

**Report of the Review by the Police Complaints Authority  
of the Police Investigation into the Death of Barry John Coleman  
in Christchurch on 25 December 1996**

In September 1997 the Police Complaints Authority received two complaints, one from Mr Terry Rex Brown and another made by a solicitor, Mr Hall, on behalf of Mr Gregory Neil Mather. Both had their origins in a Police investigation into events that took place in the early hours of Christmas morning 1996 at Wicked Willies Nightclub in Christchurch. As a result of that investigation Mr Mather was charged with murder. As the result of a later happening on that Christmas Day, which was related to the earlier events at the club, Mr Mather and Mr Brown were charged with attempting to pervert the course of justice. Ultimately on 18 August 1997 the murder charge (which by then had been reduced to one of manslaughter) was the subject of a successful application by the Crown pursuant to section 347 of the Crimes Act. This had the same effect as an acquittal. As a result the other charges did not proceed.

I have made decisions in respect of the complaints and solicitors acting for the complainants have been informed of my conclusions. Ten grounds of complaint were common to both complainants. An additional two submissions were advanced by Mr Ruth, the solicitor acting on behalf of Mr Brown. My letter to the solicitors is lengthy. The issues raised were important and complex and merited an extensive investigation and a correspondingly detailed report.

I am aware of the considerable public interest in this case. It has been the subject of comment in both the electronic and print media. Hence I believe the public are entitled to be made aware of the result of the Authority's investigation.

This is a case where a man has died as the result of violence. The Police file remains open. A person has been named as a suspect by former Detective Superintendent Rowe, now a private investigator. Mr Rowe carried out an extensive investigation on behalf of Mr Mather and Mr Brown.

The person named by Mr Rowe has not been charged. Hence any report I make public must ensure I do not derogate from his legal rights. The result is that I cannot simply release the

whole of my letter to the solicitors. What is more public interest is a yardstick justifying publishing a report but not all the matters raised by the complainants are matters of public interest.

It is important however that this report should mirror as far as possible the letter sent to the solicitors. Accordingly I propose quoting relevant sections of that letter which I regard as significant. This must be done bearing in mind the restriction which I have outlined. This report has then been edited particularly to ensure the suspect is not named or identified and so it does not include any comment on his alleged involvement.

I have also deleted the names of several Police officers and the pathologist. This accords with normal practice.

Accordingly on the basis I have outlined I set out my letter to the solicitors, the first part of which outlines the background to the investigation.

At the outset I advised the Commissioner of Police I would oversee the Police investigation of these complaints. I also told him it was my view that a senior Police officer should be appointed and that officer should be an officer from the North Island. This was not an implied criticism of South Island officers but was a request made to ensure a perception that the investigation would be as impartial as possible.

In the result Detective Superintendent P B Marshall of Auckland was appointed. He was assisted by Detective Senior Sergeant Q Van Beynen, also of Auckland. Detective Sergeant Heath from Christchurch was also part of the team acting under the direction of Detective Superintendent Marshall. He had had no prior involvement in the case.

From the beginning it was important to clearly spell out the parameters of the investigation. On 9 October I met with Detective Superintendent Marshall in Wellington for this purpose. It was agreed that the 10 issues identified by the solicitors formed an appropriate basis for the inquiry and that each should be separately addressed. The two additional matters raised by Mr Ruth were also to be considered by the Detective Superintendent. I also required that the Detective Superintendent reach conclusions in relation to the overall competency of the original investigating team.

At that meeting it was made clear that it was not the function of the Authority to identify the person or persons responsible for the death of Barry John Coleman. The purpose of the

investigation was to investigate the solicitors' specified complaints with the rider that the investigation should be as robust and objective as possible. It was also agreed that the Detective Superintendent should visit both solicitors as soon as possible to confirm the terms of the inquiry which I had suggested. This was done. Both agreed to an investigation focusing on these issues.

The complaints arise from events at Wicked Willies Nightclub in the early hours of Christmas morning in 1996. According to Police (and the media) the club is described as a strip club. Mr Mather was the manager of the club. Just what role Mr Brown played in the operation of the club is not clear on the evidence before me. In his initial letter he stated that he provides dancers and staff to venues specialising in entertainment. Clearly on the evidence he did take an early interest in the events which occurred on this Christmas morning although he was not present on that occasion.

Around midnight, after the public had been excluded from the club, there was a drinks shout for staff and a few friends. Unhappily what was meant to be a festive occasion turned sour. Around 3am Mr Coleman was allegedly seriously assaulted by two doormen from the club. These men later faced charges arising from this incident but in both cases the prosecutions failed.

About this time also the club DJ, Stephen Colin Lane, was assaulted in the club toilets. His assailant believed that Mr Lane had been at least partly responsible for provoking the attack on Mr Coleman. Later it will be seen that Mr Lane played a major role in the subsequent history of this matter.

After these incidents Mr Mather ordered the doormen to leave the club. It appears with bad grace and reluctantly they complied but questions were subsequently raised as to whether or not they shortly returned.

In any event it was against this very unhappy and it seems alcohol-fuelled background that events moved swiftly to a tragic climax. Shortly after he was first attacked Mr Coleman was found lying unconscious on the first landing down from the top of the stairs. The evidence discloses he suffered fatal neck injuries. He died on 27 December.

On this Christmas morning, Mr Lane made a statement to Police beginning around 9.30am. In this statement he claimed that he saw Mr Mather push Mr Coleman down the stairs with the tragic result that ultimately followed. Based on that statement, Mr Mather was charged

with the murder of Mr Coleman. Along with Mr Brown later he was also charged with attempting to pervert the course of justice. These charges arose because it was alleged that when Mr Lane went back to his flat that Christmas afternoon he was confronted by Mr Mather and Mr Brown. They demanded he return to the Police station and change his statement so that he exonerated Mr Mather. Mr Mather had angrily denied to Mr Lane that he had anything to do with Mr Coleman's fall down the stairs and Mr Brown, it seems, accepted what Mr Mather said. In the event Mr Lane returned to the Police Station and according to Police arrived in a very distraught state. Nevertheless he declined to change his original statement.

Later depositions hearings took place in respect of the murder charge on 14, 17 and 21 March 1997, and in respect of the charge of attempting to pervert the course of justice on 21 March. In respect of all charges prima facie cases were held to be established. The murder charge was later reduced to one of manslaughter.

