific police, when their priority should have been securing the cell.

It is unquestionable that the police had control of the body and the death scene. Moseley was the senior officer in charge at the time and therefore the responsible officer. If he failed in his duty, then Page carried sufficient seniority to preclude him from avoiding responsibility. Yet

Moseley refuses to accept responsibility for the security of the death scene or the body after it left the police station. He puts forward a proposition which on one view could be regarded as ludicrous - that the police had no role as soon as Eddie Murray's body was removed from the police station:

**MR COE: Mr Moseley, you were the sergeant-in-charge on the day that Eddie died?---**

Yes.

**The time that Eddie's body was conveyed to the hospital mortuary, you were still the officer-in-charge?---**

Yes.

**As such, were you required by police procedures to make an inventory of all the property of Eddie Murray?---**

No.

**Did you give any instructions to the ambulance or to the doctor that the clothes of Eddie Murray be kept?---**

No, I didn't give it, no.

**The body of Eddie Murray at this particular point in time, was that regarded as the property of the police still?---**

No.

**The care, if I may use that word, or the responsibility for the body of Eddie Murray had passed over to someone else?---**

Passed over to the coroner.

**So it was no longer the property of the police. Is that correct?---**

Yes. (T 2896-7)

Page also refuses to accept any responsibility for the movement of Eddie Murray's body:

**MR EAMES: When he departed, was there any discussion at or prior to his departure as to what should happen with Eddie Murray; where the body should**

**be taken?---**

I don't know at what stage the ambulance was called. It could have been called at the same time the doctor was called; it could have been called after Dr Ralte pronounced life extinct. I don't know.

**THE COMMISSIONER: Well, you had nothing to do with calling the ambulance or the doctor yourself, did you?---**

Not to my knowledge, sir, no. (T 3068)

Page then suggests to the Royal Commission that he knew "the body had been placed in the ambulance" by the time he returned from patrol at about 3.45 pm. He says this recollection was based on what "I believe I saw". (T 3069-70) Subsequently Page changes his mind, insisting to the Commissioner: "I did not see the body being carried out, sir". (T 6621)

Parker also avoids taking any responsibility for ensuring control of the death scene:

**MR EAMES: How long after ringing the ambulance did the ambulance attend?---**

Almost immediately.

**Yes, and was Eddie's body taken out of the police station by the ambulance attendants?---**

I believe so, yes.

**Did you see that occur, from where you were?---**

Not from where I was, no. (T 3215)

No officer gives an acceptable explanation for their failure to control the death scene. Three police officers even claim to leave the scene at the relevant time. No appropriate explanation is given about why the two most senior officers absented themselves, when Parker could have easily gone with one of them to visit the father of the deceased.

The Commissioner found that Parker was probably the officer who assisted Lewis remove the body from the cell. (Report, p 86) The Commissioner did not comment on the failure of the police to secure the crime scene, and the various counsel assisting and representing did not raise the issue. The Commissioner either did not consider this an issue of any relevance, or was unaware that it was important to secure a possible crime scene. Having not identified the issue, he was therefore probably unable to discern any possible concerns that may have affected the credibility of the police evidence about their movements at the time when the death scene should have been secured, pending arrival of a police photographer and other investigatory police to examine and document the scene.

Yet the Commissioner should have been aware that the body needed to be secured in the police cell. This conclusion is drawn inferentially from the following questions by the Commissioner to Sergeant Page about the purpose for contacting Eddie Murray's father:

**I appreciate that but would you have brought him - did you intend to bring him back to the police station, do you remember, to see his lad?---**

We had no reason to bring him back there, sir.

**Well, his son was lying there dead?---**

Yes, sir. (T 6636)

The Commissioner and counsel never asked relevant questions about why Eddie Murray's body was removed so quickly from the place of death, certainly with the assistance of a police officer and most probably (in view of Cronin's evidence about the police talking quietly before contacting the doctor and ambulance) as a result of a decision by several if not all of

the officers on duty at the time. In his criticism of the police investigation, which is evaluated in the following chapter, the Commissioner noted that Detective Sergeant Callaghan "accepted that he should have examined Eddie's body himself". Yet no question was raised in the Commissioner's report about where the body should have been kept until the investigating police (including the photographer Detective Sergeant Dallas James Lamey) whose task was to document the death, arrived at the scene. (Report, p 125)

Another question not resolved by the Royal Commission concerns whether photographs taken in the Wee Waa police cells on the night of 12 June, 1981, accurately document the death scene. When Detective Sergeant Lamey, the photographer, arrived in Wee Waa at 7.30 pm he was told the cause of death was suicide, then directed toward a particular cell in which there was a noose hanging from a bar above the door, and told the noose then looked "the way it was" when Eddie Murray's body was removed from that cell. (T 2456, 2458-9, 2473)

Detective Sergeant Lamey took three photographs of a noose hanging on the inside of a door which is in the middle of a cell wall (numbers 1, 2 and 15), and another of a yard showing locks on two cell doors on adjacent walls (number 14). It is Detective Sergeant Lamey who identifies the cell behind the middle door in photograph 14 as where Eddie Murray was detained on 12 June 1981, although it is not clear on what basis he could have been sure this was the cell in question. (T 2463) However, Lamey says he directed another police officer to cut the noose at a point closest to the bar:

**MR EAMES: Do you recall who cut it away?---**

Yes, I believe Sergeant Parker cut it under my directions.

**In directing him to cut it and perhaps using photograph 15 as a guide, whereabouts did you ask him to cut it?---**

We actually cut that blanket directly behind the bar through the blanket, the reason being that gave us a reference point at any stage to indicate exactly where the blanket was cut in relation to how it's sitting on the cells - well, the bars at the moment. (T 2464)

A record of where the blanket was cut could readily have been made with a photograph. What is remarkable is that it appears the blanket was cut at the very point where it would have been tightened and turned over, if in fact it had been a noose.

Lamey's evidence about the cutting of the blanket raises a real concern that what is shown in the photographs he took from inside the cell on 12 June 1981 may not have been a real noose. This concern is based also on the loose appearance of this noose, which shows little sign of having been tightened around the bar as a result of the weight of a body. If the death scene had been secured there would be less doubt about the nature of the noose.

The long edges of the strip of blanket shown in photograph 16 taken inside the cell by Lamey after it was cut down also appear to be inconsistent with it having been torn by hand.

Furthermore, the position of the alleged noose shown in photographs 1, 2 and 15 would clearly have obstructed entrance to the cell by the ambulance officer Mr Lewis if it had remained unmoved. Mr Lewis walked through the cell door several times without ever noticing a noose hanging down from a bar above the door, as pictured in the photographs taken by Lamey. Mr Lewis says that he saw a whole blanket hanging through the flap in the door. (See Chapter 11: HOW WERE THE HANGING MARKS CREATED?) Unless the noose had been deliberately placed above the door so that it was not hanging down (and there is no evidence that this ever happened), anyone going through the cell door to remove the

body would have come into contact with the noose.

## Chapter 8

### FAILURE OF POST-DEATH INVESTIGATIONS

The failure of police on duty at Wee Waa on 12 June 1981 to secure a possible crime scene occurred before senior police responsible for investigating a death in custody were notified. Remarkably, this failure was apparently not noticed by the police charged with investigating Eddie Murray's death, who compounded this fault by not checking the accuracy of the police version of events or reviewing the adequacy of the documentary records made by the police.

The Commissioner's finding (point 19) that:

"The police investigation into Eddie's death was inadequate, based on assumptions that he had committed suicide and that the officers involved were 'reputable and dependable.' The combination of the autopsy, the police investigation and other factors including destruction of clothing, or its remnants, without consultation with the family inevitably gave rise to disquiet and suspicion which are likely to persist."  
(Report, p 133)

is undoubtedly true. The Commissioner did not share that "disquiet and suspicion", despite the serious grounds for such concerns raised by counsel for the family at the hearing. It is of significant concern that the Commissioner seems to have placed all the responsibility with government to determine adequate investigatory procedures:

"at Government level there should always be understanding of the catastrophic impact a custodial death has upon the deceased family (black or white), and the suspicions involved serve only to perpetuate grief and anger. Governments should bear these

facts in mind where determining investigatory procedures. The issue is a broad one and is relevant to public confidence in police and other custodial authorities."

(Report, p 127)

One unfortunate aspect of this conclusion is that government at the highest level in New South Wales was involved, and obviously did not understand or failed to read the available evidence. Another is that those vested with the responsibility for investigating such matters failed to ensure that appropriate attempts were made to reinvestigate this death in custody. Detective Sergeant Callaghan, who was responsible for conducting the police investigation into this death in custody, states in his own defence:

"I submitted the report to the Premier, setting out the full investigations and they seemed satisfied with those investigations." (T 4229)

Even if it is accepted that it may be very appropriate for government to determine, where a further review of an investigation is needed, that the police should not investigate the police in such circumstances, there are more important issues involved. It is of primary importance that any police investigating the role of other police do so in a competent and diligent way. In the years since Eddie Murray's death, the role of the police has not altered materially and the procedures which they should follow for proper investigations have not changed significantly. In 1981, investigatory flaws could not be excused on the basis of ignorance of what should occur in uncovering the circumstances in which a person died in custody.

It is a very frugal approach to take to simply accept the explanations of the investigatory police that they knew the officers involved or that they relied upon the police initially involved to conduct the investigation without meticulous review. The inactive role of the

investigatory police gives rise to a reasonable concern that they did not conduct a meticulous review of the circumstances of Eddie Murray's death such as to dispel any suspicions that the police involved were responsible in any way. The police who were allocated to investigate the death on a reasonable view did so in such a superficial manner that it is a misnomer to use the word "investigate" to describe what they did.

Detective Sergeant Callaghan from Moree was directed by Chief Inspector Goddard to carry out the investigation into the death of Eddie Murray. Callaghan had been a detective sergeant for approximately 10 years prior to 12 June 1981. He attended Wee Waa in the afternoon and left at about 9.30 pm. (T 4208) He later prepared a statement for the Coroner's Inquest dated 9 November, 1981. The statement records the following:

"About 4 pm on 12 June 1981 I received a telephone call from Sergeant Moseley, officer in charge of Wee Waa Police Station, who informed me that a short time earlier a male person, Edward James Murray, born 6 December 1959 had been found hanged in a cell at the Wee Waa Police Station with a piece of blanket. He also told me that Murray had earlier been detained for being an intoxicated person after a complaint had been received from the Imperial Hotel.

"I travelled to the Wee Waa Police Station and carried out an investigation with Detective Middleton. I spoke with Sergeant Moseley, who informed us about 1.45 pm he received a telephone call from the Imperial Hotel. As a result of the call he drove to the Rose Street entrance to the Imperial Hotel where he observed Edward Murray stumble from the main entrance into the street. He was satisfied that Murray was intoxicated, so he placed him in the rear of the police vehicle. At the time he was in company with Senior Constable Parker.

"They conveyed Murray to the police station where he was searched by Senior Constable Parker and his particulars entered in the intoxicated persons book.

"He was then placed in the number one cell of the police station which contained a cell mattress and blankets. About 2.15 pm he went to the cell door and spoke to Murray as a result of Murray calling from the cells. He asked Murray what the trouble was and Murray had replied, 'Nothing.' He told Murray to lie down and have a sleep.

"About 3 pm Sergeant Page commenced duty and he [Moseley] went with Sergeant Page to the cell block to check Murray. When he looked through the cell flap he saw Murray hanging by the neck with a piece of blanket which was attached to the bars above the cell door.

"He placed his hand through the cell flap opening and endeavoured to lift Murray while Sergeant Page opened the cell door. After the cell door was opened, he saw that Murray had his feet on the floor. Sergeant Page lifted Murray and he released the blankets from around his neck. Sergeant Page lowered Murray onto the cell mattress and they tried to find his pulse but was unable to do so.

"He then performed an external cardiac massage but could not revive Murray. Dr Ralte was immediately summoned. He attended the police station and after an examination of the deceased, pronounced life extinct. We then spoke to Senior Constable Parker who verified the information related to us by Sergeant Moseley regarding the detention of Murray. He further stated he visited the cell and spoke to Murray about the continual banging on the cell about 2.30 pm. At the time he noticed Murray appeared to be agitated and was walking about the cell and kicking the cell door with his feet. He told Murray to calm down and have a sleep.

"We then spoke to Sergeant Page who verified what Sergeant Moseley had told us after he commenced duty at 3 pm. We then accompanied Sergeant Moseley to the number 1 cell where I saw a strip of blanket with a noose-type knot tied to the bar immediately above the cell door with the bottom of the blanket level with the hinge section of the flap. I also saw a cell mattress and portion of a blanket on the cell

floor.

"We then returned to the office and checked records at the station concerning the detention of Murray. We then had a conversation with Inspector Goddard. We then made a patrol of the town area and then went to the Imperial Hotel where we spoke to the licensee, Mr Walter John Molyneux. He accompanied us to the police station, we obtained a statement from him concerning his knowledge of the deceased Murray's actions at the hotel prior to the police being telephoned. He also stated that he saw Murray being placed in the back of the police truck.

"Then in company with Detective Lamey we went into the cell block and I was present while Detective Lamey took photographs and also took certain measurements. I was also present when he took possession of a strip of blanket which formed the noose and also the remaining section of the blanket. I then made arrangements for Detective Lamey to be in attendance at the post-mortem examination the following morning to photograph the body and take the necessary samples.

"The following day I had a conversation with Detective Lamey, who told me that he had attended the post-mortem examination and that he had photographed the body and taken the necessary samples for analysis. I then had a further conversation with Sergeant Moseley concerning the deceased hanging himself while his feet were still on the floor and he told me that Dr Mulvey had attended the police station and with the use of the telex had conferred with Dr Brighton at the city morgue. It was ascertained that it is not necessary for a person to have his feet off the floor to hang. Also the majority of people who suicide by hanging do so by suspending; they don't have their feet off the floor, they simply sink down and allow the weight to cause a tightening of the neck and consciousness would be lost almost immediately.

"I later ascertained from the analytical laboratory that blood taken from the deceased after his death showed an alcohol reading of 0.300 grams of alcohol in 100 millilitres of blood. From investigations conducted in this matter I can find no evidence to suggest that the deceased died as a result of any cause other than self-inflicted by

hanging while in a state of intoxication."  
(Royal Commission Exhibit N1/85 T 4205 - 4208)

There are many problems with this statement, including the fact that there is no reference to civilian witnesses in the police station (Mr McKnight, Mr Cronin and the ambulance officer Mr Lewis) nor to any witnesses other than the publican at the hotel. The investigatory police should have determined this basic issue along with many others. For example, Callaghan's statement emphasises that the death apparently occurred without suspension, yet the issue of whether any of the police at the scene had ever seen the result of a hanging death was not clarified either at the Inquest or the Royal Commission.

### **Many police investigatory failures**

Callaghan was asked by counsel assisting what he considered his role was when he embarked on his journey to Wee Waa. He states:

"I suppose Sergeant Moseley would've been in charge of the investigation at Wee Waa and my duty would have been to see if there were any suspicious circumstances." (T 4212)

The first suggested failure on the part of Callaghan was that he did not speak to all the police officers on duty at Wee Waa on 12 June 1981 prior to the Coroner's Inquest. In particular, he did not speak to Fitzgerald. (T 4213) The best explanation that Callaghan offers as to why he did not speak to Fitzgerald is that:

"His name wasn't mentioned." (T 4215)

The need to interview Fitzgerald should have been obvious, as the police roster, if it had been examined, would have revealed that he was on duty at a relevant period of time. Whether he was on the day shift until 4.30 pm or the night shift from 3 pm, he was clearly rostered to be on duty before Eddie Murray's body left the police station. Callaghan says that after arriving in Wee Waa, he spoke to Parker, then to Page and then accompanied Moseley to the police cell. (T 4215) Callaghan presumed that these officers had prepared their statements before he arrived in Wee Waa. (T 4215) Callaghan's failure to ask for a statement from Fitzgerald in circumstances clearly calling for it raises real concerns about why this was not done.

This first failure encompasses the fact that the proper police procedure was for Callaghan to take statements from each police officer before they had the opportunity to discuss the matter between themselves. A reasonable approach for Callaghan was to insist that each police officer on duty at the relevant time recorded their version of events in isolation from their fellow officers. The fact that they were police officers does not reduce in any way the necessity to treat them as individuals, who could give evidence about a major event which required police investigation. For example, an attempt should have been made to determine, by individually interviewing police officers present as well as civilian witnesses, whether Fitzgerald was at the police station when Page arrived at 3 pm, as Page consistently states.

Callaghan's second and related failure which is an obvious step after the taking of statements, is his failure to check the personnel files of the police to determine if any of them had violent tendencies. (T 4250) The third, again linked and arising from the first, is the failure to check

if any relevant police officers had animosity towards Eddie Murray. (T 4250) At the Inquest Parker said he had been told by Fitzgerald that Eddie Murray “was a bit of a trouble maker and sort of caused trouble when he was drunk”. (Inquest, p 212) The failure to investigate this background is compounded by the failure to seek any evidence from the police station cleaner, Mr McKnight, who heard the angry exchange between Parker and Eddie Murray.

The fourth failure was the near complete lack of endeavour to identify if the police version of the detention could be corroborated. (T 4253) The only civilian witness Callaghan spoke to was Mr Walter Molyneux, the publican. The reason that he gives to the Commissioner for this is:

"Under the circumstances I had no reason to believe that there was any suspicious circumstances." (T 4220)

The obvious point was that others may have seen the detention of Eddie Murray.

When it was posed to Callaghan that it would have been wiser to conduct the investigation with an open mind, he states:

"Well, I suppose everybody can be wise after the event." (T 4220)

It must be regarded as doubtful that an experienced police officer would accept without corroboration or critical analysis a version of events from only one civilian witness (Molyneux) who was at the scene of a detention which ultimately ended in death.

The fifth failure involves not making inquiries about whether or not there were any civilians

at the police station when Eddie Murray was in detention. The evidence of the civilians, McKnight and Cronin, who were present at the relevant time, was very significant, and not overlooked by the Commissioner when making his findings about allegations of noise from the cell. The evidence of Mr Lewis, who took the body from the police station with the assistance of a police officer, was as important as the evidence of Dr Ralte who pronounced death in the cell. The obvious question which apparently was not asked by Callaghan was: who was at the police station when Eddie Murray was in detention?

The sixth failure of Callaghan was not to view Eddie Murray's body prior to the autopsy. It was suggested to him by counsel assisting that this would have been appropriate, "to assess whether there were any blood stains, any bruises, or any indication that might've conflicted" with what he had been told by some of the police who were on duty when Eddie Murray died. His response is this:

"Knowing what I know now, I probably would have, yes." (T 4227)

This and his other explanations fall well short of the acceptable standard for an experienced detective.

The seventh failure of Callaghan was his lack of investigation into the patent discrepancy between the time of arrival of the ambulance noted in the occurrence pad entry and that recorded by the ambulance officer Mr Lewis. (T 4233) It is obviously important to fully investigate such matters as soon as possible so that those involved have, as far as possible, such issues fresh in their minds.

Callaghan's eighth failure was in not making any record indicating that he had asked and been told by Molyneux who the officers who detained Eddie Murray were. (T 4234) This is a very serious matter and leaves open grave suspicions about who in fact these officers were.

Callaghan's attendance at Wee Waa was the earliest and best opportunity to gain information in this regard, before the effluxion of time gave the opportunity for any "infection" or failure of memory to occur.

The ninth failure of Callaghan was not making any inquiries into the state of mind of Eddie Murray prior to his detention. His explanation in response to the suggestion that he should have made such inquiries is this:

"On the grounds of courtesy the parents should have been interviewed, I suppose. I probably left it to the inspector and the inspector left it to me and it didn't happen."  
(T 4239)

If Eddie Murray had expressed any tendencies towards inflicting self-harm then there may have been at best a limited explanation as to why the police did not fully investigate the circumstances of his death with an open mind. The fact that Eddie Murray was described as "happy-go-lucky" by those who knew him closely was and remains an important factor in assessing the circumstances surrounding his death.

The tenth failure of Callaghan was that despite the fact that he sat through the Inquest, he did not follow up on any of the discrepancies in the police evidence that were revealed. There may be some acceptable explanations for not realising the extent of the discrepancies in police evidence before the Inquest, but there is less reason for not realising after it. The

existence of discrepancies at the Inquest should have led Callaghan to make further inquiries. Indeed, the Coroner's open finding should have been sufficient to activate the interest of even the most lethargic police officer.

Other failures of Callaghan during the investigation included: not ensuring that police present at the time of death were not present at the autopsy; not ensuring the integrity of the evidence after the autopsy (especially the retention of clothing); not reviewing the autopsy findings to determine if they were sufficient to dispel doubt about the cause of death; not viewing the work of the scientific officer employed to assist in the investigation of the death; not ensuring that all the relevant records created by police officers on 12 June 1981 were independently secured away from those officers who had been on duty at the time of Eddie Murray's death; and not determining if histological tests had been conducted after the autopsy, and if they had not been, why not.

At the Royal Commission, an attempt was made by counsel for the family to test the veracity of Callaghan, but the Commissioner had a certain view which did not leave open the possibility of collusion between police officers. When counsel for the family attempted to question Callaghan at some length about the extent of his investigation and discrepancies in the evidence that arose at the Inquest, the Commissioner intervened to stop the process:

**THE COMMISSIONER: Mr Coorey, I just wonder how this is helping me at the moment. This man wasn't in Wee Waa when Eddie died and no doubt you will be making submissions about shortcomings. I think I understand the basis of them. (T 4282)**

. . . .

**THE COMMISSIONER: How is it going to help me? That's all.**

MR COOREY: Well, Mr Commissioner, only this way: that it will be my eventual submission that this man as a police officer could have been in the attempt to give a police version of what happened without any recourse to independent witnesses. The only person spoken to was the publican and the relationship between the publican - - -

**THE COMMISSIONER: We know all that. Are you going to ask me to find that he is involved in a conspiracy?**

MR COOREY: I am going to ask you to find that his investigations were so inadequate- - -

**THE COMMISSIONER: Well, you just heard the summing up.**

MR COOREY: Well, Mr Commissioner, do I take it from that that you would make a finding that his investigations were inadequate?

**THE COMMISSIONER: No, I am not going to say that at all because I haven't heard all the evidence but on what he tells me - I think he himself believes, in retrospect, that they were inadequate and, in fact, he was paraded by his own department - - -**

. . . .

**THE COMMISSIONER: But this business of introducing what other witnesses have said to me or did say at the inquest, it's not helping ---**

MR COOREY: Mr Commissioner, perhaps I haven't made it clear. As I understand his evidence, it was this: that he was sent to investigate the circumstances of the death and that he was involved from 12 June right up until - I think it's April or July 82 - so that he covers not just the date of death but his investigations and reports even comment upon the coroner's inquest and indeed one of the things he comments upon is the coroner's findings.

**THE COMMISSIONER: Well, all that correspondence - the memorandum and everything - is before me in evidence.**

MR COOREY: Yes.

**THE COMMISSIONER: I've heard him give evidence. All I am saying is - you putting to him other things that he may or may not know, things that occurred in**

**the cell, things that Mrs Garden or Miss Garden told us the other day, that's not helping me.**

MR COOREY: Well, Mr Commissioner, perhaps this would in this way: that if he is at the inquest and hears and sees certain witnesses giving evidence and yet he does nothing- - -

**THE COMMISSIONER: You see, the difficulty, Mr Coorey - and it may well be that you deny the veracity of this - but he doesn't remember. This is the difficulty. He says to me that he doesn't remember these things. How can I - unless I find he is a liar in not remembering what happened six years ago - draw many factual findings based on his cross-examination?**

MR COOREY: Mr Commissioner, because he does remember some things. He doesn't say the whole thing is a blank.

**MR COMMISSIONER: We all remember some things about things that happened a long time ago; that's not unusual.**

MR COOREY: Yes. I suppose my job is to explore as much as I can what he does remember. I think it would be the easy way out for me - - -

**MR COMMISSIONER: But Mr Coorey, just remember that you are exploring it to get the facts before the royal commissioner - - - (T 4283-5)**

Similar interchanges occurred a number of times during the hearing. The assumption seems to have been made by the Commissioner that an investigating officer would not deliberately cover up or fail to investigate. Turning a "blind eye" to the obvious, or to what should be obvious, is not an unknown practise within the New South Wales Police Service. The Commissioner should have known this and should have allowed the issues to be explored for the purpose of assisting him with findings as to whether or not the police version of the circumstances surrounding Eddie Murray's death was accurate. It must be regarded as trite that a police detective vested with the duty of investigating a death should know the available evidence, and should be willing to comment on how he regards the value of such evidence.

Callaghan's very limited time in Wee Waa was partly spent patrolling the town looking for any disturbances arising from the death. (T 4217) If he is to be believed on this point then he is acknowledging that he was concerned with collateral matters which may have prejudiced or confused his view about the extent to which he needed to pursue the investigation of the death. Did he deliberately omit performing his duty because he wanted to turn a blind eye to what had in fact happened? Was he prejudiced or confused? Alternatively, was he ignorant of what was involved in the performance of his duty, and had he not been properly directed by his superior, Chief Inspector Goddard? If there are other possibilities then they are not clear from the evidence and Detective Callaghan should be given an opportunity to explain what they might be.

### **Role of Inspector Goddard**

Chief Inspector Goddard accompanied Callaghan to Wee Waa on 12 June 1981 after being contacted by Moseley. Goddard arrived at 5.30 pm and remained in the town for 6 hours "making observations". (T 6022) His principal concern was to check that there was "nobody rampaging around the place, nobody congregated about the place." (T 6023) One Aboriginal man allegedly broke a window but it is unclear if this was related to Eddie Murray's death, or whether there was likely to be any "trouble" in Wee Waa that evening arising from this death. Goddard does not recall whether he had even seen Fitzgerald, though it was Fitzgerald who at 5.30 pm arrested this Aboriginal man for breaking windows. (T 6021; Report, p 25)

Goddard prepared a report to the police superintendent in Tamworth dated 24 July 1981 to which statements of Parker, Moseley and Page (but not Fitzgerald) were attached. (T 6000)

The failure to obtain a statement from Fitzgerald is remarkable in the light of an alleged subsequent conversation in early 1982 recalled by Christine Stafford, a researcher who was given permission by Inspector Goddard to attend the Wee Waa police station while studying relations between police and Aboriginals in a country town. (T 3883, 6015) When Fitzgerald entered the room where the conversation took place after Moseley had affirmed to Stafford his view that the Murrays created trouble, Moseley said to her while looking at Fitzgerald: “This is the man himself. Go on mate, show her how you strung him up.” (T 3884, 3896, 3899-3900) These two police then apparently laughed, together with another officer Sergeant Kevin Thomas Forbes, who was not on duty on 12 June 1981 but who attended the Murray household on 24 March 1981 on the night when Fitzgerald allegedly threatened Eddie Murray. (T 3896; 2509) Fitzgerald then showed Stafford where the noose was allegedly attached above the cell door, saying it could be seen from outside the cell. (T 3897)

Stafford believes that the police during this conversation in early 1982 were trying to string her along in some way, in view of the publicity about Fitzgerald being found by the Coroner in late 1981 to be an unreliable witness. She says of Moseley’s alleged remark that she “at no stage interpreted it as a serious statement about guilt or complicity”. (T 3896-7) However, it is of concern that the only time soon after the Inquest that Fitzgerald seems to have been interviewed in any sense about what happened on 12 June 1981 was by this outside researcher, not by the police responsible for investigating the death of Eddie Murray.

Inspector Goddard talked with Moseley about “the overtime he would be claiming”. (T 6020) He did not know there was an erasure on the police roster sheet for 12 June 1981, over which Moseley typed in that he had detained Eddie Murray, though Moseley claimed to the Royal

Commission this had been done for the sole purpose of his overtime claim. (T 6014; 6458)

Inspector Goddard does not think it odd that, when he and Callaghan left Wee Waa that evening the investigation remained in the hands of those officers against whom possible allegations of foul play might be made. (T 5989, 6003)

The Commissioner expressed concern about the approach that Goddard took to the police investigation. He stated:

“It is clear to me that the police inquiry was inadequate. It was too hasty, too restricted in scope and it was based on assumptions in Goddard’s mind, namely that Eddie had committed suicide and that the officers involved were ‘reputable and dependable officers’.” (Report, pp 127)

Goddard made assumptions which were not appropriate in the circumstances. Neither he or Callaghan, as the investigating officer, inspected the body, even though Goddard was aware that allegations could be made of foul play. (T 5989) In his statement Goddard simply says:

“The deceased had been removed from the police station prior to my arrival and at no time did I see the deceased.” (T 5979)

Goddard made no inquiries about who gave the authorisation for the removal of the body from the police cell before Lamey, the police photographer, arrived to document the scene.

A salient point about the role of Inspector Goddard which the Commissioner did not note concerns Goddard’s awareness before the autopsy of the possibility of allegations of foul play. Goddard states that before leaving Wee Waa late on the Friday night he knew that an

autopsy was going to occur the next morning, although he did not know that Parker had already prepared the P79A Form on the Friday night. (T 5986; 5989) Goddard says he “had considered” the possibility that the Murray family would dispute the police version that the cause of death was suicide:

**MR EAMES: So it was still a possibility, as you understood it, when you left Wee Waa on the Friday night, that there would be public controversy raised with suggestions that the death was not a suicide?---**

Yes, I had considered that. (T 5988)

In these circumstances, it is strange not only that Goddard did not inspect the body himself, but that he did nothing to ensure that the autopsy would be conducted by a properly qualified forensic pathologist, and even failed to convey his concerns to the Government Medical Officer, Dr Mulvey, who the police on duty at Wee Waa had arranged to conduct the autopsy early on Saturday morning. The Commissioner did not ask why Goddard chose not to subject the assumption of suicide to careful scrutiny and forensic investigation, especially when he was aware of the likelihood of suspicion about the death.

Inspector Goddard could have, to a significant degree, allayed suspicions by ensuring that the autopsy was conducted by an experienced forensic pathologist. The reason he gives for not doing so is his high opinion of the police officers responsible for caring for Eddie Murray. Yet, by directing that a specialist forensic pathologist conduct the post-mortem, Goddard could have ensured a thorough examination of the cause of death, which may have confirmed this opinion independently.

## Chapter 9

### ADVERSE POLICE INFLUENCE ON AUTOPSY FINDINGS

The Commissioner's main finding in respect of the autopsy was that:

"18. The autopsy was carried out by Dr Mulvey in the presence of Detective Sgt Lamey and Senior Constable Parker. At some stage Sgt Page attended. I find that there was no 'impropriety' in the conduct of the autopsy. There were several unsatisfactory features of the autopsy, its reporting, and above all the fact that histological examination were not carried out [sic]. An autopsy following a death such as this should have been performed by a specialist forensic pathologist." (Report, p 133)

In effect to support this finding he found:

"16. Eddie Murray died by hanging. The evidence does not justify a finding that he died by any other means. The lump or bruise which may have been present on his forehead did not indicate an injury sufficient to cause his death. The marks on the neck were consistent with death by hanging. There is just no evidence to support the hypothesis raised that the marks were caused after death." (Report, p 132)

He drew the conclusion that Eddie Murray died by hanging, without any intervention by the police, on the basis that there was no evidence from the autopsy that he died by any other means. His suggestion that "there were several unsatisfactory features of the autopsy" understated the facts to such an extent as to give further weight to the submission that his findings are inadequate and unsatisfactory.

It is trite to say that an autopsy is one of the primary forensic tools available to assist in

determining cause of death. It is not the only tool (although the Commissioner seemed to rely on it as such in Eddie Murray's case) but an inadequate autopsy can result in a crime going undetected. The circumstances leading up to the autopsy as well as the procedures followed by the doctor performing it are all relevant to assist with determining possible cause of death. Of particular concern in this case is the fact that the Commissioner appears to have failed properly to consider the evidence of the steps taken prior to the autopsy and what role the police may have had in determining the outcome.

### **Role of the police and the P79A Form**

The autopsy was conducted at 8 am on 13 June, 1981 following the receipt of a P79A Form, "REPORT OF DEATH TO CORONER". This form is used as a guide to the doctor conducting the autopsy, and directs the doctor's attention to the circumstances of the death known to the police at the time and thus assists by pointing to possible causes of death. It is therefore a very important and potentially influential document.

The P79A Form was prepared by Senior Constable Kevin Joseph Parker who states in his evidence that it took him "15, 20 minutes" (T 3294) to type. Parker was one of the officers who claims to have apprehended and detained Eddie Murray. He was therefore clearly not the person who should have completed the form, for the obvious reason that if he did have anything to hide, then the contents of the P79A Form would be very useful for the purpose.

Apart from his statement dated 12 June, 1981, and the P79A Form prepared at the same time, Parker did not record details of the apprehension and detention of Eddie Murray. These documents were prepared sometime later on the day of Eddie Murray's death and therefore

were not contemporaneous. It was, however, open to Parker to make a contemporaneous note of the apprehension and detention in his police notebook. Indeed, on one view, the recording in his police notebook of the detention of Eddie Murray should have been done as a matter of routine as any detention must be regarded as a matter of significance. He gives no reason for not recording the detention in his note book. When questioned about this he states:

**MR COOREY: Constable, you said that significant matters are put in your notebook, didn't you?---**

On occasions, yes.

**Yes, and your arrest of Eddie Murray and his death on that day would be a significant occasion, wouldn't it?---**

It would, yes.

**Particularly the fact that you were the last person to see him alive?---**

Yes.

**You saw him at 2.30, you told my friend, didn't you?---**

Approximately 2.30, yes.

**Yes, and you told the royal commission that you arrested him just before 2 pm, or one of the persons who did?---**

Yes.

**Is that right? Can you explain why your notebook entry for 12 June has no reference at all to Eddie Murray?---**

I can't actually explain, no. (T 3230 - 3231)

Parker is questioned further about his notebook and later entries and it is suggested to him that the reason he has no relevant entries is that he is covering up for Constable Fitzgerald:

**MR COOREY: Because the following day - 13 June - you have got there a reference to Eddie Murray. You've talked there about his post-mortem; (sic) you've given the times; I think you've got 3 hours - I might be wrong, something**

**"minute" I think. You've got the 13 June details there, haven't you?---**

I'd have to have a look at it.

**All right. Accept from me that you've got the following re Eddie Murray?---**

Yes.

**You see, isn't the reason that you haven't got the arrest of Eddie Murray in or the detention of Eddie Murray on 12 June because you weren't involved in it?---**

I was involved in it, yes.

**You see, you worked the afternoon shift?---**

I did not, no.

**And Constable Fitzgerald, I suggest to you, was the person who was driving the vehicle?---**

He was not. (T 3231)

Whether or not the above suggestion is accurate, it is of vital importance that Parker's P79A Form had the effect of influencing the doctor who conducted the autopsy, to such an extent that he did not look sufficiently for indications of the cause of the death other than those that could be regarded as consistent with a self-inflicted death. Support for this proposition is provided by the following analysis.

#### **Relevant information not included in the P79A Form**

The P79A Form prepared in Eddie Murray's case did not describe in full relevant detail the method of apprehension and detention used. In particular, no reference was made to the last communication between Eddie Murray and a police officer, which occurred about an hour before he was pronounced dead, and that the exchange was an angry one. This evidence had to be provided by the only independent witness to Eddie Murray's detention, the civilian cleaner at the police station, Mr McKnight. He states:

**THE COMMISSIONER: This is the first statement you've ever made about it?---**

That is the first statement I've ever made.

**You were never asked after Eddie's death or at the time of the inquest?---**

No.

**And you remembered just the other day that he used the words, "Why don't you pick on" - - ?---**

"Why do you always pick on me? Why don't you pick on the white people."

**MR EAMES: Now, you said that you remembered that he said, "Why don't you pick on the white people?" at the time when you were speaking to Mr McDonald.**

**Did Inspector McDonald ask you if you could remember anything else he said?--**

No.

**You said that that sounded to you as though it was coming from the dock area.**

**Is that right?---**

Yes.

**I take it you would work in the upstairs at some time every day when you were doing cleaning?---**

Yes.

**Had you on any other occasions ever heard the sound of voices coming from the dock area whilst you were working upstairs?---**

Yes, I could hear voices and that.

**When you heard these voices, did you recognise either of the voices?---**

Only Constable Parker's.

**How did Constable Parker sound?---**

It was in a loud voice. He said to the prisoner, "Sit down and shut up or I'll charge you with something more serious."

**Did he sound angry?---**

He sounded angry, yes.

**Did the other person's voice sound angry?---**

Yes.

**When you said in your statement he said, "Sit down and shut up or I'll charge you with something more serious, I'm only charging you with drunkenness," are**

**you sure those were the words he used?---**

Yes.

**He didn't use words like "You're only getting locked up for intoxication," or anything like that?---**

No.

**THE COMMISSIONER: They're the exact words?---**

Those are the exact words, yes. (T 4542 - 4543)

The police evidence in the P79A Form listed Parker as the last person to see Eddie Murray alive, but it was clearly misleading about the nature of Parker's interaction with Eddie Murray in the police station.

The P79A Form provided no information about Eddie Murray's demeanour at the time of his arrest other than that he was intoxicated. It did not indicate whether or not he came willingly with the police when they detained him outside the hotel or later when they took him into the police station. Indeed no arresting police officer gives evidence of any words said at the time of his arrest or up to the point of placing him in a police cell. Moreover, no information was provided in the form describing his degree of intoxication such as his gait, the condition of his eyes or his ability to communicate. The brief description provided - "well effected by intoxicating liquor" (sic) - did not provide the doctor with sufficient information to determine whether or not Eddie Murray had any injuries at the time of or after his detention or indeed any information about Eddie Murray's apparent state of health.

The P79A Form simply described how Eddie Murray was found in the cell as, "...found him hanging by the neck by means of a strip of grey blanket material." No information was provided as to where in the cell he was found or what position his body was in at the time.

The only description in the P79A Form of how he was removed from the hanging position was:

"The cell door was opened and the deceased taken down."

Further information about this event may have assisted the doctor to determine if the taking down could have affected his chances of survival. (The alleged rescue attempt is described in chapter 5) Also omitted from the Form was any reference to the attendance of scientific or investigatory police. It may have been of interest for the doctor conducting the autopsy to know that the scientific and investigatory police had no role in the preparation of the Form.

#### **Allegations in the P79A Form rejected by the Commissioner**

The following information contained in the Form was not accepted by the Commissioner:

"At about 2.15 pm the deceased was seen and spoken to by Sgt. 2/c Moseley in relation to continual yelling. At about 2.30 pm the deceased was seen and spoken to by Sen/Constable Parker in relation to a continual banging."

The Commissioner found:

"6. The noises of Eddie calling out and kicking the cell door, as described by Moseley and Parker, did not occur - nor did the subsequent attendances by Moseley and Parker in response to such noises."

It is significant that the attempts to revive Eddie Murray described in the P79A Form were

not accepted by the Commissioner. The information in the form says:

"All efforts to reveive (sic) him were to no avail."

