

STRIKEFORCE PARRABELL PROJECT

Overview of Parrabell review

Write at the very end

Historical backdrop against which this review proceeds: situating anti-homosexual bias in the Australian context.

Few people living in Australia today would be oblivious to the problem of so-called gay-hated related homicides in Sydney and other parts of NSW during the 1970s to 1990s. These alleged crimes have received saturation media attention and have seen concerned community members marshal a series of responses to try and monitor and gauge the true extent of the problem. Before this report can begin to grapple with some of the complexities related to this period and the recent review conducted by Strike Force Parrabell, it is helpful to provide a brief summary that accounts for the complex legacy of animosity that was often *associated with* and *directed at* male homosexuality. This history will help the reader of this report comprehend some of the prevailing social, legal, cultural and institutional (church and school-related) factors that may have helped shaped the backdrop under which many bashings and murders of gay men took place. And whilst this *history* is itself now largely *historic* in our contemporary era of tolerance, acceptance and [in some quarters] celebration of homosexuality (where the right to marry beckons as a possible momentous social change), we should not forget the long shadow cast by anti-homosexual sentiment in the last 100 odd years in Australia.

Whilst it is unwise to attribute a causal link between these factors and the motivations of specific perpetrators, what is clear is that these factors coalesce (in profoundly complex social and individual ways) to help shape both social [shared] and singular [individual] attitudes to male homosexuality that – in particular scenarios or human interactions – can produce extreme and seemingly irrational violence.

Hatred, animosity and fear of homosexuality are not innate qualities that an individual is born with. Rather, they are *learned* by exposure to ideas perpetuated in the schoolyard, through religious discourse (the so-called ‘sin’ model), legal discourse (the ‘crime and deviance’ model) and, more generally, through ideas of homosexual abnormality that are so ubiquitous and common place that they appeared both natural and common sense at the time they were purported.

A helpful starting point for our history is to recall that prior to the latter part of the 20th century, consensual homosexual sex was a crime in all states and territories of Australia with many men being prosecuted and imprisoned for crimes including ‘gross indecency’ or ‘sodomy’ (Carbery 2010; Dalton 2011). Same-sex attracted men lived furtive, secret lives with the threat of exposure and criminal prosecution hanging over their heads. This climate of fear and loathing reached its zenith during the Cold War period (Wotherspoon 1989; Willett 1987) with the popular tabloid newspaper *The Truth* regularly publishing stories that exposed gay men as sexual deviants, effectively ruining their lives and careers (French 1986; Murdoch 1998). Such was the fear of losing one’s job and being rejected by their family that many men lived closeted lives prior to the era of increased tolerance that followed the *Stonewall* inspired gay rights movement heralded in during the 1970s and 1980s (Wotherspoon 1991; Willett 2000).

The police force played a major role in suppressing homosexuality prior to the decriminalisation era. *Agent provocateur* sting operations would be conducted whereby young policemen would loiter in public toilets and either wait for a man to importune a sex act with them or encourage such an act to take place by pretending to be there for that purpose (Dalton 2007). Whilst such entrapment practices were not specific to Australia (Moran 1996) the NSW police were particularly keen on targeting homosexual men because the [then] acting Police Commissioner Delaney was so obsessed with combatting homosexuality that he ensured that Vice Squad detectives devoted considerable time and resources to policing the scourge of homosexuality (Wotherspoon 1993). Indeed, the reminiscences of a famous Sydney detective named Sergeant Joe Chuck published in 1956 have three chapters devoted to his personal recollections of combating homosexual ‘sex pests’ in Sydney between the two world wars (Kelly 1956).

The police would combat homosexuality by prosecuting homosexual men, the popular tabloid media, in turn, would disseminate stories of their spectacular downfall in lurid details that effectively both named and shamed them (as individuals) and functioned as a type of warning to other homosexual men: *we will expose you next and destroy your life*. The role of the various Churches in Australia during this period should not be overlooked. They propagated the notion that homosexuality was an abominable crime and that men who participated in homosexual sex were indulging in the gravest of sins: unnatural sex (Henderson 1996). In tandem, medical discourse played a role in admonishing homosexuality. Prior to its removal from the DSM in 1973, homosexuality was understood in psychiatry in Australia as a disorder that could be treated. In Sydney and Melbourne the lower courts [termed ‘Magistrates’ in Victoria and ‘Local’ in NSW] sometimes sent a procession of convicted offenders for aversions treatment to ‘cure’ them of their homosexuality. For individual offenders, often agreeing to undertake such treatment would mitigate against a potential prison sentence. Such treatments typically involved subjecting the men to electric shocks or nausea inducing drugs whilst being exposed to homoerotic stimuli (Dalton 2002).

