The Critical Hour and the Crucial 20 minutes (the death of Eddie Murray in Wee Waa on 12 June 1981)

In January 1989, Aboriginal Deaths in Custody Royal Commissioner Justice James Muirhead submitted his report on Eddie Murray's death to the Governor General of Australia and the Governor of NSW. Muirhead found that Eddie Murray had died by hanging, and it was "*more probable than not that death resulted by Eddie's own actions*". Muirhead also concluded that police had fabricated and withheld evidence and that the autopsy was inadequate. Despite this, no further legal action was recommended.

It is well established via the testimony of multiple witnesses that Eddie Murray died between 2pm and 3pm on 12 June 1981. I'm calling this the *critical hour*. Eddie was last seen alive by multiple witnesses as he was being loaded into in the police van and driven away from the front of the Imperial Hotel in Wee Waa around 2pm on 12 June 1981. An hour later, Eddie Murray's lifeless body was discovered (around 3pm) after which a doctor was summoned who pronounced him dead shortly afterwards.

Only two people, both police officers, are known to have had any contact with Eddie during 'the critical hour'. Nobody else had any contact or saw him alive after he was taken from the front of the Imperial Hotel (although one civilian witness heard Eddie shouting during the booking process at the police station shortly after 2pm).

Eddie Murray was not arrested but detained under the NSW Intoxicated Persons Act and placed in 'preventive detention'. The police officers that picked him up and brought him to the Wee Waa police station were the officers on duty that morning, Sergeant Alan Moseley and Senior Constable Kevin Parker (1940 - 2011).

On arrival at the police station, Eddie was escorted from the garage area through the rear doors and along the passageway to the 'dock' area inside the police station. An entry in the police Occurrence Pad noted that: "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." When both officers gave evidence about this at the hearing, Muirhead noted that both Parker and Moseley presented a different "image of Eddie's condition in which he was apparently less affected by alcohol and more in control of his actions".

Mr. McKnight, the cleaner working at the police station, was upstairs when the prisoner arrived. He heard parts of a conversation between Parker and Eddie during the booking process. He heard Eddie cry out "*Why do you always pick on me? Why don't you pick on white people?*" McKnight said Parker responded in a very loud voice, "*Sit down and shut up or I'll charge you with something more serious. I am only charging you with drunkenness*." McKnight said both Parker and the prisoner sounded angry. However, when giving evidence to the Royal Commission, both Parker and Moseley said they did not recall anything about this exchange.

Muirhead concluded: "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. 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. 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."

After Parker searched the prisoner, both Moseley and Parker said Eddie was taken to number one cell and locked inside at about 2.10 to 2.15 pm without incident or any verbal exchange. Both officers gave evidence that they then returned to the office area in the police station, and Moseley had gone upstairs.

Muirhead commented: "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."

Nonetheless, Muirhead did not believe the police officers had harmed Eddie in any significant way, or physically did something that may have caused his death. This is because the autopsy did not reveal any marks or other indication of bodily injury consistent with anything other than a possible hanging.

Muirhead: "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."

However, there was a significant piece of evidence that was not known at the time of the Royal Commission hearing, namely that Eddie had suffered a fractured sternum (breast bone) after his body was exhumed and formerly re-examined in 1997. A new autopsy report by Dr. Joe Duflou, deputy director of the NSW Institute of Forensic Medicine, concluded that the skeletal injury could have been caused by severe blows to the chest "some time prior to death".

It is reasonable to conclude this injury occurred during the 'critical hour'. If this injury happened before Eddie was placed in the police van, then there is no evidence or any other indication that Eddie was injured, or in pain. This type of injury would be extremely painful with bodily movement and especially when lifting his arms. There was no sign Eddie was injured while mock sparring with one of his mates on the footpath outside the Imperial Hotel a short time before. So the injury almost certainly occurred at the Wee Waa police station. It might have occurred during the short drive to the police station, however, this is unlikely and there is no evidence in support of this possibility.