Page says of his attempts to revive Eddie Murray:

"Upon finding the deceased hanging in the cell I did everything possible within my capabilities to revive him." (T 3060)

This effort supposedly involved external cardiac massage. When asked how long he tried to revive Eddie Murray he states:

"Only minutes, sir, not very long - minutes, that's all."

"No, it wouldn't be 10 minutes"

"Closer to 5." (T 3142)

Moseley claims to have left this scene to get medical help. (T 6428-29)

The revival attempt at best was very limited. Indeed the Commissioner's comment in this respect casts doubt on Page's claim that he attempted to revive Eddie Murray. The Commissioner stated:

"I have doubts whether Page performed cardiac massage or made attempts to revive Eddie." (Report, p 78)

These doubts derived from the evidence of the civilian witness Mr Cronin, who says that after Page and Moseley had gone to the cell together they both returned together. (T 3010)

### **Unusual sequence of events following finding of Eddie Murray**

The P79A Form described the events immediately after the alleged attempt to revive Eddie Murray in the following terms:

"Dr Ralte of Wee Waa was contacted and attended immediately and pronounced (sic) life extinct. The deceased was then conveyed to the Wee Waa District Hospital Mortuary."

This was not a full description of what occurred as there was an attempt made by Parker to call Dr Mulvey prior to calling Dr Ralte. (T 3214) Some criticism of the sequence of calling the doctors before the ambulance was made by the Commissioner although it was muted:

**THE COMMISSIONER: It may have no significance. It seems to me it would have been better to have rung the ambulance first and got him to hospital where resuscitative equipment was available.**

...

**THE COMMISSIONER: Must have had hundreds of experiences of road traffic, and you know, other types of injuries where you get an ambulance and get them to hospital.**

...

**THE COMMISSIONER: I felt here it was accepted as a fait accompli very quickly, but that may go to training and everything; I don't know.**

...

**THE COMMISSIONER: I mean, I don't think any general practitioner would welcome the concept that he was to be substituted for an ambulance officer in emergencies. (T 7293 - 94)**

Indeed, in this case the ambulance was used only to take the body from the scene before the scientific police investigation began. The Commissioner did not provide much insight into

why the ambulance was not called at once. Suggesting that the police must have thought the death was a "fait accompli", and vaguely referring to "training and everything", understated the significance of the use of the ambulance to remove the body in this case.

If the resuscitation was as limited as described at the hearing, then this point was not made to the doctor conducting the autopsy. Indeed, the opposite impression would have been given. If the police knew that Eddie Murray was dead then there would be little purpose in calling the ambulance officer for assistance with any revival attempt. Another purpose would be to have the body removed from the scene as soon as possible. The attempt at calling Dr Mulvey first could be seen as an indication that the police knew Eddie Murray was beyond help; this leaves open the question of whether the purported attempt at revival was a fabrication to cover police knowledge of the true circumstances of Eddie Murray's death, or alternatively a story to cover their indifference about his death, as the Commissioner found. He stated:

"Why Page should claim he remained with the body performing cardiac massage, which I do not accept, is, I believe, explained not by any suggested cover-up or staging of a hanging, but by reluctance to expose what could be interpreted as indifference about the death." (Report, p 79)

The Commissioner preferred this view based on the evidence of Cronin that Moseley and Page returned from the cell in a hurry, having not been in a hurry to go to the cell. The Commissioner said, "That dramatic change in atmosphere is an important observation." That may well be true, however, it is not logical to conclude from that observation (which he does) that police were uninvolved in Eddie Murray's death. Cronin's observation that Moseley, Page and Parker talked quietly amongst themselves and were "very flustered until they made

the phone call” suggests the police may have had something to hide. (T 3018, 3025) This, together with the strange delay in calling an ambulance, points to justified concern about the degree of their involvement because of their overt lack of diligence or their indifference.

**Parker's inconsistent evidence about when he completed the P79A Form**

Parker initially claims to have completed the P79A Form on the afternoon or the evening of 12 June, 1981. This claim is clearly false.

**MR COOREY: Constable, you lied to the royal commission yesterday and you lied to my friend today, Mr Eames, when you said that you made your statement, which is in front of you, on 12 June, 1981, didn't you?---**

No, I've no reason to do that.

**You know you lied, don't you?---**

No.

**You dispute it. Can you tell me by what magic you can make a statement on 12 June and describe an event that had not even taken place until later than 12 June? By what magical power can you do that?---**

I made this statement after the tea period, before knocking off.

**On 12 June?---**

On 12 June.

**You remember that?---**

Yes.

**Clearly?---**

Clearly.

**In the Wee Waa Police Station?---**

That's correct, yes.

**Have a look at the bottom paragraph. The event you describe had not even happened until 13 June, had it?---**

That's correct yes.

**Yes, so you lied, didn't you?**

. . .

**THE COMMISSIONER: What do you say about that, Constable Parker?---**

That was put there because I knew I was attending on that morning and that I would be present at that post-mortem examination.

**What, you did it in advance, did you?---**

In advance, Your Honour, yes. I'll admit to that.

**Are you sure about that?---**

Yes, Your Honour. (T 3218-19)

He also claims to have typed the Form in 15 - 20 minutes (T 3294). When it was pointed out to Parker that the Form he claims to have completed on 12 June 1981 refers to events that did not occur until the next day, he admits to having completed the Form on 13 June, 1981:

**MR COOREY: You see, you've even got the time, haven't you, "At about 8 am on 13 June the body was identified by me to Dr Mulvey." How could you have put that in?---**

Because Dr Mulvey was our government medical officer at Wee Waa then.

**But you made the statement before that date?---**

That particular part, yes.

**Constable, the whole statement was made before 13 June?---**

Before 30 June, yes.

**No, not the 30th, the 13th?---**

Before the 13th, sorry, yes.

**How can you possibly say on 12 June, in a statement which you've dated 12 June, that on 13 June that the body was identified by you to Dr Mulvey? How can you possibly say that unless you are lying to the royal commissioner and to my friend?---**

I'm not lying, sir. I knew that I had prepared the coroner's report and I would be attending there on that day.

**Constable, you know quite well that the documentary police records that you've had access to have been done at a later time to fix the times, haven't they?---**

No, they have not.

**Indeed the occurrence pad which was made at 20 past 4 on 12 June has got false times, hasn't it? You know that, don't you?---**

I haven't read the occurrence entry.

**You've never read the occurrence entry?---**

I've had a read through it prior- - -

**THE COMMISSIONER: Mr Coorey, let him answer the questions.**

**MR COOREY: Yes, sir?---**

I've had a read of it in the earlier stages but I haven't read through that prior to here.

**If you accept from me that that occurrence pad is timed 4.20 pm on 12 June 81 - is that right? Do you accept that from me so far?---**

I'll accept it but I can't say the exact time because I haven't seen the time.

**All right, but if you accept from me that if I was giving you the wrong details, at both ends of the bar table there would be an objection. Do you accept that from me too?---**

Yes.

**All right. Now, you see, that record you'd expect to be the most contemporaneous note of what happened, wouldn't you?---**

Yes. (T 3219-20)

This evidence casts doubt on the reliability of the evidence of Parker about police records.

The most that the Commissioner said of this is found at page 100 of his report. He stated:

"Dr Mulvey said that prior to performing the autopsy he was provided with the Report to the Coroner (P79A form) (N/1/48A) and Coroner's Order (N/1/107). The P79A form was provided by Senior Constable Parker and it sets out the 'circumstances

under which death took place.' The P79A form is dated 12 June 1981 yet it refers to the autopsy which occurred on 13 June 1981. Senior Constable Parker initially gave evidence that he made out the P79A form on 12 June, 1981 and completed it after the autopsy (3592-94, 3655). Dr Mulvey, speaking as to practice, not from memory, believed that the P79A form he received prior to the autopsy was completed up to the sentence 'The deceased was then conveyed to the Wee Waa District Hospital Mortuary.' (3519). I find this is probably correct."

The Commissioner does not seem to have properly evaluated the evidence concerning the P79A Form or to have appreciated its significance in terms of how it may have influenced the doctor conducting the autopsy. As the hearing progressed there was no indication from the Commissioner that he understood the possibility of a link between the P79A Form and the autopsy in the sense of how police could influence autopsy findings.

Even when Dr Mulvey gave evidence that he was influenced by the contents of the P79A Form, the Commissioner did not show any indication, either at the hearing or in his report, that he understood a connection between it and the autopsy finding, that could lead to a logical conclusion that the police deliberately attempted to influence the autopsy outcome. The Commissioner considered the principal influence on Dr Mulvey through the P79A Form as coming from a junior clerk in the coroner's department, rather than the police.

**MR COOREY: It's unusual for you to take on a post-mortem with your level of expertise where there is a degree of suspicion of foul play?---**

There's a degree of suspicion of foul play in most deaths. The P79A form that the police gave to me did not suggest homicide.

**THE COMMISSIONER: You seem to have been substantially influenced by that form?---**

Yes.

**But you didn't know the qualifications of the coroner who issued it?---**

Being the government medical officer, I'm responsible to the coroner legally. That's how I take it.

**You never saw fit to send specimens for histological examination in formalin?---**

No.

**As opposed to the strict directions on the form?---**

Yes.

**Did you ever in your mind query the directions on the form?---**

Well, I couldn't have - - -

**At that time?---**

I don't recall that, judge, but I couldn't have, otherwise I would have sent tissues away for histopathology analysis. (T 6837)

### **Police influence on Dr Mulvey**

Dr Mulvey commenced the autopsy some time after 8 am on 13 June 1981 and probably completed it by 9 am when he had appointments with his patients. (T 6843-4) He states:

**MR COOREY: You were in a big hurry, weren't you, in the autopsy?---**

Well, the usual time is about an hour but with the photographer being there it would have been less than- - -

**It would have what?---**

It would have taken up time which would have - - -

**So you would have had less than an hour for your part of it?---**

Not necessarily. I don't know what time I got back to the surgery. I could have arrived there late.

**But the usual time you would like would be an hour?---**

Yes. (T 6844)

If the doctor had a real suspicion that death was other than self-inflicted then it would have been his duty to have involved the services of a senior forensic pathologist to conduct the post-mortem. The evidence given by Dr Mulvey shows that he understood this duty.

Dr Mulvey's evidence is unequivocal about the fact that he relied very heavily on the police version of events in reaching the conclusion that the death was not a homicide. He states:

**THE COMMISSIONER: But did you think in those circumstances - and we can all be wise after the event - but did you think then that it may have been wise to get a specialist pathologist?---**

Not at the time, judge. Reading the P79A, to me it seemed most likely a suicide.

**I think you told me last time you approached this matter on the basis of information supplied by the police which led you to the assumption that it was suicide?---**

Yes, judge.

....

**THE COMMISSIONER: I'd just like to read you something you said, I think probably to Mr Eames, last time. You were asked: "When you commenced the autopsy" - page 3520 - "on the following day, did you in fact start with any assumption that the circumstances were those of suicide?" and your answer as recorded, doctor, is, "Well, I can't recall. I think it's most likely that I did commence the autopsy believing it to be suicide." And you've just told me that's so. "If it had been considered a homicide, a senior forensic pathologist would have been contacted." So I can only assume from that, doctor, that your assumptions of suicide assumed priority over any other suspicions you may have had?---**

That's right. (T 6834-5)

....

**It's unusual for you to take on a post-mortem with your level of expertise where**

**there is a degree of suspicion of foul play?---**

There's a degree of suspicion of foul play in most deaths. The P79A form that the police gave to me did not suggest homicide. (T 6837)

....

**MR COOREY: And it's an unusual form of death. In that situation you weren't qualified to do it, were you? That's the truth, isn't it---**

Well, if it was a homicide, I'd agree with that. But it was a suicide - I'd disagree.

**THE COMMISSIONER: That was your assumption right through - it was a suicide?---**

Yes.

**You see, you'd never - I don't think you'd ever done a pathological examination on a hanging case?---**

That's right, judge.

**This was the first one?---**

Yes.

**MR COOREY: Doctor, what I'm saying is this: you're not qualified to determine whether it's suicide or homicide with your lack of expertise. That's what I'm putting to you, you see?---**

Well, the powers that be allow us to do autopsies in the country and if there's any grave doubt about whether it's a homicide, it should be sent away. But on the P79A form, reading that, it would have appeared to have been a suicide. (T 6844-45)

It was on the basis of the P79A Form that Dr Mulvey presumed that it was proper for him to do the autopsy. He took the view that if homicide was suggested to him then he would have contacted a senior forensic pathologist. (T 3520) Moreover, Dr Mulvey's assertion that he would be qualified if "it was a suicide" suggests that he made up his mind on the cause of death before conducting the post-mortem. The considered opinion of forensic experts in evidence to the Royal Commission was that Dr Mulvey lacked the knowledge of forensic pathology required to distinguish suicide from homicide.

Dr Mulvey had assistance available but did not appropriately seek it:

**MR COOREY: Well, bearing in mind you've told us that there was a suspicion of foul play, some degree of suspicion, why didn't you speak to Dr Brighton before you started the autopsy - that's what I'm asking you. That would be the proper thing to do, wouldn't it?---**

Well, we've handled quite a few suicide cases in the past and so I didn't see why I couldn't do this one. I've done quite a few suicide PMs before.

**Hangings?---**

Not hangings no.

**The first hanging ever?---**

Yes.

**Well then, with respect, that's a pretty big responsibility to take on isn't it?---**

Yes.

**Why did you do it?---**

Because I'm the government medical officer and I was told by the coroner to do an autopsy.

**Doctor, you also as the government medical officer knew that you had Dr Brighton there to come up and do it, didn't you. You knew that in 81, didn't you?---**

Yes, well, I contacted Dr Brighton by telex.

**You contacted him after?---**

Yes, he could still have come up though.

**Yes, but, with respect at that stage you had done a certain amount of the autopsy, hadn't you? The clothing had been shredded?---**

Yes.

**Yes?---**

But the limbs were still there and - - -

**All right. You mentioned a telephone strike?---**

Yes.

**This might be my ignorance: what's a telephone strike?---**

Well, they didn't have access to use the telephones in the - - -

**Sorry, didn't have what?---**

They couldn't use the telephones in the police station.

**You couldn't use the telephones in the police station?---**

Well, that's what I believe to be true after 7 years.

**Yes, but there's other people apart from the police in Wee Waa have got telephones, haven't they?---**

Yes.

**THE COMMISSIONER: Was that the police telex you did - - -?**

Yes.

**- - - the communication?---**

Yes, it was.

**You didn't go to your surgery and do it from there?---**

No, judge. (T 6846)

It was the police who persuaded Dr Mulvey that there were no suspicious circumstances.

Because of the P79A Form, combined with the G219 Form from the Coroner, Ms Anderson,

Dr Mulvey presumed that it was not necessary to do any histological examination. (T 6772)

It is a fair criticism to make that Dr Mulvey lacked the qualifications and experience to conduct an autopsy in the fashion required for a case of this type. Further, it is apparent that he did not wish to seek assistance to supplement his limited expertise in this case because the police had convinced him that there were no suspicious circumstances. By making the unwarranted assumption that he was examining just another suicide, Dr Mulvey in effect preempted the findings of the autopsy.

Whilst the Commissioner ignored the fact that the police influenced Dr Mulvey, there is good reason for concern in this regard. The Commissioner did not make the connection, but the

obvious point is that if the police wanted to cover up the circumstances of Eddie Murray's death then one of their first steps would be to influence the doctor doing the autopsy. Such adverse influence was exerted through the police preparation of the P79A Form in a way that encouraged the doctor to conclude, before he had conducted the autopsy, that it was a simple suicide. This is the reason why Dr Mulvey finished the autopsy so quickly: he had been persuaded there was no need to look for any other cause of death.

### **Proper conduct of autopsies**

The Commissioner's failure to comment about the adverse police influence on the autopsy in this case is perplexing in view of the remarks about proper conduct of autopsies in his *Interim Report*, completed in December 1988, that is only one month before his *Report of the Inquiry into the Death of Edward James Murray*. The Commissioner stated in the *Interim Report* that a number of the "observations" he made there about autopsies arose "from issues which have arisen in the inquiries I have completed to date." (*Interim Report*, p 61) The Eddie Murray case was the first to be investigated in NSW and the third nationally, and it may have been the principal case on which the Commissioner relied for his broader observations.

Noting the "vital role" of the pathologist, the Commissioner observed that:

"He or she should be a specialist forensic pathologist wherever the autopsy takes place. It is unacceptable (and unfair to all concerned) to place responsibility for autopsies upon a general medical practitioner, whether or not he or she be associated with the Government Medical Service. The pathologist should retain an inquiring mind and should not make assumptions from hearsay information received.

(*Interim Report*, p 60, emphasis added)

While the first part of this statement is reflected in part of the Commissioner's finding number 18, the emphasised sentence is not. It is odd that the Commissioner made a general warning about the danger of a pathologist relying on hearsay information, yet he made no finding in this particular case about the extent to which hearsay information was influential in preventing a thorough autopsy which could accurately disclose the cause of death.

In his *Interim Report* the Commissioner outlined a number of basic requirements for the proper conduct of autopsies after a death in custody:

- (a) There should be a careful examination of the whole body before internal examination commences to seek evidence of bruising, swelling or other signs of trauma. The site of any bruising should be explored in an endeavour to ascertain its severity, age and probable agency.
- (b) Whether or not bruising is detected, the body surfaces should be photographed and colour proofs and negatives retained. Significant findings on autopsy should be the subject of photography and, where necessary, x-ray.
- (c) Body samples should be retained for subsequent and appropriate scientific analyses and examination;
- (d) All clothing removed during autopsy should be retained so as to be available for forensic examination. Beyond that, some Aborigines consider it important that the clothing be returned to the family for burial or other purposes.
- (e) It is often necessary that investigating police be present at autopsy. It is desirable that the pathologist should have an assistant or observer present who is not a police officer. Police officers should play no part beyond that of observers or photographers.
- (f) I accept there are good reasons (including scientific ones) why autopsies should be promptly carried out. There will be occasions when bodies must be removed to other locations for this purpose. On the other hand, a request from

the deceased's family or their legal representatives that an 'independent' pathologist should be present should be sympathetically considered and, where practicable, implemented. (*Interim Report*, p 61)

It is strange that the Commissioner did not comment in his findings about the death of Eddie Murray about how far short of these requirements the conduct of the autopsy in this case was. He merely referred to "several unsatisfactory features of the autopsy, its reporting, and above all the fact that histological examination were not carried out" (sic), having decided that "there was no 'impropriety' in the conduct of the autopsy." (Report, p 133)

Such a general exoneration is hardly in accord with the requirements outlined in the *Interim Report*. The following chapter details the effects of a very poorly conducted autopsy on the medical evidence in this case. The Commissioner did not make plain his criteria for judging that there was "no impropriety" in the autopsy conducted by Dr Mulvey. Questions that flow clearly from the requirements outlined above, and which deserved critical consideration by the Commissioner in his report on the death of Eddie Murray, include the following:

- how could Dr Mulvey have conducted a careful external examination of the body if he failed to note either the presence of a significant abdominal scar, or what appeared to a hospital sister before the autopsy to be a significant bruise to the forehead?
- how could Dr Mulvey have conducted an internal examination of any bruising in view of the paucity of his external examination and the very limited time of about an hour in which he conducted the autopsy?
- why was there no close-up photograph of the forehead and other body surfaces such as the arms and legs?
- why were no photographs taken during the autopsy?

- who was responsible for deciding to destroy Eddie's clothing?
- why was a police officer (Parker) involved in lacerating the clothing when it could, according to expert pathologists, have been removed without cutting?
- did Dr Mulvey actually examine the brain for haemorrhages or contusions?

In his evidence Dr Mulvey initially says he thought a statement by Dr Ralte would have been attached to the P79A Form, but later he says when doing the autopsy he relied on information in this form not on the observations of Eddie Murray made by Dr Ralte in the cell. (T 3517, 6803) (Dr Ralte did not make his brief statement until 15 July 1981.) When it was pointed out to Dr Mulvey that Dr Ralte had not observed the marks around the neck during his examination of Eddie Murray in the cell, Dr Mulvey said he "would have" expected these marks to have become apparent later. (T 6798) This is one instance of Dr Mulvey's lack of knowledge pertinent to the conduct of this autopsy, since several forensic pathologists agree in their evidence to the Royal Commission that these marks could not have spontaneously appeared later if they were not present when Dr Ralte examined Eddie Murray in the cell (see the next chapter, EFFECT OF AUTOPSY ON MEDICAL EVIDENCE).

When asked about the police presence at the autopsy, Dr Mulvey says he could "remember the photographer because there was a delay in the dissection of the body because of the photographs that had to be taken." (T 6790) The photographer, Sergeant Lamey, chose what photographs to take himself and saw no reason to photograph the back of the body or legs:

**MR COOREY: Yes, but you have never found a photograph showing the skin on the legs?---**

No.

**Or a negative, rather?---**

There was never a photograph taken of the body apart from what's been produced here today. The reason I say that, I was only interested in the area of the neck and general photographs of the body.

**THE COMMISSIONER: No one directed you to take a photo elsewhere?---**

Sir, it was our inquiry to conduct ourselves - - -

**The doctor never asked you to?---**

Sir, had the doctor asked a particular photograph to be taken, it would have been taken.

**That's the point. He never did?---**

Apart from that - no. (T 6481)

When asked about the remarkably similar position of Eddie Murray's hands, Lamey says:

**MR COOREY: Did you ever at any stage remove the hands from the crossed position and photograph the stomach area? Did you ever do that?---**

I can't remember. I don't know. I certainly didn't remove them. No, all my photographs show the hands on the stomach.

**Would you agree that it would be preferable, bearing in mind that you were there for the purpose of assisting in a scientific fashion - weren't you? To obtain evidence for a later Coroners Court?---**

Yes.

**You agree with that?---**

Yes.

**Would you agree it would be preferable to have removed the arms and taken a photograph of whatever was under the arms?---**

I didn't notice anything under the arms to take a photograph of.

**Did you ever look though?---**

I would have done. I don't recall doing it exactly, but I would have done.

**If you took the arms away and looked, you'd be unlikely to put them back there again for a photograph, would you?---**

Well, I wouldn't have put them back there. Particularly, they would have been - when

I took the photograph of the body with the clothing on, it would have been how I saw it, it wouldn't have been touched. By the time that I took the photograph - for argument's sake, number 18, which shows the shirt removed; why the arms are back in that position, I can only suggest that that's where they - after the shirt was removed, they sort of stayed there. (T 6328-9)

Photograph 19 shows the arms unmoved with the shirt having been cut off but the body still lying on the shirt which is on a sheet. Remarkably, there are only two photographs of the body unclothed, both from the same angle looking at the torso over the right shoulder. There are no photographs documenting the autopsy itself. This, together with the meagre autopsy report from Dr Mulvey, has meant that the medical evidence available for subsequent examination by expert pathologists is significantly restricted.

## Chapter 10

### EFFECT OF AUTOPSY ON MEDICAL EVIDENCE

A number of expert witnesses were called before the Commission to comment on (among other things) the quality of Dr Mulvey's procedures at autopsy and the conclusions that he reached. Their evidence is based on his autopsy report, a very limited number of poor quality photographs, and the explanations that Dr Mulvey gave to the Commission for the procedures he followed and the findings he made.

Dr Mulvey acknowledges that he had no experience of doing an autopsy where the cause of death was believed to be hanging. (T 3511) Yet, when asked if, with the benefit of hindsight, he would have carried out any additional steps during the autopsy, Dr Mulvey rejects this proposition:

**MR EAMES: Now, no doubt since the time of the death you've had many contacts with other doctors and with pathologists where you've discussed what is required to investigate a death of this sort. Have those discussions that have taken place subsequently led you to believe that there were other steps which, with the benefit of hindsight, you might have taken at that time?---**

No, there hasn't. (T 3521-22)

The evidence of the expert medical witnesses points clearly to the fact that Dr Mulvey did not follow procedures that may have provided him with a firm basis for finding the cause of death. Moreover, his procedural failures had the consequence of restricting the information available to experienced forensic pathologists to the extent that they are unable to provide opinions as to the cause of death with any degree of confidence. If Dr Mulvey had ensured

that a sufficient number of quality photographs were taken of Eddie Murray's body before and during the autopsy, and if he had recorded his observations with care, then independent expert forensic pathologists may have been able to confirm his findings as to the cause of death or alternatively to have formed a different view as to the cause of death.

### **Duration of autopsy**

The autopsy was conducted between 8 am and 9 am on 13 June, 1981 at Wee Waa Hospital. The autopsy was described as "routine" by Dr Mulvey. (T 3553) Yet when questioned about the fact that he did not record the existence of a crossed surgical scar on the abdomen of the deceased, the evidence suggests that he was in such a hurry that the duration of the autopsy may have been less than it otherwise might have been. Dr Mulvey states:

**THE COMMISSIONER: Do you know why you didn't mention the surgical scar?---**

Well, the only explanation I can give, judge, is that on the morning I had to get up at 6 o'clock in order to do the ward round at 7.00 and be at the autopsy room at 8.00. Then when the photographer had finished, I had to do the post-mortem and then had to be back at the surgery soon after 9.00.

**THE COMMISSIONER: You think you may have missed it?---**

Yes.

**MR COOREY: You were in a big hurry, weren't you, in the autopsy?---**

Well, the usual time is about an hour but with the photographer being there it would have been less than---

**It would have what?---**

It would have taken up time which would have- - -

**So you would have had less than an hour for your part of it?---**

Not necessarily. I don't know what time I got back to the surgery. I could have arrived there late.

**But the usual time you would like would be an hour?---**

Yes. (T 6843-4)

In earlier evidence he states:

**MR COOREY: Doctor, how long did the examination take from start to finish, your part?---**

Well, its 1981. I can't recall that.

...

**THE COMMISSIONER: From your experience can you give me an estimate - an hour, 2 hours?---**

It's about an hour, judge.

...

**MR COOREY: . . . did you sectionalise parts of the body?---**

We did the routine post-mortem.

**All right, did you sectionalise, for example, the brain?---**

The brain would have been removed and sectioned.

**What I'm asking specifically is whether you---?---**

Well, I can't recall that. (T 3553)

The inference that can be drawn from this evidence is that Dr Mulvey may have completed the autopsy in under one hour. It is very doubtful that a person of his limited experience could have performed all the procedures required within the limited time taken and with only police officers to assist him. Of great concern is Dr Mulvey's apparent refusal or inability to recall whether or not he removed or sectioned the brain. This procedure would have needed to have been carried out to exclude the possibility of death being caused by head injury. It is very doubtful that this relevantly inexperienced doctor could have performed this procedure in a post-mortem taking under one hour, while also taking specimens and making a careful examination of the body for bruising. (See comments in report of Dr Duflou, p 308 below)

**Assumption as to cause of death made by Dr Mulvey prior to commencing autopsy**

Apart from any influence that the police may have had on Dr Mulvey through the P79A Form, he recorded his view of the cause of death in some hospital notes, made after seeing Eddie Murray's father the evening before the autopsy: "Son hung himself in gaol". This record was made on 12 June, 1981 when Dr Mulvey treated the father of the deceased who had collapsed after being informed of his son's death. The notation in Arthur Murray's hospital records was made by Dr Mulvey as a result of information supplied to him by the police; this fact, together with his failure to request a senior forensic pathologist to do the autopsy, provides the basis for a reasonable inference that he had a preconceived notion as to the cause of death. Dr Mulvey states:

**MR EAMES: Now, when you recorded, "Son hung himself in gaol" does that assist you, doctor - had you received information from the police at that stage to suggest to you that the death was due to suicide?---**

It certainly suggests that.

**... when you commenced the autopsy on the following day did you in fact start with any assumption that the circumstances were those of suicide?---**

Well, I can't recall. I think it's most likely that I did commence the autopsy believing it to be suicide. If it had been considered a homicide a senior pathologist would have been contacted. (T 3520)

An inexperienced doctor, in a hurry, with a preconceived notion about the cause of death produced the following report on the death of Eddie Murray.

**Dr Mulvey's Autopsy Report**

The relevant part of Dr Mulvey's report is contained hereunder:

- "2. I opened the three cavities of the body.
3. Upon such examination I found a young man of slight build with black linear

marks over the lower third of his neck more extensive on the left side. Old facial scars. No other external marks of violence.

Cranial Cavity:        No fractured skull  
                                  No fracture of cervical spine  
                                  No intracranial haemorrhage  
                                  congestion of big veins in neck above linear marks  
                                  No haemorrhages in eyeball or on skin of face

Thoracic cavity:        No abnormality detected  
                                  Vocal cords closed

Abdominal cavity:    No abnormality detected.

1.        **DIRECT CAUSE**

Disease or condition directly } (a) Strangulation  
 leading to death.                        } (due to) "

This is the only written record made by Dr Mulvey of the procedures he says he followed and the observations he claimed to have made at the post-mortem. In itself, this limited record of the observations made during the autopsy has to be regarded as a matter of great concern.

**Procedures followed by Dr Mulvey during autopsy**

In answer to the question, "What was your task to be at the autopsy?" Dr Mulvey states:

"The autopsy pass was to examine the body, do a three cavity - an examination, that's cranial cavity, thoracic caviety, (sic) abdominal cavity, and to send tissue away for analytical and toxicological examination." (T 3519)

Dr Mulvey states that the body had been in the refrigerator and that his first step was to do an

external examination of the body, although he can not recall whether the body had clothes on or not. (T 3522) He is unable to recall if there were any signs of blood or staining on the clothing. (T 3523) He in fact has the view that only the police had a role in examining the clothing. He states on this point:

"Usually with the examination it's of the body, the naked body. The examination of clothing is left to the police to - I see my role as an autopsist to examine the body itself, the naked body." (T 3523)

The clothes were apparently cut from the body, (T 6846) the doctor holding the view (although incorrect) that it was "standard procedure . . . to cut clothes off because of rigor mortis . . . there's no way you can peel the clothes off". (T 3528) There were a number of police present to assist, (T 3528) although the doctor cannot recall how many (the evidence of Parker is that Page was there as well as Lamey). No medically qualified assistants were present to assist the doctor with the autopsy.

Dr Mulvey gives evidence that he saw black linear marks over the lower third of the neck, more extensive on the left side, and an old facial scar. (T 3523) However, he is unable to recall if he checked the arms and hands for any external marks of violence. He states:

**MR EAMES: Did you make such an examination of the arms and hands of Eddie Murray on this day?---**

That I can't recall. The body as a routine is examined front and back so I can only assume that it was.

**When you've recorded here, "No other external marks of violence," doctor, as best you can remember this, if you can remember this, should we take it that the reference to no other external marks of violence was referring to the entire body**

**- in other words, that you did specifically check the arms and hands for that purpose or is that a reference really to the face?---**

That I can't be sure of.

**I mean at that time did you know specifically to look for signs on the arms and hands to determine whether a death was due to suicide or foul play?---**

I don't know. (T 3524)

Dr Mulvey then claims in his evidence to the Royal Commission that there was no fracture to the skull or cervical spine and no intercranial haemorrhage. (T 3524) He apparently found "congestion of the big veins" in the neck above where he observed the linear marks. (T 3524)

The medical information Dr Mulvey received and the procedures he followed are further described in the following transcript:

**MR EAMES: Had you received any information from Dr Ralte, or indeed from any other source, to indicate whether Eddie's body at the time he was found was either pale or cyanosed?---**

I'd received information that he was not cyanosed from Dr Ralte.

**Did you receive specific information as to whether his face was pale?---**

That I can't recall.

**If we can just go back to your report, doctor; you then conducted an examination of the thoracic cavity?---**

Yes.

**You found no abnormality and you found the vocal chords closed. The incision that is caused there at the thoracic cavity, how much of the body in that area - and perhaps if you can show on your body - would have been opened?---**

It's from there right down.

**Right down. In conducting that examination what were you looking for?---**

Any evidence of violence: ruptured spleen, ruptured liver, fractured ribs.

**Specifically in the area of the neck, did you make any observations as to whether**

**there was any bruising beneath the surface of the skin?---**

Yes. Well, again I can't recall but it would have been protocol to have done that.  
(T 3527)

The above procedures may have been carried out when the doctor was performing the autopsy after 8 am on 12 June, 1981. However, when Dr Mulvey noted in his report "no haemorrhages in eyeball or on skin of face", this observation seems to have been made some time after the autopsy was finished. The first indicator of this notation being made after the autopsy was finalised is found in his hand-written report. Because of the angle of his writing and the "cramped" position of the words it is apparent that they were inserted after the report was written. The second indicator of the later entry of these particular words is Dr Mulvey's acknowledgment that he telexed Dr William Harold Brighton in Sydney for assistance on a number of matters, mainly relating to how a death by hanging could occur when a person had their feet on the floor, including how long death would take to occur in such circumstances. However, he also asked Dr Brighton by telex, "Can't we ask him the autopsy findings of strangulation compared to asphyxiation?". (T 3526) The following answer was received:

"Not many hangings of this kind show evidence of asphyxiation. Also usually the only finding is the groove around the neck. There is usually no internal injury if they're asphyxial.

Probably if present it will show itself as haemorrhages in the eyeballs and the eyelids or sometimes of the face." (T 3526)

It is unclear from the evidence, but it would seem that Dr Mulvey sent the telex to Dr Brighton from the Police Station in Wee Waa either later on the day of the autopsy, or on Sunday 14 June 1981, the day after the autopsy. Dr Mulvey claims to have made additional observations and undertaken additional procedures on 14 June 1981, the day he sent the telex.

He apparently removed an eye on this day (T 3524-5) and examined for haemorrhages. He gives the following answers on the issue:

**MR COOREY: Doctor, you said to my friend today that you went back in with a police officer and removed part of the body?---**

Yes.

**What time was that?---**

I can't recall.

**Was it the same day?---**

No, it wasn't the same day.

. . .

**It would be very unusual, wouldn't it, to conduct an autopsy on a particular day and then Sunday go back again with a policeman to do some more autopsy work? That would be unusual, wouldn't it?---**

No, we phoned by telex Dr Brighton and that's after that that would that have happened. [sic]

**Do you actually remember going back to the mortuary?---**

Yes, I do.

**You've got a picture of it?---**

Yes that time I have.

**With a policeman?---**

Yes. (T 6840-1)

Apart from these answers, there is no evidence that a police officer returned with Dr Mulvey to the mortuary to assist with the additional procedures and observations. There is also no evidence from hospital staff that corroborates the proposition that Dr Mulvey returned to the mortuary to perform additional procedures, either later on the day of the autopsy or on the following day.

**Professional criticism at the Royal Commission of Dr Mulvey's autopsy report**

During the Royal Commission the family of the deceased, through their legal representatives, obtained a report from a senior forensic pathologist, Dr. E. Brian La'Brooy, which clearly highlighted many of the failings apparent in Dr Mulvey's autopsy procedures. Expert opinions were sought by counsel assisting the Commission, and Dr La'Brooy comments on some of their findings in his report. Dr La'Brooy's report also answers some of the questions posed to him by the family's legal representatives. His report is expanded upon in his evidence to the Royal Commission. His report states, inter alia:

### **Report on the Death of Edward James Murray**

#### **“Postmortem report by Dr. E.J. Mulvey**

This report is remarkable by virtue of the paucity of recorded observations both positive and negative. The absence of these observations in the report can only mean that they were not noted at the time of the autopsy. The only positive evidence of suspension of the body by the neck is contained in the first sentence viz, "Black linear marks over the lower third of the neck more extensive on the left side."

However even the above description is incorrect in stating that the marks were over the lower third of the neck when they were obviously in the upper third or half of the neck. Further there is no measurement of the marks nor is their angulation in relation to the horizontal recorded. There is no description of the state of the tissues in the neck after reflection of the skin, e.g. whether the subcutaneous tissues and muscles were bruised or compressed; the condition of the cartilages of the larynx and the hyoid bone, (the statement that the vocal cords were closed is of no significance); the condition of the carotid arteries, in particular whether any transverse linear tears were present in the intima (the inner lining) at the level of the marks in the neck. The only positive evidence of ante mortem suspension is the statement that the veins in the neck above the linear marks were congested. The absence of

haemorrhages in the eyeball and skin of the face indicates that the manner of death was not asphyxiation and that death supervened very rapidly after the onset of the encircling pressure on the neck, if this in fact was the cause of death.

Dr Mulvey's recorded opinion of the cause of death as "Strangulation" is not correct on the basis of his recorded observations; he has altered his opinion in subsequent evidence.

### **Opinions of Drs James, Brighton and Oettle**

It is not possible to disagree with the opinion of Dr James that "the only evidence in this case is of death by hanging. I've seen no evidence inconsistent." This opinion is also reached by Drs Brighton and Oettle. However, these opinions are based only on the evidence of the meagre, incomplete and inadequate report by Dr Mulvey. No blame can be laid on Dr Mulvey for this because of his lack of experience in forensic pathology. In addition the opinion is based on an acceptance of the history as provided by the police, with no contradictory evidence in the meagre postmortem findings.

It is unfortunate that more detailed discussion was not undertaken between Wee Waa and Sydney before the postmortem examination due to an apparent lack of telephone communication in spite of which communication by FAX was nevertheless possible. Having regard to the kind of information sought by Dr Mulvey it should have been obvious that the good doctor was not competent to make a proper post mortem examination in this case and a forensic pathologist from Sydney should have been sent to Wee Waa as a matter of urgency. Failing this the following information should have been sent to Dr Mulvey by FAX:

I. detailed advice regarding dissection of the neck with special regard to careful removal of the entire "pluck" which consists of the tongue, larynx, trachea and oesophagus with all the surrounding muscles and other tissues

making sure to include the jugular veins and carotid arteries as high up as the base of the skull.

ii. the following specimens in addition to the "pluck" above to be submitted in adequate volumes of formol saline to the Division of Forensic Medicine in Sydney:

the entire heart (after dissection), portions of the lungs, kidneys, liver, spleen and brain, portions of skin of the neck taken across the entire width of the marks in at least two places.

The above to be sent to the Division of Forensic Medicine separate from and in addition to specimens sent to the Government Analytical Laboratories for alcohol and toxicological analysis.

The absence of a record of a surgical scar in the post mortem report further indicates the inadequacy of the report.

If there was an injury to the forehead as given in evidence by Sister Garden and apparently shown in photograph 7A, it could have been caused when the deceased was tossed into the police wagon as stated by Mr Collett.

I agree with Dr Oettle that the marks near the left elbow could be finger marks. However it is not possible to state with certainty how they came about. If there were reciprocal marks on the opposite side of the upper arm and if there were similar marks on the right side this would be significant.

In regard to these marks and the marks around the neck, the photographs are totally inadequate in quantity and quality. One can only conjecture on the reason for this effort which is not any where near the standard one has come to expect from the Scientific Section of the N.S.W. Police Force.

The marks on the neck depicted in the photographs are consistent with

suspension by a strip of blanket. The angled depressions in the mark evident on the left side of the neck are consistent with those produced by a twisted strip of blanket.

While the upward inclination of the mark is slightly above the horizontal, nevertheless it is consistent with suspension marks as in hanging.