The advent of HIV/AIDS did much to pathologise gay men as dirty and diseased. Repudiated as a class of people addicted to causal sex and in doing so ‘spreading AIDS’, public health responses – including the infamous Grim Reaper with a bowling ball television advertisement (Lupton 1993) – contributed to a climate of fear where gay men were understood as sexual subjects synonymous with death and suffering.

In 1975 South Australia made legal history by being the first State to decriminalise male homosexuality, followed by ACT in 1976 and Victoria in 1980. NSW and the Northern Territory followed suit in 1984 and Western Australia in 1989 (Bull, Pinto and Wilson 1991). One might herald the era of decriminalisation in Australia as a period that effectively banished anti-homosexual societal attitudes from our shores as quickly as their arrival had been in colonial times. To ascribe to such a view would be to erroneously imagine that the removal of homosexuality from the purview of the criminal law could somehow – as if by magic – undo the cumulative and collective reputational damage that such an inclusion had fostered over 200 odd years. The homosexual man may well have been freed from the criminal law, but the pejorative language of ‘faggot’, ‘poofter’, ‘pillow biter’ and ‘queer’ (before the GLBTIQ community could reappropriate this term) endured as terms of derision for gay men that remind us that a change of law does not necessarily lead to an immediate change of mind in the wider community. Indeed, some of these terms emerged from the Parrabell case archives; a reminder that the legacy of anti-homosexual ideas has its

origins in the historic period when the law, church, popular media and psychiatry conjoined to speak of homosexuals as – variously – deviant, sinful, perverse and mentally ill.

LINKING SENTENCE/SEGUE to next section about hate/bias

I guess we need a summary of gay hate /bias literature – will be bloody hard to write – I guess I should have a crack at it?

How the Strike force operated

[**Years of operation – to determine**] Strikeforce Parrabell operated under a “Co-coordinating Instructions” document that set out the impetus, parameters and instructional guidelines for detectives to follow. The document noted that in 2002 “the then NSW Police Gay and Lesbian consultant, Ms. Sue Thompson, identified a potential 88 cases between 1976 and 1999 that potentially involved anti-gay bias” (REF police1, page 2).

Taking this list as its point of departure – and in recognition that “The NSWPF has recognised that the community’s concerns may be addressed through a comprehensive review of the relevant cases from a bias crime perspective” (REF police1, page 2) – Strike Force Parrabell was established to review these previously reported deaths between 1976 and 2000 to determine if a sexuality or gender bias was a contributing factor. The “mission” of Parrabell –as the co-ordinating instructions termed it – was to conduct a review of the NSWPF holdings in relation to potential gay hate crimes resulting in death. The review related to police investigations conducted between the 1970s and 2000. The purpose of the review was to determine if any antigay bias was involved in any of the deaths that figured in the list of deaths tabled over a long period of time by former police officer Sue Thompson, the criminologist Stephen Tomsen and other parties that contributed to this list.

Using this list (irrespective of its fluctuating number) as a starting point for this review is profoundly problematic [as will be explored in a subsequent section of this report]. This factor will be set aside for the moment in the interests of documenting how the Strike Force operated in as concise a manner as possible.

Investigators commenced a systematic review of the 88 cases that formed the basis of the community activists’ list to determine if there was evidence indicative of a bias crime.

The definition of a Bias crime indicators were taken to be:

“objective facts, circumstances, or patterns attending a criminal act or acts which, standing alone or in conjunction with other facts or circumstances, suggest that the offender’s actions were motivated, in whole, or in part, by any form of bias”
(Massachusetts Model _ - Protocol for Bias Crime Investigation) [REF police1, page 2]

It should be emphasised that the Strike Force was designed to “review matters that have *already been investigated* by the NSFPP [REF police1, page 3, original emphasis]. The review sought to assess each individual case holding entirely on its own merit.