It is common ground that the Crown case in respect of both matters depended absolutely on the evidence of Mr Lane. Put bluntly, without Mr Lane no charges would ever have been laid.

After the depositions hearings as noted earlier Mr B J Rowe, a private investigator from Auckland, undertook inquiries for the defence teams. In July defence counsel disclosed to the Crown Solicitor evidence which Mr Rowe had gathered. Mr Rowe is a former detective superintendent from Auckland and in evaluating the result of his inquiries, due weight must be given to that background.

The evidence he gathered suggested a person other than Mr Mather was responsible for Mr Coleman's fall down the stairs.

Mr Rowe's enquiries centred around a statement made to defence counsel in May by Mr Tuala Taulago, a doorman at the club. In that statement he claimed he was a close eye-witness to what occurred. He said he had seen a person, not Mr Mather, deliver a heavy blow to the face of Mr Coleman and this caused him to fall.

The Authority's investigation confirmed that on 29 December 1996 Mr Taulago went with a barrister to impart this same information to Police. Police did not believe what he said when he named the alleged assailant and a statement he had begun to make was abruptly discontinued and later discarded.

Mr Rowe interviewed Mr Taulago in June 1997 when he made a confirming and more detailed statement. Mr Rowe also obtained further evidence from surreptitiously taped telephone calls said to have been made to the suspect in July by Mr Taulago and his wife. These telephone calls were claimed to corroborate Mr Taulago's version of what happened.

The report of Mr Rowe proved a catalyst which resulted in a Police review of the original inquiry. This inquiry was conducted by Dunedin CIB directed by Detective Superintendent Millar of Christchurch.

In the course of this Police review Mr Lane recanted his version of events which implicated Mr Mather. This meant also a disavowal of evidence given by him at depositions.

For this reason the Crown Solicitor made his decision not to proceed against Mr Mather on the charge of manslaughter.

For the sake of completeness I add that since then Mr Lane has made several further statements, which are inconsistent with each other.

In his report dated 6 October 1997, following the Police review, the case against the new suspect was analysed by Detective Superintendent Millar. He recorded the view of the Crown Solicitor that the then evidence did not justify charging him. This was also the expressed view of the Southern Region Legal Adviser.

I will comment later on the decision not to charge the new suspect.

Before considering the 10 agreed heads of complaint posed by Mr Hall and endorsed by Mr Ruth I say this. All these 10 heads of complaint are set out as stand-alone complaints but it would in my view be quite wrong to simply deal with each in isolation. This would not do justice to the fundamental basis of the complaints. The common thread running through this series of complaints is that the complainants believed that Christchurch Police were determined at all costs to successfully prosecute Mr Brown.

Both Mr Mather and Mr Brown were seen personally by Detective Superintendent Marshall.

Detective Superintendent Marshall records that the primary concern of both parties when seen was the apparent lack of objectivity shown by the original investigation team. He said they believed the tragic death was used as a vehicle to charge Mr Mather and *'more*

*importantly*' Mr Brown. It was their view, he said, that the charges were the result of a predetermined fixation on both men regardless of other evidence.

In assessing each head of complaint then I have been very alert to the primary complaint made and have carefully borne it in mind in assessing each individual complaint to see what evidence, if any, there is to justify this expressed major concern.

I am satisfied that this investigation has been thorough and comprehensive. Twenty-nine people were interviewed or seen during the course of the investigation and many were spoken to several times.

I note that the recommendations of Detective Superintendent Marshall were reviewed by the Internal Affairs Division at Police National Headquarters before being sent on to me for my independent review. The recommendations of the Detective Superintendent were endorsed by the Internal Affairs Division.

I record that while the primary function of the Authority in dealing with complaints is to consider allegations of Police misconduct or neglect of duty, if the investigation reveals evidence of errors of judgment or misjudgment or inappropriate or ill-considered actions these too may be the subject of censure and criticism.

In the course of this review an enormous amount of material has been considered in this office. First there are two large files resulting from the very thorough investigation of Detective Superintendent Marshall carried out under my oversight. The original homicide investigation file and the like file dealing with the charges of attempting to pervert the course of justice were also considered. The evidence given at depositions has been read. The large file resulting from the investigation of the review team following Police receiving Mr Rowe's report has been examined. Mr Rowe's report has also been read. In addition the tapes of several television programmes have been viewed.

In the result I am satisfied certain deficiencies have been revealed in the way the original investigation was conducted. Some of the questions posed by Mr Hall target such deficiencies. In my view the question which relates to the most serious deficiency revealed in the investigation is an omnibus question raising several matters. It reads:-

***“Why was Taulago ‘leant’ upon to withdraw his voluntary statement of 29.12.96 implicating [the new suspect]? Who ordered the destruction of that statement? Why when Taulago made another statement on that day which***

***was patently untrue did Police not say so? Did Taulago or his counsel, David Bunce, agree to or even know about the intention to destroy this statement? Was it proper Police practice to destroy this statement? On whose instruction was it that Mather's defence counsel was not told that the statement had been destroyed or otherwise misplaced. Why was no Job Sheet made about the matter? Why was the destroyed statement and its contents not discovered during the criminal discovery process?"***

The repeated reference in the posed question to destroying a statement in my view masks the real matter of concern which in plain terms is simply this. That when a person claiming to be a close eye-witness called with his barrister at the Police station on 29 December 1996 and there named a person other than Mr Mather as being responsible for the death of Mr Coleman, why did Police choose to disregard this information?

Relevant events following that visit were these.

On 23 May 1997 the barrister who had been present on 29 December arranged for this same witness to meet Mr Ruth. He then made a statement along the lines of the one he had proposed to make to Police on 29 December. In it he named the new suspect. On 4 June he was interviewed by Mr Rowe and made a confirming and more detailed statement. For the sake of completeness I record that on 8 August, in the course of the Police review prompted by Mr Rowe's report, this witness, in the presence of his solicitor, was interviewed by Detective Slaughter. He again maintained that the person responsible for Mr Coleman's death was not Mr Mather but the person named by Mr Rowe as the new suspect.

As I have already noted, it is not my function to determine who was or was not responsible for that death. However, it is very much my function to look closely at the investigation itself to see if there is any evidence of Police misconduct or neglect of duty.

Right at the outset I made it very clear to Detective Superintendent Marshall that I was particularly concerned that in this homicide investigation it seemed a potentially vital eye-witness was apparently deflected from embodying his concerns in a written statement. I required a thorough investigation of this seemingly incredible situation. Detective Superintendent Marshall has carried out such an inquiry.