### **Clothing**

The procedure with regard to clothing is as follows:

- I. If the clothing is required for forensic examination, it is retained and removed intact, and handed to the Police officer from the Scientific Section who signs for it.
- ii. The Police normally inquire of the relative if they require the clothing. If they so indicate it is stated on the P79A form and the clothing is then removed intact and returned to the relatives.
- iii. If the relatives do not require the clothing or if the clothing is soiled and offensive it is cut off and destroyed.

Removal of clothing from the body intact is a relatively simple procedure and can be done by one person. Rigor mortis when present can readily be broken to enable shirts, singlets, T-shirts, dresses, petticoats etc to be removed over the head. Trousers, underpants and panties are most easily removed down the legs even if stiff.

It is not possible to account for the discrepancy between the description by the police of blue jeans on the body at the time of death and the presence of brown slacks as seen in the photograph except by conjecture.

### **Alcohol**

1. I am not qualified to comment on the state of the deceased with a blood alcohol level of 300 mgms except to say that he would have been obviously intoxicated. I would agree with Dr Brighton that different people react differently to alcohol. A regular consumer can consume more alcohol with less effect than an occasional drinker.

However, this is not an expert medical opinion based on personal experience gained by examination of many intoxicated persons. It is in reality a lay opinion and in this sense as good as that of anyone else with the exception perhaps of publicans. Unless one has had long experience in the field of clinical assessment of acutely intoxicated persons matched by blood alcohol levels, one cannot state with certainty what an intoxicated person is capable of with any blood alcohol level.

2. In respect of this case, the deceased had been drinking over a period of time before his arrest. Whatever his state of intoxication was at this time, it is most likely that he would have had alcohol in his stomach; he would continue to absorb more alcohol increasing his level of blood alcohol until his death, when absorption would cease.

While it is possible that although shortly after his incarceration he was able to converse albeit briefly, further continued absorption of alcohol from his stomach would have rendered him more intoxicated and made him stuporous if not comatose as given in evidence by Professor Starmer.

If this were so, and it is a very likely, if not probable, sequence of events, the longer he was in the cell the less likely he would have been able to perform the complicated manoeuvres needed to hang himself in the fashion alleged.”

### **Injuries to the neck**

A critically important issue central to causation of death was whether or not there were any marks on Eddie Murray's neck when he was found in the police cell. The doctor who attended the death scene, Dr Ralte, and the ambulance officer, Mr Lewis, did not observe any marks on Eddie Murray's neck, even though they both examined his neck for a pulse. (T 4311-3; 6415-7; 6384) Page says that he saw marks on Eddie Murray's neck before his body was removed from the police cell, but he does not give any details. Counsel for the Murray family appearing at the Royal Commission read to Page the evidence that he gave

at the Inquest and attempted, without success, to elicit from Page some detail about the location of the supposed marks on Eddie Murray's neck. The questions by counsel and Page's answers to the Royal Commission on the issue of the neck marks are as follows:

**MR COOREY: I think what you said was - you were asked, "When you saw the deceased in the cell did you notice any black marks around his neck?"**

**Answer: "There was a number of marks around his neck I noticed, yes."**

...

**Sergeant, as best you can recall from what I've just read to you as well, you said there were a number of marks. Were they around the whole of the neck or were they basically on both sides?---**

I don't recall now.

**Me reading that doesn't cause anything to respond in the way of your memory, it doesn't revive anything?---**

I remember marks or discolorations to the neck area. Exactly where they were, I don't know. (T 3102)

There is no evidence suggesting that the marks on the neck would have been obscured from view. Indeed, the evidence is that the marks should have been able to be seen if they were present. Page confirms this point when he states:

**MR COOREY: You saw Dr Ralte examine or feel for a pulse on the neck?---**

Yes, sir.

**He would have been - in your opinion he would have been in a position close enough for one to see the bruise marks, wouldn't he?---**

He would have been, yes. (T 6585)

The ambulance officer was also in a good position to have seen any marks on the neck if they were present when Eddie Murray was removed from the cell. Ambulance officer

Lewis says he did not observe any marks around the neck area, although he did notice some blue colouration to the face. He states:

"The deceased had a blue tinge to his skin, and it was particularly blue around the lips." (Statement, 28 April, 1988)

The Commissioner found, nevertheless:

"I find the neck marks were there to be seen upon close observation after his release from the noose, not necessarily to the extent revealed in the bright lighting of the autopsy room." (Report, p 96)

He justified this finding in the following terms:

"It was submitted to me that the marks which were noted by Dr Mulvey at the autopsy were the result of a simulated hanging performed by the police after Eddie was already dead. I reject this submission as being highly unlikely, not only because it would be an extraordinary step for the police to have taken, but also because it has no medical support. One must ask why the police would go to such lengths to simulate a hanging when the body had already been examined by a medical practitioner and when it was likely that the simulation would be exposed." (Report, p 96)

Leaving aside the value judgements of the Commissioner about what police in general would or would not do, his comment that there was "no medical evidence" to support the proposition that a simulated hanging could have been performed soon after death does not take into account the evidence of expert forensic pathologists. The evidence of several expert witnesses is that such a simulation, if performed soon after the death, could give rise to marks on the neck of the type photographed on Eddie Murray's neck at the time of the

autopsy.

Dr William Harold Brighton, retired director of the Division of Forensic Medicine, New South Wales states:

" . . . marks can look identical in a simulated hanging if the body is hung very soon after death." (T 3705)

Dr Ross Alexander James, forensic pathologist with the Forensic Science Division in Adelaide, gave evidence about the marks on the neck and how they could have been inflicted, and the possible cause of death. Like other medical experts, he makes the point that without the marks on the neck the cause of death is unknown. He states:

**. . . if you take away the marks around the neck, where are we then?---**  
I've got no idea what the cause of death was. (T 6190)

This conclusion is supported by Dr E.B. La Brooy when he says:

**. . . if you took away the marks then you could say it's impossible to say how death occurred? Would you agree with that?---**

With the evidence which we have right now?

**Yes?---**

The answer is we can't say anything about the cause of death. (T 6277)

In respect of the time when the marks on the neck could have been placed there, Dr James says definitively that such marks could be placed on the neck after death. He states:

**THE COMMISSIONER: Well, I was just saying that if you suspended a**

**recently dead body could the noose leave marks on that body? I'm only speaking generally.**

**MR COOREY: Yes.**

**THE COMMISSIONER: And your answer is, yes, it could. Is that right doctor?---**

Yes. (T 6189)

The important question arises as to whether or not the marks on the neck could have become apparent only after the body was removed from the cell; the injury giving rise to the marks having caused the death.

Dr James is clear on this issue, stating to the Commissioner:

**MR COOREY:How would it happen that there might not be a mark there at that time?---**

I can put it this way. I can't imagine that the particular mark seen in 5A

[photograph of deceased's neck] spontaneously arose between the postmortem interval of the doctor seeing the body and certifying death and the time of the postmortem the next morning.

**Unless the body were, of course, hanged after the doctor left?---**

Indeed. If that were a valid observation then we have a striking problem to look at.

**I see. If there were no marks on the neck when the doctor was there then you would say the most likely thing is that that injury was inflicted after the doctor left?---**

Yes, if the appearance of the neck as seen in - - -

**5A?--- - - -**

in 5A was not as it appears in 5A after death when the doctor saw it then there is a real problem here.

**The problem being that you think it's most likely that the injury was inflicted when the doctor left?---**

Yes.

**THE COMMISSIONER: Just assuming the doctor correctly certified death and then the body was suspended and assuming the man's dead, could those marks nevertheless have been left by the noose in a recently dead body?---**

Yes, Your Honour. I have to be guided only by the photographs here.

**Yes?---**

Yes, indeed. (T 6188-9)

Dr La'Brooy is of the same opinion in respect of the possibility of the marks arising after the death and the removal of the body from the cell:

**MR COOREY: In other words, if the marks were not there when Dr Ralte saw the body, then those marks are not of a nature which would become apparent later from a pre-doctor examination injury. Would you agree with that?---**

Yes. (T 6275)

The Commissioner commented that a simulated hanging was unlikely because Eddie Murray had been examined by a doctor and therefore the simulation would be exposed if the marks were not present. This avoids the fact that both the examining doctor and the ambulance officer did not see any marks on the neck. This being the case, the issue of whether or not there was a simulated hanging is still an open question - one that the Commission did not properly address. Indeed, the Commissioner did not even refer to the evidence of the expert medical witnesses on the point, preferring to say that there was no medical evidence in "support" of such a proposition. If the Commissioner had accepted as accurate the evidence of Dr Ralte and Mr Lewis that they saw no neck marks when they examined Eddie Murray in the cell, then a possible scenario is that the marks may have been placed on Eddie Murray's neck after death and the police could have been exposed,

but the Commissioner simply refused to accept the exposure.

### **Possible bruising to left arm**

A significant factor in any homicide case, which may point to the involvement of others in unlawful acts that may have contributed to the death, is the presence of defensive injuries on the body of a deceased person. In Eddie Murray's case, Dr Mulvey did not notice any new injuries on Eddie Murray's body, although because of his inexperience this fact is hardly of consequence. Evidence elicited at the Royal Commission points to two possible injuries that could be significant in determining if there had been a struggle between the police and Eddie Murray prior to his death. The first possible injury is to his left forearm between his wrist and elbow. This was not noticed by any person until photographs, taken at the time of the autopsy, were examined at the Royal Commission by medical witnesses. The second injury, observed by a hospital sister, involves a possible bruise to his forehead. It can also be seen in one of the photographs (7A) taken at the time of the autopsy, even though the perspective of the photograph does not allow a clear observation of it.

At the Royal Commission Dr Mulvey was shown a photograph including Eddie Murray's left arm. The photograph (4A) revealed what appeared to be marks on his arm. He was asked to say what the marks were and states:

**MR EAMES: You see these marks which appear to be lengthwise and look to be about two or possibly three marks. Do you recall seeing those at the time of your examination?---**

I would assume that they are lividity marks because of the position of the arms - that lividity is where the small blood vessels break and you get exuding into the

tissues and it occurs at dependent points and that is a dependent point.

**You notice also in that photograph at the elbow - -?---**

Yes, it is the same principle.

**The same principle applying?---**

Yes.

**Those marks, the first of those marks that I referred you to, they could not be scratch marks?---**

I don't believe so. (T 3528)

Apart from not answering the question as to whether he saw the marks on the arm at the time of the autopsy, Dr Mulvey gives an opinion which is not supported by the expert forensic pathologists called to give evidence to the Royal Commission.

The Commissioner's view on the nature and significance of these marks was:

“The other medical witnesses did not necessarily agree that the marks were due to lividity and could not, naturally enough, discount the possibility of bruise marks. (Dr Brighton 3681, Dr James 6176, Dr Oettle 6213, 6230, 6233, Dr La Brooy 6267-68)

Again, it is impossible to determine the existence of bruise marks on the left arm as shown in Photographs 4A and 26. With reference to the medical evidence I can only observe that such slightly darkened areas may have indicated slight bruising or lividity. No finding can be made. If they were bruises, their age cannot be determined, nor can their origin. I do not discount Dr Mulvey's evidence on this aspect and if they were bruises I do not consider them significant in considering the circumstances of death.

Whilst injuries to arms or wrists may be expected if a person was forcibly hanged, none of the medical witnesses suggested that the areas of possible bruising (if indeed there were bruises) were consistent with such a forced marks, [sic] their

origin and nature, are not therefore of any significance in explaining the circumstances of death.” (Report, pp 95-96)

There are two critical flaws in the Commissioner's reasoning on this issue. The first is the position that he takes in not excluding Dr Mulvey's opinion that the marks could be post-mortem lividity. It was accepted by the Commissioner that Dr Mulvey was not qualified to conduct an autopsy involving a death in custody. The nature of Dr Mulvey's autopsy report suggests that he did an inadequate job, and the expert opinion is clearly against his view about lividity. Dr La Brooy gives the following evidence on the issue:

**THE COMMISSIONER: Do you think it's likely or unlikely that that's due to post-mortem lividity, those marks which we are referring to as bruises?---**

I can't see how they could be post-mortem lividity. (T 6266)

There can be little doubt about whose opinion should be accepted. The senior forensic pathologist says that the marks are not lividity marks. It is odd that the Commissioner did not exclude lividity as a possibility.

The second major flaw in the Commissioner's reasoning is his exclusion of possible bruise marks on the arm as having any "significance in explaining the circumstances of death".

Dr W. H. Brighton expresses a different view, when he states:

**MR EAMES: Doctor, even if Dr Mulvey had recorded no abnormalities were detected, no signs of bruising or other injuries which might be consistent with foul play were detected, would you exclude the possibility of foul play if you learnt that the injuries to the left wrist and the elbow were in fact a scratch and a bruise respectively? Would those two factors of themselves be sufficient for you to say, "I wouldn't be confident that this was a case of suicide"?---**

Yes, I wouldn't be confident until I knew whether they were old injuries or perhaps any other related - facts related to the production of those injuries. If somebody knew that they were there at an earlier date, for instance, or in some way could relate a happening to them, then - only then, I think, would I be able to say, well, they're not related to the death. (T 3681)

Again the Commissioner's reasoning cannot be accepted. The apparent bruises on the left arm are one piece of circumstantial evidence which, along with other facts, may be an indication of foul play.

#### **Lump, bruise or mark on Eddie Murray's forehead**

The second indicator of a possible altercation between Eddie Murray and the police is a lump, bruise or mark that appears to have been on Eddie Murray's forehead. This mark was observed by a nurse employed by Wee Waa Hospital at the time of the death, Sister Beverley June Garden. She states:

"I remember that one side of the neck was more marked than the other. There was discolouration going right up over the ear on that side. I remember a mark on the forehead and that it was on one side, but on which side I cannot remember. The mark looked like a bruise." (Statement, 18 March, 1988; T 3916)

Bruce Munro, an office manager of the Moree office of the Aboriginal Legal Service, spoke with Moseley on Friday afternoon about Eddie Murray's death. He visited the police station in Wee Waa and then the mortuary on the Saturday several hours after the autopsy. While at the mortuary, he saw significant indications of bruising to Eddie Murray's forehead:

**THE COMMISSIONER: The head was nearest the entrance to the freezer?---**

Yes, and we had a good look and asked questions about various marks on the head portion and the things that I noticed was that there were dark patches that appeared to be bruising, which was explained that it was a drainage of blood after death, and the marks on the side of the neck went from about there to there.

**Indicates from below ear level to ear level on either side of neck?---**

The marks didn't go all the way round the neck.

**They did not go all the way round?---**

They did not go all the way.

**And the bruising you referred to, where was that?---**

On the head.

**On the forehead?---**

On the forehead.

**And right across the forehead or a particular spot?---**

Well, they were in various areas across the forehead, not altogether, not big ones, but bruises - - -

**Was it a mottled effect - do you know what I mean by "a mottled effect"?---**

Yes.

**Lots of little marks?---**

No, they were large ones and small ones.

**And you indicated in your statement in relation to those - or the bruising you saw - that it was heavy bruising?---**

Yes.

**MR BELLEAR: What do you mean by "heavy bruising"?---**

Well - - -

**I am sorry, that was to the neck?---**

Okay.

**The bruising on the forehead wasn't heavy bruising though, was it?---**

Yes, they were - they stood out a lot clearer also. (T 3426-7)

Expert medical witnesses were shown photograph 7A which, of the photographs taken, gives some evidence of an abnormality being present on the forehead. Unfortunately, the police officer engaged for the purpose of taking photographs apparently did not take a full frontal

photograph of Eddie Murray's face, which may well have provided detail of the mark on his forehead sufficient for expert opinion to settle the issue of its nature and, if an injury, its gravity. The absence of such a photograph is strange in view of Sister Garden's observation of an apparent bruise to Eddie Murray's forehead before the autopsy. The photograph of Eddie Murray seen at the front of this report, which was taken about two weeks before his death, does not show any signs of an unnatural lump to his forehead.

Dr Oettle, when questioned by counsel assisting the Commission about the appearance of a lump on the forehead, states:

**MR EAMES: Doctor, could I ask you to turn to photograph 7A . . . just turn it to its side. Can I ask you to look at the mark and you will see there's a small arrow pointing there. Does that appear to be a lump?---**

Yes, that does.

**Again, just looking at it, on that photograph, is there any way of looking at it that you can tell whether that appears to be an unnatural lump in the sense that would be consistent with a bruise or a swelling taking place after some injury?--**

-

No. I suppose that any lump is able to be that but one would have to look at the other side of the head because that's in an area of the forehead where you're able to get a lump naturally occurring.

**THE COMMISSIONER: What, do you mean just as part of our ordinary growth, you mean?---**

Yes, as part of the anatomy. That would really require a photograph of that and it would have required at the time if it was recognised as a lump, that it was seen relative to the other side of the skull or the head, rather.

**MR EAMES: So you'd take a photograph from both sides of the forehead and from directly in front of the forehead?---**

Well, you'd examine it and assess it in terms of whether it was a naturally occurring

thing or whether it was unnatural. (T 6214)

When Dr Oettle was questioned by counsel for the family and provided with Sister Garden's evidence about the lump to the forehead, he states:

**MR COOREY: Doctor, in this case we've heard evidence . . . from a hospital sister that she saw the deceased on the same morning of the post mortem - this was a Saturday morning - and she saw him there and saw a lump. I think she called it a raised discolouration, which concerned her, on the forehead. She gave evidence about seeing that and when she gave evidence she also put an arrow near the lump that you can see in 7A. She described it as a raised discolouration. With the assistance of her evidence would you agree that that does appear to be consistent with a blow to the forehead of some sort?---**

It's consistent with a blow; it's consistent with other applications of force.

**THE COMMISSIONER: Not necessarily a human blow but a trauma?---**

A trauma of some sort, that's right.

**MR COOREY: Any impact at all?---**

Yes.

**We've had evidence, one form of evidence to the effect that the deceased was seen by a civilian to be thrown head first into a police truck. Would you agree that if that was the case then that sort of injury could result?---**

Yes.

**And, doctor, it would be possible for that sort of injury to cause concussion. Is that right?---**

Yes.

**And in that situation, coupled with the reading of .3, it would be possible to have a loss of consciousness. Would you agree with that?---**

Yes. (T 6230-6231)

Dr La 'Brooy gives evidence about the lump on the forehead in the following terms:

**MR EAMES: Firstly, doctor, from just looking at that photograph, are you able**

**to say that it is an injury or is it possible that there's a range of other things which it might be?--**

Well, there could be a whole lot of things which caused it. He may have had a small tumour underneath there for all I know; I couldn't tell you. (T 6262)

Dr James gives the following evidence about what the lump on the forehead could indicate:

**MR EAMES: If you turn to photograph 7A and on the forehead do you see a mark or what appears to be a lump on the upper forehead above the eyebrow to his head there?---**

Yes, about midway between the eyebrow level and the hair-line on the profile of the skin there is an unnatural hump.

**Would that be consistent with a lump being caused by trauma?---**

Yes.

**Again if you observed such a lump, would one presumably take close-up photographs of it?---**

Probably. (T 6177)

### **Summary of medical evidence**

The medical evidence includes the inadequate autopsy report by Dr Mulvey and the opinions of several forensic pathologists who examined that report, along with some very incomplete photographs of the body taken before the post-mortem. The medical experts were concerned that the examination of the body at the autopsy was incomplete. This key point is undisputed given the basic questions which Dr Mulvey asked Dr Brighton by telex after completing the autopsy and signing the autopsy form; the form includes a statement that the examination conducted by Dr Mulvey was "external" not internal, but he claimed he did both. (T 3554) When asked about drawing conclusions from the autopsy, Dr La Brooy warns:

**MR EAMES: But on the evidence if one accepts the evidence that was provided by Dr Mulvey as to the absence of signs seen by him, you would not then disagree with the conclusion?---**

If one accepts that was everything to be found and nothing else was found, but I can't believe that.

. . .

I have already indicated that the report is meagre, it's inadequate and it's incomplete. But as I said you can't blame Dr Mulvey for this because he doesn't know what - to start off with, I wouldn't expect him to know what he has to look for. (T 6256)

The extant medical evidence can best be summarised in terms of levels of certainty. There are four different conditions, which must each be interpreted specifically in order to produce reliable findings about the medical evidence, which can then be related to findings from other evidence. The Commissioner apparently failed to particularise the medical evidence, ignoring the problem of judging probabilities according to different levels of certainty.

A. The only certain, discrete finding from the autopsy is the 0.3 level of intoxication, which was clinically tested. This finding is consistent with evidence of substantial drinking on the morning of Eddie Murray's death, and with the evidence of the barmaid Mrs Berger:

**MR COOREY: In fact you'd put him - in your experience of him, I suppose he was the drunkest you ever saw him?---**

He was because I've seen Eddie drunk a lot of times and I've never seen him like that day. (T 3388)

The probable consequences of this certain finding upon Eddie Murray's capacity to make the finely knotted noose and tie it to the cell bar, while balancing on his toes in the cell, depend

greatly on his level of alcohol tolerance, which is considered in the following chapter.

B. The next highest level of certainty concerns the extensive marks found on the neck, particularly the left side, which are clearly visible in a photograph taken before the autopsy. The expert medical evidence is that the marks shown in the front photograph of the neck could have resulted either from self-inflicted hanging or from hanging by others soon after death. The relative probabilities of these alternative scenarios for creating the neck marks are considered in the following chapter. One consequence of the marks, taken together with the P79A Form, is that the autopsy performed by Dr Mulvey was merely "routine" not forensic. (T 3553, 6259) This detracts from the quality of other, less certain medical findings, to the extent that the medical evidence as a whole remains significantly inadequate.

C. A lesser level of certainty exists about any bruising to the body, particularly to the forehead and the left arm. This appears in photographs but was not recorded by Dr Mulvey. All expert pathologists thought the autopsy should have included a thorough external and internal examination of the body for bruising, particularly given the fact that the autopsy was conducted within 24 hours of death on a dark-skinned body. Stressing the need for careful forensic examination beneath the skin, Dr Oettle says:

**MR COOREY So it is fair to say this: if you were performing an autopsy and you were before the 20 hour period, you would make a point of examining for bruising under skin level. You would do that?---**

Yes.

**Otherwise you'd take the risk of missing things, I suppose?---**

Yes, I suppose it depends on your evaluation of the relevance of the bruising concerned. (T 6236)

The extent of bruising on Eddie Murray's body is unclear because of the inadequate nature of the autopsy, and the fact that the photographs of the body were too few and taken too far away. Other witnesses who saw the body immediately before and after the autopsy (Sister Garden, and Bruce Munro from the ALS in Moree) noticed the bruise to the forehead particularly. Bruising to the forearm consistent with force being applied to Eddie Murray's arm may be apparent in one photograph. The significance of such bruising remains unclear, but Dr Brighton considers it important enough to doubt a finding of self-inflicted hanging. Given what is apparent from the photographs and in the evidence of other contemporaneous witnesses, this further calls into doubt the reliability of Dr Mulvey's postmortem examination and his autopsy findings.

D. The lowest level of certainty in the medical evidence concerns the reported finding by Dr Mulvey that there were no internal injuries, specifically no intercranial haemorrhage and no haemorrhage in the eyeballs. The latter finding was recorded on the autopsy form by Dr Mulvey after completing his examination and contacting Dr Brighton by telex. Dr Mulvey vaguely recalls returning to the mortuary with a police officer to do an examination of the eyeballs, but there is no evidence from hospital staff that this occurred. Dr Mulvey says that he allowed only about one hour for the autopsy on 13 June 1981, and that part of this time was used for the taking of photographs by the scientific police officer, Sergeant Lamey. As well as apparently not checking the body carefully for signs of bruising, some of which may be recorded in the photographs, Dr Mulvey did not notice a surgical scar to Eddie Murray's abdomen. Questioned about this he explains:

**COMMISSIONER: Do you know why you didn't mention the surgical scar?---**

Well, the only explanation I can give, judge, is that on the morning I had to get up at 6 o'clock in order to do the ward round at 7.00 and be at the autopsy room at 8.00. Then when the photographer had finished, I had to do the post-mortem and then be back at the surgery soon after 9.00.

**You think you may have missed it?---**

Yes.

**MR COOREY: You were in a big hurry weren't you, in the autopsy?---**

Well, the usual time is about an hour but with the photographer being there it would have been less than - - -

**It would have what?---**

It would have taken up time which would have - - -

**So you would have had less than an hour for your part of it?---**

Not necessarily. I don't know what time I got back to the surgery. I could have arrived there late. (T 6843-4)

Significantly, Dr Mulvey does not say it was his practice not to record old scars (indeed he did record one on Eddie Murray's face). He simply might not have noticed it because he was concerned to complete the autopsy in time to get back to his surgery within the hour.

A reasonable conclusion based on Dr Mulvey's meagre report is that the autopsy which he conducted was not a full post-mortem as required, and as stated on the P79A form by Parker. The time allowed by Dr Mulvey did not allow for a thorough examination to find the cause of death. Even if the autopsy in this case had been conducted by an experienced forensic pathologist with a skilled assistant, an hour would not have been long enough to carefully check the body internally and externally for bruising, while completing all other essential procedures including examination of the brain. Considering that this was the first autopsy on an apparent hanging that Dr Mulvey had ever conducted, and the fact that additional time

may have been taken by the way the clothes were cut rather than pulled off, it is far from certain that his examination of the body was sufficient to allow him accurately to make the crucial finding of “no haemorrhages”.

Consequently, the key finding of the autopsy of “no internal injuries” is, like the finding of “no external marks of violence except the marks around the neck”, highly uncertain.

Whereas the Commissioner based his whole report on these findings by Dr Mulvey, a careful assessment of the autopsy shows they are uncertain to a greater degree than: (a) the medical evidence of intoxication, (b) the marks on the neck, and (c) possible bruises to the forehead and arms, all of which can be verified to different degrees by reference to clinical records or compared with available photographs and the evidence of witnesses. There is no evidence except for Dr Mulvey’s meagre autopsy report to suggest that he conducted the required dissection of the brain. He could not recall actually doing this, merely saying it “would have” been done in a routine post-mortem. (T 3553, 6850) Given his inexperience in conducting complex autopsies, his view of this case as “routine”, and the limited time which he allowed, it is possible that he did not dissect the brain or even externally examine it, especially since he had been persuaded that he was examining a simple case of suicide.

### **Exhumation of Eddie Murray’s remains**

An investigatory procedure that could be adopted, which might even now provide evidence of the cause of death, would be to have Eddie Murray’s remains examined by an experienced forensic pathologist. The evidence given by Dr Mulvey about the autopsy was so bereft of detail that, from it alone, no expert forensic pathologist could say with any degree of certainty what caused the death.

Although Eddie Murray has been buried for about sixteen years there may still be worthwhile evidence to be obtained if his body is exhumed and examined. Dr La Brooy in his report which was supplied to the Royal Commission says about this issue:

**“Exhumation**

With the lapse of time since interment, it is unlikely that any soft tissues or cartilage would remain to make exhumation meaningful. If however the body was well embalmed before burial, the question of exhumation may be considered.”

The Commissioner made no comment about Dr La Brooy’s opinion on this matter either during the hearings or in his report.

In August 1996 Eddie Murray’s family obtained a further report on the autopsy conducted by Dr Mulvey from Dr Johan Duflou, Deputy Director of the New South Wales Institute of Forensic Medicine. (see Chapter 14) He comments, inter alia, on the inadequacies of the autopsy:

*“The autopsy report:* The value of a medico-legal post mortem examination is significantly reduced if the report of that examination does not accurately or completely reflect the extent of natural and traumatic pathology. The report by Dr Mulvey is very brief and does not afford a pathologist the ability to assess the nature of injuries adequately. As an example, the phrase "black linear marks over the lower third of his neck more extensive on the left side" does not transmit any useful information, and photographs of the deceased depict these marks on the upper thirds of the neck. Two other positive pathological findings are made by Dr Mulvey: the first refers to congestion of big veins in the neck - I have not seen this feature in hanging cases once the ligature has been released, and I do not understand how this could occur following the cessation of circulation in an "uncomplicated" neck

compression case. The second finding by Dr Mulvey relates to closed vocal cords - again, this is a most unusual finding in cases of neck compression. I strongly suspect that both diagnoses are incorrect and based more on flawed inference rather than direct observation. It can thus be concluded that the description of the injuries is not only inadequate but is also inaccurate. Previously published research by pathologists at the NSW Institute of Forensic Medicine has found a similar low standard of post mortem examinations by Government Medical Officers, this research concluding that only 11% of these examinations provided adequate information for the Coroner to use in reaching a valid conclusion based on the autopsy evidence. Consequently, I am of the opinion that it would be unwise to rely on the autopsy report to any meaningful extent." (emphasis added)

On issue of the value of exhuming Eddie Murray's remains for examination Dr Duflou states:

**“The value of exhumation:** Mr Murray was buried approximately 15 years ago. Although there is marked variability in the rate of decomposition, it is likely that Mr Murray will be almost totally skeletonised unless the body was expertly embalmed. Exhumation will therefore only be of value in detecting skeletal injury. This skeletal injury could include antemortem fracturing of the skull and facial bones, injury to the small bones of the neck as a result of hanging and evidence of post mortem dissection. If an adequate post mortem examination was conducted, it is unlikely that any additional injuries will be identified. However, if an inadequate examination was conducted initially, there is the possibility that injuries may be found at this stage which may give credence to the possibility that Mr Murray did not die of hanging, but died of a head injury instead.”

Together with the paucity of information provided by Dr Mulvey, there is the significant problem of whether he could have conducted the autopsy adequately over the period of time he recalls. On a realistic reading of his evidence he took no longer than one hour and probably less. Dr Duflou says about this:

*“The time spent on the autopsy:* From Dr Mulvey's evidence before Justice Muirhead, it appears the entire examination took approximately one hour. I am unable to find any reference to an assistant helping in the conduct of the examination, although it is possible that a police officer may have provided that assistance. Nevertheless, I would find it extremely difficult to perform a full autopsy on a custodial death in under one hour, even with the assistance of an experienced mortuary assistant. I have trained numerous Government Medical Officers and trainee pathologists in forensic autopsy techniques, and have found that it takes the inexpert prosecutor between 2 and 3 hours to perform a basic dissection of a routine case. I therefore conclude, on the basis of the time spent on the examination, that Dr Mulvey could not have conducted a full autopsy on the deceased.”

In order to determine if Eddie Murray had suffered a head injury Dr Mulvey would have had to remove the brain and examine it. The skeletal remains should reveal whether Dr Mulvey performed this procedure at least to the extent of satisfying whether he exposed the brain for examination. There may also be other injuries that the skeletonised remains could reveal that Dr Mulvey overlooked. This would be the case even if the body was not expertly embalmed.

## Chapter 11

### HOW WERE THE HANGING MARKS CREATED?

Notwithstanding the inadequate nature of the medical evidence and the refusal of police witnesses to give in a number of instances frank testimony to the Royal Commission about events after Eddie Murray's detention, in one sense the central questions raised by this case are clear. There are two possible occasions on which the marks on Eddie Murray's neck were able to be observed, and only three possible scenarios for their appearance. As to occasions, the neck marks had either been made at the time of death and were not observed by Dr Ralte and the ambulanceman Mr Lewis when they examined the neck to check for a pulse in the cell, or they were made soon after the body had been transported to the mortuary.

If the marks were made after the removal of the body from the cell, it is reasonable to infer that only the police on duty at Wee Waa police station on 12 June 1981 could have done this. If the marks were already made at the time of death, this was done either by Eddie Murray alone in a condition of extreme intoxication, or by one or more of these police officers. Thus, there are three alternative scenarios possible on the evidence: 1) self-inflicted hanging in the cell with no police present; 2) an actual or simulated hanging of Eddie Murray in the cell by one or more of the four police on duty; or 3) a simulated hanging of Eddie Murray in the mortuary by some police after his body had been taken there by ambulance.

Given the uncertainty of the autopsy findings, it is not appropriate to discount any of these scenarios without careful assessment of all the possible opportunities and also difficulties

involved in the creation of the hanging marks. Each scenario includes a range of factors, the probability of which must be judged according to the evidence. The Commissioner focussed only partially on the scenario of self-inflicted hanging. He found that "it is not possible to make a confident finding" about Eddie Murray's capacity to hang himself by considering Eddie Murray's level of intoxication alone (Report p 76). He then disregarded any alternative scenario as "inexplicable in terms of rational human behaviour", although not rejecting this "possibility". (Report, p 77) He did not examine the probabilities of alternative scenarios through a particular assessment of the relevant evidence.

**Scenario 1: self-inflicted hanging.**

This scenario is based principally on the evidence of Sergeant Page. He is the only witness who claims to have seen marks on Eddie Murray's neck in the cell. Page claims that he stayed in the cell after discovering the body and attempted resuscitation, but this is contradicted by the evidence of the civilian witness, Mr Cronin, who was inside the police station and observed both Page and Sergeant Moseley racing back towards Parker, who contacted a doctor after these three police had talked quietly amongst themselves. Cronin says he was left on his own firstly "for quite some time" before the doctor was called, and secondly for "probably 10 minutes" after Fitzgerald joined the other police from within the police station at about the time that Dr Ralte left. (T 3017-9)

The Commissioner rejected Page's evidence that he had remained in the cell attempting resuscitation until Dr Ralte arrived. The Commissioner suggested that Page told this story because he was reluctant to expose his indifference to the death of Eddie Murray in the cell. (Report, p 79) This interpretation disregards a possible implication of the evidence by Page

and Moseley about how they claim to have discovered the body in the cell, a claim which the Commissioner fully accepted (see chapter 5). This part of Page's evidence about the alleged discovery of the body appears to be linked with his claim to have conducted resuscitation. If the latter point is doubted because it is inconsistent with Cronin's evidence, the alleged discovery deserves to be questioned, especially since there is another explanation consistent with Cronin's evidence which was not properly considered by the Commissioner. A logical reason for Page not to stay in the cell for resuscitation is that Eddie Murray was beyond medical help. If Eddie Murray was not already dead, then by leaving the cell Page would have demonstrated his indifference, not to death, but to the prospect of saving a life.

There was no need for both Page and Moseley to return to tell Parker to get a doctor and an ambulance, but they may have needed to decide together what to do with Eddie Murray's body, and agree on what to say about the circumstances of his death. Cronin observed that the police "appeared to be very flustered until they made the phone call" to get the doctor and the ambulance, which was used to take Eddie Murray's body taken to the mortuary. (T 3018)

The Commissioner viewed Cronin's evidence of a "dramatic change in atmosphere" when Page and Moseley returned from the cell as consistent only with a case of self-inflicted hanging. (Report p 79) That conclusion is unwarranted without carefully assessing this scenario. The dramatic change could have resulted from Page and Moseley realising that they were responsible for, or had been negligent about, the circumstances in which Eddie Murray's death occurred, and that they faced immediate problems in explaining the death. The scenario of self-inflicted hanging should not be deduced from interpreting other

evidence, particularly given the basic difficulties in terms of whether Eddie Murray was sufficiently tolerant of alcohol for it to have been physically possible.

Apart from the question of whether the marks were on Eddie Murray's neck in the cell, this scenario relies on the police evidence about the position of the noose, as well as on a general presumption that Eddie Murray was not too intoxicated to construct and fasten this noose to a bar above the cell door. Page claims the noose was not moved from the bar until after it was photographed later that evening by Detective Sergeant Lamey, but in that case, both Dr Ralte and the ambulanceman Mr Lewis could hardly have avoided noticing the noose when they attended the cell. Dr Ralte thought the noose was not on the bar until he was shown the photograph of it there later on. Mr Lewis says the blanket was not obstructing the entrance to the cell as shown in the photograph:

**MR COOREY When you walked into the cell your face never hit a blanket, did it? Do you know what I mean?---**

Not to my recollection, sir, no.

**You see, what I'm suggesting is this, that if the blanket was in the position in the photograph [number 2] you would have bumped into it?---**

It would have hit me in the face, yes.

**Your memory is that the blanket was near the flap, down there, looped around the flap?---**

That's right, yes.

. . . .

**So that it was your memory that the blanket was somehow attached to the door?-**

That's right. (T 6386)

Mr Lewis recalls only seeing "a full blanket" which "was rolled and was hanging through the door"; he could not recall seeing a noose. (T 6406-7) In order to remove the body from

the cell with the assistance of an unidentified police officer, Mr Lewis would have had to notice the noose, if it had been made from a strip of blanket and was obstructing the door:

**MR FINNANE Yourself and this other policeman, one or other of you, had to push the door more open than it was?---**

Fully open.

**So that you could between the two of you get the stretcher out?---**

Get the body out.

**Well, the body was on the stretcher, was it not?---**

The body was still on the bed and we had to get it out into the exercise yard onto the stretcher.

**COMMISSIONER: You carried the body out and put it on the stretcher which was outside the door?**

Yes, sir. (T 6408)

....

**FINNANE: When you or the policeman who was helping you pushed the door open, one or other of you no doubt pushed against this hanging blanket. Would that be right?---**

It may have been touched. I can't recall that. It was lying flat - to my recollection it was lying flat against the door.

**You were told, before you came down, that somebody had hung - to use your expression, "Somebody's hung himself down here"?---**

Yes. ( T 6410)

While noting inconsistencies in the evidence of Page compared to Ralte and Lewis, the Commissioner simply dismissed this problem. He wrote:

"I do not regard either Dr Ralte or Lewis as reliable witnesses as to the situation of the noose during their short visits to the cell. Their attention was devoted to the question of life and death. I am satisfied that the photographs of Detective Sgt Lamey accurately depict the position of the noose when he photographed it that

evening and I find the noose had not been significantly disturbed after the body was released shortly after 3.00 pm." (Report, p 52)

This judgement may be sound in relation to Dr Ralte, who was in the cell for only a short time and changed his evidence when confronted with the relevant photograph. The same cannot be said about Mr Lewis, who was at the police station from 3.31 until 3.45 pm and would therefore have spent about ten minutes in the cell or near it, going through the entrance at least four times. Whilst Lewis is uncertain about the position of the bars in the cell, he is sure that the blanket was hanging through the door flap, not obstructing the entrance to the cell as shown in the photographs. (T 6379-81) His attention was clearly not focused on life or death since he quickly considered when he was in the cell that resuscitation was pointless. His attention would have been devoted principally to how to get the body out of the cell onto the stretcher, so he was in the best position to see that the noose was not hanging down into the doorway, as Page claims and as is depicted in photographs 1, 2 and 15.

The construction of the noose itself was accepted by the Commissioner, on expert evidence from Mr Brown, as being completed with "a simple sophisticated and effective [reef] knot". (Report, pp 53-54) Yet the Commissioner ignored three other points made by this expert that are pertinent to the scenario of self-inflicted hanging:

1. "There was very little blanket left" when the reef knot had been completed, with a procedure which would have been "more difficult" if tied from behind the back, as well as requiring "some dexterity". (T 6509-10; 6517-8)

2. It is "a possibility" that if the final completion of the reef knot was done at the same time as weight was applied, not before, then the knot would slip. (T 6514)
3. If the noose was around Eddie Murray's neck, it could not have been released by "anything from above", only by someone coming from "below the knot". (T 6522)

The last point contradicts Moseley's claim that he "lifted" the noose from Eddie Murray's neck by using his arm which was placed through the flap of the cell door. (Report, pp 47-8)

Another issue concerns whether the alleged noose could have been seen attached to a bar as stated by Moseley and Parker when they say they first approached the cell. This is queried by the evidence of Lamey who says, when asked about the cell scene that he photographed:

**MR COOREY: Sergeant, standing outside the cell, would one be able to see the blanket in contact or around the bar, standing outside the cell door? Do you understand what I'm putting to you?---**

Yes, I know what you're saying.