Holdings consist of the standard brief items that are collected in a criminal investigation, such as:

- Witness statements
- Crime scene evidence
- Crime Scene photographs
- Records of interviews
- Contemporaneous police notes (hand written and typed)
- Coronial documents
- **DEREK TO INSERT OTHER EXAMPLES** to ensure this list is comprehensive.

Many of these items were stored in standard cardboard archive boxes [**smallest/largest**] which had to be conveyed to Surry Hills so that the detectives could unpack them and begin the painstaking task of examining (photographs) and reading each archived item. The time this took varied considerably depending on the number of archives boxes assigned to each case. In the course of the review approximately **500** archive boxes were examined (**check with Craig?**)

It was not the intention of the Strike Force to re-investigate matters that have already been investigated by the NSWPF. Rather, as the “Co-coordinating Instructions” stated:

“The proposed bias crime review is different from a homicide investigation as its primary focus will be in determining whether any of the identified deaths were in fact motivated by anti-gay bias, rather than identifying and prosecuting offenders. If during the course of a review, viable suspects or lines of enquiry are identified, that information will be passed on to the Unsolved Homicide Team, Homicide Squad, for further investigation” [REF police1, page 3]

Investigators created a ‘Bias Crime Indicators Review Form’ which was used to systematically review each relevant case file item. This instrument is reproduced in Appendix [x] and will be the subject of sustained critique in a later section of this report.

As the review of each case was evidence based, detectives reading a relevant holding would familiarise themselves with the TEN Bias indicators:

- 1) Differences
- 2) Comments, Written Statements, Gestures
- 3) Drawings, Markings, Symbols, tattoos, Graffiti
- 4) Organised hate Groups (OHG)
- 5) Previous Existence of Bias Crime Incidents
- 6) Victim/witness Perception
- 7) Motive of Offender/s
- 8) Location of Incident
- 9) Lack of Motive
- 10) Level of violence

The *descriptive meaning* and *nuances* of these ten Indicators will be critiqued at great length in a subsequent section of the report, suffice to say that it is important to briefly note here the categories that the detectives were working with.

The detectives would read and review their holdings with a view to identify any information that would allow them to tick a particular indicator. For example – and to quote directly from the “Co-coordinating Instructions”:

“If the offender is recorded in police files as associating with persons known to have assaulted young gay men, then the investigator may mark Bias crime Indicator 4 (Organised Hate Group) as being relevant” [REF police1, page 3]

In such instance, this fact would be accurately recorded on the Bias Crime Identification Form (in the form of a tick in a box) along with the source of the evidence and a description of how the evidence relates to the indicator. The source of evidence was termed a “product” and a rigorous cross referencing system meant that that that “product” was captured and numbered should it needed to be retrieved. For each indicator, the following four findings are were available:

Evidence of Bias Crime – sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially motivated by bias towards one of the protected categories and constitutes a criminal offence.

Suspected Bias Crime – evidence/information exists that the incident may have been motivated by bias but the incident cannot be proven beyond a reasonable doubt that it was either wholly or partially motivated by bias and constitutes a criminal offence.

No Evidence of Bias Crime – the incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group

Insufficient Information – insufficient information has been recorded to make a determination in regards to bias motivation. This may be due to a lack of detail recorded by police or a lack of information supplied by victim’s and/or witnesses.

A team of approximately **four** detectives worked on each case. The time this took varied greatly depending on the amount of archived material that had to be read, interpreted and coded for “products”. At the conclusion of each review, the individual detective who conducted the review would share his findings with the head detective [**do we name Cameron?**]. He would review the case, perhaps seek clarification and question any issues that seemed pertinent to the review. The detective would then finalise his/her review in light of this feedback process. Then, approximately once a month, a team of three senior detectives [**do we name all 3?**] would convene a committee to read and review all the accumulated cases. At that meeting by the detectives would read and discuss the cases and seek to reach consensus.