The crucial 20 minutes

Within the 'critical hour', there is a narrower window of time when this injury is most likely to have occurred, namely between 2.10 pm and 2:30 pm. I'll refer to this as the *crucial 20 minutes*. According to their own testimony, Moseley and Parker escorted Eddie to the cell between 2:10pm and 2:15pm. What happens in the next 15 to 20 minutes is unknown. Muirhead concluded that the account given by the police officers in this time period is likely to be fabricated and untruthful, at least in part.

Since I believe the events in this time frame are crucial in understanding what happened to Eddie, I have included Muirhead's entire summary in reference to this period of time below.....

Muirhead wrote: "The evidence of Mr Cronin, a civilian witness whose evidence I accept, is important in relation to this issue. He attended at the police station at about 2.35 pm having previously attended at about 2.00 pm only to find the station doors locked and the station apparently unmanned. On his return at 2.35 pm Cronin was attended by Parker in relation to his motor vehicle registration. He also saw Moseley around the station at this time but did not recall the presence of other officers at this stage."

"Sargent Moseley and Senior Constable Parker stated that between 2.00 pm and 3.00 pm they heard noises coming from Eddie's cell. Each said they individually attended him at the cell. At 2.15 pm Moseley went to investigate 'yelling noises' and at 2.30 pm Parker went to investigate a 'banging' noise."

"On the other hand, two civilian witnesses, Mr McKnight and Mr Cronin, who were in the police station complex at relevant times did not hear noises of the nature described."

"At the Coronial inquiry Moseley said he was in the office downstairs at the time he heard yelling (about 2.15 pm). At the Commission's inquiry he gave evidence that he was upstairs in his office when he heard the noise. Moseley said he then went to the cell and asked Eddie what was the matter and he replied 'Nothing'. Moseley then said 'lie down and go to sleep', or words to that effect; Eddie ceased yelling and he returned to his office. Parker gave evidence that he also heard yelling at about 2.15 pm shortly after Eddie had been placed in the cell. He told me that after five to eight minutes of yelling Moseley came downstairs and visited Eddie in the cells. Parker could not recall what he himself was doing at the time and did not know why he did not go and see the prisoner himself. He said the yelling ceased for a little while."

"Moseley did not hear any further noise. Parker told me that the yelling only stopped briefly and the noise commenced again very soon after Moseley had returned upstairs. First he heard yelling and then there was a banging or thumping noise. It sounded to him as though the prisoner was kicking the door. This went on for about eight to ten minutes. Parker said that at about 2.30 pm he went to the cell and spoke to Eddie about the continual banging. He looked into the cell through the open flap and saw Eddie walking about the cell; when adjacent to the cell door he lunged out and kicked the door with his feet. Parker said he asked what was wrong and Eddie replied 'Nothing'. Parker then said to him 'Well look, just try to settle down and have a bit of a sleep'. Parker said he may have made mention of the lockup keeper's sick child. Parker said that Eddie was not aggressive towards him and he himself was not annoyed. He then returned to the counter area in the office. He estimated his attendance at the cell door occupied two to three minutes. But after he returned to the office the banging noise was heard again. He did not attend to the noise because a civilian (Mr Cronin) was waiting at the counter. Parker said it was then approximately 2.30 pm. At the Coronial inquiry Parker said the civilian arrived two to three minutes after he had returned from the cell. Before the Commission Parker stated the banging continued whilst the civilian was there and the noise was quite audible. Cronin, as I said, attended at the police station in relation to a motor vehicle registration. Parker said he commenced reading the instructions about registration between 2.29 pm and 2.31 pm. He spent about half an hour carrying out the registration transaction and was in the main office area from 2.30 pm to 3.00 pm."

"McKnight (who was upstairs cleaning at the time when Eddie was placed in the cells and was allegedly yelling out and kicking the cell door thereafter) did not hear the noises described, although he stated he had earlier heard a prisoner and Parker speaking in loud angry voices. He was vacuuming upstairs for a period of five to ten minutes but told me he believed he would have heard any banging or yelling noises. He said he came downstairs from the office at about 2.30 pm and went outside to the garage area to hose it down. It is possible he was in this outside area at the time when Parker claims to have attended Eddie in the cells in relation to the yelling and banging. This garage area is guite close to the cell in which Eddie was placed. I find it probable that McKnight would have heard the yelling at 2.15 pm and the yelling and banging noises at around 2.30 pm from either of the locations he was in, i.e., from the upstairs office and downstairs in the garage area, if it had occurred. In making this finding I am influenced in some measure by the demonstration conducted from the cell in question on the occasion of the Commission's visit to Wee Waa. This was not a scientifically oriented test but the noises then emanating from the cell were clearly to be heard throughout the police station complex."