**THE COMMISSIONER: Assume a man of your height.**

**MR COOREY: Yes?---**

Unless you were particularly looking for it, I don't think you would. I'm not sure.

**Indeed you've got the mesh up there, haven't you, for a start?---**

Yes.

**And then I think you've got the height itself of course?---**

Yes.

**And you've also got the fact that the blanket had the knot - when you saw it, the blanket had the knot away from the bars, didn't it?---**

It was down towards the noose area. I think with the weight on it, it would pull the blanket down hard onto the bottom of the bars which would make it more difficult again from what it is at this stage.

**In that case would you say that it would be unlikely that one could see that if one were standing near the cell door?---**

Yes, I would say so. (T 2486)

The Commissioner commented, when looking during the view of the cell at how a strip of blanket could have been tied to the bar and if it might have been seen by Page and Moseley:

**COMMISSIONER: Well, the only observation I would like to make is that it is visible but with that particular blanket unless you were kind of looking you'd hardly be likely to see it. (T3326)**

There was no attempt during the view of the cell to determine whether a noose could possibly have been removed from Eddie Murray's neck by Moseley using only his right arm placed through the cell door.

The only other relevant observation during the view of the cell was not conclusive. When a person of the same height as Eddie Murray was asked to try to place a piece of blanket between the bars and mesh above the door, this was attempted only in a position facing the door. Initially, a sober person managed to do this standing with "both heels off the ground", straining up on his toes; when trying again he could do it only by straining, lifting at least one heel above the ground, not when keeping both heels flat. (T3324)(See photographs at the end of this chapter.) No demonstration was attempted by this person tying a knot and then facing away from the door. No attempt was made to see whether a heavily intoxicated person of the same height could put the piece of blanket between the bar and mesh, then tie a knot which (according to the knot expert Mr Brown) produced "very little blanket left" at the end and required "some dexterity", especially if tied from behind the back. (T6509-10; 6517-

8)

Subsequently, Professor Graeme Alexander Starmer, one of the expert medical witnesses on the effects of alcohol, told the Commissioner that extreme intoxication might have made Eddie Murray incapable of doing what, for a sober person, required significant agility and balance:

**THE COMMISSIONER: With an ingestion of say .25 or .2 you would generally expect gross impairment of balance amongst other things?---**

Yes.

**Yes, and I think Mr Eames asked you to take into account that he may well have stood on tiptoes while trying to adjust the blanket. The act of standing on tiptoes is in itself something, is it not, that requires not only agility but a sense of balance?---**

Yes.

**Especially if you're going to perform a task while you're on tiptoes?---**

Yes.

**Is that significant in your view in trying to work out the probabilities as to whether it was likely or unlikely that Eddie Murray could have done that in his condition?---**

It could be, yes. We regularly measure body sway. In fact it's perhaps the most sensitive measure for alcoholic intoxication that we have and we find that people start to show impairment at sometimes below the legal limit. You can see - you can measure this impairment and certainly the swaying movements at .15, that sort of level, are gross, sometimes with the subject finding it impossible to actually stand on the platform that we use with - particularly if he has his eyes closed. (T 4136)

While the Commissioner discussed Professor Starmer's opinion about "the effects of alcohol on driving ability, manual dexterity and co-ordination" and the significance of personal

tolerance to alcohol, it seems that he ignored this evidence about body sway. (Report, p 61)

Having found that Eddie Murray was not suicidal, the Commissioner stated that "to this issue must be added the intrusion of alcohol, the effects of which cannot be confidently predicted in assessing human conduct or reaction to particular circumstances." (Report, p 10). Eddie Murray was known to have been binge drinking, yet there is simply no evidence that this made him susceptible to suicide. Indeed, the evidence is to the contrary. Eddie Murray's uncle Allan Murray, with whom he stayed in Sydney, says that when he drank on weekends:

**MR FINNANE: Did he ever appear to get a bit upset after he was drinking?---**

No.

**Or a bit downcast?---**

No.

**Not at all?---**

No. (T 3370)

The Commissioner found the evidence showed Eddie Murray may have "started drinking" as late as the age of 17, and that "he was probably more aptly described as a binge drinker than a consistent and heavy drinker", since often "there were periods when he would drink very little, particularly during the football season when he was playing and in training." Indeed, the Commissioner was not convinced that Eddie Murray's tolerance to alcohol was enough to make him an 'alcoholic', a term used by Dr Francis Harding-Burns and Dr Frederick Anthony Moynhem, the two out of five experts who said he could have made the noose. (Report, p 75)

The Commissioner concluded that, considering "this issue in isolation, it is not possible to make a confident finding" about Eddie Murray's capacity to hang himself with a blood alcohol level of .3%, because there was insufficient information to determine Eddie Murray's degree of alcohol tolerance. (Report, p 76) The Commissioner summarised the evidence of Dr Aiden Foy as being that: "the tolerance required to perform the tasks involved in hanging himself at .3% would be a very highly developed tolerance"; yet the Commissioner then said that it was "possible" Eddie Murray had developed such tolerance, assuming that he had "been drinking in a harmful fashion since his mid-teens". (Report, p 69) This assumption seems to have been unsupported by reliable evidence, as well as being unhelpfully vague.

After considering carefully the differing views of five medical experts concerning the issue of alcohol tolerance, the Commissioner discussed a study by Davis and Lipson, saying it was "generally speaking" respected by these experts. The only subjects of this research were, in the Commissioner's own words "32 patients with chronic alcoholism", of whom the youngest was aged 29 years and the average age was 45 years. (Report, p 71) This study is relevant to determining the capacity for self-inflicted hanging in this case only if Eddie Murray could have been classified in 1981 as a chronic alcoholic, aged just 21 years. Dr Foy says about this research:

“The youngest person in that study was 29 and I have not myself seen anyone aged 21 or younger who had that degree of tolerance and I've not seen anyone that I'm aware of, at any rate, who had only a 3-year drinking history but had developed that degree of tolerance.” (T 4402)

Professor Douglas Ian McCloskey, whose evidence at the Inquest was that Eddie Murray was "unlikely" to have been able to make the noose, says that the Davis and Lipson research

was hardly relevant because the most complex task it involved was taking a tablet with a glass of water. While qualifying his general view of tolerance in view of this research, he maintains that the scenario of self-inflicted hanging was "in the particular case considered, unlikely because we know that the person Eddie Murray was ataxic at the time; his movements, his walking and so on, were not normal." (Report, p 64)

The Commissioner, while rejecting the classification of Eddie Murray as a chronic alcoholic as unconvincing, proceeded to resolve the "scientific uncertainty" about the key issue of Eddie Murray's capacity to make the noose merely negatively, by rejecting the alternative scenarios as "inexplicable in terms of rational human behaviour." (Report, pp 76-7) Such reasoning by default can produce "a probable finding" of self-inflicted hanging only by logically requiring that Eddie Murray must be considered as an alcoholic within the extreme range studied by Davis and Lipson. Hence the Commissioner's argument was contradictory: while Eddie Murray was not a chronic alcoholic on all the available evidence, he must still have had the "very highly developed tolerance" of a chronic alcoholic, because without this assumption his death resulted only from "otherwise irrational behaviour" by the police. It is precisely because the scenario of self-inflicted hanging requires an assumption of Eddie Murray's extreme tolerance to alcohol which the Commissioner could not confidently make, that scenarios of possible police involvement in Eddie Murray's death deserved much more considered attention than the Commissioner gave to them.

### **Scenario 2: forced or simulated hanging in cell**

The Commissioner asserted the probability of self-inflicted hanging by assuming that alternative scenarios were incredible. In taking this approach, the Commissioner failed to take proper account of the possibility for police misbehaviour or negligence. To assess the

likelihood of police involvement in Eddie Murray's death, it is necessary to look at the evidence about his condition and his contact with police after being detained. While the Commissioner found that the police were not frank about this, some observations made by witnesses at the hotel and the police station, when taken together, suggest that a serious conflict between Eddie Murray and police most probably occurred when he was detained. The last time that Eddie Murray was seen by a civilian witness prior to his death was outside the Imperial Hotel, when various people claim to have observed his apprehension by two police (the inconsistencies in this evidence of the apprehension are considered in the following chapter). Immediately before the arrival of the police outside the hotel, Eddie Murray was forcibly ejected by four civilians, according to the barmaid, Mrs Beryl Berger, who says he was clearly more intoxicated than she had ever seen him before:

**MR EAMES: Could I ask you whether the observations that you made on this day suggested to you that Eddie was any more or less drunk than you had seen him to be on previous occasions?---**

He was more.

**You've referred to the starey eyes and wide open eyes and him being very strong, what else was there that suggested to you that he was very drunk?---**

Just his manner, he couldn't hardly stand and yet he was so strong.

**When you say he couldn't hardly stand were there occasions where no one was touching him at all and he was simply standing?---**

Yes, he was also doing that before they started to all put him out, he was on his own then.

**And on that or those occasions where he wasn't actually being held onto by anyone did you observe then whether he was able to stand normally?---**

I never took that much notice really but he was drunk, he was really drunk.

**Did he appear to be swaying at all or staggering in any way to indicate to you that he was drunk?---**

Yes. (T 3386)

As well as being inconsistent with the Commissioner's conclusion that there was no struggle when Eddie Murray was apprehended shortly afterwards by police outside the hotel (see chapter 12), this evidence strongly reinforces the Commissioner's doubt that Eddie Murray's subsequent detention in the cell "was as quiet an episode as the evidence of the officers depicts." (Report, p 34) According to Mrs Berger, Eddie Murray soon became fighting drunk during an angry exchange when resisting attempts to eject him from the hotel:

**MR COOREY: In fact you'd put him - in your experience of him, I suppose he was the drunkest you ever saw him?---**

He was because I've seen Eddie drunk a lot of times and I've never seen him like that day.

**Have you ever heard the expression that someone's so drunk he could hardly scratch himself. Was he - - -?---**

But he was different. I even said - you know, thought to myself - that's why I remember this case so well. He was so strong, he could have fought anyone off that day, you know. He was different to an ordinary drunk, he just was different.

**He wasn't in a subservient mood, was he? Do you know what I mean by subservient or docile? ... you know what I mean?---**

Yes.

**He wasn't like that was he?---**

No.

**He was resisting?---**

Yes.

**He was fighting with these people?---**

He had plenty of strength and was fighting, yes. (T3388)

Within a short time of this observation (at most half an hour) Mr McKnight, the police

station cleaner, heard an angry exchange between Parker and Eddie Murray in the dock, before he was taken to the cell (see chapter 3 for McKnight's evidence, which the Commissioner accepted). Thus there is clear evidence that Eddie Murray was not docile before and after apprehension. What has to be explained is this: why wouldn't he have resisted detention in the cell in the strong manner that he resisted ejection from the hotel, particularly when he had been held as an intoxicated person, not arrested?

The Commissioner did not pursue this important question. Two possible answers to it are that Eddie Murray became subdued because of the effects of being extremely drunk, and/or that his ability to resist was forcibly limited by the police who apprehended him. The possibility that Eddie Murray quietened down merely due to extreme intoxication is improbable, given the evidence of the barmaid about Eddie Murray's condition in the hotel. The possibility that Eddie Murray was forcibly subdued by police invites further investigation, especially since the police version that he "slipped on the wet pavement" after getting out of the police truck is contradicted by Mr McKnight's evidence that the pavement was washed after 2.30pm, approximately thirty minutes after the police say that they put Eddie Murray in the cell.

A scenario of force being used by police to restrain Eddie Murray would explain the bruise to his forehead (noticed by Sister Garden on the Saturday morning before the autopsy and apparent in an oblique photograph, though not recorded by Dr Mulvey) and possible bruising to his left arm (which Dr LaBrooy says could not be lividity marks as Dr Mulvey claims). The expert medical witnesses agree that an extremely intoxicated person could be concussed and lose consciousness from a blow to the forehead. Dr James states:

**MR COOREY: Doctor, if concussion resulted from a blow to the head and the person, we are told, had a reading of .3, could anything happen other than a loss of consciousness?---**

Yes. I think that people who are extremely intoxicated with alcohol with levels as high as that in the deceased are very likely to get into trouble with blows to the head.

**I see?---**

Anything with sufficient force to cause concussion may also result in injuries that are very likely to prove fatal. Concussion by itself has no pathology; you can't see it at the post-mortem. It's simply a temporary period of unconsciousness due to stretching of some nerve fibres in particular parts of the brain. But people who are full of alcohol are very much at risk because they are very likely to bleed inside the skull and get fatal subdural haematomas for instance. (T 6194)

Dr James considers that, "what we know, if one accepts the post-mortem report, is that there wasn't fatal intracranial damage." Yet Dr James says that, assuming Dr Mulvey's report was inadequate and assuming that the marks on Eddie Murray's neck were not present when he was examined in the cell by Dr Ralte and Mr Lewis, then he would have "no idea what the cause of death was." (T6189-90, 6195) Dr La Brooy agrees that if the neck marks were not present at the time of death, then, based on the autopsy report, "we can't say anything about the cause of death." (T6277, 6291) He gives this evidence about the possible effects of a blow to the head which caused a loss of consciousness:

**MR EAMES Let me put this to you. You've referred in your report as saying that lump, if it was a lump, "could have been caused when the deceased was tossed into the police wagon as stated by Mr Collett." Assume this: assume that a person was thrown into the police wagon, did hit his head and did have that lump produced, but was then conscious when driven to the police station and was able to walk, albeit stumbling, at one point; was able to walk into a police**

**station and carry on a conversation. Certainly at that point you'd say the person is apparently conscious?---**

Yes.

**If a person was to become unconscious as a result of that blow to the head, would you agree that for there to be a post-concussional loss of consciousness with a delay of time such as that, one would expect there to have been an underlying injury such as a fractured skull or a haemorrhage?---**

Well, the fractured skull by itself would not produce the loss of consciousness. It is the internal injury to the contents of the brain, usually either a subdural or an extradural haemorrhage which appears later - and the interval between an injury and the subsequent loss of consciousness is referred to in medical terms as the latent interval.

**Would you agree though, doctor, that if that was the sequence of events, the injury to the forehead would be unlikely to have caused a subsequent loss of consciousness in the circumstances I have postulated unless it was due to a haemorrhage of some description having been later created?---**

If the loss of consciousness was due to the trauma, then I would expect to see some obvious evidence in the brain. However, there could be subsequent loss of consciousness due to the fact that he has still got too much alcohol in him.

**But that would be an effect relating to the alcohol rather than an effect relating to a blow to the head, would it not? In other words, you would expect that if a person was later asleep, that that would be due to drunkenness rather than to a concussive effect of a blow to the head which didn't cause unconsciousness at the time and which did not produce a haemorrhage?---**

In the absence of any internal brain damage, that would be so, yes. (T 6264)

Dr Oettle agrees that an injury to the forehead coupled with an alcohol level of .3 could have produced concussion and unconsciousness. He says that when stating in his report that "there would appear to be no injury consistent with a person fighting for their life or in a homicidal situation" he was unaware of the evidence from Sister Garden that she saw an injury to the forehead. He also says that in a situation where a person had sustained an

injury while intoxicated to the level of .3, it was likely they could be subdued more easily than someone who had not been injured. (T 6230-3)

The scenario of Eddie Murray being injured while forcibly detained by police would explain not only the lump on his forehead and possible bruising to his left arm. In addition, such a scenario would explain his transformation from someone who was fighting off four people in the hotel to someone who was apparently subdued quite quickly when taken to the cell at the police station. The evidence of Mr McKnight about the angry exchange of words between Parker and Eddie Murray in the dock shows he was conscious upon arrival at the police station. McKnight did not see Eddie Murray, so it is not clear whether an injury to the forehead was present on the way to the cell, or occurred subsequently before the doctor and ambulance were called. If that bruise was caused at the police station, it may have become evident only later that day. This is in contrast to the neck marks, which all the medical experts say could not have developed spontaneously before the autopsy.

One reason why the medical experts viewed a forced hanging of Eddie Murray by police in the cell as improbable was the lack of evident signs of resistance. If Eddie Murray had lost consciousness after an injury to the forehead suffered at the police station, he would not have been able to resist a further assault by hanging if that occurred in the cell. The scenario that Eddie Murray was fatally harmed by police and then later hanged to make the neck marks was considered by the medical experts as possible, yet discounted because of Dr Mulvey's autopsy finding of no intracranial haemorrhage. If that finding is unreliable, this scenario becomes more probable, since it would explain why Eddie Murray did not resist detention in the cell. However, a simulated hanging of Eddie Murray after he sustained a fatal injury

need not have occurred in the cell. Indeed, one view of the Commissioner's finding that Page (the only witness who claimed to see the neck marks in the cell) did not remain in the cell before the doctor and ambulance were called, is that it suggests that a simulated hanging which produced the neck marks could have occurred later, at the mortuary.

### **Scenario 3: simulated hanging at mortuary**

The scenario of a simulated hanging after Eddie Murray was removed from the police cell to the mortuary requires consideration because of the uncertainty about the presence of neck marks when Eddie Murray was examined by Dr Ralte and Mr Lewis. Only Page says he saw the marks, and his evidence is doubtful in important respects. Firstly, he did not mention the marks in his statement made on 30 June 1981. It is probable that he typed the occurrence pad on 12 June 1981, which also contains no mention of any neck marks observable in the cell. Secondly, the evidence which Page gave at the Inquest and to the Commission is vague as to the specific whereabouts of the marks (in the photographs they are more visible on the left side of the neck). As noted in the previous chapter, Page cannot recall where the marks were.

The evidence of Dr Ralte about not seeing marks on Eddie Murray's neck in the cell when he examined it to check for a pulse is different than his evidence about the position of the noose. Dr Ralte, when confronted with a photograph showing the noose attached to the bar above the cell door, changed his original evidence at the Inquest, which was that the noose was lying around Eddie Murray's neck when he entered the cell. (T4320-1) Yet Dr Ralte does not recall seeing any neck marks even when shown a photograph:

**MR EAMES: You've said, I think, that the photograph there, the way the blanket is shown there, is the position as you recall it being shown to you by Sergeant Page?---**

Yes.

**I think that was your evidence. When Sergeant Page showed you that blanket, did you inspect it?---**

Not really.

**Did you notice what sort of a knot it was that was in it?---**

No.

**When you examined the body did you notice any marks on the body consistent with a person having been hanged?---**

Not that I recall, except maybe a trickle of saliva from the corner of his mouth.

**In particular, doctor, did you make an examination of his neck?---**

Superficially, yes.

. . .

**If you just look at this photograph, number 5A - and this is not the original 5A so the colouring I'd ask you, doctor, not to assume to be accurate but you notice, however, a distinct mark on the left-hand side of the neck?---**

Yes, there is.

**Did you notice that mark, or a mark similar to that, on the neck when you examined the body?---**

No, I did not - I did not notice.

. . .

**When you say you didn't see any marks, might that be because you didn't particularly look for marks?---**

Yes, quite.

**THE COMMISSIONER: If a nursing sister said the next day she could detect a bruise on his face, you wouldn't dispute that?---**

I wouldn't dispute that because sometimes mark [sic] don't appear until later date.

(T 4311-3)

All the medical experts say that, whereas the bruise to the forehead may have become

evident only the next day, the neck marks could not appear spontaneously. Although Dr Ralte was in a hurry, he most probably went down on his knees to check for a pulse at Eddie Murray's neck. Since he says he was shown a piece of blanket by Page to indicate the cause of death, it is strange that he did not see, or even look for, marks on the neck. The Commissioner's interpretation was that Dr Ralte had a busy surgery to get back to, but this is hardly convincing. It would not have taken Dr Ralte long to examine the deceased's neck. Mr Lewis, in his statement given in April 1988, recalled that when he received the phone call to attend the police station he was told something like 'A bloke has hung himself here', and that when he was moving the body to the ambulance he saw:

"the deceased had a blue tinge to his skin and it was particularly blue around the lips. I have a picture of that because it is the only hanging I've ever been to." (T 6372)

Mr Lewis says he didn't notice any marks on Eddie Murray's neck despite feeling there for a pulse. (T6384, 6395). When shown photograph number 5A, he says this:

**THE COMMISSIONER: The marks on the neck?**

**MR COOREY: Exactly yes.**

**Would you agree with me that they appear to be prominent marks, don't they - they appear to be prominent?---**

They are there, yes. Yes, in the photographs they are.

**And do you normally wear glasses?---**

No.

**Is your eyesight good?---**

Excellent.

**Excellent eyesight. And you never saw those marks or you've got no memory of seeing those marks when you saw Eddie. Is that right?---**

Not when I examined him, no.

**When you examined him, you never saw those marks?---**

No. (T6394)

Like Dr Ralte, Mr Lewis does not change his recollection of not seeing the neck marks in the cell when shown the photo. Lewis is questioned quite specifically about the nature of his recollection and whether he would have been looking for any marks:

**MR WILLIAMS; In answer to some questions by Mr Coorey, you said that your recollection was that there were no marks on Edward Murray's neck. Is that right?---**

That's right, yes.

**In your evidence-in-chief you said that you couldn't recall seeing any marks on his neck. Do you remember that?---**

I can't recall.

**Of course, they're two different propositions, aren't they: having a memory that there were no marks on the one hand and not being able to recall seeing marks on the other hand. You appreciate the difference, don't you?---**

Yes.

**Now, which is it?---**

I can't recall.

**So you don't know whether there were marks on his neck, or not.**

**Is that right?---**

My recollection is - and I'm only going by the case sheet, which I would have put the marks on that case sheet.

**If you've seen them?---**

If I'd seen marks, yes.

**Of course you weren't looking for marks around his neck, were you?---**

Well, I was told that he was hung - on the telephone. So it probably would have been obvious to me if there were marks there.

**So do you think you would have - if there had been marks there are you saying you would have seen them?---**

They would have been on the case sheet. (T 6415-6)

The Commissioner, in a section entitled "Examination by ambulance officer", refers only to Mr Lewis examining Eddie Murray's body in the cell, citing his evidence that since the cell was dark and because Eddie Murray was dark-skinned it would have been difficult to see marks. (Report, p86) In fact Mr Lewis is far from certain about the cell lighting:

**MS HERPS: You would have noticed those marks if they had been there at the time?---**

Yes. You've got to understand that a cell is dark and the chap being dark skinned, it would've been hard to see. I can't recall seeing that mark.

**THE COMMISSIONER: Can you remember whether the cell was, in fact, dark, or whether it was well lit when you went in? I know we always think cells are dark but they're not always. Have you any memory now of the lighting in the cell?---**

I wouldn't be positive, sir.

**MS HERPS: But what you can tell us is that if you had seen it, you would have written it down?---**

Yes. (T6425)

If the cell light was not on and any neck marks were hard to see, one issue would be how Page managed to see the marks, particularly since the Commissioner accepted Mr Cronin's evidence that Page came back from the cell together with Moseley prior to the doctor and ambulance being called.

Yet with the marks even more so than with the noose, the evidence of Mr Lewis cannot be so hastily dismissed. Since Mr Lewis took Eddie Murray's body from the cell to the mortuary in daylight (at 3.45pm) he was in the best position of any witness to observe whether there

were any marks on the neck before the body was placed in the mortuary. He specifically noticed the blue tinge to Eddie Murray's lips, which Dr Ralte did not observe in the cell, and it is clear from his statement that he noticed this when transporting the body. Presumably, Mr Lewis had to turn on the light in the mortuary when placing the body there, moving it from the stretcher to the table. Hence this finding made by the Commissioner is misconceived:

"I find the neck marks were there to be seen upon close examination after his release from the noose, not necessarily to the extent revealed in the bright lighting of the autopsy room." (Report, p 96)

This finding also conflicts with Page's evidence, which the Commissioner reviewed immediately afterwards as stating that the marks were "quite obvious". (Report, p 96) If Page, who was with the body for only a few minutes in the uncertain lighting of the cell, saw marks on the neck with such clarity, it is hardly conceivable that Mr Lewis, who was with the body for a least ten minutes in various places including daylight, and who knew it to be a case of supposed hanging, would not have made a case-sheet record of the marks, if they had been there to be seen. Since Eddie Murray was wearing a t-shirt his neck would have been exposed, making it highly unlikely that Mr Lewis could have missed seeing any marks.

The fact that Mr Lewis contemporaneously recorded blue lips but made no record of neck marks is of considerably more cogency than Page's vague evidence at the Inquest and to the Commission, which is without support from the police documentary record of events.

### **Police presence at the mortuary**

If one or more of the police went to the mortuary on 12 June 1981 to simulate a hanging, this would have to have occurred soon after death, in order for neck marks to appear relatively clearly as shown in the photographs taken at the post-mortem. When Eddie Murray's body was delivered by Mr Lewis, Sister Cruckshank observed two police officers standing out the back of the mortuary waiting for something:

**THE COMMISSIONER:** You said in your original statement, "I noticed some police out the back," and Mr Eames is talking to you about a police car. Can you just help me: did you see police officers standing around or did you just see a police car or did you see both?---

To the best of my recollection I saw the police van and I think two policemen but they were not close to the back of the hospital, they were down a bit.

. . . .

**Can you say where they were standing?---**

I think one was near the front of the vehicle and one near the side.

**Can you say whether they appeared to be in uniform or not?---**

They were in uniform. (T 6870-1)

Sister Cruckshank is certain that she saw police standing outside the mortuary:

**MR WILLIAMS:** Just in relation to your evidence that you saw police officers - and I want you to think about this very carefully, if you would, Mrs Cruckshank. Are you quite sure that there were two police officers there or might there only have been one police officer?---

I thought there were two. There could have only been one.

**Are you quite sure that it was a bull wagon and not a marked police sedan?---**

I think so.

**So you think that it was a bull wagon and there were two police officers?---**

Yes, to the best of my recollections.

....

**By the way, when you saw the police officers, it wasn't as if they were lurking around trying to stay out of sight, was it?---**

No, they were just - the ambulance has preference of entrance and I just accepted it at that.

**The police bull wagon is a fairly large vehicle, isn't it?---**

Yes.

**And it's emblazoned with the word "Police"?---**

I only saw the front of it.

....

**You were able to see it there in the hospital grounds quite clearly?---**

Just the front of it. It was facing on to me.

**It was quite easy for you to see the policemen?---**

Yes. (T6895-6)

Sister Cruckshank did not know the local police well enough to recognise who was there:

**MR COOREY: You don't know any of those men?---**

No.

....

**All right. All you know is that they were police. There was a police bull wagon, and you never saw them engage in conversation with the ambulance man. They were about a cricket pitch back?---**

That's right.

**All right, and is it fair to say this: that you came out, opened the door for the ambulance man, and then you left it to the ambulance man to put the body into the mortuary?---**

That is correct.

**Yes. In other words, you left the door open?---**

Yes.

**So you don't know if the police went in there or who went in there?---**

That's right. (T 6882)

The Commissioner, responding to submissions from Counsel for the family, wrote:

"The police officers were observed outside the mortuary whereas Eddie's body was placed in a refrigerator inside the mortuary, the door of which was locked and the key retained in possession of the nursing staff. There is just no evidence to justify a finding that police entered the mortuary on the Friday afternoon and then, or at any other time, by some means simulated hanging marks to Eddie's neck." (Report, p 120)

In fact, neither Sister Cruckshank nor Mr Lewis locked the mortuary door that day. Mr Lewis, when asked about taking Eddie's body to the mortuary, says this:

**MR FINNANE: When you got to the mortuary, you being on your own, how did you get the body into the mortuary?---**

I just wheeled the stretcher in.

**I see, it was on a trolley, was it?---**

Yes, the body was on the stretcher in the ambulance which when you pull it out the wheels automatically fall down so that you can - one man can quite easily handle it.

**You put the body in and then locked the door and gave the key to the sister?---**

No, the sister would lock the door, I don't lock the door. (T6408)

It becomes clear from a careful reading of the evidence of Mr Lewis given above and Sister Cruckshank given below that neither of them locked the mortuary door, and there were two policemen waiting outside. A crucial point of the Commissioner's rejection of counsel for the family's concerns about police access to the mortuary, namely that the mortuary was locked, cannot withstand critical scrutiny of all the available evidence.

Furthermore, Mr Lewis says he did not put Eddie Murray's body in the refrigerator:

**THE COMMISSIONER: You don't or you didn't put the body in the refrigerator?---**

No, sir.

**MR FINNANE: It was just left in the - - -?---**

From my recollection it was put on a stainless steel table in the centre of the floor.

**And just left there?---**

Yes. (T 6409)

Immediately after these questions, Mr Lewis implies that it was Sister Cruckshank who closed the door, but she is quite certain she had left the mortuary before Mr Lewis:

**MR EAMES: And having unlocked the doors of the mortuary, did you remain or depart?---**

I departed. I went round into the engine-room. I had to get another key to get in there to turn on the cooling system.

**To get to the engine-room do you have to go through the mortuary itself and out another door?---**

No, you can't go through the mortuary. You have to go back around to the front desk, the sister's desk, get the key and go right away around out the back to get into the engine-room.

**Now, having opened the door for the ambulance driver, having departed and turned on the refrigeration, did you then return to the desk with the key that you had?---**

Yes.

**Did you return the key to its place in - I think in a tin you say where it's kept?---**

Yes, that's correct.

**Now, at that point the door is unlocked. Is that right?---**

That's right. (T 6868-9)

In answer to the Commissioner's questions, Sister Cruickshank then says she thought the door was self-locking, but she does not know if it had a catch to stop it from locking. There can be no confidence in a finding that the door closed automatically. It is most unfortunate, but it seems that no one involved in the Royal Commission thought to check how the door closed.

Sister Cruickshank is adamant that she did not stay with Mr Lewis after opening the mortuary:

**MR COOREY: Sister, it would have been possible for the ambulance officer to wheel the body in - taking it out of the ambulance vehicle. Is that right?---**

Yes.

**That is, he doesn't need to carry a stretcher?---**

No, he didn't need to carry it at all.

**Do you remember on this occasion that he did in fact do that or did you just open the door and go?---**

I just opened the door and went. (T 6887)

....

**But you don't know, do you because you just opened the door - - ?---**

And left it - that's right. (T 6895)

As well as not locking the door, Sister Cruickshank says she did not return to the mortuary with a Sister Lovey to check that the body was there until "it was dark", i.e. about 5.15pm. When they did so, they found Eddie Murray's body was already in the refrigerator:

**MR EAMES: You and Sister Lovey returned to the morgue, went to the freezer unit, did you?**

Yes, that's right.

**And did you open the door of the freezer unit?---**

Yes.

**Did you have to move the stretcher that the body was on to see the body or could you just open the door and see?---**

We just opened the door and we saw a head and we both went.

**Was there a sheet over the body?---**

Not to my memory.

**Can you recall whether the body was clothed or not?---**

No.

**Having satisfied yourself that the body was there, you then left at that time and went back, I presume, to your normal duties, did you?---**

That is correct. (T 6870)

It is likely that if Sister Cruckshank had put Eddie Murray's body into the freezer unit, she would recall whether or not it was clothed.

Thus neither the ambulanceman nor the hospital sisters on duty moved the body from the stainless steel table, where Mr Lewis left it, to the refrigerator, where the sisters saw it at least an hour and a half later. A second crucial point of the Commissioner's rejection of counsel for the family's concerns appears, on a careful reading of the evidence, untenable. Far from being already secured in the refrigerator when the policemen were seen outside, Eddie Murray's body was moved, at some time within an hour or so of when Mr Lewis left the mortuary at about 3.51pm, by a person or persons unknown. The only people who knew where Eddie Murray's body was at that time were: the four police on duty then, Dr Ralte, who supposedly gave a direction to take his body to the mortuary (though this is disputed by Sergeant Page), Mr Lewis, who transported his body, and Sister Cruckshank, who left the

scene after opening the mortuary door. Dr Ralte, Mr Lewis and Sister Cruckshank were clearly busy with their duties, whereas three of the four police were on unspecified 'patrol'.

Mr Lewis was only at the mortuary for 4 minutes, arriving at 3.47 and leaving at 3.51 pm. He says that he definitely did not go back there that day after taking Arthur Murray to the casualty section of the hospital following his collapse at the police station on learning his son was dead. (T 6409) It is not surprising that Mr Lewis cannot recall any police officers near the mortuary, though he suggests that they may have pressed the buzzer to get the sister to open the mortuary, since he does not recall doing this:

**MR COOREY: Mr Lewis, you've probably gathered - what's happened is this: there's a Sister Cruckshank who has made a statement to the effect that the buzzer sounded - she was in the operating theatre, I think. She came out, opened a door to allow - I think her words were, "to allow an ambulance man into the mortuary." She said, "I noticed police officers," and I think the words are, "out the back." What I'm getting at is this: Is it possible that there were some police officers that came across to that mortuary at the time that you were there?---**

Well, if Sister Cruckshank said that someone pressed the button, I can only surmise that the police officers pressed the button but I can't remember seeing police officers there.

**But it's not one of those things that you're definite about, is it?---**

No (T 6393)

The presence of police at the hospital soon after Eddie Murray's body was delivered there by Mr Lewis can also be inferred from the fact that Mr Lewis was unable to give details of whose body it was immediately he arrived at the mortuary. The details were given to Sister Cruckshank about "5 to 10 minutes" after the ambulance arrived, but Mr Lewis was only

there for 4 minutes. (T6872) In one statement Sister Cruckshank recalled that "the police gave me the details of age, etcetera". When questioned about this, she says that "it might have been the police" who gave her the details, although she "tended to think" it was the ambulance officer. (T6893-4) Mr Lewis implies this is unlikely:

"I'd only just walked out of the mortuary when I was told that I was required at the ambulance - back at the police station." (T 6383)

Mr Lewis would not have had time to get the details from the police and pass them to the Sister. It is likely that the police, having told Sister Cruckshank (perhaps by using the buzzer) that a body was coming to the mortuary also gave her the details she required for the records.

### **Access to the mortuary**

Further information about who had access to the mortuary comes from examining the issue of whether, and if so, when and in what way Dr Mulvey returned to the mortuary to complete the autopsy after asking Dr Brighton by telex what signs he should have been looking for to determine the cause of death. According to Detective Sergeant Callaghan, this telex itself contains no record of when it was sent, although the police photographer Detective Sergeant Lamey was present at the Wee Waa police station when this occurred. (T 4218) Callaghan, who was responsible for the initial police investigation of the death, visited Wee Waa for a few hours on the evening of the death, but he made no effort to see the body in order to check the accuracy of police claims about the cause of death. In his statement of 9 November 1981, Callaghan said that he had been informed of the telex communication between Dr Mulvey and Dr Brighton when talking again with Moseley later

on "the following day" after the death, i.e. on Saturday 13 June 1981, the day of the post-mortem (T 4208) This strongly suggests Dr Mulvey returned to the mortuary on the Saturday afternoon, although Dr Mulvey cannot not recall which day it was:

**MR COOREY: Doctor, you said to my friend today that you went back in with a police officer and removed part of the body?---**

Yes.

**What time was that?---**

I can't recall.

**Was it the same day?---**

No, it wasn't the same day.

**Another day?---**

Well, it might have - sorry, it might have been the same day. That I can't recall.

....

**Do you actually remember going back to the mortuary?---**

Yes, that time I have.

**You've got a picture of it?---**

Yes.

**Who was the policeman?---**

I don't know. (T 6840-1)

Sister Cruckshank is unaware that Dr Mulvey had returned with a police officer to finish the autopsy later on the Saturday. She says that if this occurred, then Dr Mulvey should have got the key from her or Sister Garden. They were both on duty until 3pm on the Saturday and assisted "in clearing up after the post-mortem". (T 6878) Yet Sister Cruckshank does not recall opening the mortuary for the post-mortem to be finished:

**THE COMMISSIONER: Could I just ask you this: I suppose anyone performing the post-mortem would have to get the keys to get access to the - - ?---**

That's right.

**Yes. Have you any memory of handing over the keys to anyone that morning, be it the police officer or the doctor?---**

No, I have no memory of doing it. I could have done it, but I don't remember doing it.

....

**Yes. Anyhow, you've got no independent memory now of seeing Dr Mulvey there that morning or seeing anyone else in or about the mortuary?---**

No, not about the mortuary, no. I didn't go out there.

**No. How many sisters would be on duty on the Saturday morning?---**

Just Sister Garden and myself.

**If Dr Mulvey was using the mortuary, would he have to get the key from you?**

Yes, one or other of us.

...

**MR COOREY: As far as you knew there was only one post-mortem examination on the Saturday morning, of Eddie Murray. Is that right?---**

That is right.

**No one's ever told you that Dr Mulvey and a police officer went back another day for further post-mortem work. You know nothing about that?---**

No.

....

**THE COMMISSIONER: Either that day - later on the Saturday or on the subsequent day, you know nothing about Dr Mulvey going back to do further procedures?---**

No. (T 6880-1)

Sister Garden also is unaware that Dr Mulvey returned later that day. She says that after the post-mortem in the morning, nobody came to ask for keys to the mortuary:

**MR BELLEAR: You were the senior sister on duty on 13 June 1981?---**

Yes.

**And you would have known if persons wanted to go to the mortuary on that day, would you?---**

Yes.

**Any time after the group had come to you firstly - any time after that did you receive any notification of persons wanting to go to the mortuary that day?---**

Not while I was on duty. I knew they were doing the post-mortem and they would have to get the keys from the desk. Other than that, no. (T 3919)

Having acquired the key from the desk, they were not accompanied by the nurse:

**MR COOREY: I suppose it follows from your evidence that the police and the doctor had access to the body before the post-mortem and obviously during the post-mortem and had nothing to do with the hospital at all, is that right?---**

They would have received the keys and then proceeded to the mortuary.

**And no member of the hospital staff went with them, as far as you know?---**

No. (T 3924).

Sister Garden says the key to the mortuary was simply kept behind the front desk at the hospital. It was not secured in any sense, and could be obtained without asking:

**MR WILLIAMS: From where did you get the key to open the mortuary?---**

It's in a draw on the sister's desk.

**So that would be in your custody, would it?---**

I guess you could say it's in the custody of the sisters that are on duty.

**When a body is brought to the mortuary by ambulance officers, to gain access to the mortuary I take it that they have to go to the sister on duty to obtain the key to the mortuary?---**

Well, they should.

**Is there any other way they would obtain access to the key?---**

Well, if they just go to the drawer and take it - I mean if we didn't know.

**But that would normally happen?---**

Well, mostly they would see the sister.

....

**Certainly police wouldn't have access to those keys, other than with the consent of the nursing staff?---**

They shouldn't have, no.

**Do you know of any instances where they have had access without the consent of nursing staff?---**

No.

....

**THE COMMISSIONER: In your experience have the police ever requested you or other hospital staff in your presence for a key so they can have access to the mortuary?---**

They have asked to go in, yes.