How the detectives ultimately made their determinations

It should be stressed that whilst the detectives paid attention to the ten indicators on the Bias Crime Indicator Form (a qualitative instrument with four variations in each numbered category, their ultimate determination was not calibrated by counting the number of ‘yes’ or ‘no’ indicators of Bias and referencing that number to some sort of table that accorded Bias status to a particular *threshold* number [e.g. seven out of ten indicators]. Rather, the process was much more intuitive and relied on qualitative data in the form of contextual information derived from analysing each case. That is, having taken notice of the requisite Indicators of

bias, the detectives would also take into account the “Summary of Findings” section (which itself was an amalgam of the “general comments” section that corresponded to all ten indicators). Thus the indicators were weighed against the context of the summary narrative. This narrative was often rich in detail and – when viewed in concert with the relative indicators – allowed a view of whether bias was involved to emerge. Of course, such a process can be critiqued, but will not be in this section lest it detract from the goal of clearly outlining the processes that governed the Parrabell review as conducted by NSWPF.

When the process of review was concluded, the detectives provided the academic team with their findings on the 88 cases. **It should be stressed here that:**

- Unable to be located (insert final #)
- Returned to Unsolved homicide (insert final #)
- 1 case – Tasmanian jurisdiction
- To avoid confusion – one case involved double homicide [Mokdad and Creighton]

The genesis of the lists from which Parrabell derived its cases

The specific cases that Strike Force Parrabell reviewed derive from a list [or more accurately *series of lists*] that can be traced to the work of various individuals concerned with gay hate related homicidal violence in NSW. The following section will account for the manner in which these lists took shape. It provides a *context* for understanding the list that Parrabell ultimately tethered its Strike Force to.

A NSW Police Force employee named Sue Thompson maintained a list of “possible gay hate murders” for the ten year period 1989 -1999 using the indicators used by the police service at the time. Initially the list “was conceived to monitor actual deaths (rather than frequency thereof) in order to stop the murders happening & in particular to stop the horrendous involvement of young teenage boys in bashing and killing gay men” (Thomson email 1). Thompson was aided by Detective Sgt McCann who had first-hand knowledge of a “massive and invisible problem of unreported bashings” (Thomson email 1). Thompson said that they were “shocked and alarmed” and that “so it began” (Thomson email 1). Like many people who seek to monitor a perceived social problem, the significance of their work was not immediately apparent. As Thompson stated in her correspondence to the Parrabell academic review team:

“I was not even initially aware that it would become about monitoring frequency until much later when we realised there was indeed a terrible pattern of frequency that needed monitoring and a police and ultimately government response” (Thomson email 1).

The first list that Sue Thompson compiled contained some 46 identified deaths and another 4 identified by Det Sgt McCann. (EXP) Some research was conducted with the Australian Institute of Criminology (between 1999 and 2001) and the data was secured in a registered police file and ring folder that had contained gay hate homicide materials. The internal list grew in number over time and, as Sue Thompson states, “Various versions of the formal Police “Possible AntiGay/Gay Hate Murders List” would have been in various files as updated at different times” (EXP).

Herein a misunderstanding should be corrected from the outset. Sue Thompson has categorically stated that a list of 88 specific cases did not come from her or her work. The number of alleged murders was, she said, “publically stated and reported as up to 80” (EXP). Indeed, Sue Thompson has stated that various versions of the list arose in the context of various police Working Parties, Conference documents; official submissions and other internal initiatives linked to understanding and combatting gay hate violence [see appendix # 1 containing 8 bullet points].

Overtime, various people including Professor Stephen Tomsen, other academics, gay rights campaigners, gay and lesbian historians and other interested parties have sought to use various versions of the “list” to try and fathom just how serious the problem of gay hate violence and homicide was during the period of 1980 to 1999.

To further complicate matters, in 2013 “a group of individuals with historical knowledge on the [alleged] murders quickly gathered and recompiled a list at the request of the *Sydney Morning Herald* and a Member of Parliament” (EXP). Professor Stephen Tomsen’s list of the initials of 74 murder victims’ names (with date of murder) was used for this commission. In this particular version of the list some 74 cases were identified from 1980 to 1999. (EXP).