In the course of this inquiry the Detective who dealt with Mr Taulago when he called at the Police station on 29 December was subjected to a searching and uncompromising interview on 14 October last year. A 27 page statement was the result.

This statement seeks to explain what on the face of it was inexplicable. Before turning to deal with this explanation I make one thing clear. Counsel's question begins by claiming that Mr Taulago was 'leaned' upon to withdraw the statement he began making. I can understand Mr Hall inferring that this must be the only possible explanation for this extraordinary happening.

I too have considered that possibility with a very critical eye. However, I am satisfied on the evidence this is not the explanation.

On the day Mr Taulago was accompanied by Mr Bunce, a barrister. In his statement the Detective points out that Mr Bunce is a high-profile barrister who specialises in criminal matters. He was present throughout on this day. It is then unthinkable that Police would be in a position to 'lean' on Mr Taulago. What is more in a statement made on 5 August 1997 in the course of the Police review, Mr Bunce said of this meeting and Police interaction with Mr Taulago:

*"I am satisfied that he was dealt with fairly by Police. Both statements were made voluntarily by Tuala."*

If the immediate explanation which leaps to mind to explain what happened can be laid to rest, whatever did happen to deflect Mr Taulago from making the statement he had come specifically to make?

The explanation I believe is this. The Detective had already taken two detailed statements from Mr Taulago on 25 December. One ran to eight pages and was taken at 6am. That statement now appears to be a lie. In it Mr Taulago denies seeing anything out of the ordinary that night and says he did not even know Mr Coleman. In his last statement made on 8 August 1997, however, I note he said he went to the club that night specifically to pick up a bottle of whisky from the said Mr Coleman and he in fact did so.

In his first statement to the Detective on 25 December 1996 he gave a false name but I note a correct address. His wife came to the Police station after he made his first statement. By chance it happened the Detective had gone to primary school with her so he spoke to her. As a result Mr Taulago made a further statement at 9am. This runs to 12 pages. In it he said he had seen the first earlier assault on Mr Coleman and named the assailant. The rest of his statement is a denial that he saw what ultimately caused Mr Coleman's fatal injuries.

What is more that night there had been even earlier denials by Mr Taulago of seeing anything amiss. I have seen a copy of another recorded denial in a brief statement taken by Constable Burnside. Apparently there was yet another earlier verbal denial. Whether the Detective was aware of these I do not know. However, clearly he was surprised and suspicious when Mr Taulago telephoned him saying he would like to come and see him again. Police believed that he was not likely to be a person enthusiastic to proffer help to Police.

As a result the Detective spoke with senior officers after the phone call and says:

*“It was pointed out to me there had already been one complaint of intimidation of witnesses and people involved in the inquiry had been contacting other witnesses, etc.”*

In short I am satisfied the Detective was very suspicious and felt that this hitherto unreliable witness may have been seeking to still further muddy the waters of the investigation.

However, on Mr Taulago’s arrival on 29 December the Detective immediately began to take a statement from him. There was no prior discussion apart from Mr Taulago being told that the interview would not cover the assault charge which he now faced along with another person relating to the earlier assault on Mr Coleman.

The Detective then recorded a statement which he says was *“about a page or less”*.

The taking of this statement came to an abrupt halt when the name of the new person was introduced as being responsible for what happened to Mr Coleman.

The Detective explained the introduction of this person as the principal player was completely new to Police and *“at complete variance with our investigation to date”*.

He left the room and checked with a now retired Sergeant. It was decided to advise Mr Taulago of the dangers of making a false statement. This was done in the presence of Mr Bunce. Mr Taulago was told that he must be careful what he said and if there was anything false there could be serious consequences.

At this point Mr Bunce asked for time to speak to his client. The Detective then spoke with the Sergeant and the O/C Investigation. The O/C Investigation apparently agreed that the warning was properly given.

After 10 minutes Mr Bunce said Mr Taulago wished to speak to the Detective again. Then something very strange happened. Mr Bunce said Mr Taulago wished to discuss the Witness Protection Programme and how that might arise if Mr Taulago was to continue to make a statement.

The Detective discussed the matter with his senior officers. The result was, it seems, that Mr Taulago was in effect told that he had to make his statement first and then a decision would be made on protection.

At this point he said he wished to make a completely different statement and what he had said in the first partial statement was wrong.

Then came the event around which this complaint centres. The Detective said he discarded the one-page aborted statement in the rubbish bin. Mr Bunce does not agree with this. In any event that page was never seen again. Nor was any Job Sheet ever completed recording its apparently brief existence.

The Detective says he acted as he did as a sign of good faith to Mr Taulago who said he was now going to tell the truth.

As it turned out the subsequent statement made by him has been described by the O/C Investigation as '*nonsensical*'.

Mr Rowe has critically analysed it and reaches a similar conclusion.

I am satisfied on the evidence that no other officer was aware of this statement having been made and then discarded. They apparently knew what was to be in such a statement but never learned that anything had been reduced to writing.

What conclusions then do I draw from these facts?

I am aware of how easy it is to be wise after the event. I, too, can appreciate how local police felt about the veracity of witnesses who they apparently saw as part of the local underworld scene. I hold no such views and I approach the matter as clinically as I can on the evidence.

I repeat this was a homicide inquiry and it was still in its early days when Mr Taulago came to the Police station on 29 December. Despite all the mitigating circumstances I have set out it is my view that it was a serious error of judgment not to take the statement proffered and follow it up by intensive investigation. It may have been a false statement. So what I ask? In the circumstances of a homicide inquiry there could be no possible justification for simply ignoring it.

I appreciate that the Detective did refer the matter to his superiors and that there were, as I have said, mitigating circumstances but for Police to decline to take the offered statement was inexcusable. I use the word advisedly. If that statement had been taken it could well have triggered the same enquiries made by Mr Rowe.

For Police to decline to take a statement naming a person allegedly responsible for a homicide when another person had been charged and was in custody merits censure. This is especially so when it was recognised at the time that there was no corroborating witness to support the allegation made by Mr Lane against Mr Mather.