**Mr Coe's question is have you any memory where they've ever been refused access?---**

No, I haven't. (T 3930-2)

Clearly, police at Wee Waa were aware of where the key to the mortuary was kept, having been given it by a sister in the past to get into the mortuary. If police wanted to gain access to the mortuary by themselves without anyone knowing, all they had to do was get the key from the sister's desk when nobody was observing them.

If Dr Mulvey did return to finish the post-mortem sometime on the Saturday afternoon before 3pm, having consulted Dr Brighton for advice by telex at the police station, he seems to have done this without telling either Sister Garden or Sister Cruckshank that he needed the key.

Dr Mulvey may not have wanted to publicise the fact that his post-mortem examination was

inconclusive. When Bruce Munro of the Moree Aboriginal Legal Service suggested to him on the Monday (15 June 1981) that a second doctor be allowed to inspect Eddie Murray's body on behalf of the family, Dr Mulvey rejected this. What is clear is that, if Dr Mulvey did return to the mortuary with a police officer on Saturday, or indeed if police officers went to the mortuary after 3.50 pm on the Friday afternoon, they could have gained access to the body without anyone noticing that they were there.

Thus the third aspect of the Commissioner's rejection of concerns of counsel for the family is unconvincing. It would certainly have been possible for police officers to get the key without asking and then put it back after they had been to the mortuary. The key to the mortuary was definitely not secured by the sisters against such a scenario.

### **Police involvement at the post-mortem**

The probability of some kind of police involvement in Eddie Murray's death and then in simulating the hanging marks at the mortuary is heightened by the unusual number of police present at the post-mortem. Both Parker and Page were present, as well as the police photographer Detective Sergeant Lamey. The fact that Dr Mulvey did not give Lamey any directions about what photographs to take is one indication, together with the P79A Form, that the autopsy was influenced by police. Dr Mulvey could not recall giving any directions to the police photographer regarding what photos to take before the post-mortem; apparently none were taken during it. (T 6854)

Dr Mulvey implies that Lamey determined what photographs were taken at the autopsy, particularly the absence of any close-up photograph of a bruise on Eddie Murray's forehead:

**THE COMMISSIONER: Your answer's based purely on the photo?---**

Not entirely, judge. Having been the only doctor at the autopsy, that was the only one that saw from the front as well as from the side, I think that would have been recorded and I think the photographer, if he'd thought it was a lump he would have photographed it too. (T 6852)

The proper procedure about what photographs to take is stated by Dr La Brooy:

**MR WILLIAMS: Doctor, at a post-mortem when photographs are taken, does the pathologist or the GMO carrying out the post-mortem direct the photographer as to photographs he requires be taken?---**

I can't speak for anybody else but I know that's exactly what I would do.

**I take it that as you spoke to GMOs around the country in your educating programme, that that's one of the things you'd mention to them?---**

Well, I may have mentioned it, I may not have mentioned it. But certainly I think the taking of photographs, if a GMO found there were injuries or marks of whatever kind, he would have directed the photographer, "Listen, I think these may or may not be of importance. We'd better take pictures of them."

**In other words, it is for the person carrying out the autopsy to direct the photographer as to what should be recorded by way of photograph?---**

I would agree with that, yes. (T 6297)

It still remains to be explained why Lamey did not take any photographs during the autopsy.

The Commissioner concluded, on the evidence of Sergeant Lamey and Parker, that it is "probable that Page was present for some time during the autopsy, although he probably arrived after it commenced." (Report, p 93) This tentative statement is the only observation made by the Commissioner concerning the remarkable presence of three police officers during the post-mortem. If Page was there before the post-mortem and only left the

mortuary for a brief period, why did he repeatedly deny being present at any time during the autopsy? (T 6626) However long he was there, his presence along with that of Parker was exceptional.

Dr La Brooy, the expert forensic pathologist who had visited rural GMOs prior to 1981 when he was investigating conditions for conducting autopsies in country mortuaries, says:

**MR COE: Doctor, in your experience as a pathologist, how many police would you expect to be there assisting you, helping you conduct your investigations in the post-mortem examination?---**

On what sort of post-mortems?

**Well, how many police would you expect there to be examining, for instance, a post-mortem of this particular calibre?---**

Let's assume if I was doing this post-mortem in Wee Waa--

**THE COMMISSIONER: Yes, assume that you were doing it?---**

There would necessarily be only one policeman there and that would be the scientific officer. He would be there to take the photographs and if the clothing was needed for forensic examination, it would be handed to him. If there was specimens to go for analysis or for a special examination, they would have been bottled and what have you and handed to the scientific officer. Of course, before the post-mortem there would be one identifying officer who would have to come and say, "This is the body of so and so." He'd know it was the body of so and so, I assume, because somebody else had told him because there had to be a chain of evidence for identification.

(T 6298)

No photographs were taken during the autopsy, so Detective Sergeant Lamey could have assisted with any turning of the body or removing of clothes required by Dr Mulvey. Yet Parker not only remained in the mortuary after identifying the body, he actually assisted in the removal of the clothes. This conduct is acknowledged by Dr Mulvey as unusual:

**THE COMMISSIONER: Can I ask you to assume there were three police officers?---**

Right.

**Would that be unusual?---**

Yes, sure - yes, judge.

**Including the photographer?---**

Yes, right.

**MR COOREY: It's unusual for police to remove clothing. That's unusual?---**

Yes. (T 6842)

### **Changing and/or destruction of clothing**

The appearance of brown trousers on Eddie Murray in one of the photographs showing him clothed at the post-mortem that was tendered to the Royal Commission creates an anomaly that the Commissioner failed to resolve. His finding "that there was no interference with clothing." (Report p 121) relied on clearly inconsistent evidence. Further, the Commissioner failed to draw logical inferences from his finding about the colour in this photograph which relate to important medical evidence of bruising to parts of Eddie Murray's body.

The Commissioner accepted a new print of the relevant photo (number 4A) provided by a professional photographer, Mr Leo Duyckers, in which the pants are shown as grey, as being more accurate than the original photograph given to the Royal Commission (Report p 105). Mr Duyckers described the pants as "slacks or something like that", not as jeans (T 6734). All the Commissioner said of this expert's evidence was that the prints given to the Royal Commission "were eventually proved to have a foreign colouration which caused some confusion." (Report, p 105)

A particularly relevant point which the Commissioner ignored is Mr Duyckers' evidence that, on the original photographic print which the forensic experts had been shown to assess possible bruising to Eddie Murray's left wrist, the marks "are much more obscure" than on the new print which he considered to be the most accurate photograph available from the post-mortem. (T 6743). Mr Duyckers' evidence about the reproduction of the photographs casts doubt on the Commissioner's refusal to accept that the marks to Eddie Murray's left wrist indicated bruising, which could have signified his resistance to force used by police. (Report, p 95).

The Commissioner focussed on the colour of Eddie Murray's pants rather than whether they were jeans or slacks. (Report, pp 105-106) As well as Parker, who describes the pants shown in the photograph of Eddie Murray clothed in the mortuary before the post-mortem as jeans (T 6561), the three civilian witnesses who saw Eddie Murray at close quarters either during his apprehension or in the police cell after his death recall his pants as being blue or grey jeans (Mr Lewis, T 6381; Dr Ralte, T 4307; Mr Collett, T 4462). Dr Ralte, who had changed his memory about the place of the noose when shown a photograph, is certain about jeans:

**MR EAMES: In your mind your picture of that scene, is it the case that you did not picture a pair of trousers like the trousers shown in that photograph?---**

That's right.

**Would you agree that those trousers don't look at all like jeans?---**

No, they don't look like jeans.

**When you said earlier grey jeans, you mean grey jeans rather than grey trousers?---**

Jeans not trousers. (T 4316)

If the original colour of Eddie Murray's pants in the photograph before the autopsy was grey not brown, there is still a significant discrepancy in the type of pants shown there and the type of pants seen in the cell, which the Commissioner did not attempt to explain.

The Commissioner also relied on the description in statements by Leila Murray of the pants Eddie Murray was wearing earlier that day as "brown", together with the same description given by her eldest daughter, Helen Murray, who viewed his body with her parents at the mortuary. The Commissioner ignored Leila Murray's statement that Eddie Murray did not wear trousers with a belt-holder (as shown in photographs 4 and 17 taken before the autopsy) due to "a hernia haemorrhage when he was a fortnight old". This meant that "he couldn't wear anything tight on his stomach as it hurt him." (T 2523-4) The Commissioner implied that if the pants in the photograph were really brown he could still "find that Eddie's clothing was not changed by police", without considering the type of pants shown. (Report, p 106)

When Leila Murray and her family saw the body before the post-mortem, the sister only pulled the sheet down to waist level. (T 2524.) The inconsistency about the colour of Eddie Murray's pants in the photograph and the evidence of the witnesses who saw him shortly before his apprehension and in the police cell is increased not resolved by Leila Murray's statement. The only way for the Commissioner to "find with confidence" that the clothing was not changed by police sometime before the autopsy is to discount Mrs Murray's evidence on this issue. The Commissioner's acceptance of this evidence (Report p 106) is illogical, since he inadequately focused only on the shirt Eddie Murray was wearing and dismissed the serious concerns which exist about discrepancies in the evidence regarding the

pants.

This ignores the real possibility that Eddie Murray's shirt may have been removed by police before he was assaulted, as suggested by the recollection of Mr Lewis that the body which he examined in the cell did not have a shirt. (T 6381.) Police clearly had the opportunity to replace the shirt on the body at the mortuary. The shirt shown in photographs 4 and 7A taken before the autopsy is very clean, showing no signs of the drinking session by the levee where Eddie Murray was for several hours on the morning of the day of his death. Further, in both these photographs there is a thread of several inches in length apparently from a grey blanket that seems to be just resting on the shirt near Eddie Murray's left shoulder. Mr Lewis cannot recall seeing this thread, or even the shirt on which it was placed. (T 6396)

Finally, when considering the destruction of Eddie Murray's clothes during and after the autopsy, the Commissioner ignored the evidence of expert forensic pathologists that the trousers shown in the photograph of Eddie Murray at the mortuary appear loose and could easily have been removed without cutting. (Dr Brighton, T 3684-5; Dr Oettle, T 6267-8; and Dr La Brooy, T 6289). Even Dr Mulvey says the pants shown in the photograph could have been removed by the police pulling them off instead of by lacerating and destroying them:

**MR EAMES: Just whilst we've got that photograph there, you can see the trousers and T-shirt that Eddie was wearing. Do you recall how the clothing was in fact removed?---**

Yes, the standard procedure - I don't recall doing it on Eddie but the standard procedure is to cut the clothes off because of rigor mortis which has set in causes the muscles to go into fixed contraction and there's no way you can peel the clothes off.

**Would you agree, doctor, just by looking at the photograph, it perhaps gives a**

**false impression but it does give the impression that the trousers at least are relatively loose without having to be cut?---**

Yes.

**Are there circumstances in which the trousers are simply removed rather than cut away?---**

Yes, if you've got the strength to pull them off. It is done so in a number of autopsies that I've - - -

**There were in fact several police officers in attendance who might have assisted in that regard, weren't there?---**

Yes, there were - well, I can't recall but - - -

**That would be the usual practice, would it not?---**

The usual practice. (T 3528-9)

Another problem with the pants was noted by the photographer Lamey who says this:

**MR COOREY: Would you have a look also at 25 - photograph 25?---**

Yes.

**Do you agree that the trousers would appear to be rolled up at the bottom?---**

They appear to have a cuff on them, yes.

**Yes, but appear not to have a manufacturer's cuff but it appears to be a rolled up cuff, doesn't it?---**

That's right.

**Is that right?---**

Yes.

**That, would you agree, would give an indication that the trousers appear to be too long for him because in that photograph the trousers come down to the top of the shoe, don't they?---**

The trousers are too long for him?

**THE COMMISSIONER: There seems to be a big cuff and if we look at the right leg, it seems to come down onto the forefoot?---**

Without alteration they do appear to be too long. (T 6318)

If the colour of the trousers does not prove they were changed, their length suggests this.

Dr La Brooy, senior forensic pathologist in NSW in 1981, pointed out in his report to the Royal Commission, commenting on the inadequacy of Dr Mulvey's autopsy, that:

"Removal of clothing from the body intact is a relatively simple procedure and can be done by one person. Rigor mortis, when present, can readily be broken to enable shirts, singlets, T-shirts, dresses, petticoats, etcetera, to be removed over the head. Trousers, underpants and panties are most easily removed down the legs even if stiff." (T 6249)

Dr La Brooy said the standard procedure in 1981 was for both a careful examination to look for any "vital evidence on the clothing", and to ask: "do the relatives want it?" He said only "if the relatives don't want it and the forensic people don't want it, then we can just cut it up and throw it away in the same way we handled soiled clothing." (T 6259) He said clothing should not be cut without the family's permission:

**MR COOREY: Would you disagree that it is standard procedure to cut the clothing?---**

It shouldn't be standard procedure.

**It should not be standard procedure?---**

No, unless the clothing is soiled and the relatives say they don't want it. (T 6289)

The Commissioner noted that Eddie Murray's father, Arthur Murray, specifically asked for his son's clothing straight after being shown the body by Sister Garden immediately before the autopsy. The Commissioner suggested "she advised him to talk to the police about this." (Report p 107) In fact, Sister Garden in her statement to the Royal Commission says:

"After I had closed the refrigerator and locked the mortuary, Arthur told me that they wanted their son's clothes. I told him we would have to talk to the police about that, but some time after that day I recall getting a telephone call from the police asking about the clothes." (T 3916, emphasis added)

Neither Sister Cruckshank nor Sister Garden found the clothes during their clean up. Sister Cruckshank looked in the disposal bags on the Saturday afternoon, but she can only speculate about the whereabouts of Eddie's clothes and shoes after the autopsy:

**MR COOREY: Sister, when you cleaned up - this is the mortuary, after the post-mortem - did you see any shredded clothing or not?---**

No, nothing I could identify.

**If the clothing had been shredded it would have been inside a plastic bag in the corner. Would that be right?---**

Yes, there were two holding bags there. We called them wet bags; they were lined with plastic. Just anything and everything went in there: old gloves, masks towels that they'd used, all sorts of things.

**THE COMMISSIONER: Did you see that in the morning, that wet bag?---**

After the post-mortem, yes, but I could not identify anything in it.

**Of course not. What did you do with it, if anything?---**

Well, I fancy there was an old towel and some other rubbish. We take them out - I tied them up securely and took them round and put them near the disposal unit. When Mr Pollard came on Monday, he would fire it. I never learnt how to fire that unit.

**No, I'm not suggesting you should. But you have no memory of seeing clothing in the mortuary when you were cleaning up - either cut clothing or whole clothing?---**

No.

**No memory of seeing any footwear?---**

No. I think if they were there they were probably in the bags under all the other things. I did not look, I did not go through it. (T 6886-7)

Bruce Munro, of the Moree Aboriginal Legal Service, asked for Eddie's clothing on behalf of the Murray family when he visited the mortuary a few hours after the autopsy. Already, the clothing had apparently disappeared from the mortuary:

**MR BELLEAR: And I think further you inquired as to the clothing that Eddie had on that day or the day before?---**

We did, yes.

**And the answer you got to that, was that satisfactory?---**

No, because no one could tell us what happened to the clothing. The sisters at the hospital said if they were there, they would have been placed in the linen basket.

**In fact - - ?---**

There was nothing in it. (T 3427)

It would be strange for the clothes to have got to the bottom of the linen bags if they had been put there within a few hours of the autopsy. Since the bags would only have been for refuse from the mortuary, not from the hospital, there is no reason to believe that material not from the post-mortem would have been placed on top of the clothes. It seems more likely that the clothes may have been taken away and destroyed separately. However, the disappearance of Eddie Murray's clothes from the mortuary within a few hours of the autopsy occurring cannot be excused as normal practice. Rather, it needs to be cogently explained.

The responsibility for determining whether the clothes were needed by the relatives lay with Dr Mulvey. He could have asked Sister Garden, who knew the clothes were needed before the post-mortem commenced. Dr Mulvey's responsibility in this respect is not clarified by the statement by Parker in the P79A Form regarding "how property and clothing disposed of

and on whose authority":

"Lacerated & destroyed to allow reasonable access to conduct full post mortum." (sic)

Parker says that most of the P79A Form was completed "in advance" on 12 June 1981, though in cross-examination he says that the last paragraph about body organs being taken for laboratory testing was added after the autopsy on 13 June. (T 3218-9, 3592-3) If the reference to destruction of the clothing (which was before the last paragraph) was also added after the autopsy, it does not answer the question posed on the form of who gave the authority to destroy the clothes.

No clothes were found in the linen bags by the sisters cleaning up after the post-mortem. Even if Eddie Murray's trousers were not changed by the police, destruction of his clothing soon after the autopsy obstructed a thorough examination of the circumstances of his death.

### **Conclusion: relative probabilities**

The Commissioner did not make a specific finding that Eddie Murray's tolerance to alcohol was chronic enough for him to have been able to construct the noose and hang himself with an intoxication level of 0.3%. This finding is clearly essential for the scenario of self-inflicted hanging, yet the Commissioner found no positive, relevant evidence to establish this crucial point. He relied instead on an unwarranted extrapolation from studies of chronic alcoholics, and generally on an assumption that any alternative scenario of police involvement in Eddie Murray's death was simply unreasonable. Yet the possibility of police involvement deserves scrutiny precisely because the improbability of self-inflicted hanging

in this case is very high.

A cogent reason for doubting the scenario of self-inflicted hanging is the fact that the two medical witnesses who saw Eddie Murray's body soon after death both did not recall seeing the neck marks which Page claims to have seen in the cell. The ambulanceman Mr Lewis, who transported the body to the mortuary in daylight, would have had a better opportunity to observe any neck marks than Page had in the cell, yet he did not record them together with his record of a blueing of the lips. Both Mr Lewis and Dr Ralte examined Eddie Murray to check for his pulse. It would be remarkably strange for both of them to have missed the neck marks that Page claimed to have seen in the cell, particularly since the Commissioner found, based on Mr Cronin's evidence, that Page did not remain in the cell to attempt resuscitation.

If the neck marks were not present when Eddie Murray's body was taken from the cell to the mortuary, the second scenario of a forced or simulated hanging in the cell could not have occurred. A particular problem with the scenario of forced hanging is the lack of any apparent signs of resistance, though this lack may reflect the inadequacy of the autopsy. Eddie Murray strenuously resisted being ejected from the hotel, and he had a history of antagonism with police, so it is highly probable that he would have resisted a forced hanging or any use of force by the police who detained him. Given his high level of intoxication, it is possible that any injuries which he may have sustained during an altercation with police could have rendered him physically incapable of resistance.

The angry exchange overheard by Mr McKnight between Parker and Eddie Murray before he was taken to the cell led the Commissioner to be "particularly concerned as to what took

place when Eddie was placed in the cell.” (Report, p 22) The Commissioner assuaged his concern “that the officers have not been frank about what took place at this time” by referring to the lack of unambiguous medical evidence “to justify a finding of a physical assault”. (Report, p 131) Yet this begs the question of the quality of the medical evidence. There is evidence that a bruise to Eddie Murray’s forehead was observed by Sister Garden before the autopsy, as well as some oblique evidence from very selective photographs which suggests other possible bruising to his body. There is also the evidence of the expert pathologists that the neck marks could have been made after death, and the fact that Dr Ralte and Mr Lewis, while checking for a pulse in the cell, did not see marks on Eddie Murray’s neck.

Other significant evidence points toward the scenario of simulated hanging at the mortuary as at least as probable as the scenario of self-inflicted hanging. The presence of police outside the mortuary soon after Eddie Murray’s body was left there by Mr Lewis is very worrying, particularly because the police deny going there, although Page and Parker are recorded in the police reporting sheet as being on patrol at the time when two police were seen waiting outside the mortuary by Sister Cruickshank. Much more worrying is the logical deduction from the evidence of Mr Lewis and Sister Cruickshank that Eddie Murray’s body was moved within the mortuary from the table on which Mr Lewis left it at 3.47 pm to the refrigerator where Sister Cruickshank and Sister Lovey saw it an hour and a half or so later. Indeed, the Commissioner observed:

“Well, someone put the body in the refrigerator. What did the evidence reveal on that?” (T 7209)

There is no positive evidence about who moved the body within the mortuary, but the only people who knew it was there, apart from these hospital sisters and the ambulance man, were Dr Ralte, who was busy at his surgery, and the local police under whose authorisation the body had been transferred to the mortuary before the police photographer arrived.

The suspicion of police involvement in simulating a hanging at the mortuary is heightened by the number of police and the unusually active role of Parker in particular at the post-mortem. The police influence on Dr Mulvey's autopsy findings was not limited to the P79A Form. Two particular matters of concern are: (1) the absence of any photographs to show what sort of examination Dr Mulvey made of Eddie Murray's body; and (2) the destruction of Eddie Murray's clothing which the family had requested before the autopsy. The photographs taken showing the neck marks support the presumption of suicide with which Dr Mulvey began the autopsy, but there is no complete record of the condition of all parts of Eddie Murray's body. While the medical evidence is incomplete, if police were involved in a fatal altercation with Eddie Murray they had the opportunity to create the neck marks in order to simulate death by hanging, and to direct Dr Mulvey along a particular path as to the cause of death.

The extent of any injuries to Eddie Murray at the police station could have been determined if the autopsy had been full and complete. This would have required significantly longer than the time allocated by Dr Mulvey, part of which was taken up by Lamey taking selected photographs and Parker removing the clothes. Because Dr Mulvey did not notice a surgical scar or the bruise to the forehead seen by Sister Garden, there is no knowing what other bruises on Eddie Murray's dark body may have gone unrecorded, particularly given the paucity of the photographs taken. The professional opinion of Dr La Brooy that Dr Mulvey

would not have known what to look for in this case, casts doubt on the validity of the entire autopsy. Since Dr Mulvey presumed there were no suspicious circumstances, it is hardly surprising that he found none, especially when he was in a hurry and did not tell the police photographer what range of pictures to take of the body.

## Chapter 12

### POLICE CONDUCT WHEN APPREHENDING EDDIE MURRAY

In assessing the apprehension of Eddie Murray by the police whose conduct is in question, the Commissioner considered four issues:

- (1) the need to critically check police evidence against the evidence of independent witnesses, particularly in view of the unreliable nature of much evidence given by all four police on duty at Wee Waa on 12 June, 1981;
- (2) the disputed identity of the officers who detained Eddie Murray;
- (3) Eddie Murray's condition when apprehended by police; and
- (4) the manner in which Eddie Murray was placed in the police van.

(Report, pp 19-31)

The Commissioner did not ask why the police who apprehended Eddie Murray gave no consideration to taking him a short way home instead of detaining him in a police cell as an intoxicated person. This is crucial to understanding police conduct in this matter, since it suggests the apprehending police saw Eddie Murray as a prisoner subject to their authority.

The Commissioner's primary conclusion was "that the apprehension was not accompanied by violence or indeed by a spirited struggle." (Report, p 31) In terms of "an assessment of the probabilities relating to the sequence of events when viewed in their totality", which the Commissioner regarded as the basis for all of his findings, this particular finding has vital significance, especially since most of the "objective medical and pathological evidence" on

which the Commissioner relied was dubious. (Report, p 20) The Commissioner's finding about the apprehension is doubtful when tested against the evidence of the independent witnesses closest to the scene.

### **Unreliability of police evidence**

The Commissioner claimed that his conclusion that Eddie Murray's death did not result from an assault by police officers could be made without having "to rely on the words of the police witnesses." (Report, p 19) The Commissioner seems to have emphasised this point after having in a number of instances been concerned about the frankness and reliability of some of the police evidence. The senior officer, Sergeant Moseley, gave little information beyond that in the occurrence pad entry made on 12 June, 1981. This the Commissioner found to be inaccurate "in some respects". (Report, p 21) Sergeant Page "denied involvement in a number of matters, whereas the evidence has led me to the opposite conclusion, e.g. typing of Occurrence Book, attendance at the post mortem. His denials cause me concern and, making allowance for the passing of time, I have doubts as to his reliability. I found his apparent detachment from the events of the day unusual." (Report, p 21.) The Commissioner doubted the "accuracy or frankness" of Senior Constable Parker, particularly about "what took place when Eddie was placed in the cell". He also found Constable Fitzgerald's apparent ignorance of significant events "before and after Eddie's death" to be insincere. (Report, pp 21-22) This lack of reliability of police witnesses makes a critical assessment of other evidence crucial.

Paradoxically, despite his lack of confidence in the police witnesses, the Commissioner did rely on their evidence to a significant extent about a number of very important matters. His

finding that the marks on Eddie Murray's neck existed when he was in the police cell, and examined by Dr Ralte and Mr Lewis who did not notice any marks, relied entirely on the evidence of Page. (Report p 91) The Commissioner accepted Page's evidence about this even while rejecting Page's claim that he never left the cell prior to the arrival of Dr Ralte and Mr Lewis. (Report pp 78-79) The Commissioner thus relied on the alleged observations of a police witness who was with the body for only a short time, disregarding the fact that the ambulanceman, Mr Lewis, who saw the body for longer than Page while transporting it to the mortuary, made no record of any neck marks on the case sheet. This example, in our view, shows how the Commissioner failed to adequately check police evidence, as he suggested, against all other "evidence from individuals and records which sheds light independently on the events now spoken about by police witnesses." (Report, p 19)

The Commissioner did not accept Page's evidence about another important matter relating to who was in the police station immediately before Page and Moseley say they discovered Eddie Murray dead in the cell. Page consistently affirmed that when he arrived for duty on 12 June 1981 at 3 pm Fitzgerald was already there with Moseley and Parker:

**MR EAMES: Do you recall when you came on duty that day whether any other policemen were apparently there at the time of your arrival?---**

Yes.

**Who was there?---**

Sergeant Moseley.

**Sorry?---**

Senior Constable Parker and Constable Fitzgerald.

**What time did you get there?---**

It would be a matter of 2 minutes, 1 minute to 3 or 3 o'clock - very close to 3.00.

....

**MR COOREY: Sergeant, you gave evidence that you arrived on duty, I think you said, at 1 minute or 2 minutes to 3 and that when you arrived Constable Fitzgerald was at the police station?---**

Sir.

**You also gave the same evidence on three occasions in the Coroners Court, that Constable Fitzgerald was there when you arrived, if you accept from me for the moment that that's the fact?---**

Yes, sir.

**All right, and before you gave evidence today no doubt you refreshed your memory from your statement and you've looked at your evidence in the Coroners Court?---**

I have.

**Now, sergeant, you are aware that your evidence on that point is in direct contradiction by Constable Fitzgerald and his father-in-law, aren't you?---**

Yes, sir.

**You are aware that his father-in-law gave evidence in the Coroners Court that Constable Fitzgerald was still at his house at 10 past 3. Are you aware of that?**

Not 10 past 3, I don't know.

**I see, all right. You were present at the Coroners Court, weren't you?---**

No, sir.

**I see, you gave evidence, then - - -?**

I was, as I say, the first cab off the rank and I was excused.

**You were the first witness?---**

Witness and then excused.

**Right. Did you hear that the constable and his father-in-law gave evidence from the newspaper accounts or were you told by someone?---**

I just heard - I don't know.

**You heard?---**

Yes.

**But there was no doubt in your mind that there was a direct contradiction, wasn't there?---**

That's correct.

**Do you say you could have confused Constable Fitzgerald with someone else when you say he was there?---**

To my recollection he was there but- - -

**Otherwise you wouldn't have said it?---**

That's correct. (T 3061, 3081-2)

The Commissioner dismissed this evidence from Page as "mistaken". (Report, p 44) He does not seem to have considered why Page would be mistaken about such a straightforward matter, and in effect discounted the Coroner's opinion that Fitzgerald was the unreliable witness about this matter. (Report, p 44)

The evening after the day that Fitzgerald's original evidence to the coronial inquest (about being late to work on 12 June 1981 because he had picked his wife up from the hospital) was proven incorrect, Parker rang Fitzgerald's father-in-law to get him to make a statement, in which Fitzgerald is said to have been late to work for another reason - that he had taken his ill wife to her parents' house then waited there until after 3 pm. Mr John Peter Humphries, the father-in-law, had read of Fitzgerald's problems at the inquest:

**MR EAMES: Can I ask you why you didn't take any steps yourself to contact anyone about the recollection that you had of the events of the day?---**

Well, I would presume that Rodney Fitzgerald would've known where he was on that day; that he would've mentioned it to someone and they would've contacted me.

**When you were contacted by Mr Parker on the night - - ?---**

Constable Parker?

**Sorry, Constable Parker, on the night, did he indicate to you why it was that he'd contacted you?---**

He said he had advice that I knew of - or would I go forward because I would've known the whereabouts of Rodney Fitzgerald on that day.

**You said that your assumption was that Rodney knew where you were also and were you assuming that he would contact you or that he would give the information to someone else?---**

I would presume so. He knew he was down there.

**Did you not consider taking the step yourself, striking while the iron was hot as it were, and contacting the local police station to offer to give evidence rather than wait for them?---**

No, I didn't. (T 4120-1)

The evidence of Mr Humphries alleging Fitzgerald did not leave for the police station on 12 June 1981 until 3.10pm was not given to the inquest spontaneously; Humphries was asked to make a statement by Parker. (Inquest, pp 303, 309). This evidence must be treated carefully as its corroborative value may be undermined by the relationship between Humphries and Fitzgerald and the influence of another police officer directly involved in the matter. This is not to suggest that the evidence of Mr Humphries is deliberately untrue but simply to note that its reliability can be doubted because of intentional or unintentional influences on him which could affect accurate recall.

Page appears to have had no reason not to be honest when questioned about Fitzgerald's presence at the police station at 3.00pm, but Fitzgerald, on one view, may have had a reason not to be seen at the police station till 3.10pm, the time in the police version of events when Eddie Murray's body was taken to the mortuary (although this on the most likely analysis of the evidence occurred at 3.45pm, according to the ambulanceman Mr Lewis). Fitzgerald's father-in-law knew the significance of 3.10pm for the police when he made his statement at the Inquest, but he could not have known of the precise times recorded by Mr Lewis.

Important discrepancies exist between the evidence of Fitzgerald, his wife and his father-in-law about what occurred before Fitzgerald allegedly went with his wife to her parents' house after lunch before going to work that day. At the inquest, Mr Humphries was asked what was discussed in his house from about 2.20pm to 3.10pm that day:

**Q. What was then said and who said it?---**

**A.** I asked her how she was feeling. She said she was feeling a bit poor at that stage, she sat up for a while. I said, if you don't get any better you better go back to the doctor, and Rodney said, he had had her at the doctor that morning. He said he took her to the doctor and the doctor didn't know if there was anything he could do and to go back home and rest.

**Q. He said to you that he had taken his wife to the doctor that morning?---**

**A.** Yes that's right.

**Q. They had got the doctor's opinion?---**

**A.** That's right.

**Q. Taken his wife back home?---**

**A.** That's right. (Inquest, p 308).

At the inquest, after being shown the hospital records, Fitzgerald claimed he had taken his wife to her parents' house before going to work on 12 June, 1981, but he made no mention of taking her to see a doctor that day. (Inquest, pp 196, 202) Fitzgerald informed the Royal Commission that he does not recall taking his wife to see the doctor that morning:

**MR EAMES: Do you recall whether on 12 June, you had some contact with Dr Mulvey?---**

Prior to the 12th?

**No, on the 12th itself?---**

No. I may have contacted him by phone but I'm not sure.

**Well, do you recall in particular visiting Dr Mulvey at all on that day, 12 June?**

No.

...

**MR COOREY: On 12 June at your place, did your wife faint?---**

In the morning?

**At any time on 12 June while you were there?---**

I know she'd been crook.

**Did your wife faint?---**

I didn't see her faint. She was laying down, going to the toilet, and just generally laying around the house.

**If she had fainted, you would've got a doctor, wouldn't you?---**

Yes.

...

**MR COOREY: Did you consider whether it might be helpful to your wife to finish work early that day?---**

No. She doesn't interfere with my work. I please myself whether I - - -

**THE COMMISSIONER: Do I take it by that you weren't worried about your wife's health that day?---**

No. She'd just come out of hospital, she'd had an operation, but considering I suppose what she went through, she was progressing okay as far as I'm aware. I'm not a doctor, I'm no expert.

**MR COOREY: That particular day what made you decide to take her over to the in-laws, on 12 June?---**

It was her idea.

**Did you ask why she wanted to go over there?---**

No. She's very close to her family. (T 3971, 4041-2, 4048)

Other discrepancies exist in the evidence of Fitzgerald, his wife and her parents about when the parents were phoned by Fitzgerald that day; if he watched television before allegedly leaving the house about 3.10pm; and whether his wife was left alone in the house by her father that afternoon. (T 3971, 4045-6, 4097, 4107, 4128, 4129, 4146-7, 4153, 4155, 4156, 4174, 4195, 4198.) Neither Fitzgerald nor his father-in-law could recall to the Royal

Commission what occurred when they were allegedly together for 50 minutes on 12 June, 1981. (T 3971-2, 4129) This, with the contradictory evidence about whether Fitzgerald took his wife to the doctor on 12 June, 1981, casts a large doubt over the Commissioner's finding that Fitzgerald "was in fact late for duty that day and arrived at the police station at approximately 3.10 to 3.15pm." (Report, p 44)

Inconsistencies in the evidence of witnesses affirming Fitzgerald's absence from the police station before 3.10pm are compounded by odd evidence from Fitzgerald's in-laws that the only reason they remembered specific times on that day (and not any other days from the same period) was their belief at the time that "Rodney (Fitzgerald) won't be involved in any paperwork on this show." (T 4169, 4176) Fitzgerald was involved in processing different paperwork concerning the registration of Mr Cronin's vehicle that Parker had begun by about 3 pm. Fitzgerald recalled completing it quickly whereas Cronin recalled having to return to the police station later that afternoon to get it finished. (T 3020, 3983-4) Mr and Mrs Humphries simply could not have known that afternoon the precise time of Eddie Murray's death, and hence whether Fitzgerald would have been instructed by his superiors to do a statement or paperwork concerning it. When their evidence is critically examined, it clearly fits within the Commissioner's warning about evidence in which "processes of reconstruction as opposed to memory were at work." (Report, p 21)

Whereas Page had no ulterior motive for saying that Fitzgerald was already at the police station at 3pm, there was a possible motive for Fitzgerald's in-laws: to assist him (once his hospital alibi had been proven false) with apparently corroborating evidence. The role of Parker in organising for Mr Humphries to give his evidence at the Inquest increases the risk

that the evidence of Fitzgerald's in-laws was reconstructed. Mr Humphries acknowledges that he had been worried for his daughter when Fitzgerald had evidently given false evidence to the Inquest about picking his wife up from hospital on 12 June 1981. (T 4160) While Mr Humphries rejects the suggestion that his motive for giving evidence was only to support his son-in-law, the activation of his "memory bank" only when Fitzgerald appeared to be in difficulties, combined with important inconsistencies between his and Fitzgerald's evidence, suggests that his evidence may not be reliable. (T 4162, 4169, 4197.)

The Commissioner said that Fitzgerald's late arrival was supported by evidence of Moseley and Cronin as well as Parker. (Report, p 43) Yet Cronin, the civilian witness, said only that he did not see Fitzgerald inside the service area of the police station until he had seen Moseley and Page return from the cell area. (T 3018, 3023, 3979) Moseley, at the Inquest, said that he had no independent recollection of Fitzgerald's time of arrival; he relied instead on what Fitzgerald told the Coroner. (Inquest, p 238) Parker said Fitzgerald "wasn't there" in the service area of the police station when Page arrived at 3pm, but he did not see Fitzgerald actually arrive. (Inquest, pp 192, 214) Neither Moseley nor Parker provided clear evidence to show that Fitzgerald was not within the police station (including the cells) at the time when Page arrived.

### **Identity of the apprehending police**

Whether Fitzgerald was already at the police station before Page arrived is related to the issue of the identity of the apprehending police, although these are separate matters. If Fitzgerald was, as the Commissioner found, not one of the apprehending police officers, he could still have been present at the police station at the time of Eddie Murray's death, having

arrived at or before 3pm. Moseley says that relieving officers "might come on at half past 2" but have their time of arrival recorded as 3 pm. (T 2843) Under cross-examination Moseley says about Fitzgerald's appearance that day: "I don't know how late he was to be honest." (T 2844)

Evidence concerning the identity of the apprehending police comes from several observers of the scene outside the hotel, as well as from Moseley, Parker, Fitzgerald and particularly the police station cleaner Mr McKnight. He heard Parker talking angrily to Eddie Murray after arriving back at the police station, but he did not see who else had returned to the police station with Parker sometime before 2.30pm. Was this Moseley, or Fitzgerald, or both?

Moseley says that he received the phone message from the Imperial Hotel calling for the police to attend, but he gives inconsistent evidence about what was said. His first evidence is that Eddie Murray was named in the phone message, yet in cross-examination Moseley says the trouble-maker had not then been identified:

**MR EAMES: On that day do you recall receiving a phone call seeking police assistance?---**

Yes.

**Could you identify the person by voice that you were talking to on the phone?---**

No.

**You've said in your statement, "A female person rang to say that Eddie Murray was drunk and causing trouble at the Imperial Hotel"?---**

Yes.

**Is that how you recall it?---**

That's how I recall it, yes.

....

**MR COOREY: See, what I'm suggesting to you is this that you were looking out for trouble, you weren't sure what the trouble was going to be, and the trouble-maker turned out to be Eddie Murray. Is that true?---**

Yes. (T 2811, 2832)

Parker states that Eddie Murray had been clearly identified to Moseley on the phone:

**MR EAMES: Now, when Mr Moseley approached you and told you about the Imperial Hotel, what did he say to you?---**

He just said that he'd received a call from the Imperial; that Eddie Murray was drunk and causing trouble.

....

**MR COOREY: It wouldn't be the fact that you went along to check the disturbance and that the somebody causing trouble just turned out to be Eddie Murray?---**

No. The message that was given to me from Sergeant Moseley, that it was - that he'd received the call; it was Eddie Murray.

**Yes?---**

He was drunk there and causing trouble.

**I see. So you went there to get Eddie Murray?---**

Correct, yes. (T 3184, 3266-7)

The police evidence about Moseley receiving the phone call is contradicted by the evidence of the cleaner Mr McKnight, who is significantly specific about seeing Moseley returning to the police station and being told of the phone call by Parker:

**MR COOREY: Mr McKnight, you understand that I'm putting it to you as a very important piece of evidence that you swear that you saw Constable Parker make that statement to Sergeant Moseley. Do you understand what I'm saying to you?---**

Yes, I do, yes.

**And you adhere to your statement, do you?---**

Yes.

**Because you said you have a picture, a memory of that happening?---**

That's right, yes.

**And until I put it to you that Sergeant Moseley and Constable Parker swore that in fact it was Sergeant Moseley who made the report to Constable Parker, you'd never heard that before?---**

No. All I can say is the only thing I heard is when I came through the back door, Constable Parker had the truck keys in his hand and said, "Boss, close the door, we've got a job to do."

**That's right?---**

That's right.