When the *Sydney Morning Herald* published their article devoted to this commissioned research, the newspaper used the phrase ‘up to 80’ murders (EXP). Of course, irrespective of the *precise* number of potential homicides at play at any time (that is, in any particular version of the list), it should be stressed that 80 is a large number; one that could be predicted to capture the attention of the public and instil anger, sadness and a sense of frustration that this *figure* might somehow attest to a prevailing social climate that could fuel so many deaths underwritten by a mix of homophobia and/or hatred of men perceived to be gay.

From 2013 to 2015, further reviews were conducted by the community and academic parties hitherto mentioned. This group determined that there were 71 possible gay homicides from 1970 to June 1999 with a further 10 needing additional research (EXP).

In her document explaining the work she did to bring the problem of hate crime to the attention of both the police and the public, Sue Thompson says the efforts of those gay community representatives and interested academics and gay historians was designed to “indicate the tenor of the times and crimes” (EXP). This is apt phrase. It reminds us that the work that Sue Thompson and those who contributed to the compiling of lists had a honourable motivation. These interested parties wanted to bring a perceived social problem to light. Their principal goal was to try and gauge just how serious the problem of homicidal violence was in Sydney during a 20 odd year period. The very work *that Strike Force Parrabell* conducted is directly linked to the efforts of Sue Thompson and Stephen Tomsen to raise public consciousness and try and calibrate just what the state of play was in relation to anti-gay homicides in this period. They should not be constructed as ‘activists’, ‘agitators’ or any other pejorative term. They sought to capture an elusive truth and their efforts must be conceptualised as being motivated by a concern for justice for the potential victims of homicide that their data captured (even if erroneously).

Taking on a life of its own: the problem of the media, mythology and folklore in relation to the ‘lists’ of murders

It is apparent that the existence of various lists of potential gay-hated related homicide cases has seeped in public consciousness in New South Wales aided by: radio, televisual and newspaper media attention (including the *gay press*). Such reports have been accumulating for a good decade or so and have culminated recently in a series of events that have thrust the idea of gay homicides into sharper focus than ever before. These (mainly) media and cultural events include: an SBS mini-series ‘*Deep Water*’ (REF properly); a documentary entitled ‘*Deep Water: the true story*’; a true-crime genre book entitled ‘*Getting Away with Murder: up to 80 men murdered 30 unsolved deaths*’ (McNab, 2017). Additionally, an interactive website entitled ‘*The Gay Hate Decades: 30 unsolved deaths*’ supplemented the SBS *Deep Water* documentary (<http://www.sbs.com.au/gayhatedecades/>). Based on journalist Rick Feneley’s research, the website invites the visitor to vicariously inhabit the role of the detective to explore cases presented as “unsolved” homicides. The website opens with a panoramic view of Bondi (complete with churning surf) that zooms from a close up to a more distant perspective of this most famous bluff. Capturing some of the most infamous Mark’s Park and cliff-side cases, this panorama situates the visitor at the ‘scene of the crime’ synonymous with some of the most infamous cases. As one moves from case to case, a red circle is drawn around stylised Polaroid™ photographs of each real victim. For victims where no photograph is available silhouettes are used that have stylised splatters on them that could be interpreted as blood. Simultaneously, a map in the foreground of the website dramatically shifts from one specific death location to another location to pin point where the “murder” took place. The production values are technically impressive and they afford this website a sense of legitimacy and verisimilitude that is beguiling (notwithstanding the questionable inclusion of some cases in the website’s list).

So (in)famous is this period of gay-hate fuelled violence that it has received international attention. *The New York Times* published an article entitled ‘When Gangs Killed Gay Men for Sport: Australia Reviews 88 Deaths’ (Innis 2017).

The totality of this material circulating in society and media culture must be understood as an amalgam of facts, presumed truths, speculation, conjecture and suspicion – the likes of which can get overlooked when packaged as stories that circulate under a common moniker. As already alluded to, the vehicle of a “list” (*irrespective* of its precise number) is marshalled as an indicator of the truth of a social problem. So to the extent that wider community of NSW citizens *knows* about the “problem” of murders in NSW during this two decade period, we must acknowledge that the trope of *the list* has helped shape this understanding (however distorted or undistorted that understanding might be). Furthermore, discourse about gay hate murders circulates in the wider culture and has been (and continues to be) the subject of speculation both in the GLBTIQ community and the wider community of other citizens of NSW. People talk about the murders at work, at social functions, in pubs, clubs, cafes and restaurants. That speculation about the deaths occurs is not surprising. Real people died during this period; people with families and friends who grieved and continue to grieve for them. The imprimatur of potential murder strikes at the heart of any person concerned with justice who may well feel aggrieved by such occurrences and wish to join a chorus of voices advocating for justice.