I endorse the words of Detective Superintendent Marshall when describing what happened. He said:

*“There seemed to have been a dull acquiescence or resignation that Taulago was a liar, had lied on this occasion and he was essentially ‘written off’ by the investigating members. I would have expected a far more inquisitorial and vigorous approach to Taulago’s statement in keeping with the serious homicide inquiry that was underway.”*

I take it those comments apply both to the initial one-page statement and the second statement. In my view it is appropriate that they should.

Ignoring Mr Taulago’s evidence may not in the circumstances amount to misconduct or neglect of duty but it certainly in my view amounts to a serious error of judgment on the part of the investigating team.

I agree too with the Detective Superintendent’s view that an error of judgment was made when the investigation team lost what looked like a golden opportunity to fully explore Mr Taulago’s potential for information when he raised the question of witness protection.

Turning now to the disposal of the aborted statement by the Detective, in my view it matters not how he disposed of it. It was patently neglect of duty not to retain it. Clearly it would have been a discoverable document and of potential assistance to the defence team. I am at a

loss to understand the Detective's expressed view that such a problem never occurred to him, even when Mr Mather had been charged with murder.

I also note that I cannot agree with the view that the Detective was justified in giving that warning to Mr Taulago. I accept it may have been done with the best of motives but to do so was very likely, as it did, to inhibit the making of what could have been a very important statement. This in my view again was a serious error of judgment. This was a homicide enquiry and demanded the gathering of all possible relevant evidence. It was not of paramount importance to protect a witness against himself because he may have been intent on making a false statement.

I also believe that follow-up action should have been taken in respect of the statement described as nonsensical as this may have proved another alternative route to the elusive truth in this case.

This ground of complaint must represent the high-water mark to support the global claim that Mr Mather and Mr Brown were to be convicted at all costs. I can readily understand how counsel could view such inexplicable behaviour as showing just that. However my exhaustive analysis supports the view of Detective Superintendent Marshall, namely that the disposal of the statement by the Detective happened because he was acting in "*a naive and ill-considered way*". It does seem the Detective now realises that his misguided actions caused very considerable disquiet and cast a pall of doubt over the integrity of this investigation.

Despite what happened then I am not persuaded the evidence discloses an obsession to pursue Mr Mather and Mr Brown at all costs.

In the response to this question lie the answers to the several questions posed within it. However for the sake of clarity I quickly deal with each question.

1. Mr Taulago was not "leant upon" for reasons already given.
2. Who ordered the destruction of the statement? On the evidence nobody. The Detective who took it disposed of it he says as a mark of good faith.
3. Why did Police not acknowledge the second statement was untrue? They do now. I am not clear from the way this question is posed who it is suggested should have been told earlier. After the statement was made Police it seems saw Mr Taulago as a defence witness.

4. On the evidence Mr Bunce and Mr Taulago did not give consent to the destruction of the statement. Whether they knew of any intention to destroy it and whether they were present when it was destroyed are matters of conflict which I cannot resolve.
5. It certainly was not proper Police procedure to destroy the statement.
6. Defence counsel it appears was not told of the destruction of the statement simply because nobody in the Police apart from the Detective knew it had ever existed.
7. A Job Sheet should have been prepared. It was not apparently because of the Detective's view of the matter.
8. The statement was not discovered because its very existence was never known to anybody in the Police except the Detective.

In my opinion the next most serious criticism levelled at the standard of the original investigation is encapsulated in this question posed by Mr Hall:

***“Did the Police/CIB realise that [the O/C Scene’s] reconstruction and [the pathologist’s] opinion were at serious odds and both in conflict with Lane’s statement and his testimony at depositions. If there was a realisation of such conflicts why was nothing done about such a serious state of affairs?”***

It is not clear from this question what period is targeted. I am assuming it is the period before depositions. Police at that time would be aware of evidence to be given at depositions. This is the view taken by Detective Superintendent Marshall who investigated this matter and he had conferred with both counsel before his investigation began.

I have also re-read the letter of complaint from Mr Hall. On this point he says:

*“With the greatest of respect to the Police, the forensic evidence from [the pathologist] and the reconstruction from [the O/C Scene] (which in themselves are in serious conflict) in no way support the scenario suggested by Lane, namely that there was a push and then a tumbling down the stairs. ... Any reasonable investigation should have at least been aware of these apparent conflicts and called out for further careful examination and evaluation.”*

I will, then, consider this question as relating to the period prior to depositions. In so doing, however, I have kept well in mind the later comments made by Mr Rowe in respect of the varying scenarios as to just what happened following the incident which led to the death of Mr Coleman.

First it is important to appreciate what is meant by a “reconstruction”. According to the Police Manual of Best Practice:

*“A reconstruction is a theory about what took place in a given area over a relevant period of time and how it is likely to have happened. It is formed by logically piecing together all information gained from examination and enquiry.”*

Among other things, the O/C Scene is enjoined when making a reconstruction to:

- Assess all information, including witnesses’ statements, members’ Job Sheets and inventories.
- Question the significance of all physical evidence found and details noted at the scene. Make deductions from these.
- Consider what happened and how the activity occurred.
- Consider specialist and all other opinions. Test their theories.
- Experiment at the scene to establish whether a theory is feasible. Do not touch, move or remove anything.

The O/C Scene is also enjoined to keep an open mind and is reminded there may be more than one theory. It is also noted in the Manual that additional or different information may alter the reconstruction.

It is by no means clear whether Police did in fact apprehend the reconstruction scenarios of the pathologist and the O/C Scene were, as Mr Hall puts it, “*at serious odds*”. What is, however, very clear is that nothing was done to tackle what should have been an obvious problem.

That nothing was done is the subject of trenchant criticism by Detective Superintendent Marshall. This criticism is echoed by the Internal Affairs Division at Police National Headquarters. At Internal Affairs it was opined that to allow this conflict to go unresolved to the depositions hearing was testimony of an unco-ordinated aspect of the enquiry.

Such conduct in the view of the Division amounted to neglect of duty as opposed to an error of judgment.

The pathologist, in a letter dated 11 November 1997 to Detective Senior Sergeant Van Beynen, expressed his dissatisfaction with the way this aspect of the case was handled. In my view this dissatisfaction was fully justified. The doctor said:

*“[O/C Scene] reconstruction. I was not aware of the reconstruction until details of it were put to me by defence counsel at the depositions hearing. I suspect the Crown case was more disadvantaged by this than I was personally as I could rightfully claim that I had stated my own view in my Special Report to the Police which was identical to my brief. It is always uncomfortable to be a Crown witness and to have other Crown evidence or conclusions at variance with one’s own put to you by defence to which you have not previously been made aware.”*

He later says:

*“It would have been helpful to the Crown to have had a meeting at which a reconstruction accommodating as much scene and opinion evidence as possible could be reached.”*

The Police Manual of Best Practice makes it clear that a very important part of the duties of an O/C Scene is to continuously consider and test possible reconstructions. It is spelled out that a reconstruction must consider specialist and all other opinions and must test theories advanced.