**And you've got a picture of that, haven't you?---**

I've got a picture of that. I've still got a picture in my mind of it, yes.

**And you heard Constable Parker, according to your statement, tell the boss, "There's some Aborigines playing up in front of the Imperial Hotel," didn't you?---**

Yes.

**That's right?---**

That's right.

**So there's no doubt in your mind about your evidence, is there, about that?---**

No. (T 5912)

. . . .

**MR COOREY: Well, you see, what I'm suggesting is this: that you've lied in your evidence about Moseley and Parker at the beginning, at 2 o'clock. Do you understand that?---**

I don't know how - I was prepared to sit in this court - - -

**THE COMMISSIONER: No, that's all right---**

- - - for the next 2 months - - -

**MR COOREY: Yes?---**

- - - to say that I came in that back door at approximately 2 o'clock, and that Constable Parker was standing at the end of the counter with the keys in his hands,

when Sergeant Moseley walked in the front door and [Parker] said, "Boss, close the door, we've got a job to do at the Imperial Hotel. There are some Aborigines playing up there." (T 5952-3)

While Mr McKnight later says he "could have been" mistaken in remembering that it was Parker who informed Moseley of the call not the other way round, he points this out:

**MR WILLIAMS: And is it possible that you could have it back to front, that it was Moseley that told Parker about the trouble down at the Pub?---**

It seems very funny that Constable Parker had the keys.

**Yes, but irrespective - - -?**

How would Constable Parker know if Sergeant Moseley received the phone call - how would he know there was trouble at the Imperial? (T 5958)

According to McKnight, Parker was already preparing to leave the police station in the bull-wagon at the time of the conversation with Moseley about a call to go to the hotel. If Moseley did receive the call and told Parker about it, the only explanation consistent with McKnight's picture of the exchange is that Parker was about to leave the station for another reason as Moseley returned from lunch between 1.30 and 2 pm. Moseley told the Royal Commission that Parker may have received the phone call. (T 6431)

Assuming that McKnight witnessed the exchange between Parker and Moseley when the latter returned from lunch, an issue arises as to whether the police left for the hotel at 1.50pm or later. McKnight says he usually returned from lunch "around about 2pm". He suggests he would not have returned earlier even if he had left for lunch earlier:

**MR EAMES: You might go a bit before. If you went a bit before what time would you come back to work?---**

Around about 2 o'clock.

**On the day of Eddie Murray's death do you recall what time you left for lunch?**

No, I do not.

**You've said in your statement, "I can remember I came back from lunch. This would have been around about 2pm"?---**

About 2 o'clock, yes.

**Are you able to recall whether on this day you left early or at 1 o'clock?---**

I don't know. I could've went earlier and come back at 2 o'clock. I'm not sure.

**You simply don't know?---**

No, I don't know. Time didn't worry me, and it still doesn't. Time, it doesn't worry me. Nobody checked my times. (T 4535)

Mr Cronin, the civilian who attended the police station that afternoon to register his motor vehicle, was also not concerned about precise times except for about 2pm:

**MR COOREY: Is it fair to put this to you: that the only specific time you are able to say is that you expected the lunch hour for the police station to be 1.00 to 2.00?---**

Yes.

**So you got there at 2 o'clock or shortly after the first time?---**

Right, yes.

...

**At 2 o'clock or shortly after you could see no police officer in the office area?---**

I couldn't see any police officer - - -

**In the office?---**

---in my vision. (T 3027-8)

Cronin says that the front doors of the police station were locked, which is consistent with McKnight's evidence of what Parker said to Moseley around about 2pm. At the inquest, Moseley estimated the time of the call to go to the hotel and the return time:

**Q. Do you remember what time the call was received to make the complaint?---**

A. About five to two if I remember rightly.

**Q. And you reacted fairly quickly?---**

A. Yes.

**Q. Straight away?---**

A. Yes.

**Q. So you were up at the Imperial at 2?---**

A. Less than that I would imagine.

**Q. A bit before two?---**

A. Yes.

**Q. Murray is in the back of the van before 2 o'clock?---**

A. Yes.

**Q. You are back at the station by three, five past two?---**

A. Somethink (sic) like that time. (Inquest, p 235)

This evidence is consistent with Cronin attending the police station to find it closed at 2pm, and with McKnight's evidence of seeing Parker with the keys ready to drive the bull-wagon when Moseley came in the front door shortly before 2pm. The question remains: What did Parker need to do after he received the call to go to the hotel and before Moseley came back through the front door of the police station? Was he just waiting for Moseley, or did he contact Fitzgerald? If Parker had rung Fitzgerald, was he picked up or did he join the others?

### **Perspectives of the manner of apprehension**

There are two principal civilian witnesses of the apprehension of Eddie Murray who state that Moseley and Parker were the police officers who got out of the bull-wagon near the hotel. The first of these witnesses, Mr Samuel Thomas Bush, was not close enough to the scene to see whether another officer, Fitzgerald, was also present, sitting in the police

vehicle. At the inquest Mr Bush gave evidence that he was first contacted to make a statement about his observations by Moseley on the afternoon of 10 November, 1981, after Fitzgerald's original evidence of picking his wife up from the hospital on 12 June 1981 had been proven false. Mr Bush said he saw two police other than Fitzgerald:

**Q. Did you see Con. Fitzgerald at the truck where this man was taken into custody?---**

A. There was only two policemen at the truck that I could see that got out of that vehicle and that was Sgt Moseley and Con. Parker.

**Q. Apart from the person that they took into custody and the two police officers did you see any other person in the near vicinity at all?---**

A. There could have been, there was people standing around. There was people standing over near the post office corner, there was people standing near the hotel but I can't remember who they might have been. (Inquest, p 288)

Clearly, Mr Bush was far from the closest witness of the apprehension. At the inquest he said he was standing "approximately three chains" (i.e. 60 metres) from where the police wagon was. (Inquest, p 296) He described the two police as in uniform wearing caps, but could not give any description of what Eddie Murray was wearing, and also acknowledged that he could not identify particular police at any other similar scene in recent months. (Inquest, pp 289, 293 298) He said he had talked with Moseley shortly after 12 June, 1981, expressing surprise that force was not used in the apprehension.

**Q. I think you were talking shortly after the 12th June about these events with Sgt Moseley?---**

A. Possibly so, yes.

**Q. When was that?---**

A. I couldn't tell you, I know I did mention it to Sgt Moseley though I commended him on the way he handled the whole show and never laid a hand on that lad

whatsoever, and I said I was surprised.

**Q. Who said he never laid a hand on him?---**

A. I never seen a hand laid on him.

...

**Q. So you felt specially the need to say Sgt Moseley some two or three days later, well done?---**

A. Well it was a job well done as far as I was concerned, because that lad walked out of the hotel and straight to the constables on duty and there was no hand laid on him whatsoever by the police to the lad, I will swear on a stack of bibles.

(Inquest, pp 296-7)

Mr Bush told the Royal Commission that this reference to the apprehending police as "constables" had been merely "a figure of speech", not an accurate admission about his observation. (T 2917) He says he saw Parker more clearly than he saw Moseley:

**MR EAMES: Now, from where you were standing, you said you could see the side and the back of the van; you saw Constable Parker get out, and could you also at that point see the man who'd backed out from the hotel?---**

Yes, yes.

**Now, did you see Sergeant Moseley at any time from when he might have got out of the van?---**

Not until he come to the back of the vehicle.

**Did the young man approach the vehicle, or did the police officers approach him?---**

No, the police never left the back of the wagon at all. The young fellow looked around and he seen the police there and he walked straight across - off the footpath and to the back of the wagon.

**Did they appear to be talking?---**

They appeared to speak a few words. It wouldn't be for long. It wasn't for long though.

**Yes. Now, when the man came to the back of the van could you tell how he was**

**walking? Did you notice anything about his walk?---**

No, I never noticed that much about his walk.

**In particular, did he appear to be staggering in any way?---**

No, he didn't seem to be staggering that much, no. Not to my recollection.

...

**MR COOREY: And from where you were, looking across, you would not be able to see the police officer who alighted from the passenger side, if he walked behind the vehicle, would you?---**

No, I wouldn't see nothing until he came to the back of the vehicle.

**And would you agree with this, that if the passenger side policeman touched the person on the other side of the police vehicle, you wouldn't have see it, would you?---**

No. (T 2909, 2918)

Mr Bush was wearing bifocals. (T 2940-1) He can not say whether the police were in summer or winter uniform, and he gives no description of Eddie Murray's clothing, despite observing him for longer than he observed the arrival of the police officers:

**MR COOREY: Right, and then was there anything about the noise that prompted you to go outside?---**

Well, there must have been something about the noise that prompted me to go outside, I wondered what it was.

**Yes, so you went outside?---**

Yes.

**And what you saw was a man?---**

Yes.

**In the distance?---**

I walked to the edge of the foot path and I could hear the noise coming from that direction and I seen a lad walk back out to the - back out the door onto the step and then he was there yelling out and going on and I can't remember what he was saying or anything like that and he walked back in again.

**Right?---**

Then he walked back out again and at that time the police wagon came around the corner into Rose Street.

**All right. Well now, if I can just tie you there for a moment. It was when he was actually coming out again that the police vehicle came around the corner?--**

That's correct.

**Is that right?---**

Yes.

**Yes, so that you had him in sight at least when the police vehicle was, what, coming up George Street?---**

Well approximately, yes. (T 2951-2)

...

**THE COMMISSIONER: Just a couple of things. Could you tell me again what distance you believe you were from the entrance to the Imperial when you first heard the noise when you were inside?---**

Well, it's approximately 3 chain from the footpath in front of my place to the footpath at the Imperial Hotel.

**I see. And then when you walked outside, what would be the distance between the place where you took a stance outside and the entrance to the Imperial?---**

Well, that's 3 chain from where I was standing on the edge of the footpath. I stepped it out. I have stepped it out. I haven't put a tape measure over it but just stepped it out.

**That's all right - 3 chains. Have you any memory now of the clothes the lad was wearing?---**

No, I can't recall, sir.

**You wouldn't know whether he was in a greatcoat or a white singlet or a pair of shorts?---**

No, I don't think it was a greatcoat - no.

**You have no memory at all?---**

No, I don't remember. (T 2960)

Indeed, it is remarkable in the circumstances that Mr Bush has no memory of Eddie Murray's

clothing. It is a matter of concern that he has no "recollection" of Eddie Murray staggering, especially as Mrs Berger had just observed Eddie Murray at close quarters in the hotel and she says he was staggering. Mr Bush also does not recall seeing the publican Mr Molyneux, who was at the forefront of the group of men forcing Eddie Murray out of the hotel. (T 2906)

The Commissioner stated that Mr Bush "positively identified Moseley and Parker, Moseley as the passenger and Parker as the driver of the vehicle", without apparently considering that Mr Bush's observations were made from a distance and could not be precise. (Report, p 23) Even accepting Mr Bush's evidence without question, it is not possible to exclude the scenario that Fitzgerald was also inside the police wagon.

Mr Terence Mahaffy, who was standing inside the hotel foyer eight feet behind the front doors and a few feet behind Mr Molyneux, did not make a statement until March, 1988. Before making his statement Mr Mahaffy discussed the case with Mr Bush, who he describes as "a personal friend" of his. (T 4503) Mr Mahaffy's evidence is no more persuasive than that of Mr Bush, on which it may be based. Mr Mahaffy explains his memory unreservedly:

**MR COOREY: You had no difficulty remembering who the police were 7 years before?---**

No, because I had thought of it. I'd read all the reports.

**It was something very much in your mind?---**

That's right.

**And no doubt it was something you spoke to with people?---**

Not very often.

**But it was something that was in your mind?---**

Yes. I spoke with my family on it quite a lot. (T 4507)

Mr Mahaffy was also asked to make his statement only after a request by Page, a "friend" of his. (T 4493, 4500) His statement is contradicted by Mr Molyneux's statement made on 12 June 1981, concerning whether the people in the hotel could see the police arrive:

**MR BELLEAR: Were the doors closed at all whilst you were there?---**

No, not whilst I was there.

**Mr Molyneux didn't close them as far as you can remember?---**

He could have closed them after because immediately the van drove away I turned around and walked away. He was still there, so he could have closed them. I don't know.

**THE COMMISSIONER: He couldn't have any need to close them after?---**

He wouldn't, I don't think.

**Because the trouble, if there was trouble, had really finished, hadn't it?---**

Yes.

**MR BELLEAR: And you, Mr Mahaffy, saw the van arrive, did you not?---**

Yes.

**And you saw, as you said in your evidence, Sergeant Moseley get out of the passenger's side of the vehicle?---**

Yes.

**And you could see that from where you were standing?---**

Yes.

....

**I just put to you, Mr Mahaffy, further material that Mr Molyneux said in his statement, and that is: "Eddie then became aggressive towards me and waved his hand towards me and I thought he might hit me. I spoke to him and talked him into leaving the hotel. I closed the door of the hotel and I opened it shortly after and I saw the police putting him in the back of the police truck." Now, that's what Mr Molyneux says in his statement but the evidence you've given here doesn't agree with that, does it?---**

It doesn't look like it, does it?

. . .

**You see, what Mr Molyneux is saying is that the doors were closed, that the van wasn't seen until after he'd opened the door and they were putting Eddie in it. now, that's not true is it?---**

Well, it doesn't - - -

**You don't agree with that?---**

It doesn't work out with mine. (T 4525-6)

The Commissioner noted that Mr Mahaffy here disputes the observation that Mr Molyneux "made on the very afternoon that this occurred". (T 4527) Yet Mr Mahaffy was considered by the Commissioner as a reliable witness. (Report p 23) Though he was much closer to Eddie Murray than was Mr Bush, Mr Mahaffy also can not describe at all any of the clothing that Eddie Murray was wearing when apprehended by the police officers:

**MR BELLEAR: You recall Eddie coming to the Imperial Hotel on that day?---**

Well, I didn't recall him coming but I saw him there when I walked back into my van - from my van out the back.

**And that day when you saw Eddie, do you recall what he was wearing?---**

No, I wouldn't have any idea.

**Not at all?---**

No. (T 4487-8)

Mr Mahaffy's ostensible description of Eddie Murray's apprehension mirrors that of Mr Bush, even to the point of asserting that Eddie Murray "just turned around and walked to the van and got in" without being touched "at all" by police. (T 4489-90) Mr Mahaffy is unable to remember whether Mrs Berger was in the hotel that day, though he would have seen her for considerably longer than he would have seen Eddie Murray, let alone the police. (T 4510) Mr Mahaffy can not recall which police officer had said "Come on Eddie", though he says that a policeman may have said something like "Come on Eddie, we want you." (T

4508-9)

Mr Mahaffy acknowledges that his view of the police truck from inside the hotel (even assuming the doors were not closed) would not have been sufficient to identify the driver when sitting in the police truck. (T 4492) Even accepting all his evidence without question does not rule out the possibility of Fitzgerald's presence in the police truck at the scene of the apprehension of Eddie Murray.

Mr Mahaffy would have had a clear perspective of the passenger's side of the police truck only if the doors remained open and he had no other concerns. Yet Mr Molyneux did not merely close the doors; he was also "a bit crippled up at the time". Mr Mahaffy was "more concerned" with helping him than with observing the police. (T 4490) His observations about key details such as Eddie Murray's clothing and how he entered the police truck are as vague as those of Mr Bush, despite Mr Mahaffy being closer to the event. While Mr Mahaffy recalls seeing Moseley get out of the passenger's side of the police truck, his evidence about the doors not being closed is contradicted by Moseley's own evidence at the Inquest:

**Q. What about the door of the hotel?**

A. Well I recall seeing the licensee just shut the door, now I don't know whether he saw me or not or what happened but I just recollect seeing him go inside but I think he had his back to us.

**Q. That is Mr Molyneux who has given evidence?**

A. I don't even think Mr Molyneux knew that we were there. (Inquest, pp 233-4)

Whether or not Moseley and Parker were there by themselves or accompanied by Fitzgerald,

the police apprehension of Eddie Murray was so swift that it could have been accurately seen only by someone directly looking at the scene from nearby, not by distant onlookers like Mr Bush or someone inside the hotel like Mr Mahaffy who was looking after Mr Molyneux.

Moseley's evidence at the inquest that the apprehension was very quick is consistent with the evidence of Mr Noel Louis Collett. He was by far the closest observer of the scene directly outside the Imperial Hotel when Eddie Murray was apprehended by police:

**MR EAMES: Now, you said that you were standing on the footpath outside the main entrance and you saw Mr Molyneux standing in the entrance talking to Eddie Murray. Whereabouts was Eddie Murray?---**

About that far away from the bottom step.

**THE COMMISSIONER: Indicates about 4 feet.**

**MR EAMES: About 4 feet further into the - closer to the gutter from the bottom step. Is that right?---**

Yes.

**And where was Mr Molyneux?---**

On the top step.

**Whereabouts were you standing?---**

I was at a 45- degree angle.

**Were you standing closer whilst you were standing there?-**

I heard Jack Molyneux say, "Get out and stay out!" and that's when the wagon backed in. (T 4452)

Mr Collett had been walking from his home to the hotel. He was intending "to go into the main entrance" until he "saw Jack [Molyneux] and saw what was going on," when he "sort of balked" and watched the scene from about "12, 15 feet" away from the entrance to the

hotel. (T4452) Mr Collett observed a very quick, forceful apprehension of Eddie Murray.

He says:

**MR EAMES: Did any police officers get out of the vehicle?**

Yes.

**Well, just tell us what you saw?---**

One from either side; opened the door. Well, one pulled the bolt open, the other one opened the door and they just grabbed him and pushed him in. Eddie never even turned around.

**So he had his back to them when - - -?---**

Yes

**- - - they took hold of him. And you described some movements there with your hands. You say they grabbed him. Did both police officers take hold of him?---**

Yes.

**And how did they take hold of him?---**

There and there.

**On each side?---**

Yes.

**So you demonstrate one hand on the shoulder, one hand down by the thigh at the back of the trousers?---**

Yes.

**What was Eddie wearing, do you recall?**

I think he had a football jumper on, and jeans I think.

**What colour jeans, do you remember?---**

Faded looking, blueish.

**When they grabbed hold of him, they grabbed him from behind?---**

Yes.

**Did they have to walk any distance from the back of the van to reach him?---**

About two steps.

**Did they say anything before they grabbed hold of him?---**

No, not a thing.

**When they grabbed hold of him from behind did he say anything?---**

No.

**Did he do anything?---**

No.

**Did he struggle with them?---**

No.

**As they grabbed hold of him from behind, could you just describe how they next moved. Where did they go then?---**

They did a complete circle.

**Yes. They turned around with him?---**

Yes.

**And what then?---**

Lined him up and then he went. [perhaps mistranscribed from "in he went"]

**In your statement you describe them throwing him into the van head first?---**

Yes.

**At this point whereabouts were you standing from the rear of the van? Were you standing directly opposite the open door of the van or were you some distance to west or to east of the van?---**

I was at an angle from where Jack Molyneux was. It put me to the right-hand side of the bull wagon. (T 4453-4)

Mr Collett says in his statement that he recalls that one of the two police who got out of the bull wagon "was in uniform and one was in plain clothes. I think this because one had a coat on and the other only a shirt." (T 4450) He says that the police officer wearing the coat was the one who got out of the driver's side. (T 4469) Mr Collett is unable to say how old these police were, because he "didn't sort of really have much time to look at them." (T 4458) The police apprehended Eddie Murray forcefully and quickly according to Mr Collett. He says the detention took only "about half a minute". (T 4459)

Mr Collett recalls expressing to the barmaid Mrs Beryl Berger his reaction to the way that

police used force to detain Eddie Murray, which nobody inside the hotel had evidently seen:

**MR EAMES: You went into the hotel after seeing Eddie thrown into the van?--**

Yes.

**You there spoke to - was it Beryl Burgess [sic] ?---**

Yes, the barmaid.

**When you spoke to her did she say anything to indicate whether she'd seen the incident?---**

She said, "Thank," something, "he's out" or something and that's when I said they shouldn't have thrown him in like that.

**She said, "Thank," something, "he's out"?---**

Yes.

**Did she say anything more?---**

No.

**When you said, "They shouldn't have thrown him in like that," did she make any comment on that?---**

No.

. . .

**Was there anything said by any of the other people which suggested to you that they had also watched the arrest take place?---**

Someone said, "He should have been put out because he was going to hit old Jack."

**Did anyone say anything to suggest that they'd actually watched the way that he'd been arrested?---**

No. (T 4459)

Although Mr Collett was not asked to make a statement until nearly seven years after seeing the incident, he has a clear recollection of the manner in which police apprehended Eddie Murray:

**MR COOREY: ... you described to my friend how the police threw him in.**

**Have you ever seen anyone thrown into a swimming pool by two people?---**

Yes.

**Was it that sort of throw?---**

Yes.

**Where you get hold, two hands on and - -?---**

Yes.

**- - - throw him in, and was it a lot of force in the throw?---**

It didn't seem to be. He was such a light little chap and there wouldn't be much force to get rid of him like they did.

**You thought though it was enough to throw him right through to the cabin?---**

Yes.

**THE COMMISSIONER: You were not very happy about it?---**

No.

**MR COOREY: I just want you to think about the jeans for a while, Mr Collett.**

**You said they were blueish. Could they have been a bluey grey - a blue grey?**

**Is that possible?---**

Well, they reminded me of a faded blue - you know how jeans will go real fadey looking?

**Right, yes, all right, and the jumper was a football jumper?---**

Yes, and I thought - I know it had red on it but I'm not sure whether it was red and white. I know it had red on it.

**All right, and I think you were upset at the way he was put into the truck?---**

Yes, because I've been in them myself.

**Yes. Have you been in the bull wagon that he was put in or one like it?---**

I think I might have been.

**Can you tell me this: have you ever been thrown in like that?---**

No.

**You haven't. As you get into the bull wagon, if you were thrown in, what's at the end of the wagon as you go in? Is it a hard construction?**

Yes, I think it's either mesh or - mesh I think. I know when they shut the doors it's pretty dark; you can't see in there. (T 4462-3)

Importantly, in contrast to Mr Bush and Mr Mahaffy, Mr Collett can recall part of what Eddie Murray was wearing (faded jeans and a football jumper with red on it). His recollection is sufficient to cause him to doubt that the clothes shown in the coloured photographs taken in the mortuary (including brown slacks) were on Eddie Murray when he was apprehended:

**MR COOREY: He was by himself, all right, and now when you saw Eddie he was wearing - I thought you said, what, blue jeans and a football jumper?---**

Yes.

**Is that right?---**

Yes.

**Now, I'm just going to show you a photograph. I don't want you to get a shock at all but it's Eddie and I just want to show you this, all right, and you can see there he's wearing brown slacks and a white T-shirt. They're not the clothes he had when you saw him?---**

No.

**All right?---**

I don't - nearly sure they weren't.

**No, that's all right, I don't want to - - -**

**THE COMMISSIONER: What did he say?**

**MR COOREY:- - - hold that to you - "I'm nearly sure they weren't."**

**THE COMMISSIONER: Very well.**

**MR COOREY: The last time you saw him he had on his grey jeans and his football jumper, right?**

**THE COMMISSIONER: I think he said blue. (T 4462)**

Mr Collett's description of Eddie Murray wearing light-coloured jeans is like that given by the ambulanceman Mr Lewis who took Eddie Murray's body to the mortuary. (T6399) Mr Collett was much closer to the scene at the crucial time of the apprehension than Mr Bush, and his view of this event was not obstructed by closed doors nor was he distracted in any

way like Mr Mahaffy. Indeed, Mr Collett stopped to observe the scene when he heard Mr Molyneux telling Eddie Murray to get out of the hotel and stay out. Mr Collett was very close to the scene of Eddie Murray's apprehension, and particularly attentive to what occurred.

The Commissioner did not carefully assess Mr Collett's evidence, dismissing it merely because Collett (and the unnamed female witness) recalls the bull wagon parked at an angle with its back toward the gutter, whereas Moseley and Parker (together with Bush, Mahaffy, a Mr Horne and three Aboriginal witnesses who, like these witnesses, did not have a clear, close view of the scene) say it was parallel to the kerb. (Report, pp29-30). The Commissioner completely ignored the fact that Collett was by far the closest witness to the apprehension. Collett's evidence that the apprehension was very quick is supported by Moseley's statement to the inquest that the publican, Mr Molyneux, may not have even been aware that Eddie Murray had been apprehended by police (assuming that Molyneux closed the doors when he got Eddie Murray out of the hotel, as he affirmed when he made a statement later that day). The police version of the apprehension (supported by Bush and Mahaffy) that Eddie Murray staggered some distance over to the bull wagon unaided would necessarily have taken up a lot longer than the half minute that Collett witnessed.

Compared to Mr Bush and Mr Mahaffy, who ostensibly observed Eddie Murray detained without struggle, Mr Collett's observation of Eddie Murray being thrown into the bull wagon by two police is a recollection of an event more likely to be based on a distinct memory of what he saw at the time than on reconstruction affected by the police version of events. Mr Collett had no opportunity to be influenced by anyone prior to the Royal Commission:

**MR COOREY: Now, you knew Eddie Murray, didn't you?---**

Only to watch him play football. I've never sort of met him.

**Are you saying what you've said to help Eddie or are you telling- - - ?---**

No.

**- - - the truth?---**

Yes, well, I just didn't like the way he got thrown in.

**Right, that's the only thing that upset you was the way they threw him in?---**

Yes.

**All right, and I think you've already told us you weren't around at the time - or you don't know if you were there at the time of the inquest?---**

No.

**And nobody's ever asked you about this until very recently, this month, is that right?---**

Not till Friday week or something. (T 4465-6)

Collett's evidence is precisely about the manner in which Eddie Murray was apprehended, not about events preceding the apprehension (before Collett arrived on the scene). Collett did not hear Eddie Murray say anything at all; during the short time that he (Collett) observed Eddie Murray while he was approaching the hotel, Eddie Murray was just "looking at" the publican Mr Molyneux "all the time", having just then been told to "get out and stay out" of the hotel. (T 4467; 4453, 4456) Collett's evidence is consistent with Eddie Murray yelling out earlier, before Collett arrived on the scene when he was thrown out of the hotel for the second time.

The Commissioner did not discuss the only reasonable basis upon which he could have dismissed Mr Collett's evidence - that is, if there was doubt that Collett's recollection is of an apprehension of Eddie Murray on 12 June, 1981, not some other day. Collett says he heard

of Eddie Murray's death a couple of days later on the local radio, and this caused him to recall what he had seen about the manner of Eddie Murray's apprehension:

**MR WILLIAMS: Have you ever seen him taken into custody before?---**

Who?

**Eddie Murray?---**

No.

**So you've only ever seen him taken into custody on one occasion?---**

Yes.

**Now, when you heard about the death of Eddie Murray you were a long way away from Wee Waa shearing?---**

Yes.

**So you don't know what day it was that he died, do you?---**

No.

**And you don't know whether it was the day that you saw him arrested as you've described, do you?---**

No. I heard it over 2MO, I think, on the news.

**THE COMMISSIONER: I'm sorry, I didn't hear that.**

**MR COOREY: He heard it over 2MO on the news.**

**THE COMMISSIONER: Was that about the time you saw this incident that you heard it on the news?---**

Within a couple of days, yes.

**MR WILLIAMS: Are you sure it was within a couple of days?--**

Well, we always listen to the news. I know it didn't come over the next day and when I heard about it I remembered him being put in. (T 4468)

Mr Collett's presence outside the hotel on 12 June, 1981 is confirmed by his evidence of seeing Mr Mahaffy when he got inside the hotel after observing Eddie Murray's detention:

**MR COOREY: And from where you were I thought you said you could see the**

**entrance, the front of the entrance. Is that right?---**

Yes.

**Could you see a distance inside the entrance?---**

No, I could just fit Jack - at the angle I was I could just fit Jack in it.

**Now, do you know a man named Mahaffy?---**

Yes.

**Was he there?---**

No.

**All right, he wasn't next to Jack?---**

No.

**And you never saw him there?---**

No.

**Can you remember if he was in the hotel when you got inside?---**

Yes.

**He was inside?---**

Yes. (T 4465)

The Commissioner did not conclude that Mr Collett was not a witness to the manner in which Eddie Murray was apprehended by police. Yet he failed to give due weight to the fact that Mr Collett was by far the closest witness at the precise time of the apprehension.

### **Eddie Murray's likely response to police behaviour**

Having in effect ignored the evidence of Mr Collett, the closest observer of the apprehension of Eddie Murray by police, the Commissioner accepted the evidence of Moseley and Parker and two civilian witnesses, the principal one of whom - Mr Bush - gave evidence to the Inquest only after Fitzgerald's unreliability had been manifested there. Relying on these witnesses the Commissioner concluded "that Eddie quietly went over to the rear of the police van and entered unassisted", a finding completely at odds with what Mr Collett saw. (Report, p 30) The Commissioner realised that his finding was also at odds with all the

evidence about Eddie Murray's behaviour before the police arrived:

“The picture painted is in contrast to the young man who seconds earlier was standing on the footpath yelling abuse and gesticulating. However, I find that the apprehension was not accompanied by violence or indeed by a spirited struggle. I am confident that Eddie was not thrown into the van and it is probable that the arrival of the police had an immediate affect [sic] upon Eddie whose behaviour became more subdued.

Although Eddie was very drunk he comprehended the arrival of the police and this moderated his behaviour. He was probably held as he entered the van.” (Report, p 31)

Why the Commissioner concluded that Eddie Murray was “probably held as he entered the van” after finding just previously “that Eddie quietly went over to the rear of the police van and entered unassisted” is unclear, though perhaps it can be considered as a reflection of the difficulty the Commissioner had believing the evidence of Mr Bush, who expressed surprise that the police did not lay a hand on Eddie Murray when they were apprehending him.

The Commissioner's finding that Eddie Murray's apprehension was unaccompanied by animosity toward him from the police is also directly at odds with his finding that an angry exchange between Parker and Eddie Murray occurred a few minutes later at the police station. This exchange was heard by the cleaner McKnight, who recalls Eddie Murray screaming sometime after 2 pm that day:

I just heard the prisoner singing out and screaming out, “Why do you always pick on me?” I then continued with my work. (T 4534)

....

The prisoner said - was shouting out and said, "Why do you always pick on me? Why don't you pick on white people?" (T 5915)

This evidence from Mr McKnight, which the Commissioner accepted without qualification, is difficult to reconcile with his finding that no force was used by police to apprehend Eddie Murray outside the hotel.

The Commissioner's assumption that the mere arrival of the police in itself would have subdued Eddie Murray is also at odds with evidence given to the Royal Commission by other police who had arrested Eddie Murray in Wee Waa in years before. Moseley's predecessor as senior sergeant at Wee Waa from 1977 until June 1980 was Charles James Jurd. He recalls similar behaviour by Eddie Murray to that which Mr McKnight heard on 12 June 1981:

"He was a funny sort of guy - sometimes you would talk to him and there was no problem at all; the next time he'd start screaming out discrimination and being locked up because of who they were - those sort of things." (T 2968)

When questioned by the Commissioner, Jurd recalls Eddie Murray in conflict with police:

**THE COMMISSIONER: When you said he used to become emotional a bit, do you mean he ever became tearful?---**

Fearful?

**Not fearful, tearful or crying?---**

Tearful; no, I don't recall, sir, that he did. He would only, as I said, become emotional and then accuse us of being racist by - - -

**When you use the word "emotional," he seemed to become antagonistic towards you?---**

Yes, change his attitude all around. (T 2970)

Jurd acknowledges that during his three years in Wee Waa relations between the police and Eddie Murray's family were characterised by distrust, continuing an antagonism reflected in an occurrence pad description of Eddie Murray's father Arthur a few months before Jurd took charge of the station:

“[Arthur] Murray is a radical and trouble-maker, a preposterous type of person who bears a terrible enmity and hatred towards police generally at Wee Waa. His words can never be accepted.”

**MR BELLEAR: Now, that would suggest to you, would it not, that there was a feeling towards the Murrays by the police. Isn't that right?---**

Yes.

...

**Now, what I'm suggesting to you is that when you arrived at Wee Waa was this feeling towards the Murrays still there in the police?---**

I would say it was.

**You would say it was?---**

Yes.

**Did that change at all during the time you were there?---**

No, I wouldn't think so. I don't think Arthur would accept anything other than himself so there was no way you beat him at it.

**And also the police attitude didn't change, did it, towards the Murrays?---**

I Well, I don't know. I kept my own attitudes and I tried to get along with the man but don't think there's too many that can.

**And that would have continued on not only for Arthur but for the rest of his family, that attitude?---**

No, I don't think so.

**So you saw a change, did you?---**

Well, as I said, as far as I was aware I didn't think Eddie had half the problems that his father had. (T 3007-8)

Jurd says that there was sometimes animosity between police and Eddie Murray when he was apprehended; this did not decrease, but it was less than with his father. (T 2971, 2991)

This background evidence is significant to the apprehension of Eddie Murray on 12 June 1981, particularly in relation to the decision by the police to take Eddie Murray to the police station not to his home, as well as to the speed with which Eddie Murray was apprehended.

Jurd says an assessment should be made before police detain someone in custody as an intoxicated person:

**MR COOREY: Now, your experience would be that you'd make an assessment of a person before you made a decision whether to detain him or not under the act, wouldn't you?---**

Yes.

**You'd look for symptoms, I suppose, wouldn't you - eyes, speech, walk, those things, wouldn't you?---**

Yes.

**You wouldn't detain somebody in a situation of merely seeing somebody standing there and then walking or staggering without making some assessment, would you?---**

No, I wouldn't consider anybody - detain anybody, I would have made an assessment of that person before I would have detained them.

**It's fair to say this: that the usual police officer assessment is the look on the eyes, the sound of the person speaking - those things, isn't it?---**

Flushed appearance, walk. (T 2977)

On the evidence of the closest witness, Mr Collett, the police who apprehended Eddie Murray grabbed him from behind without taking time to observe his walk or look at his eyes.

The probability is that they detained him because of who he was, before assessing his

condition.

### **Conclusion**

The Commissioner's crucial finding that Eddie Murray was detained without a struggle is based largely on the evidence of Moseley and Parker, witnesses whom the Commissioner found to be unreliable about events at the police station soon after Eddie Murray had been detained. Mr Bush claims to have been surprised by what he said was Eddie Murray's lack of resistance to being detained, but he was called at the inquest after being approached to give evidence by Moseley when Fitzgerald's hospital alibi fell apart. Mr Bush was a long way from the scene compared to Mr Collett, whose evidence is consistent with Moseley's recollection that Eddie Murray was detained quickly as soon as the police arrived, leaving little opportunity for a distant observer of the scene to witness the manner of apprehension. Mr Bush's surprise at the lack of struggle is inconsistent with evidence from Mrs Berger about Eddie Murray yelling out about discrimination at the hotel before the police arrived. That expressed attitude of Eddie Murray strongly suggests that on the day that he died he was in the sort of mood when, according to the previous experience of Senior Sergeant Jurd at Wee Waa, a conflict with the police was likely.

The scenario of Eddie Murray quietly walking into the police bull-wagon unaided is so much at odds with other evidence concerning Eddie Murray's circumstances immediately before and after his apprehension that it should not be accepted on the balance of probabilities. Given that the police had not, when they arrived at the hotel, (1) taken time to assess Eddie Murray's condition, (2) bothered to check with witnesses inside the hotel about what had happened, and (3) suggested to Eddie Murray that they take him home to sober up, then the

scenario of peaceful apprehension lacks cogency in relation to the evidence in its totality.

The evidence of the police station cleaner Mr McKnight is that Parker was ready to go to the hotel to deal with Aboriginals “playing up” when Moseley returned from lunch. Parker says that Eddie Murray had been identified in the phone message to police as the person who was causing trouble. It is reasonable to assume that, based on previous experience, the police would have expected, upon seeing Eddie Murray, that he might strenuously resist his apprehension. The evidence of Mr McKnight about an angry exchange between Eddie Murray and Parker back at the police station strongly suggests that Eddie Murray resisted apprehension as much as he could when, according to the closest observer Mr Collett, he was thrown into the police bull-wagon by two police in a quick operation.

While Mr McKnight heard that Parker had returned to the police station with a detainee, he did not notice Moseley's return, or Fitzgerald's arrival at the police station. Parker was observed near the counter of the police station by Mr Cronin, whose vehicle he proceeded to register. Mr Cronin did not see Fitzgerald arrive at the police station, but Page affirmed repeatedly that Fitzgerald was there when he arrived on the afternoon shift. Soon after Page's arrival, Mr Cronin observed him confer with Moseley then go out to the cells, from where they returned in a fluster. At the time when Mr Cronin saw both Page and Moseley rush back from the cells, whenever precisely that was, it is clear that Eddie Murray was already dead. While Moseley said he was not sure "how late" Fitzgerald was in getting to work that day, Page was certain that Fitzgerald was not late. If nobody at the police station saw Fitzgerald arrive late, the simplest explanation is given by Page: Fitzgerald was there no later than 3 pm.

The Commissioner found that Fitzgerald was not sincere when giving evidence about what he did the day Eddie Murray died, particularly in presenting a “lack of knowledge on some issues”. (Report p22) While the Commissioner did not expound on the reason why Fitzgerald chose to appear uninvolved, an explanation for such insincerity must be sought. Either Fitzgerald was telling the truth, or he had some knowledge of the circumstances of the death of Eddie Murray which he did not wish to reveal. If Fitzgerald was at the police station before Page, then it is possible he was there before Eddie Murray died. Indeed, if Fitzgerald was at the police station before Page, an important question is: what was he doing?

Parker was occupied with Mr Cronin for some time around about 3 pm, when Page arrived. Moseley supposedly checked the police cell but the Commissioner discounted this as inconsistent with the evidence of Mr McKnight who did not hear the noises that Moseley claimed Eddie Murray was making. If Moseley did not visit Eddie Murray in the cell, did Fitzgerald? The evidence that he did not is indirect, based on claims by his in-laws that he was late for work and so would not be involved in paperwork about the death. This evidence contains inconsistencies and it was not produced initially at the inquest. It is of significant concern that Fitzgerald was the only police officer on duty at Wee Waa the day Eddie Murray died who did not produce a contemporaneous statement, despite being at the police station when the ambulance departed, having been left in charge by Parker when Page and Moseley had also unusually left the station together. Why was Fitzgerald not sent to inform the family that Eddie Murray had died? Why did Parker, or Fitzgerald, tell Cronin to “shoot through”?