"Cronin, who was attended at the counter by Parker, said he went back to the police station between 2.30 pm and 2.45 pm, probably only a few minutes after 2.30 pm. When he arrived both Parker and Moseley were in the area behind the counter. Parker attended to his requirements and this took about 30 minutes. Parker was with him the whole time. In his statement Cronin made no mention of noises coming from the cell as described by Parker. When giving evidence to the Royal Commission he was not questioned about it. In a statement tendered at a later date, Cronin stated that he heard neither the sound of kicking on a steel door, nor yelling, whilst he was at the station. Parker said that the noises continued whilst Cronin was there. I find Cronin must have heard the banging and yelling noises if they occurred whilst he was at the police station, but again, it is possible that the noises ceased prior to his arrival. Again I am influenced by the demonstration referred to above. I find it probable that the yelling and banging noises would have been heard by McKnight, and by Cronin (assuming his presence), if they had occurred and I am not satisfied on the probabilities that Eddie yelled and kicked the cell door as deposed to by the officer."

"Why then should Moseley and Parker have fabricated this story about the noises? 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)."

Presumably, if the court had known that Eddie had suffered a broken breast bone during the 'critical hour', things would have proceeded very differently at the hearing. Barrister Robert Cavanagh, who was acting for the Murray family, said that had this injury been identified, more investigation and the calling of further witnesses would have occurred.

If Eddie was beaten by the police officers on duty that day, then the 'crucial 20 minutes' is the most likely time when this might have occurred. Before this, Eddie was not yet in the police cell. After this, one of the officers, Senior Constable Parker, was working at the front desk with Mr. Cronin completing his vehicle registration until the discovery of Eddie's lifeless body around 3pm. If Eddie was assaulted and bashed after 2:30pm, then only Sergeant Moseley could have done that alone and without Cronin or McKnight hearing anything. It is more likely any such bashing, had it occurred, would have happened before 2:30pm in the 'crucial 20 minutes' when both officers were present and would be able to assist one another. The 'crucial 20 minutes' is the most likely time Eddie's sternum was fractured by a chest crushing blow, or series of blows, since there is nothing to suggest it happened either side of this window of opportunity. This of course, is not proof, just probability.

Assuming a bashing occurred causing injury as surmised, it is reasonably clear the police believed Eddie was still alive when they left the cell and resumed their normal duties. It wasn't until after 3 pm that they discovered Eddie was dead. It was at this precise moment that the atmosphere at the station changed dramatically and the police on duty began to scurry around in an agitated manner. Things were calm and activities normally during the half hour immediately preceding the discovery of the body. This is according to Cronin's testimony who was a witness Muirhead accepted as being reliable.

Muirhead summarised: "*Mr Cronin, who was still at the counter attending to registration of his vehicle, gave a different account of events at this stage. He said that both officers returned to the office area a couple of minutes after leaving, jostling each other to get there and one said 'Get hold of a doctor'. He saw Parker use the telephone. The three officers then congregated together talking behind the counter at the end of the panelled cupboard area. Dr Ralte arrived shortly after this and the three officers went behind the cupboards and he found himself alone at the counter.*"

"I prefer Cronin's account of the events at this stage. I have doubts whether Page performed cardiac massage or made attempts to revive Eddie. Cronin, who said things seemed quite normal at the station until this stage, then noticed a dramatic change in the atmosphere, an observation consistent with a sudden tragic discovery."

"That dramatic change in atmosphere' is an important observation. Nothing in the behaviour of Parker or Moseley prior to the alleged discovery of Eddie's body at 3.00 pm was consistent with awareness of or involvement in his death before that time. After the discovery of the body their behaviour (including, possibly, attempts to disguise their own lack of vigilance or, even, the fact that there had been hostility between Parker and Eddie) is entirely consistent with the fact that the discovery of the body was a complete shock. 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."