In this case this simply did not happen. It is not a matter of arranging a meeting to tailor evidence. As Detective Superintendent Marshall says, it was incumbent upon Police *“to ensure that the O/C Scene and pathologist were in agreement or otherwise, at least having the opportunity to express their opinions in a collective setting. The fact that neither knew what the other would say in depositions on such vital issues is somewhat unprecedented.”*

In fairness to the O/C Scene I record that he was an experienced officer but had not previously been the O/C Scene of a homicide inquiry. He was abruptly called from his home at 6am on Christmas morning. He reached the scene at 7am. There he had to help him a Police photographer and he called for ESR specialists. Three arrived. Their task was to deal with evidence of blood at the scene. This officer spent no less than seven hours at Wicked Willies that Christmas Day.

I agree with Detective Senior Sergeant Van Beynen’s comments that the officer’s Job Sheets are thorough and well researched.

However, I must also agree with his view that this officer did not place sufficient weight on the reconstruction phase of his duties. In fairness to him it must be said that the reconstruction phase is only part of a large number of duties expected of an O/C Scene.

Turning to the Manual of Best Practice, it is not surprising to find that it spells out that a main reconstruction is only finalised after all information is gathered. As might well be expected this includes witnesses' statements. In this case the critical statement was patently that of Mr Lane. The interview from which this statement emanated concluded at 1.40pm that Christmas Day. According to Detective Superintendent Marshall the scene was in Police parlance "*released*" some 20 minutes later. Accordingly at this time the O/C Scene was not aware of Mr Lane's final account of just what had happened.

It is my view, as it is that of Detective Senior Sergeant Van Beynen, that the scene should not have been released "*as quickly as it was*". Apparently there were later some problems in gaining access again to the club. Furthermore it is my view that as directed by the Manual the O/C Scene should have conferred with the pathologist before completing his own reconstruction.

I think it is worth noting that this tragedy happened on Christmas Day and so at the beginning of the holiday period. This may have generally affected the quality of this part of the investigation with staff on leave or about to go on leave.

The O/C Scene said, when interviewed by Detective Senior Sergeant Van Beynen on 17 October 1997:

*"As to why myself and other staff involved did not sit down with the pathologist unfortunately timings had something to do with it; as I said I was on leave for some two weeks from the day after I finished the scene. I am not sure what other discussions took place during that time ..."*

In my view, then, there was neglect of duty in two ways. First, there was a failure to prepare the reconstruction as required by the Manual, especially in relinquishing the scene before the vital witness statement was available, and also in failing to confer with the pathologist both before the reconstruction was made and also before depositions.

The Internal Affairs Division in its review has also held there was neglect of duty on the part of the officer in charge of the investigation in not ensuring these matters were properly attended to. I agree as the ultimate responsibility must be his. However in fairness to him I record he does not accept this and strongly defends his role in the matter.

I turn finally to the basic question raised by Mr Hall, namely that both the O/C Scene's and the pathologist's reconstructions do not support the eye-witness evidence of Mr Lane and hence this should have sounded alarm bells for Police and prompted them to carry out "*further careful examination and evaluation*". Mr Rowe has also made a strong submission along the same lines in his report.

The evidence before me does confirm that neither the O/C Scene nor the pathologist are able to fit into their reconstruction scenarios Mr Lane's version of what happened after the alleged push. In fairness to him I record that the O/C Investigation takes a contrary view.

When interviewed on 14 October 1997 by Detective Senior Sergeant Van Beynen, the O/C Scene said:

*"Clearly Mr Lane's version with regards to rolling down the stairs and being propped up are matters that I do not accept from my reconstruction of the scene."*

Mr Rowe met with the pathologist at the Club on 3 July 1997. He records that the pathologist then agreed that a tumble and roll scenario could not have occurred.

I simply record this evidence and I repeat that it is not for me to determine who was or was not responsible for the death of Mr Coleman. It is, then, quite inappropriate for me to comment on the evidence of Mr Lane measured against later reconstructions.

I do note however that anybody faced with resolving this dilemma would be dealing with something that must have been over in a flash. After all only seven steep stairs were involved.

To answer Mr Hall's question I record there is no evidence to show that before depositions Police realised the disparity between the O/C Scene's evidence and that of the pathologist. What is more, as Detective Superintendent Marshall says, at depositions time Police accepted Mr Lane's evidence as being "broadly correct".

What concerns me however is this. Police from the very outset appreciated there was no other witness to corroborate what Mr Lane said. His was a stand-alone account of what happened. One way, and indeed possibly the only way, to test this account was to see how it measured up against a painstakingly prepared reconstruction.

It was then imperative to achieve such a reconstruction for the purpose of carrying out this acid test. This would have demanded consultation between the pathologist and the O/C

Scene. That never happened. That it did not was unquestionably “*testimony of an uncoordinated aspect of the enquiry*”. This is the view of the Internal Affairs Division I earlier cited with approval.

I am then critical that this obvious method of testing Mr Lane’s evidence received such scant attention. It is not my function to speculate on what may have followed if proper attention had been given it. My concern is that such a vital evidential yardstick was largely ignored.

Having said this I remain of the view this failure had its genesis simply in a lack of professionalism. It is not evidence supporting the global concern that Police were determined to obtain convictions against Mr Mather and Mr Brown come what may.

On the contrary, to offer evidence where the reconstruction of two professional witnesses was at odds and which apparently eroded the evidence of the vital witness was in fact to offer grist to the mill for the defence. I agree with the pathologist that such evidence if anything would disadvantage the Crown.

As to events after depositions, Mr Rowe’s report was responsible for a quite massive Police review of evidence which resulted ultimately in the dropping of all charges. An integral and important part of Mr Rowe’s report dealt with the matters raised by counsel in this question. Police then did respond to these and other matters raised in the report in appropriate fashion and following the report there is no evidence of Police misconduct or neglect of duty.