The Commissioner assumed that Eddie Murray was detained by two police officers at about 2.00pm on 12 June, 1981 outside the Imperial Hotel. (Report p22, emphasis added) He relied principally on the evidence of Moseley and Parker that they went to the hotel to detain Eddie Murray. The Commissioner found support for their evidence on this point from Mr Bush, who was 60 metres away from the scene outside the hotel, and Mr Mahaffy, who was inside the hotel behind the publican Mr Molyneux who closed the doors just before the police arrived. This very weak evidence is made more dubious by the fact that Mr Bush came forward to the Inquest when asked by Moseley immediately after Fitzgerald was shown to be an unreliable witness. The most that can be reliably concluded from the evidence of Mr Bush and others witnessing the scene from a similar distance away is that at least two police officers apprehended Eddie Murray in a quick operation. (T 2665)

The Commissioner assumed that because two police got out of the van only two police went to the hotel and that they were Parker and Moseley. The strongest evidence that Moseley and Parker went to the hotel to detain Eddie Murray is not given by any of the witnesses at the scene of the detention, but indirectly by Mr McKnight and Mr Cronin. McKnight says that Moseley returned from lunch to meet Parker soon after McKnight returned from lunch at about 2pm. Cronin says the police station was unattended when he first arrived there soon after 2pm. McKnight also recalls that Parker had received the call for assistance from the hotel and was ready to go there when Moseley returned from lunch.

Since the call was urgent, it is improbable that Parker would simply have been waiting for Moseley to return from lunch before proceeding to the hotel. It is also unlikely that Parker would have gone there alone. If Fitzgerald was soon to start on the afternoon shift, as the

Commissioner found, he would have been due on duty within an hour. Moseley says officers on the afternoon shift at Wee Waa would at times get to the police station half an hour early. (T 2843) Fitzgerald had been based at Wee Waa a lot longer than Page, who had been there three weeks. If Parker needed to contact another officer to attend the hotel with him because Moseley was not back from lunch, it is not unreasonable to suggest that the person he would have called was Fitzgerald.

## **Chapter 13**

### **FURTHER QUESTIONS ARISING**

#### **Findings by the ICAC concerning Senior Constable Kevin Joseph Parker**

Kevin Joseph Parker commenced duty with the New South Wales Police Service in 1970. He became a Senior Constable in 1976. He served in various parts of NSW, including Wee Waa. From September 1987 he served in the Gaming Squad.

Senior Constable Kevin Joseph Parker's relationship to the detention and circumstances surrounding the death of Eddie Murray in 1981 has been analysed extensively in this report.

In 1994 it was found in an inquiry and report by the Independent Commission Against Corruption (ICAC, *Investigation into the Relationship Between Police and Criminals*, First Report, February 1994) that Senior Constable Kevin Joseph Parker was a corrupt policeman. This was the same Senior Constable Kevin Joseph Parker who was present at Wee Waa Police Station on 12 June 1981, and whose evidence about the death in custody of Edward James Murray that day caused Royal Commissioner Muirhead to doubt the frankness and accuracy of his version of the events surrounding Eddie Murray's death.

When the Royal Commission Inquiry into this death was held in 1988, the Commissioner naturally did not have the advantage of the ICAC findings of 1994. Parker's corrupt conduct between 1987 and 1994, as found by the ICAC in 1994, consisted, among other things, of regularly and deliberately falsifying entries in his police duty books in order to conceal his association with illegal gambling activities or to disguise his actual working patterns. It is relevant to ask whether Parker's capacity for corrupt conduct as a police officer as revealed

by the ICAC in 1994 was operative at the time he discharged his duties in Wee Waa in 1981.

Intermittent surveillance of Parker by the ICAC in September and October 1992 revealed that Parker's duty book had been deliberately distorted by "many false entries". The ICAC Report in 1994, in a section entitled "Parker's Duty Book - Many False Entries", reveals through surveillance the existence of evidence which:

was sufficient to establish that false records of [gaming] Squad activities were being made on a regular basis. Meetings with known or suspected illegal operators occurred but were never recorded by Parker. . . . Parker admitted that on a number of occasions the entries which he had made were deliberately false. On some of these occasions Parker had been, with other members of the Squad, in the company of people suspected or known to be involved in illegal gambling activities. He accepted that on these occasions he was actively concealing associations between himself, other police, and people involved with illegal gambling. On other occasions the false entries were to disguise the fact that although he was supposed to be on duty this was not the case. (ICAC Report, February 1994, p 198; emphasis added)

Parker was found by the ICAC to be not only deceitful when making records but unreliable when giving evidence. Concerning a dinner with a person with convictions for illegal gambling, the ICAC Assistant Commissioner Peter McLelland QC comments:

In a record of interview with Commission staff Parker stated that Disano paid for the meal. However when giving evidence he changed his position and said that they each paid their share. I have no doubt the record of interview is correct and the evidence false. (Ibid, p199)

The ICAC's observations on Parker's evidence before it about his false entries in his duty

book, which it found to have been regularly falsified by him, are as follows:

Parker was asked how often he put entries in his duty book. His initial response was that there may be eight or ten false entries. He sought to play down the consequences of his own false entries stating that they generally related to hours worked although he readily accepted that others abused the system and said that these abuses were widespread. ... Parker also acknowledged that others made false entries in relation to people they met with and activities they were engaged in while supposedly on duty. ... I am satisfied that Parker had a regular practice of falsely recording his activities. He ultimately conceded that about half the entries in his book were deliberately false. He agreed that, apart from various inappropriate activities, it is not unusual for him to cease work three or four hours early, making a false entry in the book to cover up his indiscretion. The picture is disturbing .... Parker said he believed that both supervising sergeants ... were aware of the practice of short shifts and false duty book entries. (Ibid, p 200)

Parker's evidence to the ICAC investigation "was given under objection and is therefore inadmissible against him in any criminal or disciplinary proceedings". (Ibid) Nevertheless, the ICAC Assistant Commissioner concluded that:

there is sufficient admissible evidence to warrant consideration being given to his prosecution for the common law offence of misconduct as a public officer and for the taking of disciplinary proceedings under r9(2) and r9(3) of the Police Service Regulation 1990 arising from the false duty book entries, failure to perform rostered duty, and the forming of inappropriate associations. ... I am also satisfied that the conduct of Parker was corrupt within the meaning of the ICAC Act." (Ibid, p 208)

Such corrupt conduct by Parker as a police officer with the gaming squad was disclosed through surveillance by the ICAC after Parker had been a police officer for over 20 years. Parker's practice of falsifying records as disclosed by the ICAC invites reconsideration of his

role as an officer who detained Eddie Murray and recorded events surrounding his death. In this context it is significant that Parker failed to make any notebook entry in relation to the apprehension of Eddie Murray:

**MR COOREY: Constable, you said that significant matters are put in your notebook, didn't you?---**

On occasions, yes.

**Yes, and your arrest of Eddie Murray and his death on that day would be a significant occasion, wouldn't it?---**

It would, yes.

**Particularly the fact that you were the last person to see him alive?---**

Yes.

**You saw him at 2.30, you told my friend, didn't you?---**

Approximately 2.30, yes.

**Yes, and you told the royal commission that you arrested him just before 2 pm, or one of the persons who did?---**

Yes.

**Is that right? Can you explain why your notebook entry for 12 June has no reference at all to Eddie Murray?---**

I can't actually explain, no.

....

**Now, constable, I think you said - I just want to talk about your notebook - I think you said you can't give me any reason as to why you didn't mention Eddie Murray on 12 June. Is that right?---**

No particular reason. The only reason I can give is that it's something I just overlooked - you know, with the circumstances of what had occurred.

...

**You can't recall. All right. Now, constable, you would normally use a notebook from which to prepare your statement of events, wouldn't you?---**

Yes.

**And in this case here you made a statement which you say was on 12 June 1981 -**

**right?---**

Yes.

**Well, you couldn't have used your notebook to have made that statement, could you?---**

No.

**Because your notebook is virtually empty about Eddie Murray, isn't it, on 12 June?---**

On 12 June, yes.

**Yes. Well, then what did you use to make your report to the officer in charge and your statement? What documentary material did you use?---**

No documentary papers or anything then, just what was in my memory at the time and the facts of what occurred from the time we went down and came back and - - -  
(T 3230-1, 3242, 3262-3)

### **Incomplete and unsatisfactory police testimony at the Royal Commission**

As this report has revealed and the following summary highlights, police officers on duty at Wee Waa on 12 June 1981 gave incomplete or unsatisfactory evidence to the Royal Commission on a number of material matters: the Occurrence Pad; Fitzgerald's presence at the police station at 3 pm; the supposed attempt at resuscitation of Eddie Murray by Page; the timing of Dr Ralte's attendance in the cell and the calling of the ambulance; the removal of the body from the police cell; the presence of police outside the mortuary; police who were present at the autopsy; and which police officer returned with Dr Mulvey to the mortuary some time after the telex from Dr Brighton about pathology procedures had been received.

#### The Occurrence Pad

At the Inquest Page was not asked about the occurrence pad. At the Royal Commission he initially said that he "did not type it", then, when confronted with Moseley's statement at the

Inquest that he dictated it to Page who had typed it, Page admitted the “slightest possibility” of this. (See chapter 2, section on creation of occurrence pad, pp 42-43 above) Page initially said he had no reason to dispute the accuracy of the occurrence pad entry. (T 3093) Later he said about the time given in it of 3.10 pm for the ambulance taking Eddie Murray’s body to the mortuary: “I can’t see 3.10 being right”. (T 6583) He was asked by the Commissioner:

**Well, did you believe it was later than 3.10 when you gave evidence before?---**

Thinking about it, sir, I cannot see everything happening and the ambulance being there at 3.10.

**So you think that entry is wrong?---**

That time - yes, sir. (T 6615)

The Commissioner found that Page had typed the occurrence pad entry, which he said was similar to Page’s statement of 30 June 1981. (Report, p 21) Yet there is a crucial difference: Page’s statement made no reference to the ambulance arriving to take the body from the police cell to the mortuary. At the Inquest Page said this:

**Q. Did you have any share in the removal of the deceased’s body to the mortuary?**

A. No.

**Q. Who was it that did that?**

A. Other than the ambulance I don’t know.

**Q. Any idea as to when it was removed to the mortuary?**

A. It was taken away while Sgt Moseley and I were absent from the station trying to locate Mr Murray Snr.

**Q. I think that was some time between four and five o’clock was it not?**

A. I would say 3.30 to 4.00. (Inquest, p 100)

Page told the Royal Commission there was “only a very remote possibility” that he had seen

Eddie Murray's body being put in the ambulance. (T 6619) Page was inconsistent. When asked to comment on his previous answer suggesting he had seen Eddie Murray's body removed, he insisted he had not seen this. (T 6621) If the body was removed when Page and Moseley were away from the police station, there is no explanation given about how they could have recorded this in the occurrence pad at 4.20 pm.

Page's initial statement to the Commission hearing on 7 March 1988 denying involvement in the creation of the occurrence pad entry was not accepted as true by the Commissioner. It is also a matter of concern that Page's first statement about the events of 12 June 1981 was not made until 30 June 1981, whereas Moseley and Parker made their statements within a day or so of the death. The Commissioner found Page's "apparent detachment from the events of the day unusual." (Report, p 21) The reason for Page's detachment should have been considered in greater depth and questions put to him about this.

#### Fitzgerald's presence at 3 pm

Page should have been further pressed to explain why, when the occurrence pad entry was made, there was no reference in it to Fitzgerald's presence in the police station at 3 pm when Page arrived for duty that day. At the Inquest Page, who was the first witness called, said clearly that both Fitzgerald and Parker were at the station together with Moseley at 3 pm. (Inquest, pp 96, 106) Page stated: "I don't recall who was on day shift that day", meaning which one of Fitzgerald or Parker had been on duty before 3 pm. (Inquest, p 106) At the Royal Commission Page acknowledged that his recollection of Fitzgerald's presence at the police station at 3 pm was in "direct contradiction" with Fitzgerald's evidence. (T 3081-2) The Commissioner found "that Page was mistaken as to the time of Fitzgerald's arrival", yet

he gave no reason why Page would have been wrong about Fitzgerald being present when he arrived at the police station at 3 pm. (Report, pp 43-44) Why did Page not support Moseley and Parker who claimed that Fitzgerald was late for duty on 12 June 1981?

The Commissioner noted the Coroner's finding that Fitzgerald was an unreliable witness, and said Fitzgerald's apparent detachment from events before and after Eddie Murray's death "did not strike me as sincere". (Report, pp 22, 44) Before concluding that Fitzgerald's "involvement in events on 12 June 1981 was minimal", the Commissioner did not detail Fitzgerald's lack of sincerity. (Report, p 22) One example requiring further examination occurred when Fitzgerald was first questioned about evidence he had given to the Coroner and discussions he may have had with his in-laws who corroborated his late arrival for duty.

Fitzgerald said this:

**MR EAMES: Did you discuss with them as to what they recalled of the day?---**

No.

**Any reason why you did not?---**

The fact remains that I had nothing to do with the actual death. (T 4004)

This second answer, which can be regarded as non-responsive, in effect alters the first answer to the extent, on one view, of negating it. It would be most unusual for any person confronted with the difficulties that Fitzgerald clearly faced at the Inquest to not discuss the events with relatives who may have been able to assist him in recalling events of which they may have had some knowledge.

Fitzgerald's above statement to the Commission hearing on 21 March 1988 that he had not discussed with his in-laws what they recalled of 12 June 1981 could reasonably be regarded

as requiring in-depth investigation. If Fitzgerald had nothing to hide, why would he not have discussed the events with his relatives? Further, what did Fitzgerald mean by saying he had “nothing to do with the actual death”? (emphasis added)

#### Supposed resuscitation

The Commissioner did not seem to accept Page’s evidence that he remained in the cell to engage in resuscitation, because this was clearly contradicted by the evidence of Mr Cronin who saw both Page and Moseley return to discuss the situation with Parker who was at the counter. Page’s statements to the Commission hearings on 7 March 1988 and 9 May 1988 that he did not leave the cell until Dr Ralte arrived need further scrutiny.

The Commissioner rejected Page’s evidence about his alleged attempt to resuscitate Eddie Murray and viewed the reason for Page giving this evidence as his “reluctance to expose what could be interpreted as indifference about the death.” (Report, p 79) Yet the main indication of indifference shown by Page after the alleged discovery of Eddie Murray’s body was that Page and Moseley did not contact an ambulance (rather than a busy doctor) urgently. The decision about what to do with Eddie Murray’s body was apparently made before the ambulance arrived at 3.31 pm. By claiming to have remained with the body until Dr Ralte arrived, Page in effect denied his responsibility for not calling an ambulance immediately. He even said “I think it would be almost automatic that you would ring an ambulance.” (T 6582) He also denied responsibility for taking part in the decision to remove the body from the cell.

#### Calling of the ambulance

The occurrence pad entry suggests that Dr Ralte and the ambulance were both at the cell by 3.10 pm, within a few minutes of being called. Parker (who rang for Dr Mulvey first then for Dr Ralte and then for the ambulance) says he rang for Dr Ralte "about 8 minutes, 10 minutes past 3", and he later rang for the ambulance only at approximately 3.30 pm. (T 6542, 6545)

Moseley thought that Dr Ralte arrived before the ambulance officer Mr Lewis, and could not recall if they were there in the cell together. Page, who said he had no knowledge of when the ambulance was called, accepted that Dr Ralte and the ambulance might have been called at the same time. (T 6589) Fitzgerald said he saw an ambulanceman enter the police station and both Dr Ralte and Dr Mulvey at the police station, but he could not say when either of them arrived. (T 3985-6, 4059) He has no idea of when they attended, and no other evidence suggests that Dr Mulvey was at the police station on the afternoon of the death.

Mr Lewis recorded the time of the call from the police station for an ambulance as 3.30 pm, and he said Dr Ralte arrived in the police cell after he did at 3.31 pm. Lewis seems clearly to be the most reliable witness as to time. According to all witnesses, Dr Ralte was not at the police station for more than 15 minutes, and he said when first questioned about this at the Inquest that he may have left the police station at either 3.30 or 3.45 pm. (Inquest, p 118)

Since Dr Ralte attended the police station within minutes, he could not have been contacted by Parker as early as 3.10 pm. Parker's testimony to the Commission hearing on 9 May 1988 that he rang Dr Ralte about 20 minutes before he rang for the ambulance can reasonably be regarded as unreliable, since it gives the impression that Dr Ralte was contacted soon after the alleged discovery of Eddie Murray's body by Moseley and Page at 3 pm. There appears,

according to the logic of the precise records of Mr Lewis and the evidence that Dr Ralte was away from his surgery for only ten to fifteen minutes, to have been a significant delay not only in contacting the ambulance but in contacting Dr Ralte. This remains a serious concern.

#### Removal of the body

Mr Lewis stated that a police officer assisted him in taking Eddie Murray's body from the police cell to the stretcher placed outside the cell, and thereafter to the ambulance. Page, Parker and Fitzgerald all deny doing this. Moseley was asked whether he assisted and said he could not remember, but Lewis knew Moseley and said he was not involved. (T 6382, 6456)

Page told the Royal Commission on 10 May 1988 that he did not help remove Eddie Murray's body. (T 6624) Parker told the Royal Commission on 9 May 1988 that he could not recall helping remove Eddie Murray's body out of the cell, or seeing another police officer do this. (T 6534) Fitzgerald told the Royal Commission on 21 March 1988 that he did not go to the cell or assist with the removal of Eddie Murray's body. (T 3993) Fitzgerald also said that Parker told him to look after the police station when he went out in a hurry. (T4031)

The Commissioner concluded: "If Parker was the officer who took Lewis to the cells he was probably the police officer who assisted" in removing the body. (Report, p 86) It would seem equally likely that Fitzgerald was the officer who assisted Lewis in removing the body, as he, on his own evidence, was the only person in the police station after Moseley, Page and Parker had left. Why the police witnesses failed to identify who assisted Mr Lewis in the

removal of Eddie Murray's body is a matter of great importance and considerable concern.

Police presence at mortuary

All the police deny being outside the mortuary at about the time the body was delivered. Yet Sister Cruickshank saw two police officers waiting outside the mortuary at the time when Eddie Murray's body was delivered by Mr Lewis. (T 6870) The body was then apparently moved within the mortuary from the table to the refrigeration unit within about two hours of its arrival. This is of great concern, since none of the staff of the hospital moved the body.

Parker is the only police officer who gives any indication that he "possibly could have" gone to the mortuary at the relevant time. (T 6535) Parker either was or he was not there, and his lack of specific recall can be regarded as unsatisfactory. Page suggested to the Commission that a police officer might have gone to the mortuary at the relevant time "to admit the body". (T 6622) No police officer admits to being at the mortuary for the reason suggested by Page. If police officers were there, as Sister Cruickshank recalls, what did they do there?

Police present at autopsy

The Commissioner found that Page attended the autopsy together with Parker and Lamey, even if Page arrived late. (Report, p 93) Page insisted to the Royal Commission that he did not attend the post-mortem:

**MR EAMES: Mr Parker has given evidence, both on the prior occasion and again today, that it is his belief that you did attend that post-mortem?---**

No, sir, I never attended the post-mortem. (T 6576)

Page said Parker and Lamey would have been obliged to attend the autopsy. While Lamey was uncertain, referring to “Sergeant Gary Parker” rather than Gary Page at the post-mortem, Parker recalled that Page was there. (T 2461, 2487 and 3596) Page appears to be wrong in his firm evidence of not attending the autopsy, which remains a point of concern.

#### Assisting Dr Mulvey

Dr Mulvey told the Royal Commission he returned to the mortuary either later on the day of the post-mortem or the following day to continue his examination and was assisted by one police officer but he could not recall which police officer assisted him. No police officer acknowledged that he assisted Dr Mulvey in this exercise. Why not?

## Chapter 14

### PROPOSED EXHUMATION OF EDDIE MURRAY'S REMAINS

Eddie Murray's family take the view that there are too many doubts about the cause of his death. The pain of Eddie Murray's death, sharper because it happened in police custody, has been made more bleak and less bearable by indeterminate findings of an Inquest, inadequate findings of a Royal Commission, and public censure of Senior Constable Kevin Joseph Parker by the Independent Commission Against Corruption.

The authors agree, for the reasons detailed in this report, that there is too much wrong with Eddie Murray's death and its subsequent investigation. Too many doubts surround this case. In the interests of justice and in the interests of Eddie Murray's family, further attempts should be made to resolve these doubts.

A proper and necessary step in the resolution of these doubts is for the remains of Edward James Murray to be exhumed, and for an examination of those remains to be carried out by one or more suitably experienced forensic pathologists. The family are agreeable to this course, and wish it to be done so that the doubts which have been weighing upon them for some sixteen years may be resolved.

There are various possibilities which may be found upon exhumation, including these:

- (1) that the skull was (or was not) opened for examination in 1981;
- (2) that there is (or is not) some fracture of the skull bone consistent with Eddie Murray having struck his head (or suffered a blow) prior to death;

- (3) that the skull was examined in 1981 and there are no evident fractures of it or other bones in his body which might assist in clarifying the analysis done at post-mortem.

Dr Johan Duflou in a Report dated 6 August 1996 (reprinted hereafter) explains the issue and speaks of the value of exhumation in the context of carefully assessing the autopsy findings.

***“Report of Dr Johan Duflou - Forensic Pathologist.***

***Dated 6 August, 1996.***

1. *To compile this report, I have reviewed a number of documents and photographs, as listed:*
  - 1.1. *A set of colour and black and white photographs of the police cells at Wee Waa Police Station and of the post mortem on Mr Murray.*
  - 1.2. *The post mortem report of Dr Mulvey.*
  - 1.3. *The toxicology report of Mr Lewis.*
  - 1.4. *The form P79A (Report of death to the Coroner) by Constable Parker.*
  - 1.5. *An extract from the Wee Waa police station running sheet, compiled by Sgt Mosseley (sic) and relating to the death of Mr Murray.*
  - 1.6. *A statement of Dr Ralte, relating to his examination of the deceased in the police cell.*
  - 1.7. *A statement by Mr Lewis, the ambulance officer who transported the body of*

*Mr Murray to the Wee Waa mortuary.*

- 1.8. *Chapters 16 and 18 from the Report of the Inquiry into the Death of Edward James Murray by Royal Commissioner J.H. Muirhead.*
- 1.9. *Chapter 9 (Adverse police influence on autopsy findings) and chapter 10 (Effect of autopsy on medical evidence) of a document relating to the death of Edward Murray.*
2. ***The standard of the autopsy:*** *The post mortem examination was conducted by Dr Mulvey, the Government Medical Officer for Wee Waa. Dr Mulvey has no specialist qualifications in pathology and at the time of this examination had received no formal training in forensic pathology apart from a number of lectures and demonstrations as a medical student.*
  - 2.1. *The time spent on the autopsy:* *From Dr Mulvey's evidence before Justice Muirhead, it appears the entire examination took approximately one hour. I am unable to find any reference to an assistant helping in the conduct of the examination, although it is possible that a police officer may have provided that assistance. Nevertheless, I would find it extremely difficult to perform a full autopsy on a custodial death in under one hour, even with the assistance of an experienced mortuary assistant. I have trained numerous Government Medical Officers and trainee pathologists in forensic autopsy techniques, and have found that it takes the inexperienced prosector between 2 and 3 hours to perform a basic dissection of a routine case. I therefore conclude, on the basis of the time spent on the examination, that Dr Mulvey could not have conducted a full autopsy on the deceased.*
  - 2.2. *The autopsy report:* *The value of a medico-legal post mortem examination is significantly reduced if the report of that examination does not accurately or completely reflect the extent of natural and traumatic pathology. (1) The report by Dr Mulvey is very brief and*

*does not afford a pathologist the ability to assess the nature of injuries adequately. As an example, the phrase "black linear marks over the lower third of his neck more extensive on the left side" does not transmit any useful information, and photographs of the deceased depict these marks on the upper thirds of the neck. Two other positive pathological findings are made by Dr Mulvey: the first refers to congestion of big veins in the neck - I have not seen this feature in hanging cases once the ligature has been released, and I do not understand how this could occur following the cessation of circulation in an "uncomplicated" neck compression case. The second finding by Dr Mulvey relates to closed vocal cords - again, this is a most unusual finding in cases of neck compression. I strongly suspect that both diagnoses are incorrect and based more on flawed inference rather than direct observation. It can thus be concluded that the description of the injuries is not only inadequate but is also inaccurate. Previously published research by pathologists at the NSW Institute of Forensic Medicine has found a similar low standard of post mortem examinations by Government Medical Officers, this research concluding that only 11% of these examinations provided adequate information for the Coroner to use in reaching a valid conclusion based on the autopsy evidence.(2) Consequently, I am of the opinion that it would be unwise to rely on the autopsy report to any meaningful extent.*

3. ***The cause of death:*** *Dr Mulvey gave the cause of death in his report as "Strangulation", but later changed this to "Hanging", following Dr Brighton's evidence before Justice Muirhead. (3) Taking the reported circumstances of the death scene, the photography and the post mortem report purely on face value, this is not an unreasonable conclusion to reach. The marks on the side of the neck are certainly consistent with having been caused by a ligature, and no other major injuries are conclusively identified in the photographs or by Dr. Mulvey. However, Dr Mulvey lacks sufficient expertise to detect and assess a range of potentially lethal injuries, the autopsy has not been*

*adequately performed, and tissues have not been examined histologically. It is therefore possible that other injuries and/or natural disease processes may have been present, and that these may have been responsible for the death.*

4. ***Microscopic examination:*** *An integral part of any autopsy is the microscopic examination of tissues. This has the dual function of identifying any pathology not visible to the naked eye and confirming the presence of macroscopically diagnosed pathology. In the extreme case, it also indicates that the specific organ sampled was at least examined by the prosector. Full-time training of post-graduate students in pathology (registrars) takes a minimum of 5 years. It has been my experience that prior to about two years of full-time training, registrars are not sufficiently experienced to diagnose trauma and natural diseases reliably, and it can be argued that even the best pathologist will regularly make diagnostic errors when not supplementing his naked eye examination with a microscopic examination of tissues.*
  
5. ***Neuropathology:*** *Recent research at the NSW Institute of Forensic Medicine has shown that examination of the fixed brain by neuropathologists significantly increases the chances of detecting brain pathology.(4) Although whole brain fixation was a well known procedure to specialist pathologists in 1981, it was relatively infrequently carried out by forensic pathologists in NSW at that time and very infrequently performed by Government Medical Officers. Again, whether significant neuropathology was present is open to speculation, given the inadequate post mortem examination by Dr Mulvey.*
  
6. ***Toxicology:*** *Samples of blood, lungs, stomach, heart, spleen, urine and bile were taken for toxicological examination. (5) The only positive finding reported by the analyst was one of a blood alcohol concentration of 0.3000 grams/100mL. Adequate specimens were taken for toxicological examination, although it is not clear whether the blood taken for alcohol determination was preserved to prevent the production or loss of alcohol in the specimen. In my view, it is likely the deceased was intoxicated at the time of his death, and the toxicology result probably represents his degree of intoxication. Patients with*

*this degree of intoxication are prone to suffering head injuries, which may be potentially lethal, and it can at times be very difficult for trained medical observers to differentiate intoxication from a head injury. When both intoxication and a head injury are present together, it is not at all uncommon for the head injury to be missed by both police officers and medical practitioners.*

7. ***The optimal autopsy:*** *The optimal medicolegal autopsy includes a full, detailed description of external findings, including measurements of the height and weight of the deceased, the nature and exact position of all injuries on the surface of the body, and descriptions of any old injuries and identifying marks. The internal examination includes a full neuropathological examination of the fixed brain, a bloodless field layered neck dissection, dissection and weighing of all organs in the body, microscopic examination of tissues, sampling for toxicology and taking of any other specimens which may be of relevance. In any dark-skinned person, subcutaneous dissection of the entire body to detect bruising may be of value. Photographs of both positive and negative findings should be taken at the direction of the prosecutor, usually by a police officer from the Physical Evidence Section with expertise in autopsy photography.*
  
8. ***Standing Orders to Government Medical Officers:*** *The NSW Health Department has not been able to locate any instructions to Government Medical Officers relevant to the time in question. This documentation was apparently available at the time although the nature of the material is not clear. (6)*
  
9. ***The value of exhumation:*** *Mr Murray was buried approximately 15 years ago. Although there is marked variability in the rate of decomposition, it is likely that Mr Murray will be almost totally skeletonised unless the body was expertly embalmed. Exhumation will therefore only be of value in detecting skeletal injury. This skeletal injury could include antemortem fracturing of the skull and facial bones, injury to the small bones of the neck as a result of hanging and evidence of post mortem dissection. If an adequate post mortem*

*examination was conducted, it is unlikely that any additional injuries will be identified. However, if an inadequate examination was conducted initially, there is the possibility that injuries may be found at this stage which may give credence to the possibility that Mr Murray did not die of hanging, but died of a head injury instead.*

*Footnotes.*

- (1) *Pleuckhahn VD, Crodner SM. Ethics, Legal Medicine and Forensic Pathology (2nd Edition), 1991, Melbourne University Press.*
- (2) *Kencian J, Duflou J, Hilton J. Medicolegal post mortems in rural New South Wales - another rural health crisis. Medical Journal of Australia. (1994) 161; 366-368.*
- (3) *Muirhead JH. Report of the inquiry into the death of Edward James Murray. Page 97.*
- (4) *Katerlaris A, Kencian J, Duflou J, Hilton JMN. Brains at necropsy: To fix or not to fix? Journal of Clinical Pathology. 1994;47; 718-720*
- (5) *Muirhead JH. Report of the inquiry into the death of Edward James Murray. Page 111.*
- (6) *Muirhead JH. Report of the inquiry into the death of Edward James Murray. Page 100. ”*

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### **Statutory Power**

Under Section 23A of the NSW Coroner’s Act (1980) the State Coroner must hold a fresh inquest if he is of the opinion that the discovery of new evidence or facts makes it necessary

or desirable in the interests of justice. The Coroner should hold a fresh inquest into this case for the limited purpose of exhuming the body of Eddie Murray to allow experienced forensic pathologists to conduct a post-mortem examination of the remains.

It is apparent that exhuming Eddie Murray's remains may provide further evidence for consideration by those appointed to investigate the circumstances surrounding Eddie Murray's death. It is not submitted that the Coroner should hold a fresh inquest for the general purpose of re-investigating all the circumstances of Eddie Murray's death. The main focus of the proposed exercise should be the matters raised herein which are capable of producing a decisive impact upon the doubts surrounding the death of Edward James Murray. That is, the focus should be on the exhumation.

Section 23A requires that fresh evidence or facts be recognised before the Coroner can order a fresh inquest. The evidence adduced before the Royal Commission in very many instances had not been adduced before the Coroner, and as such much of it should be regarded as fresh evidence or facts entitling the Coroner to order a fresh inquest and, pursuant to section 53, to issue a warrant for the exhumation of the remains of Eddie Murray and order a post-mortem examination. The exhumation, it is submitted, would allow qualified and experienced forensic pathologists to examine Eddie Murray's remains, and is the best available way of allaying many of the doubts which still attend this tragic case.

There are sufficient concerns detailed in this report to establish the proposition that the autopsy in this case was conducted by Dr Mulvey with a strong presumption of suicide, and to establish that this presumption about the cause of death was made largely as a result of the

material presented to him in the P79A Form which was written by Senior Constable Kevin Joseph Parker. The ICAC Report relating to Parker has increased the concerns about the reliability of his evidence to the Coroner and the Royal Commissioner about the death of Eddie Murray. Apart from this presumption, the original post-mortem was inadequately and, according to one recent professionally qualified evaluation, inaccurately reported.

Additionally, Dr Duflou and Dr La'Brooy have recommended the exhumation of the body. Both these highly respected forensic pathologists have for most of their working lives been employed by the State of New South Wales. There can be no doubt that their opinions supporting an exhumation should be accepted as their views over a considerable period of time have been accepted without hesitation by Coroners in New South Wales and elsewhere.

If the Coroner declines to hold a fresh inquest then it is open for an approach to be made to the Supreme Court under Section 47 of the Coroner's Act for the purpose of ordering a fresh inquest. Needless to say it would be desirable for the Coroner to take a flexible approach and hold a fresh inquest for the limited purpose of exhuming and examining the remains of Eddie Murray and thus avoid an approach having to be made to the Supreme Court.

If the Coroner determines that a fresh inquest should be held and that it should be conducted in its entirety by a Coroner, then it is critical that special arrangements should be made in terms of funding and investigatory personnel and methodology. Care needs to be taken in this regard since the Coroner's Office has limited resources: one Coroner (and indeed a Royal Commissioner, on one reasonable view) did not adopt a satisfactory approach to the investigation and analysis of the circumstances surrounding the death of Eddie Murray in the

past; because of this the family and members of the community may apprehend that a similar standard of investigation and analysis would again be employed. It is submitted that in Eddie Murray's case a task force of experienced investigators should be appointed and supervised by an acceptable person for the purpose of thoroughly investigating his death.

## Chapter 15

### SUFFERING OF EDDIE MURRAY'S FAMILY AND POSSIBLE REMEDIES

For Eddie Murray's family the decision to seek an application for exhumation of his remains has involved much anguish and distress. The experience of exhumation will undoubtedly bring more distress. The family's view is that it is better to take positive steps to find out what happened to Eddie Murray, than to continue to bear the burden of doubt.

The suffering of losing their son has most traumatically affected his parents Arthur and Leila Murray. No member of their family who grew up with Eddie Murray on Tulladunna Reserve and in Wee Waa has been unaffected. Eddie Murray was the second eldest child of a large family. The uncertain circumstances of his sudden death have had a major disruptive effect on the formative years of many of his younger brothers and sisters. The family has spent a lot of its energy and limited resources campaigning for justice in Eddie Murray's case, and still await answers to many questions which they had hoped would have been resolved long ago.

Arthur and Leila Murray have experienced numerous visions of their son appearing to them. They have undergone much suffering and endured harassment in their quest for justice. They both believe that their son is asking them not to let their concerns rest until their questions about his death have been answered. Leila Murray recalled some of that harassment in an interview conducted in 1994:

“We left Wee Waa in 1982, we moved to Dubbo because we was getting too much harassment. The day when we was ready to go, in the afternoon at about 5 o'clock, the police came to our house. I had been packing up for three weeks, and had

everything packed up in our lounge. A police officer came with about five other cops outside near our step. I asked them what was going on and they said they had a warrant to search our place. I said I had been packing up for three weeks, so whatever you pull out you put back in there. They walked straight in the door, they started ripping up the boxes, tipping all the clothes and that out of the ports. I said: 'What're you looking for?' They said they were looking for some clothes. I said again that whatever you take out of them boxes you put back in there. They had the last box to go after they had tipped all the clothes out of all the other tea boxes and cardboard boxes and the ports. There was one cardboard box sitting on the floor, and I said: 'I hope youse get what youse looking for.' I said: 'Find my son's shoes and socks and his shirt and trousers.' They called on the two Wee Waa cops to come down, the gaoler and the sergeant, Sergeant Page and Constable Forbes. They walked in and they were just about to rip the tape off the box and I said: 'I hope you get what you're looking for, too.' I said: 'Find my son's shoes and socks and his shirt and trousers.' They just jumped straight back up and I said: 'You wanna make sure before you wanna search people's place again.' They just walked to the door and I said: 'What, I hit a nerve, did I?' They never finished pulling the tape right off the box."

(Interview with Arthur and Leila Murray, in Irene Moores ed., *Voices of Aboriginal Australia: Past, Present, Future*, Butterfly Books, 1995, p 442.)

In November 1996 Arthur and Leila Murray saw a consultant psychiatrist, Dr Malcolm Dent, who has diagnosed their continuing traumatic condition as a case of pathological grief which he identifies as a "**Dysthymic Disorder**". He says their condition is "not normal grief in any way but Dysthymic Disorder which is part of Pathological Grieving, a formal category of mental disorder" which is a consequence of their uncertainty about the cause of their son's death.

Dr Dent states in part of his Psychiatric Report on Arthur and Leila Murray:

“Both of them indicated that one of their daughters had been killed in a motor vehicle accident but they can accept that, because it has a reality and a finality about it; but both of them described where they anticipate seeing Eddie coming home again one day, where they have not had an opportunity to say farewell and where there are so many unanswered questions about his death that defy reality in their minds; then these are the very seeds of Pathological Grieving, that which predisposes to a failure to resolve Grief in the normal way following the nervous shock of the death of their son, Eddie, and which leads very clearly to a formal category of mental illness as the way in which such Pathological Grief is expressed.” (Dr Dent’s Report, 17/3/97, p 4)

Dr Dent concludes that:

“It may be that they never recover effectively now so entrenched is this disorder.”

He assesses their suffering as so deep as to incline him to “already suspect that they would never recover, despite the best of therapeutic expertise and endeavours”. (Ibid., p 7) Whilst he suggests that “in all humane reason it is entirely appropriate” for Arthur and Leila Murray to receive treatment and assistance that can be offered to them jointly and separately, and this can be pursued, it is undoubtedly true that the most important step toward recovery would be finding out how their son died.

## Chapter 16

### NEW EVIDENCE FROM THE EXHUMATION ABOUT THE CAUSE OF DEATH

In response to recommendation (B) of this report, an exhumation of the remains of Edward James Murray was conducted (with his family's approval and in the presence of Aboriginal community elders as well as Carl Hughes, a forensic investigator representing the Murray family) on 19 November 1997. The purpose of the exhumation was to enable further medical examination by Dr Johan Duflou, Deputy Director of the NSW Institute of Forensic Medicine. Dr Duflou's Report on the Exhumation (reproduced below) was released to the family's solicitor on 19 January 1998, together with a report from Dr Denise Donlon (an archaeologist who assisted Dr Duflou with the exhumation) and a short statement from the NSW State Coroner, Derrick Hand, asserting:

As a consequence of those reports I am satisfied that there is no new evidence or facts making it necessary or desirable in the interests of justice to hold a fresh inquest.

The Murray family's legal representatives, in their pursuit of justice in this case, requested that the Coroner intervene only for "the limited purpose of exhuming the body of Eddie Murray to allow experienced forensic pathologists to conduct a post-mortem examination of the remains" (see pages 313-315 above). The exhumation of Eddie Murray's remains has definitely found significant new evidence of an injury which, if it had been disclosed at the time of the Royal Commission, would have fundamentally altered the questions asked about the cause of death. This chapter reviews the evidence found by the exhumation in relation to previously known evidence, and, based on this new evidence, addresses the need for a full-scale investigation to disclose other missing evidence.