Assuming a bashing occurred which fractured Eddie's breast bone, then there are a number of possibilities that might follow from such an event. Since Eddie was found dead at the end of 'the critical hour', then something must have caused his death sometime prior. Eddie may have died from internal injuries as a result of a beating and/or the crushing of his chest. Another possibility is the beating precipitated the idea for Eddie to hang himself which he then executed. Given those two options, I favour the speculation that he died from injuries sustained in a brutal bashing by the police for a number reasons. Particularly the facts that a systematic effort was put into covering up whatever really happened afterwards which included omissions, lying, misleading statements and the mysterious loss of vital evidence.

Neither the doctor in attendance or the ambulance officer, Harold Lewis, remembers seeing the blanket noose hanging in the doorway as they entered the cell to attend to Eddie's body. This is not 'proof' it was not there, but rather they simply don't remember seeing it. Given their focus was on the possibility of resuscitating Eddie in those first critical moments, it is not surprising they didn't notice details in their surroundings. However, it is less likely they would fail to notice an object hanging in the doorway as they departed if it was there. The lowest point of the noose hanging above the ground was 1.33 metres (about 4 feet 4 inches), so approximately chest height for an average person.

A possible explanation for the noose not being seen is a police officer may have held the noose to one side, or otherwise blocked it from view, as people were entering and exiting the cell. The other possibility is it was never there at the time Eddie's body was discovered, examined and removed from the cell (between 3pm and 3:20pm). But it is certainly clear that the noose was there sometime later when a police photographer arrived that evening and took photographs of the blanket noose which were subsequently submitted as evidence.

Muirhead summarises these accounts as follows: "*Mr Lewis (the ambulance driver) did not recall seeing the strip of blanket hanging from the bar above the door and Dr Ralte when he first gave evidence at the Coroner's inquiry said that the blanket strip was around Eddie's neck when he examined him.*"

"Lewis believed that the blanket was looped around the flap in the cell door. He said that it was a full blanket and that it could have been rolled or twisted and the ends of the blanket were hanging down inside the cell door. He does not recall that the blanket looked like it did in Photograph 15. He also had no recollection of encountering the noose on entering the cell."

"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 or 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."

The doctors account does not appear to be a genuine memory but rather a re-construction based on examining a photograph presented in evidence. It appears the doctor had no genuine memory of seeing the nose, and if he did, then it was around Eddie's neck and not hanging on or above the cell door.

Muirhead: "At the Coroner's inquiry Dr Ralte apparently changed his mind when he was shown a photograph of the noose hanging from the bar above the cell door. Dr Ralte told me that Page showed him the strip of blanket still hanging on the door after he had examined Eddie and said the noose was in the position as shown in Photograph 1, something he did not notice when he entered the cell. He said that Page held the door open for him and Page's body could have obscured the noose as he entered the cell."

The ambulance driver remembers the blanket very differently than that depicted in the police photographs submitted in evidence. So on the face of things, Lewis appears to have an extremely poor, even grossly misleading, memory of what he saw. However, if on the other hand his memory is a reasonably accurate one, this suggests another possibility entirely. Namely, a blanket was hurriedly threaded through the cell door before Lewis had arrived on the scene. The presence of a blanket in the cell would reinforce the idea of the alleged hanging scenario for those in attendance.

In Lewis's description, the ends of the blanket were not tied together with a reef knot as was the noose shown in evidence. Also, in this case, the blanket would be less noticeable if it was attached to the door since it would swing to one side in order to allow people, and later a stretcher, access in and out of the cell. Witnesses would be less likely to notice it compared the possibility it was hanging at chest height in the open doorway.

In this alternative scenario, the noose subsequently seen in the photograph would have been fashioned sometime later from a strip of blanket and hung from a different attachment point above the cell door. So this leaves us with two possibilities, either Lewis's recollection was extremely poor and therefore highly inaccurate, or alternatively it was a reasonable description of what he saw. In the latter case, it was deemed inconsequential since it was overshadowed by other evidence and essentially ignored. It seems clear that Justice Muirhead did not attribute much importance to either account by the doctor and ambulance driver describing the blanket.