The next most important question for consideration is this:

***“In respect of the witness, Lane, was it appropriate to rely on the seriously conflicting statement of a self-confessed liar when there was no corroboration?”***

I have already pointed out that a statement made by Mr Lane on 25 December 1996 was the cornerstone of the Police case. This is the statement in which he said he saw Mr Mather push Mr Coleman down the steps. As I said earlier, without that evidence there simply was no case against Mr Mather.

On 26 December 1996 Mr Mather was interviewed by the now retired Sergeant. At the conclusion of this interview at 2.25pm he was arrested and charged with assaulting Mr Coleman with intent to cause grievous bodily harm. At that time Mr Coleman was still alive. At the time of arrest Mr Mather reasserted that he had done nothing wrong.

Events then moved swiftly. At 5pm that day Mr Mather was informed by the Sergeant he also faced a further charge of attempting to pervert the course of justice.

On 29 December the Sergeant went to Addington Prison. There he charged Mr Mather with the murder of Mr Coleman who had died on 27 December. Again Mr Mather reaffirmed that he had done nothing wrong.

At this time Mr Lane was placed in the Witness Protection Programme and removed from the Christchurch area.

At Christchurch in March 1997 he gave evidence against Mr Mather at a depositions hearing arising from the murder charge. He was subjected to intensive cross-examination but a prima facie case was established. This charge was later reduced to manslaughter.

Also in March he gave evidence at depositions arising from the other charge against Mr Mather and Mr Brown namely attempting to pervert the course of justice. Again a prima facie case was established.

What this present question really boils down to is this. Should Mr Mather and Mr Brown have ever faced prosecutions on the evidence available?

In other words, however this ground of complaint is phrased, it essentially challenges the exercise of the Police discretion to lay criminal charges.

The Authority has always recognised that this discretion is an operational decision of the Police. Prosecution decisions are generally not reviewed by the Authority unless circumstances give rise to possible misconduct or neglect of duty with which this Authority is concerned. To that limited extent the Authority may examine the exercise of the discretion. I repeat again however that it is not my function to determine guilt or innocence by a critical analysis of Mr Lane's evidence.

I turn then to consider what matters Police should have considered in exercising this discretion to launch these prosecutions.

The first factor clearly would be the undisputed fact that Mr Lane initially lied to Police who came to the club in the early hours of that Christmas morning. In effect Mr Lane said he saw nothing and heard nothing. This '*see no evil, hear no evil*' response to Police was, according

to Detective Superintendent Marshall, a response common to a number of other '*centrally positioned*' witnesses. All these witnesses it seemed were in various stages of intoxication.

The Detective Superintendent states:

*"This is a common scenario, experienced by Police officers, during the course of this type of investigation."*

On reading the several statements where material changes were later made, it is clear there is evidence that supports the assertion of the Detective Superintendent that in cases such as this some persons deny seeing anything simply to avoid at all costs becoming mixed up in a Police inquiry.

The all-important statement implicating Mr Mather was that taken when Mr Lane was re-interviewed at 9.30am on Christmas Day.

The question posed by Mr Hall refers to the statement as a "*seriously conflicting statement*". If this means Mr Lane changed his story in the course of this statement, Mr Hall's comment is justified. Nevertheless, when Mr Lane did turn to spell out the alleged involvement of Mr Mather, he did so in considerable detail.

Evidence obtained in the course of this very extensive investigation is to the effect that not only the officers who took the core statement, but others who had dealings with Mr Lane up to and after depositions time, did not doubt the central truth of his account. Officers involved in taking the critical statement say they had no previous dealings with him and had no reason to believe he was telling anything but the truth and reject any suggestion that he was subjected to any form of pressure.

Indeed it was not until some eight months later on 10 August 1997 when Mr Lane was interviewed by Detective Va'a'eula as part of the Police review, that he claimed he had been pressured into making the statement. I have also read the record of his interview with Mr Rowe on 2 October 1997. In this he expands on this claim of being subjected to Police pressure. This too was a claim repeated on television.

I believe it is very important when considering this question that there be a clear demarcation concerning events before the depositions and after. After Mr Rowe's investigation, which was the catalyst for a Police review of the evidence, things did change dramatically after

depositions. Attention then focused on another person as a suspect. As a result Mr Lane's version of events became, if not suspect, at least open to doubt.

Prior to depositions Mr Lane had been re-interviewed to clarify matters in his original statement. Mr Stanaway, the Crown Solicitor, appeared with Ms Jane Farish at both deposition hearings. The view of the Crown Solicitor at that time was that Mr Lane was telling the truth.

Mr Rowe and defence counsel have placed major emphasis on the claim that Mr Lane was pressured into making a false statement to Police. Mr Rowe makes the point that there must have been some considerable pressure exerted on him given the reputation of Mr Brown.

Mr Rowe points out Mr Mather is an associate of Mr Brown; hence he argues Mr Lane would be unlikely to "*dob in*" such persons. Further, he points out that Mr Lane relied on these people for work. Hence, he says, to make such a statement something must have occurred which made him more frightened than he would have been of Mr Brown and Mr Mather. In other words he was forced into choosing the lesser of two evils.

The Crown Solicitor, on the other hand, suggested that because Mr Lane was prepared to make such a statement so very much against his own interests, this must strongly suggest he was telling the truth.

I am unable to resolve these conflicting views nor, as to Mr Lane's credibility, is it my task to do so.

The Police reject absolutely any suggestion of improper pressure being placed on Mr Lane. I have watched three video interviews with Mr Lane, all carried out after the date of depositions. These were interviews carried out by Detective Sergeant Tomoana, Detective Sergeant Van Beynen and Detective Superintendent Marshall. The relevant dates were 14 August, 3 November and 7 November 1997. In the first Mr Lane stated that he saw the new suspect punch Mr Coleman, then that suspect and Mr Mather threw Mr Coleman down the stairs. In the second he said the only person responsible was the new suspect. Then only four days later there was an astonishing volte-face. Mr Lane then disavowed all his recent disavowals in respect of what he had said originally and claimed that what he had said on Christmas Day 1996 and on oath in depositions was in fact the truth. He rejected in the last interview any suggestion that he was ever put under any form of pressure by Police.

My own assessment of Mr Lane, having watched these videos, is that he is a very malleable and compliant witness.

Mr Rowe said that he found it unbelievable that Police interviewing Mr Lane at the outset failed to see how “unreliable and hopeless” a witness he was. He asked did they turn a blind eye to this because it suited their purpose.