### **Report of Dr Duflou on the exhumation and further medical examination**

The disclosure of some vital new medical evidence in this case as a result of the exhumation is described in Dr Duflou's Report dated 16 January 1998, which reads as follows:

*“REPORT ON THE EXHUMATION OF THE BODY OF EDWARD JAMES MURRAY*

*Ref: ICN 97/5802*

1. *On 19 November 1997, in accordance with an order to perform a post-mortem examination on the body of Edward James Murray, an exhumation was performed at Wee Waa Cemetery. The body was exhumed with the help of Dr Denise Donlon, Mr Carl Hughes, members of the NSW Police Service, members of the Volunteer Rescue Service and the operator of a backhoe. The remains of Edward Murray were then transported to the NSW Institute of Forensic Medicine for detailed examination.*
2. *A description of the procedures involved in the exhumation of the body, compiled by Dr Denise Donlon, is attached to this report [not reprinted here].*
3. *On receipt of the remains at the Institute, the bones were cleaned, placed in the correct anatomical position, radiographed and photographed. Examination of the bones was conducted jointly with Dr Denise Donlon. Following the examination, the remains were released for reburial.*
4. *A report on the various bones identified and the physical characteristics of the remains has been compiled by Dr Denise Donlon, and is attached to this report [not reprinted here]. A report on the deceased's dentition has been compiled by Dr Russel Lain [not reprinted here].*
5. ***Description of skeletal abnormalities:***
  - 5.1 *The following skeletal abnormalities were observed on examination of the bones:*

- 5.1.1. *There was a transverse fracture of the body of the sternum, approximately 2/3 along its length (Annexure 3 [see x-ray photograph reproduced at the end of this volume]).*
- 5.1.2. *There was extensive comminuted fracturing and disintegration of the bones of the face (Annexure 3).*
- 5.1.3. *There were circumferential saw-blade incisions of the calvarium of the skull.*
- 5.1.4. *There were multiple incisions in the anterior aspects of ribs.*
- 5.1.5. *There were incisions, probably caused by a saw-blade in the manubrium, resulting in the manubrium being divided into three.*
- 5.2. *The following traumatic abnormalities were excluded as a result of my examination:*
  - 5.2.1. *Fractures of the base of the skull.*
  - 5.2.2. *Fractures of the bones of the hands.*
  - 5.2.3. *Fractures of ribs.*
  - 5.2.4. *Fractures or other perimortem injuries of the teeth.*
- 5.3. *The hyoid bone and thyroid cartilage were not identified, and no comments can be made in relation to any injuries sustained by these structures.*

## **6. Interpretation of abnormalities found at autopsy:**

- 6.1. *The fracture of the sternum: The injury to the sternum may have been sustained in a number of ways:*
  - 6.1.1. *As a result of one or more blows to the chest not more than a number of days prior to death.*
  - 6.1.2. *During resuscitation of the deceased in the police cell.*
  - 6.1.3. *During the conduct of the autopsy.*
  - 6.1.4. *As a result of collapse of the coffin and the associated fracturing and fragmentation of bones by the weight of the earth.*

*The features of the fracture are not those expected from the collapse of a coffin lid, and it would be most unusual to cause a fracture of the*

*sternum during a post mortem examination in a young adult. There appears to be doubt that any attempts were made to resuscitate the deceased in the police cells (Report of the Royal Commission, p 78). Consequently, the most likely cause of the fracture of the sternum is one or more blows to the chest some time prior to death. I cannot state with any degree of certainty whether this blow was inflicted by a person or as a result of Mr Murray falling onto a protruding surface. Similarly, I cannot state with any degree of certainty when the injury was sustained - most likely the injury would have been sustained between about 2 or 3 days prior to death and the time of death. If, on the other hand, the deceased had been resuscitated with vigorously applied cardiac massage, the more likely cause of the fracture would then be resuscitation, and would have been inflicted shortly after death.*

- 6.2. *The fractures of the bones of the face: A large number of small facial bone fragments were retrieved from the grave. The absence of significant dental injury and the absence of fracturing to the base of the skull suggests the facial fracturing is most likely a result of fragmentation of the skull secondary to prolonged burial. I cannot exclude the possibility that there was antemortem fracturing of facial bones - if present, these fractures were masked by the extensive post mortem fracturing.*
- 6.3. *Incisions and saw marks on ribs, manubrium and skull: These incisions and saw marks are indications that a post mortem examination with examination of internal organs was performed. The saw marks in the manubrium are unusual and may represent either a novel autopsy technique or inexperience in the removal and examination of chest organs. The saw marks to the calvarium of the skull indicate the head had been opened.*
- 6.4. *Neck injuries: The cervical spine was normal and uninjured. The hyoid*

*bone and thyroid cartilage were not found in the grave. These laryngeal skeletal structures often disintegrate entirely following burial, and are frequently not found at exhumation. No comment can be made on the nature or extent of the neck injuries from my examination of the exhumed remains.*

**7. Conclusions:** *Based on the second autopsy findings, I come to the following conclusions:*

- 7.1. *There was a fracture of the sternum. If the deceased was subjected to vigorous cardiac massage the most likely cause of the fracture is resuscitation. If the deceased was not resuscitated, or was subjected to non-vigorous resuscitation, the injury was most likely inflicted not more than a number of days prior to death.*
- 7.2. *There were multiple fractures of the bones of the face. Most likely these fractures are the result of deterioration of the corpse and collapse of the coffin. I cannot exclude the possibility one or more cranial fractures identified may have been inflicted antemortem.*
- 7.3. *A post mortem examination had been performed on Edward James Murray prior to his initial burial.*

*J Duflou MBChB MmedPath(Forens) FRCPA DavMed*

*Deputy Director and Clinical Senior Lecturer*

*NSW Institute of Forensic Medicine*

*16 January 1998”*

**The significance of Dr Duflou’s findings**

The most significant finding from the second autopsy examination of Eddie Murray’s remains by Dr Duflou concerns the severe fracture of the sternum, very clearly evident in an x-ray photograph included at the end of this report. This injury went unnoticed in the original short

autopsy conducted by Dr Mulvey, although his procedures included an internal examination looking for “any evidence of violence: ruptured spleen, ruptured liver, fractured ribs” (see page 171 above). This injury is obviously a major new part of the medical evidence which casts further doubt upon Dr Mulvey’s original autopsy, reinforcing Dr LaBrooy’s warning that it is impossible to believe Dr Mulvey observed all the injuries to be found (page 192 above).

Because of the passage of time since Eddie Murray’s burial some possible injuries cannot be excluded, in particular antemortem cranial fractures (other than to the base of the skull) not identified at the first autopsy. The exhumation has disclosed that Dr Mulvey’s routine autopsy technique did, as he affirmed to the Royal Commission, include opening the skull to enable an examination of possible internal injuries to the brain. While it can positively be concluded that Dr Mulvey examined the brain for evidence of haemorrhaging, the accuracy or thoroughness of his examination cannot now be determined because no photographs of the brain were taken.

The hypothesis that Dr Mulvey did not even externally examine the brain has been disproven, but his key finding of “no internal injuries” remains very uncertain. This is particularly so in view of his failure to observe a severe sternum fracture at autopsy when he made “saw marks in the manubrium” (the higher bone adjacent to the main sternum bone). Dr Duflou notes that “the saw marks in the manubrium are unusual and may represent either a novel autopsy technique or inexperience in the removal and examination of chest organs.” It is probable, given the short time which Dr Mulvey took for the autopsy, that his inexperience in examining chest organs was matched by inexperience in the established techniques for

examination of the brain to determine whether there was any evidence of internal injuries. This hypothesis is based not only upon Dr Mulvey's inexperience as a pathologist, but also on the fact that he had to be told by Dr Brighton to specifically look for haemorrhaging in eyeballs. (See page 172 above)

As a result of the exhumation the extant medical evidence in this case has been significantly enhanced. The particularity of the medical evidence (reviewed at pages 192-196 above) can be further specified. In addition to the certain and discrete finding of a 0.3 level of intoxication, there is a new finding of a severe fracture of the body of the sternum, approximately 2/3 along its length. This finding is as certain as the extensive marks photographed particularly on the left side of the neck. Some consistent explanation must be found for both these findings which exist at the next highest level of certainty after the clinically tested blood-alcohol level.

The two lesser levels of certainty, concerning the probability of bruising to the forehead and left arm and the reported lack of internal injuries to the brain, have not been enhanced by the exhumation, although in both respects the new finding about the fractured sternum has raised additional questions about the significance of these findings. The probability of significant bruising not discerned at first autopsy would be substantially increased if it can unambiguously be shown that the fractured sternum most likely resulted from an assault after Eddie Murray had been detained by police. Furthermore, if such bruising was most likely present (as seen by Sister Garden immediately before the first autopsy) but not recorded by Dr Mulvey, this would raise additional doubt about the reliability of his specific finding of no internal injuries to the brain. In any case, his general finding of no internal injuries (which the

Commissioner relied upon when exonerating the police despite their lack of frankness about what occurred in the cell) must now be regarded as a mistaken assumption based on an unreliable autopsy report.

### **Most probable cause of the fractured sternum**

It is crucially important to determine the most likely cause and probable effects of the broken sternum. Dr Duflou was able to exclude several other possible injuries, such as a fracture of the base of the skull, fractures of the bones of the hands, fractures of ribs and injuries of the teeth. Although fracturing of facial bones may have been present and “masked by the extensive post-mortem fracturing” of the face, there is no doubt about the existence of a severe fracture of the sternum, together with the lack of other fractures specifically excluded by Dr Duflou.

Dr Duflou considered four hypothetical causes of a severe sternum injury, two of which in this case he readily discounted as inconsistent with the specific fracture found (these are an injury sustained during the original autopsy or as a result of post-mortem fracturing after burial). The two possible causes of a severe sternum fracture such as that disclosed by the exhumation of Eddie Murray’s remains are:

- 1) “As a result of one or more blows to the chest not more than a number of days prior to death”, or
- 2) “During resuscitation of the deceased in the police cell.”

Dr Duflou notes in his report that “there appears to be doubt that any attempts were made to resuscitate the deceased in the police cells”. Royal Commissioner Muirhead was not convinced by the police testimony that strenuous resuscitation occurred:

Efforts made by Page to resuscitate him [Eddie Murray] were, if any, minimal.  
(Report, p 131, part of finding 8)

The Commissioner stated that he had “doubts whether Page performed cardiac massage or made attempts to revive Eddie.” (Report, p 78) This was because of the direct inconsistency between the police testimony and the evidence of the civilian witness in the police station, Mr Cronin, who recalled seeing both Page and Moseley “jostling each other to try and get in front” running back to the office area when, according to the police evidence, Page remained in the cell with Eddie Murray while Moseley returned alone to get medical help. (T 3017)

This crucial point was checked specifically by the Commissioner, who asked Cronin whether he had “a definite memory of them both coming back”, to which Cronin replied that he was sure Moseley had not come back alone:

**THE COMMISSIONER: You’re sure it wasn’t just Sergeant Moseley?---**

No, they were actually in quite a hurry.

**And both of them were in a hurry?---**

My word they were. Just from memory there’s not a lot of space around that corner there and they both came around there full pelt together. That’s what I say, they were in a hurry. (T 3025)

This evidence means it is highly improbable that there was any attempt to resuscitate Eddie Murray in the police cell, as claimed by Page and Moseley.

The alleged resuscitation attempt by Page is also hard to believe in view of the fact that the police contacted Dr Ralte, who attended the cell merely to pronounce death, before ringing an ambulance. The Commissioner in his summing up noted that this death “was accepted as a

fait accompli very quickly”, whereas the standard practice would have been “to have rung the ambulance first and got him to hospital where resuscitative equipment was available.” (See page 148 above) Since an ambulance could have been expected to arrive much quicker than a doctor with a busy surgery, the police did not in fact seek urgent medical help. Their conduct at the time is not consistent with any efforts to revive Eddie Murray through resuscitation.

It is significant that the Commissioner disbelieved Page’s claim about making a resuscitation attempt despite accepting Page’s claim that marks existed on the deceased’s neck in the cell. (Neither Dr Ralte nor the ambulance officer Mr Lewis recalled seeing such marks when they examined Eddie Murray; see Chapter 11 above, pages 201-205.) The hypothesis of vigorous resuscitation causing the sternum fracture is at odds with clear evidence from Mr Cronin, a witness whom the Commissioner found reliable. Indeed, to suppose that the sternum fracture was caused by rough resuscitation in this case would be in effect to reject without foundation one of the Commissioner’s particular findings which withstands careful scrutiny.

The hypothesis that the sternum fracture occurred during resuscitation in the cell is highly improbable for another reason. Dr Duflou in his examination of Eddie Murray’s remains was able to conclude that his ribs had not been fractured. If a fracture of the sternum had been sustained during vigorous cardiac massage, it is most likely that some fracturing of the ribs would also occur, together with related internal bruising (which, according to Dr Oettle, would have been pronounced: T 6236). Dr Mulvey made no reference to such bruising in his meagre autopsy report, although it is highly probable that he made no detailed examination for signs of internal bruising. The obvious explanation for the lack of fracturing to the ribs is that no vigorous resuscitation occurred in the cell because there was no sign of life then.

Even if Mr Cronin's evidence is disregarded, a further reason for discounting the hypothesis of resuscitation causing the severe sternum fracture to Eddie Murray is the short time that the police claim resuscitation lasted. Page, who claimed to have done "everything possible within my capabilities to revive him", stated when asked how long the resuscitation attempt took:

**THE COMMISSIONER: Can I just ask you this: you told us how you tried to revive Eddie Murray. Just looking back on it now, did your efforts continue for how long?---**

Only minutes, sir, not very long - minutes, that's all. (T 3142)

This evidence is hardly consistent with the occurrence of a vigorous resuscitation attempt so strenuous that it caused a severe fracture of the sternum. Together with Cronin's evidence about Page and Moseley returning from the cell together, Page's own testimony means that the sternum fracture most probably resulted from what Dr Duflou described in his report as "one or more blows to the chest some time prior to death". While Dr Duflou considered that this was "the most likely cause" of the sternum fracture, two key questions remain:

when was the most likely time that Eddie Murray suffered this injury?, and

what was the most probable effect of this severe fracture on Eddie Murray's mobility?

**When did Eddie Murray suffer "blows to the chest"?**

Dr Duflou concluded that, given the lack of vigorous resuscitation in the police cell, the most likely cause of the fractured sternum was "one or more blows to the chest" which, in his opinion, "would have been sustained between about 2 or 3 days prior to death and the time of death." It is clear that the fractured sternum was not an old injury because no healing of the

bone is evident (see x-ray photo at the end of this report). The medical evidence is not more precise about the time when Eddie Murray suffered the fracture, but this can be determined from other evidence about Eddie Murray's condition prior to his detention by police, at about 2 pm on 12 June 1981. In particular, the evidence from the barmaid Mrs Beryl Berger about Eddie Murray's behaviour at the Imperial Hotel immediately before he was detained by police is important in showing his lack of this significant injury at that time.

Mrs Berger had seen Eddie Murray drunk on previous occasions. She says that on 12 June 1981, when it took four men to force him out of the hotel, he was more drunk than previously and "he couldn't hardly stand and yet he was so strong." She has a clear recollection of him that day because he was unusually strong:

But he was different. I even said - you know, thought to myself - that's why I remember this case so well. He was so strong, he could have fought anyone off that day, you know. He was different to an ordinary drunk, he just was different. ... He had plenty of strength and was fighting, yes.

(T 3388, see Chapter 11 above, pages 212 and 213)

Mrs Berger recalled that Eddie Murray was so strong that four men were required to forcibly eject him from the hotel. (T 3383, 3390) It appears that one of these men was the elderly publican Mr Molyneux, but Mrs Berger clearly recalls that Eddie Murray was struggling hard:

**MR WILLIAMS: From your point of view what were these four men doing helping Mr Molyneux remove Eddie Murray?**

**THE COMMISSIONER: There were three I think?---**

They were drinking in the bar and when they - if Jack [Mr Molyneux] ever had

trouble, anyone that was drinking always helped him, as he was an old man, and they just raced out to help him.

**MR WILLIAMS: Well, let's be clear. Were there three men plus Mr Molyneux or do you mean there were four men?---**

That's from what I can remember - three plus Mr Molyneux.

**You didn't think it was a bit tough on Eddie Murray, three men buying into it, did you?---**

Probably was, but Eddie was so strong he nearly got through them anyway. (T 3397)

Such force could not possibly have been necessary if Eddie Murray already had a severely fractured sternum immediately before the police arrived and detained him. This clear evidence of Eddie Murray's exceptional strength at the hotel before his detention demonstrates that the injury to his sternum must have occurred between his detention at about 2 pm on 12 June 1981 and when he was first seen by Dr Ralte and Mr Lewis sometime between 3.30 pm and 3.45 pm that day. The impact of a severely broken sternum would reduce the strength of an injured person substantially, even if their pain had been temporarily lessened due to the effects of a very high level of intoxication.

#### **How did the fractured sternum limit Eddie Murray's movements?**

An important medical issue not addressed by Dr Duflou in his report is the most probable effects of the severe sternum fracture on Eddie Murray's movements. This is now a crucial issue in determining the most probable cause of death in this case. The question of the physical and psychological effects upon Eddie Murray of the fractured sternum obviously did not arise before this fracture was disclosed by the exhumation. Now that this injury is one of the certain parts of the medical evidence, attention must be given to assessing the impact of the injury. This matter is an issue of parallel importance to the concerns raised in the first edition of this report about whether Eddie Murray was sufficiently tolerant of alcohol to make

the scenario of self-inflicted hanging conceivable. (See pages 207-211 above)

### **Report of Professor Nikolai Bogduk on the death of Eddie Murray**

The most probable effects of the sternum fracture on Eddie Murray's mobility are assessed professionally in a Report dated 6 January 1999 by Professor Nikolai Bogduk, Director of the Newcastle Bone and Joint Institute and Professor of Anatomy and Musculoskeletal Medicine. In his Report he was requested by the Murray family's barrister to provide an opinion about a number of specific matters, namely:

1. Whether the fracture to the sternum was ante or post mortem.
2. The severity of this injury and the most likely way such an injury could have occurred.
3. The effect of such an injury on a person of the age, build and the level of intoxication of Eddie Murray.
4. What impact would a fractured sternum have on the dexterity required for example, to tie a reef knot and form a noose?
5. What effect would a very high level of intoxication have on the mobility of upper limbs whilst having to balance on tiptoes and whilst having such a fractured sternum?

Professor Bogduk's Report answers each of these particular questions as follows:

*"1. I did not see the specimen of the sternum when it was freshly exhumed. On this matter I defer to the report of Dr Duflou, which is confident that the fracture was sustained ante-mortem.*

2. *It is my opinion that the fracture was most likely due to a blow on the chest, which would include, but not be limited to, vigorous cardiac massage. Again, I cannot venture further than the report of Dr Duflou on this matter.*

3. *A fracture of the sternum would cause a spectrum of disability proportional to activity and effort. Since the fracture is stabilised by the rib cage, an individual at rest would notice little apart from, perhaps, local and mild pain, and tenderness. They could have difficulty in breathing in as much as deep respiration would cause the fracture to move and become more painful. However, shallow, quiet breathing would be quite tolerable.*

*On the other hand, I would expect major efforts with the upper limbs would be impaired. The pectoralis major muscle, which controls the movements of the upper limb as a whole, attaches to the sternum and chest wall. An individual with a fractured sternum would have their chest pain strongly aggravated by movements such as lifting the arms above the head to hold or pull objects. In this regard, no movement would be prevented, but an individual would have to be very determined to persevere with above head movements and effort, because of the exacerbation of pain. Accordingly I would find it remarkable, although not impossible, for an individual to reach to the top of a door, on tip toe, to tie a knot strongly.*

4. *I would not expect a fracture of the sternum to affect dexterity. Dexterity, per se, depends on the integrity of the nerves and muscles of the distal parts of the upper limbs (hands, fingers). However, the pectoralis major has a cardinal role in holding the extended, entire upper limb steady against the chest wall, i.e. securing a steady base from which the fingers can work accurately. Aggravation of pain, therefore, would interfere not with dexterity as such, but would affect the subconscious control of the position of the entire upper limb. In other words, what we take for granted when reaching up, in terms of being able to “balance” the upper limb as we reach up or out, would be impaired. Aggravation of pain would tend to dissuade the individual from maintaining the position, and they would have to over-ride this protective urge. It would require perseverance and determination to use the limbs in this way. A suitable analogy might be an individual with a broken leg; they cannot walk normally,*

*and would prefer not to walk; but if determined they could limp.*

*5. Intoxication would not have any effect on the mobility of the upper limbs.*

*Intoxication would only affect the accuracy of co-ordination of the upper limbs, and balance at the lower limbs whilst standing on tip toe.”*

### **The significance of Professor Bogduk’s opinion**

The Commissioner based his finding that Eddie Murray died by self-inflicted hanging on the autopsy report by Dr Mulvey which included no reference to any signs of violence. That basic finding has now been shown, as a result of the newly discovered injury after the exhumation, to be clearly wrong. There is now new evidence that Eddie Murray suffered a traumatic injury soon after being detained by police. The impact of this injury on Eddie Murray’s condition is a further matter of medical significance which raises serious questions about the cause of death.

Professor Bogduk’s Report raises the crucial issue of the painful process of Eddie Murray’s death. His opinion about the degree of perseverance required to overcome the aggravated pain from pressure on a severe sternum fracture is of vital importance. Professor Bogduk makes the strong point that a high degree of determination would have been required to overcome the severe pain of a sternum fracture. This calls into question the Commissioner’s principal finding about the cause of Eddie Murray’s death:

I find that death was due to hanging; this does not necessarily imply suicide. The medical evidence does not support death due to other causes and the post mortem findings are not consistent with the application of violence to other parts of the body of a nature to cause unconsciousness or death. (Report, p 99)

The Commissioner concludes in his summary of findings that: “On the whole of the evidence and material now before me it is more probable than not that death resulted from Eddie’s own actions.” He also states that: “There is no evidence to justify a finding that he was a person likely to suicide although the effects of a high level of intoxication are not predictable.” And, in a significant comment suggesting a relatively painless process of death, he also added:

Assuming I am correct in my finding that Eddie’s death resulted from his own actions, I cannot exclude the hypothesis that this was done by way of protest or in anger with neither an intent to put an end to life nor an appreciation of the swiftness with which death by such processes may occur. (Report, pp 132-133)

Whatever may be said about this speculation about Eddie Murray’s intentions, on the whole of the medical evidence as it now exists after the second autopsy the scenario of an isolated and quick self-inflicted hanging in the police cell should be regarded as highly improbable. Rather than a lack of appreciation of the ease with which death by hanging may occur, this scenario requires a remarkable determination to endure a dramatically increased level of suffering. Given the exacerbation of pain which Eddie Murray would have experienced had he attempted to reach up and balance on tip toes while threading a strip of blanket through a small space above the cell door and tying two effective reef knots, the Commissioner’s hypothesis that Eddie Murray caused his own death without knowing what he was doing is unbelievable.

### **The need to reassess the probable cause of death**

The Commissioner does not completely discount the probability that Eddie Murray had been assaulted by police in the cell, but he links this only to a scenario of self-inflicted hanging, an assumption based on Dr Mulvey’s original autopsy report which is demonstrably inadequate.

After saying that he had not relied on the words of police witnesses, the Commissioner states:

Indeed, I am not able to say whether or not Eddie was physically or verbally harassed by any officer thus precipitating his decision to construct the noose. (Report, pp 19-20)

The question of whether Eddie Murray was assaulted at Wee Waa police station on 12 June 1981 is logically separate from, and prior to, the question of whether he constructed the noose. Together, the reports of Dr Duflou and Professor Bogduk show that, rather than precipitating a decision to construct the noose, the severely fractured sternum which Eddie Murray suffered after being detained by police would have made it much harder for him to have done this.

The Commissioner's favoured scenario of a self-inflicted hanging precipitated by police abuse is improbable once the nature of this abuse is disclosed as likely to have been a physical assault of sufficient force to cause a severely fractured sternum, not just Parker's verbal harassment of Eddie Murray (about which Mr McKnight gave evidence). The Commissioner, commenting on Parker's refusal to admit the angry exchange that occurred when Eddie Murray was detained at the police station, states:

Why then was Parker holding back on this information? Had there been medical evidence consistent with Eddie's death having been caused by a third party, Parker's evasiveness would assume significance and sinister overtones. But whatever was said between he and Eddie, it is quite clear that Eddie was not forcibly hanged by a third party.

It is possible that Parker did or said something which precipitated a decision by Eddie to stage a suicide attempt. If that was so, his reluctance to acknowledge any hostility between them could explain Parker's evasiveness. I find it unlikely that Eddie was struck a blow although the only possible injury (a mark to the forehead) would neither

have caused unconsciousness or death. (Report, p 35)

The Commissioner's clear view about the lack of other serious injury, based on Dr Mulvey's meagre autopsy report, has now been revealed as a mistakenly narrow view of the evidence. The finding by Dr Duflou that the most likely cause of the severe sternum fracture was "one or more blows to the chest" raises precisely the concerns about the "sinister overtones" of Parker's evasiveness about which the Commissioner commented briefly. The opinion of Professor Bogduk about the impact of this injury upon Eddie Murray's mobility reinforces these grave concerns, which were not seriously investigated by the Royal Commission.

The Commissioner had some concerns about the credibility of the police evidence, to such an extent that he claimed he had not relied "on the words of the police witnesses" in determining the cause of Eddie Murray's death (Report, p 19). He stated that his findings were based "not on the evidence of police officers but on the objective medical and pathological evidence", as well as on the accounts of independent witnesses with integrity and on "an assessment of the probabilities relating to the sequence of events when viewed in their totality". (Report, p 20) A reassessment of these probabilities is now clearly necessary, taking into account the new findings about the objective medical and pathological evidence following the exhumation.

This reassessment should focus on the need to answer questions which were raised at but not adequately resolved by the Royal Commission. In particular, what happened to Eddie Murray when he was detained at Wee Waa police station still has to be determined. The Commissioner had a view that he was not told what happened to Eddie Murray immediately before he died:

I am concerned that I have not been given an accurate account as to what took place when Eddie was placed in and locked in the cell. I doubt whether it was as quiet an episode as the evidence of the officers depicts. (Report, p 34)

This doubt must be resolved through a new investigation to ensure that the true cause of death is now disclosed, as outlined in the Overview and Recommendations at the start of this report.

The new and competent investigation of this case called for in recommendation (A) of this report is quite different in scope from another Inquest conducted by the Coroner's office, the authority which failed to find much of the relevant evidence at the first opportunity in the five months following Eddie Murray's death. Having properly supervised the exhumation, the Coroner's office is not equipped to find other significant evidence (beyond that disclosed by the exhumation) which may remain hidden in this case. The proper procedure for advancing the investigation of this case is through the appointment of suitably qualified and experienced legal practitioners who, together with a forensic medical expert, can review existing evidence and gather further evidence to determine what happened to Eddie Murray in the police cell.

## CONFIDENTIAL

Dr Gregory Woods QC DCJ  
The Downing Centre, Sydney

**Re: Eddie Murray Report - Second Edition**

We attach the following for your consideration:

- (a) the title page for the second, updated edition (the cover will be similarly amended);
- (b) the last page of the new Overview and Recommendations where it is proposed to make a straightforward statement that the report is unchanged from the first edition except for the new Overview and an additional chapter (16) on the results of the exhumation.

We are aware of the limitations placed on you following your appointment as a judge. However, if it is possible we want to acknowledge your contribution to the first report and generally the case. Against this we are concerned not to prejudice your current role as a judicial officer in any way.

Please advise if you wish to:

- 1) accept; or
- 2) reject; or
- 3) amend.

With Best Wishes,

Robert Cavanagh

Dr Roderic Pitty.      31 March 1999      Newcastle Legal Centre      Fax: 0249 218866

## OVERVIEW AND RECOMMENDATIONS

Since the first edition of this report was published in 1997, the remains of Edward James Murray have been exhumed. Acting upon Recommendation (B) of the first edition calling for that exhumation, the Government of New South Wales through the Coroner's office arranged for this to take place in Wee Waa on 19 November 1997. A further post-mortem examination was conducted in November-December 1997 on the remains by Dr Duflou, Deputy Director of the New South Wales Institute of Forensic Medicine. Dr Duflou's examination revealed a very significant injury to the sternum that had not been previously discovered at the original autopsy conducted by Dr Mulvey on 13 June 1981. The nature of this previously undetected injury and its implications for the death of Edward James Murray and for a full and proper investigation of this death are examined in further detail in an additional chapter (Chapter 16) of this report. Recommendations (A) and (C), which called for reopening the investigation into this death and for a review by the Director of Public Prosecutions of all previous testimony to the Coronial Inquest and to a Royal Commission of Inquiry to assist with this, have not been implemented. It is extraordinary that, having found a significant injury on exhumation, the Government has not implemented these complementary recommendations over a year after Eddie Murray's family was informed about the injury for the first time.

It is also remarkable that resources have not even been applied by government to the need to provide expert opinions about the cause and the likely consequences of this significant and previously undetected injury. The family of Eddie Murray do not have the financial resources to reinvestigate the case. No government agency, state or federal, has offered to assist in this regard, despite advice being given to relevant ministries about the necessity of obtaining

expert opinions and gathering further evidence to resolve unanswered questions.

Furthermore, the relevant government agencies have refused or not cared to evaluate the significance of the newly disclosed injury in the light of the previous evidence given at the Royal Commission and the Coronial Inquest. Such an evaluation could now reveal the most probable way in which Eddie Murray suffered the sternal fracture, and thus uncover the truth about how he died. State agencies failed in their duty of care to Eddie Murray when they detained him, and continue to fail in their duty to fully investigate the circumstances of his death.

We maintain our recommendations:

- (A) That the investigation into the death of Edward James Murray be reopened;
- and (C) That the Director of Public Prosecutions review all the testimony at the Coronial Inquest and the Royal Commission in order to assist with the reinvestigation of the death of Edward James Murray.

Additionally, we recommend:

- (D) That the Attorney-General or the Minister for Police for the State of New South Wales appoint two independent legal practitioners and a forensic medical expert to review the results of the exhumation and have further investigations conducted. Such investigations to include: obtaining expert medical opinions about the cause and likely consequences of the injury found on exhumation; reviewing the evidence of witnesses, especially concerning the treatment by police of the deceased while he was in custody; and reinterviewing witnesses to gather further evidence. The experts appointed to

report with findings and recommendations to the relevant minister and the family of the deceased.

The appointed experts must be independent of state agencies. It is crucial that there now be an independently conducted investigation to resolve this case because state agencies have in the past shown a willingness to protect their vested interests by being functionally incompetent. The new investigators must conduct their inquiries so that the results of their investigation are transparent and accountable to the family of the deceased. Their findings and recommendations must be clearly based on all the evidence rather than, as has occurred in the past, based on incomplete and inadequate analysis.

An example of the approach taken by government thus far to this case is provided in a letter from the Attorney-General of New South Wales to the solicitor for the Murray family dated 17 November 1997. In this letter Attorney General J.W. Shaw QC MLC states, *inter alia*:

As you are no doubt aware, it is a fundamental principle of our system of justice that coronial proceedings and Commissions remain independent of government control and political interference. It is the responsibility of these forums to make their determinations within the limits set by legislation and on the basis of evidence presented. Therefore it is beyond my role as Attorney General to interfere in the determinations of such proceedings.

This comment was in response to the first edition of this report, and was written two days before the exhumation. The Attorney General therefore was aware at the time of writing that the exhumation was going to occur shortly. The comment is particularly unhelpful in that there were no 'Commissions' considering the case then, and the Coroner had only been

involved strictly for the purpose of the exhumation, as required by the Coroner's Act 1980, and not for the purpose of conducting another Inquest. The comment is also misconceived when the Attorney says that "coronial proceeding and Commissions remain independent of government control and political interference". Assistance was being sought on behalf of Eddie Murray's family from the Attorney on the basis of his position as first law officer of the Crown. As such, his assistance could not possibly be regarded as 'political interference'. The comment is also mischevius in that it suggests that government has no role in ensuring that the circumstances surrounding the death of an individual in police custody must be thoroughly and investigated. Furthermore, the comment fails to take account of the fact that an inquiry does not have to be conducted pursuant to any legislation for it to be both bona fide and effective.

The Attorney in his letter goes on to state *inter alia*:

My sympathy lies with the family of Mr Murray and I trust this matter will be brought to an end soon.

The family of Eddie Murray simply want their son's death to be properly investigated. The sooner this is done the sooner this matter will finally be resolved. The Attorney in his letter claims to have been "reliably informed that depending upon whether a pre-mortem injury is discovered" after exhumation, the Coroner will determine whether to conduct a further investigation. The Coroner decided not to reinvestigate but provides no cogent reason for not wanting to reinvestigate the case. His views may be relevant pursuant to the Coroner's Act but his office, having failed on a previous occasion to properly investigate the death, has failed again following the exhumation, and therefore appears to be incapable of helping to

resolve this particular case. More importantly, the family do not want any further involvement of the Coroner and their views should be respected.

Another government response was provided in a letter from the Minister for Police to the solicitor for the family in a letter dated 9 January 1998. Minister Paul Whelan LLB MP states *inter alia*:

Should the Attorney General, Crown Law Officers or the Coroner consider it appropriate for police to investigate any aspect of the matter, the Police Service will be happy to do so.

Since the matters raised in the report constitute a complaint under the Police Service Act 1990, the Police Service is considering the matter in this context. The Police Service has been asked to keep the Northern NSW Aboriginal Community Legal Centre advised.

The Police Minister's response is helpful in that he confirms the generally understood role of the Attorney General and Crown Law Officers in overseeing the administration of justice in death cases. What is of concern is that the solicitor for the family has not been advised by the Police Service of any investigations or views they have about the case. The inference is drawn from this fact that after more than a year since the exhumation the Police Service has still failed to properly investigate this case, despite the disclosure of significant new evidence.

The case of any individual who dies in custody cannot be considered closed when substantial doubts remain about the actual cause of death, especially where the recently disclosed evidence is that a traumatic injury occurred shortly before death. The new medical evidence uncovered by the exhumation of Eddie Murray's remains has exposed the limitations of both

the previous inquiries. The Coronial Inquest, while recording an open finding about the cause of death, was remiss in several respects, particularly in allowing the police who investigated the death to not call as witnesses a number of people who later provided significance evidence to the Royal Commission inquiry about the condition of the deceased and the conduct of the police. The findings of the Royal Commission inquiry have been shown by the results of new autopsy in this case to have been based on an unwarranted faith in the credibility of the initial autopsy. Given the demonstrated failure of previous inquiries, a new investigation is clearly required.

This investigation is necessary in order for the Government of New South Wales to respond appropriately to the findings of the Royal Commission into Aboriginal Deaths in Custody. That Commission's National Report included a strong suggestion from Elliot Johnston QC, the National Commissioner, that the prosecuting authorities should review all cases to assess the need for charges to be laid against anyone concerned. [##QUOTE from Vol 1 p 109##] Clearly, in this case where new evidence from the exhumation has disclosed that a traumatic injury was most probably suffered by Eddie Murray in the period between his detention by police and his death the importance of such a review by the Director of Public Prosecutions should be obvious. It should also be clear that such a review must be based on a new and thorough investigation of the type now called for in Recommendation (D) of this report.

The death of any individual in custody is a terribly stressful experience for the family of the deceased. This is particularly so when the cause of death remains unclear, and especially so where, as in the case of Eddie Murray, further evidence has been disclosed raising grave concerns about gross failure of the police to care for someone in their preventative custody.

The Murray family endured the torment of an exhumation of Eddie Murray's remains despite this being in conflict with Aboriginal tradition. They did this to enable the State of New South Wales to do everything possible to resolve unanswered questions about the cause of death. Now that further serious questions concerning this specific matter have arisen as a result of the second autopsy, the State is obliged to ensure that all efforts are undertaken to determine what happened to Eddie Murray between his detention by police and his death, including the person or persons responsible for inflicting the injury which he is now known to have suffered.

The second edition of this report includes the original preface to the first edition. The additions to this edition, apart from this Overview and Recommendations, are contained in a new final chapter, Chapter 16, reviewing new evidence from the exhumation about the cause of death. That chapter includes the full text of the second autopsy report by Dr Johan Duflou, Deputy Director of the New South Wales Institute of Forensic Medicine. Dr Duflou's report had as appendices two other reports, one from an archaeologist Dr Denise Donlon relating to the actual process of the exhumation and including a list of the remains recovered from the grave, and the other from a forensic dentist Dr Russel Lain concerning examination of the deceased's teeth. Neither of those reports contain anything pertinent to determining the cause of death which is not summarised in Dr Duflou's report, so those reports have not been reprinted here.

As well as assessing the significance of the findings of the second autopsy in relation to some of the evidence given to the Royal Commission inquiry, the additional chapter in this report also includes a new report from Professor Nikolai Bogduk, Director of the Newcastle Bone

and Joint Institute and Professor of Anatomy and Musculoskeletal Medicine at the University of Newcastle. That report is in the form of answers to a number of specific questions asked by the Murray family's barrister concerning the likely impact of the newly discovered injury upon Eddie Murray's mobility. Together with Dr Duflou's second autopsy report, that report raises grave questions about the probable cause of Eddie Murray's death. These questions are briefly raised in this additional chapter in relation to the particular findings and assumptions made by the Royal Commissioner in his inquiry report, although no attempt has been made in this report to provide an exhaustive analysis of all the issues which now require further investigation.

Apart from this overview and the new chapter 16, this report remains the same as in the first edition. That edition (comprising the preface, introduction and chapters 1 through 15) was written together with Dr Gregory Woods QC, who has since been appointed as a judge and in consequence has not contributed to the new material written for this edition.

cccli

## POLICE PHOTOGRAPHS OF EDDIE MURRAY BEFORE AUTOPSY

- Photograph No. 4     Black and white photograph of deceased clothed, from thighs upwards, showing trousers with belt-holder (of a type which Eddie Murray never wore) and a long thread resting on the shirt near the left shoulder
- Photograph No. 5     Black and white photograph of deceased unclothed showing left lateral view of head and shoulders with marks on upper thirds of neck.
- Photograph No. 6     Black and white photograph of deceased unclothed showing right view of head and shoulders with marks on neck, not as clear as on left side
- Photograph No. 7     Black and white photograph of deceased unclothed showing upper chest and right lower view of chin
- Photograph No. 17    Black and white photograph of deceased clothed, from chest to right shoe from left side, showing hands crossed over stomach resting over trousers with a belt-holder, with body lying on a sheet on a stretcher
- Photograph Nos 18    Black and white photographs of deceased unclothed, taken over right  
and 19                  shoulder, showing shirt having been cut off, hands resting on stomach at edge of photograph, forehead in shadow and person standing at head
- Photograph No 5A    Colour photograph showing left lateral view of neck, similar to 5.
- Photograph No 7A    Colour photograph of deceased clothed, taken over right shoulder, showing appearance of a large and uneven lump or bruise to forehead, with a long thread resting lightly at left shoulder on a very clean shirt.

Three other colour photographs showing hands across abdomen from below (4A); upper right

lateral view of trousers (25); and side view (26) are reportedly kept in a Tamworth police file.

#### POLICE PHOTOGRAPHS OF ALLEGED NOOSE IN POLICE CELL

- Photograph No. 1      Photographs taken on evening of 12 June 1981 by Detective Sergeant
- Photograph No. 2      Lamey showing alleged noose attached to bar above cell door from
- Photograph No. 15     three angles looking from inside cell.
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- Photograph No. 16     Close-up photograph by Lamey of alleged noose after being cut from
- bar in cell and placed on mattress, showing both long and short-edges
- of strip of blanket with appearance of having been cut rather than torn.
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- Photograph No. 14     Photograph by Lamey (taken on 12 June 1981 or later) of exercise yard
- showing cell number 1 of Wee Waa police station with door of cell (in
- middle of photograph) opening outwards against adjacent wall.
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- Photograph No. 8      Photograph of front of Wee Waa Police Station taken from a distance
- in Nelson St.
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- Photograph No. 9      Photograph of Wee Waa Police Station showing the laneway and rear
- entrance, with concrete.