Muirhead: "On arrival at the police station Dr Ralte recalled Moseley standing behind the counter area. Both Page and Moseley appeared shaken. He recalled that Moseley came to the cells a little later. Dr Ralte did not recall seeing either Parker or Fitzgerald at the police station. Whilst it is absolutely no reflection upon his integrity, I consider Dr Ralte's true memory of events is not good. He was in a hurry at the time, he concentrated his attention on whether Eddie was alive or dead and I do not rely on his evidence of other matters, particularly the presence or otherwise of other persons."

There were two shifts at the Wee Waa Police Station in June 1981, a morning shift and an afternoon shift. The morning shift commenced at 8.00 am and finished at 4.30 pm and the afternoon shift commenced at 3.00 pm and finished at 11.30 pm. Thus there was an overlap of police officers on duty between 3.00 pm and 4.30 pm. Four police officers were rostered on duty on 12 June 1981, Sergeant Alan Moseley and Senior Constable Kevin Parker (1940 - 2011) in the morning shift, and Sergeant Gary Page and Constable Rodney Fitzgerald in the afternoon shift.

During the proceedings, considerable suspicion fell on Constable Rodney Fitzgerald because he had allegedly made verbal threats to members of the Murray family in the weeks just prior to Eddie's death. Also because he lied about this whereabouts on the day Eddie died. However, Fitzgerald does not appear to be present at the critical time of death and therefore was not directly involved in whatever happened to Eddie Murray in the Wee Waa jail cell. Fitzgerald may have been involved in a possible cover up afterwards but he was not involved in the actual death by whatever means that occurred.

In the light of substantial new evidence, namely the discovery of the shattered breast bone in 1997, it is now reasonable to insist upon the reopening and a re-evaluation of the case. The new evidence appears to contradict the police testimony to a substantial degree, and therefore should be critically evaluated. It also underlines the inadequacy of the coroner's report on which the case is based in large part.

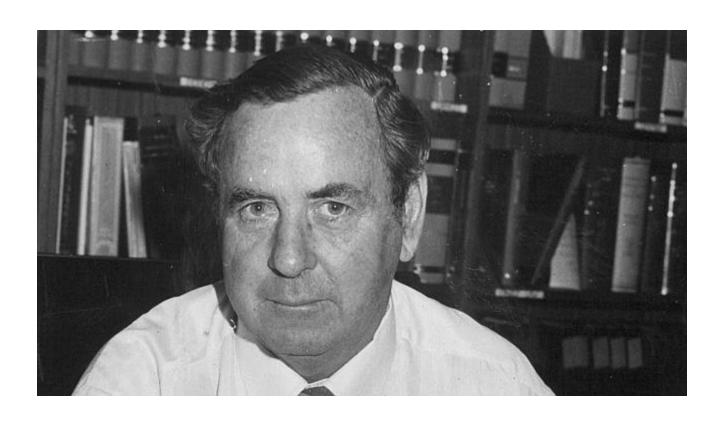
On January 20, 1998, the then state coroner, Derrick Hand, stated that he was "satisfied there is no new evidence or facts making it necessary or desirable in the interests of justice to hold a fresh inquest".

His successor reasserted this same position. The new state coroner, John Abernethy, was also not prepared to re-open the case saying the excavator used to exhume Eddie's body in the Wee Waa cemetery in 1997 could have crushed his chest. He closed the case. This is a somewhat ridiculous assertion since this could be reliably established if the investigation was allowed to proceed. His speculation could have been put to the test.

Twice now, the courts have returned an inconclusive verdict for lack of clear evidence. The fundamental questions of how, when, where and why Eddie Murray died in police custody have not yet been answered. Any conclusions arrived at up to this point in time are now subject to serious doubt, especially the notion that Eddie died by hanging and also that he caused his own death.

The coroner's inconclusive findings at the inquest on 18 December 1981 still remains the official account of the manner and circumstances of Eddie Murray's death.

Compiled by Peter Gray (2015)



Aboriginal Deaths in Custody Royal Commissioner Justice James Muirhead.