This is a very serious suggestion. It is not supported by any direct evidence and it is not an inference which I am prepared to draw on the evidence before me.

I interpolate here to say that I agree with the view expressed by Mr Rowe as to the effect of alcohol on the events of this night. He stated that all persons who were at the club were affected by alcohol to varying degrees and he further stated that he had no doubt that some of them were seriously affected and their ability to effect accurate recall must be suspect. This is a factor I have kept well in mind in dealing with the huge amount of evidence which I have had to consider.

The point is, however, that the only witness interviewed by Police at the outset who claimed to have seen what happened was Mr Lane. It is the case that he made a statement which on the face of it was totally against his own interests. The Police were entitled to have it in mind that in nearly all cases where false statements are made the makers are motivated by self-interest.

After depositions Mr Rowe carried out a very thorough investigation and strongly suggested that another person was a suspect. This clearly raised serious self doubts in the mind of Mr Lane. However, this was some eight months after the event. Since then Mr Lane has vacillated. However, before and during depositions this was not the situation.

After a critical review of the issue I do not find any evidence that Mr Lane’s statement was the result of Police pressure or of other unacceptable conduct on their part.

However I have already made clear my view that despite Police acceptance of what Mr Lane said, that should not have been the end of the matter. Nobody had corroborated Mr Lane’s account. Hence Mr Taulago’s visit to the Police Station on 29 December 1996 in the company of a barrister should undoubtedly have sounded a loud wake-up call for Police to probe deeper. Again as I have stressed, his account should have been subject to rigorous

testing by laying it alongside a detailed reconstruction containing input from the pathologist and the O/C Scene.

In saying this I really answer another question posed by Mr Hall. This reads '*Was there a conscientious effort to challenge or corroborate Lane's account? If not why not?*'

For the reasons I have just outlined there was not.

I should add for the sake of completeness and in fairness the O/C Investigation believed there was some corroboration for what Mr Lane said. He saw his account as being "overall consistent" with the result of the post mortem.

As further corroboration he also points to several statements allegedly made at the club soon after the event by a person he names. That person is said to have told several named people that Mr Coleman was indeed pushed down the stairs. Those said to have been told include an ambulance officer, a detective constable and a friend of Mr Coleman. The O/C Investigation says that that person later denied making these statements.

In any event the corroboration seems minimal and I do not resile from my view that the steps I have outlined should have been undertaken either to verify or discredit Mr Lane's statement.

On this expressed head of concern, the evidence does not persuade me of the global suggestion that there was a Police conspiracy to use Mr Lane, come what may, to involve Mr Mather and especially Mr Brown.

The remaining six questions posed by Mr Hall and endorsed by Mr Ruth are in fact complaints against Police. Two of these specifically target Police dealings with the man now named as a suspect. For legal reasons clearly I cannot deal with those in a public report. Counsel were entitled to raise the other four heads of complaint but I do not regard them as being of such significance as to merit inclusion in a public report. I have however responded in considerable detail to these other six complaints in my letter to counsel. I record that none of these six heads of complaint have been upheld.

I have also dealt with the two issues specifically raised by Mr Ruth on behalf of Mr Brown. Again I do not believe public interest dictates they be dealt with in a public report. Neither of these matters resulted in a finding against Police but no criticism was levelled against Mr Brown in respect of these matters.

I record now my views in respect of revealed deficiencies in the original investigation.

At the outset I noted that when I met with Detective Superintendent Marshall on 9 October 1997 I directed him to reach conclusions in respect of the overall competency of the original investigation team. He has done that. He has concluded there were deficiencies in the original investigation. He is a senior and very experienced officer and I accept his conclusions. They accord with my own, reached after a consideration of the many files forwarded to me. As I noted earlier, these include original prosecution files, deposition transcripts and statements taken by the review team in addition to the material assembled on behalf of the Authority.

On 13 November last year Detective Superintendent Marshall interviewed the O/C Investigation. He raised with him matters relating to the standard of the investigation. The interview was long and the questions probing.

Before turning to deal with the deficiencies revealed I say this. I was impressed by the immediate Police response to this potential tragedy when it first became known.

Realistically I think it must never be forgotten that this was Christmas morning. Nevertheless immediately, according to the O/C Investigation, some 15 to 20 officers became involved. As he said, it was Christmas Day and there were a lot of people just unavailable but he got everybody he could possibly get. He felt that he had adequate support to carry out this inquiry and in my view there can be no criticism of this initial rapid response.

He also stresses that this was not the normal type of case where there may have been independent witnesses. He points out virtually everybody in that nightclub was in some way or other dependent upon the club for their livelihood. He points out the persons there in some cases had close criminal connections and were totally unco-operative. They were affected in many cases by alcohol. Nevertheless witnesses were seen and most were seen twice on that morning and during the following days. It seems however Police were simply running into a brick wall.

Nevertheless as the inquiry progressed I think the criticisms now levelled at it by Detective Superintendent Marshall are justified. His criticisms while not scathing appear demonstrably correct following my own review of the file.

However, before turning to these, it is fair and important to state the balancing view expressed by the O/C Investigation. He said:

*“This inquiry was conducted in a careful way. A total lack of co-operation was received from those who were in a position to know the truth. Influences beyond our control have been at work and in my view a new scenario has been threaded through the old. This case was always vulnerable. However it was taken in good faith. It was investigated to the best of the abilities of all involved and I have no doubts as to their integrity. The Crown were consulted and supported us throughout the inquiry.*

*The vulnerability of this case came from the type of people who we were dealing with and the influences they can exert.*

*I totally reject any suggestion of impropriety on the part of myself or any member of the investigation team. I would work with all again tomorrow if required.”*

I agree with Detective Superintendent Marshall that in no way has the integrity of the Police investigation team been impugned by this inquiry. However, deficiencies in the investigation have been revealed. Detective Superintendent Marshall identified some of the areas as disclosing a less than satisfactory standard of performance as follows:

*“The failure of the O/C Scene to develop his reconstruction further (with or without Lane)”.*

*“The failure of the O/C Scene to liaise with the pathologist concerning the reconstruction.”*

*“The failure of the O/C Scene to appreciate that his evidence at depositions was somewhat at odds with the pathologist.”*

*“The failure of [the Detective] to retain the partially completed statement from Taulago on 29 December 1996 and his failure to submit Job Sheets on this point.”*

*“The failure of the O/C Investigation to ‘draw together’ all of these areas by comprehensively reading the full file and appreciating all the implications prior to the deposition hearing.”*

These criticisms are endorsed by the Authority.