A recent review of the SBS television drama ‘*Deep Waters*’ was published under the heading: ‘A licence to bash gays’: 1980s crime wave revisited in new TV series’ (Medhora, 2016, SBS). Another article entitled ‘Gay hate: the shameful crime wave’ was published in the Sydney Morning Herald in 2013 (Sheehan, Paul). The use of the term ‘crime wave’ is both

these articles is instructive. **Lists featuring large numbers Alarmist term – fuels public fear – need theory [To be developed]**

An examination of the process and method used to conduct SP including the application of the NSWPF Bias crime indicators

The list of cases developed by Sue Thompson and Stephen Tomsen does not have a known relationship with the number of gay bias homicides during the period that the cases were collected. Possible errors related to the list includes under-recording and uneven or inconsistent application of inclusion criteria, where cases come to attention under a variety of means. The methodology depends upon a variety of means to discover possible cases, but it does not depend upon any one means consistently. This would result in an uneven and somewhat unpredictable under-recording and over-recording. Even where the AIC report attempted to place the list against a total of relevant homicides, the selection criteria for the list makes it impossible to draw a conclusion between the investigation of gay bias homicides and non-gay bias homicides.

Our assessment of the Bias Crime Indicator Review Form began with a query concerning the authorities cited by the police to support the use of the instrument. Our inquiry resulted in statement that the factors are used as prompts and that there is no necessary correlation between any of the factors and a determination of bias. We found no case in which association with organised hate groups (factor 4) was present. There was no viable reference to witness or victim perception (factor 6), and there were several factors which we preferred to view under motive.

We determined that the Bias Crime Indicator Review Form may have produced a lack of distinction between categories of bias that are germane to this investigation. This was the finding upon attempting to use the BCIRF in categorising the cases. This led to the querying of the values or factors and to the definition of bias used by police and by those who developed the original and subsequent lists.

In short, we determined that a proper evaluation of the cases required more than a reproduction of the methodology used by the NSWPF and its Bias Crime Indicator Review Form, comprising of an “indicative” list of ten factors.

In our re-assessment, we found it necessary to develop a short list of necessary factors directly from a definition of bias crime, which we then proceeded to do. In doing so, we were aware that we needed to distinguish the direction of the animus, because it appeared that there were many cases in which there was a potential to over-categorise anti-gay bias.

Over-categorising Bias

This review is concerned directly with measures of anti-gay bias crime. On one hand, there is an argument that the list presented provides evidence that police have been negligent in their prosecution of anti-gay bias in crimes of homicide specifically. On the other hand, there is an argument that whilst this may be true generically of police historically, the commentary on the evidence presented (the list) has exaggerated or even grossly exaggerated the scope of the underlying phenomenon.

As social scientists, we believe that the evidence does matter. Crimes may be both under and over-categorised, and sound public policy is not well-served where there is either an under or an over recording of bias. Where there is an under-recording of bias crime, there may be systemic or institutional bias against a social group that is not being adequately redressed by public resources or that may, as has been suggested, indicate a malfeasance by those public institutions. Where there is an over-recording of bias crime, the opposite distortion may occur. There will be over-criminalisation and the potential for public or moral panic that will have impact on freedoms. There will also be mis-categorisation, meaning also that other dimensions of an event are not properly recorded and addressed.

Defining Bias

A review of research on bias has resulted in the following findings. Researchers make the point that hate or bias offenders are “otherwise ordinary” (Hall 2004: xvii). Recognition of bias and prejudice in public policy including the criminal code is a matter of changing cultural or societal attitudes. According to Perry, there is little consensus over a global definition of hate crime (Boeckman and Turpin-Petrosino 2002: 208)

Bias crime laws are concerned with acts where hostility, bias, prejudice or hatred (we may say animus) is directed at a presumed attribute of the victim, and is an integral or key element of the offender’s behavior, upon which the victim is selected. ACPO defines hate crime as “any incident perceived by the victim to be motivated by hate or prejudice” (ACPO, 2005). However, victims are often in no better position to determine the motivation for behaviour than is the perpetrator or the bystander. England and Wales have enormous numbers of bias crimes, no doubt due to this over-inclusive definition. As per Hall (2004:11), the concept loses meaning where it permits subjective over-inclusion.