It will be recalled my criticism of the failure to retain the partially completed statement went very much further. I saw the failure to retain the partially completed statement as being symptomatic of something more serious. This was that in the early stages of a homicide enquiry an officer declined to take a statement from an eye-witness who claimed to be only

about a metre away from the final act in this tragedy and who named another person as the sole and real culprit.

I have already voiced my criticism of the failure to liaise with the pathologist to produce a detailed reconstruction against which the evidence of Mr Lane could be assessed.

The criticism of the O/C Investigation relates to his ultimate responsibility. I have earlier endorsed that criticism but noted that the officer rejects such criticism.

I accept that the O/C Investigation did not know that a written statement from Mr Taulago had been commenced but he did know of his visit and the purpose of it. In my view he must accept ultimate responsibility for failing to ensure that a full statement was taken with appropriate follow-up investigation.

Detective Superintendent Marshall then points to further matters which may have contributed to the problems with the investigation. Again they are all matters where criticism is appropriate and is endorsed by the Authority. The initially appointed second in charge of the investigation was released from his responsibility within days of the event. Detective Superintendent Marshall asked the O/C Investigation why this officer was relieved of his duties after about two days. The response was that his role had been completed and he was going on annual leave. The O/C Investigation said he was comfortable that he had provided all the input that he required and the former Sergeant was then given the task of the file.

Detective Superintendent Marshall then comments that it was unfortunate that the former Sergeant, who inherited the file, left Police on 20 February 1997 and passed on the file to a Detective Constable. He points out that neither the former Sergeant nor the Detective Constable had previously been responsible for a homicide file.

The O/C Investigation has expressed a strong view that none of these factors affected or influenced the direction of the investigation. However it may well be that inexperience at least contributed to the failure to take a statement from Mr Taulago and to ensure an acceptable reconstruction was prepared.

The Detective Superintendent is also critical that no formal properly recorded conferences were convened on a daily basis. This is normal practice he says in such cases. It enables officers to interact with one another and set the focus for future enquiries. This appears to be a valid criticism.

The Detective Superintendent also expresses a concern that nobody was appointed to be beyond question the O/C of the file.

He draws attention to a question put to the Detective Constable who was given responsibility for the file after 20 February 1997. The question was put by Detective Senior Sergeant Van Beynen:

Q. *So effectively if I can use the term you became the file manager or managed the file; who appointed you or did you just inherit this role?*

A. *I wouldn't use the term manager, I'd use the term administrator and I make that distinction in the sense that I wasn't managing the file although you might want to draw the inference I was. I felt that I was administering and co-ordinating not managing. Ultimately I saw that perhaps as [the O/C Investigation's] role. The file evolved (sic) to me and quite clearly it came to me because I was a significant inquiry member at the time."*

Detective Superintendent Marshall comments thus:

*"The semantics involving terms such as 'file manager' or 'administrator' are quaint and perhaps an unfortunate trait in many of today's files. There should simply and unequivocally have been an 'O/C file' who had the ability, time and interest to ensure that the best evidence was produced at the evidential hearings."*

I endorse this criticism.

On a practical level I make this comment. This event occurred on Christmas Day and some of the officers involved naturally had leave commitments. As I have pointed out, the officer who was originally second in charge of the investigation, left the investigation about two days after the event. The O/C Scene went on leave for two weeks from the day after he finished the scene examination. The O/C Investigation went on leave on 6 January for three weeks and was out of town for two of them. I of course accept his statement that he was contactable if required and he made that clear to the officers involved. He also states he was satisfied by the time he left that the inquiry had been satisfactorily concluded. Nevertheless I am left with the feeling that perhaps the timing of the event may have led to some of the deficiencies in the subsequent investigation.

I endorse the final view expressed by the Detective Superintendent when he says of the original investigating team:

*“Without exception we believe they were attempting to do their best under difficult circumstances and in an honest manner. There is no evidence to suggest otherwise and there is not the slightest doubt in our minds that [the O/C Investigation] is a man of integrity. The lapses in investigative standards occurred through a combination of lack of experience, a lack of appreciation of the consequences and a lack of overall ‘ownership’ or appropriate supervision of the investigation file.”*

In the course of this investigation another major concern became apparent to me. It is this. Following receipt of Mr Rowe’s report Police carried out an extensive review of the case focusing on a possible prosecution of the new suspect. Ultimately a decision was made not to prosecute.

I repeat it is not my function to determine the guilt or innocence of the suspect and I accept that in the criminal justice system in New Zealand it is the Police who decide whether a prosecution is to be instituted.

I have said earlier that prosecution decisions are generally not reviewed by this Authority. But the exercise of the discretion may be examined to see whether it discloses any elements of misconduct or neglect of duty.

In his report of 6 October last year to the District Commander, Canterbury, following the completion of the Police review Detective Superintendent Millar analysed the evidence resulting from the review and reached a conclusion that with the information Police currently had it seemed prudent to leave the matter open and await the possibility of further evidence becoming available. He also summarised in some detail legal advice received from the Southern Region Legal Adviser and the Crown Solicitor.

This office sought a report from the Crown Solicitor in Christchurch of dealings he had with Police which led to the decision not to prosecute. I am indebted to him for the very detailed information he has provided. I have critically examined this and am satisfied the exercise of the discretion not to prosecute cannot be impugned on the basis of misconduct or neglect of duty by the Police.

I am informed however that the file remains open.

In the review conducted by the Internal Affairs Division, before the review by the Authority, a recommendation that three officers involved in the original investigation be counselled because of the deficiencies now identified was endorsed. Any such action is the prerogative of the Commissioner.

I make it very clear that while I have highlighted some deficiencies in the work of the original investigation team, it should not be inferred from this that I am in any way predicated what may have happened had there been no such deficiencies. That is not my task.

Finally I record that while I am satisfied that there were those significant deficiencies in the original investigation, my investigation has not revealed evidence that there was some form of conspiracy whereby the Police were determined to pursue charges against Mr Mather and Mr Brown and relentlessly pursued this objective despite other evidence which they chose to ignore .

**Judge N C Jaine**  
**POLICE COMPLAINTS AUTHORITY**  
**23 April 1998**