Many researchers make the point that the perceived affiliation of the victim is important (Chakraborti and Garland 2015: 3; Mason 2014: 78; Gerstenfeld 2004: 9) and others cite vulnerability or vulnerable populations (Chakraborti and Garland 2012; Wolfe and Copeland 1994: 201). Gerstenfeld defines hate crime as “illegal acts motivated, at least in part, by the group affiliation of the victim” (Gerstenfeld, 2004). Perry (2001: 29) says that it is generic subordinate identity of the victim rather than any individual characteristics that must be viewed as key. She (Perry 2001:10) defines hate crime as involving the reassertion of the dominance of the perpetrator’s group over the victim. Important to a conceptualisation of bias is reference to the *relative* powerlessness of vulnerable peoples vis-à-vis a dominant, privileged class of people.

Our definition of bias is as follows. Bias crime is an act that

- a. expresses a categorical animus (directed at a person or group on the basis of his/her perceived identification with a vulnerable group)
- b. intentionally, by way of criminal predation on the basis of that categorical animus, causes harm to that person or group
- c. is mitigated or aggravated by an offender’s contemporaneous associations that are linked by a commitment of denunciatory non-identification with the vulnerable person or group

In this definition we are concerned that to categorise an act as a bias crime, practitioners must be able to perceive a minimum of discrete factors that relate with one another. First, the act *expresses* an animus. This expression might be in the degree of violence or in the utterances, statements, gestures or other communications. As noted in the literature, these acts are meant to communicate an expressive message of negation. This expression is *directed* at a person or persons on the basis of the perceived identification of that person or persons with a vulnerable group, and as a means of distinguishing the identity of the perpetrator against that group.

The second factor permits a review of the intentionality of harm. Criminal acts require some degree of intentionality, and some acts are planned and calculated to do harm against a specific target whilst others are more reactive, defensive, opportunistic or can claim some provocation. This matters when assessing anti-gay bias. A person who seeks out a gay person against which to do harm because of perceived vulnerability is arguably more of a threat to the community than a person who reacts violently against an unanticipated gesture or sexual advance. In addition, if the victim is chosen exclusively to express an animus toward an identity group this is more solidly a bias crime. Where the victim is chosen for another crime (robbery, for example), because he is an easy target, the *strength of the prejudice motivation* in the causal link, as Hall (2004: 12) notes, between the prejudice and the offending behavior, may be relatively weak.

Lastly, the definition makes reference to the *associations* of the perpetrator. We are more likely to be confident in a designation of bias where there is some evidence that the perpetrator has had an association with others who share the offender's presumed antipathy to a vulnerable group. It is those who associate with others *on the basis of a common bias* or prejudice against a vulnerable group and who then take an action either individually or collectively intended to cause harm to that target group that are justifiably the most concerning to public policy.

Anti-gay versus anti-paedophile bias

This investigation is concerned explicitly with *anti-gay* bias. However, in our preliminary assessment of the cases we found that there were many instances where it was at least unclear whether the bias was anti-gay as opposed to anti-paedophile. Many of the cases involved young men of between 15-25 who killed older men between 45-65. In many of these cases, the perpetrator's sexual identity was unclear and the victim was accused of having committed sex crimes against under-age men. Some of the perpetrators had themselves had liaisons with older men, and it appears that some of them may have been trading sex for drugs or other goods. It seemed apparent or at least more than plausible that the animus that was present was directed at men for the sexual exploitation of boys. In some cases it also appeared as though a strong animus against homosexual paedophiles may have developed from historical sexual abuse. It is not clear to us that the bias expressed in these cases is motivated against homosexuality or homosexuals as against homosexual paedophiles.

We reasoned is that it is not sound public policy to conflate an animus towards paedophilia and an animus towards homosexuals. There are not too many social analysts who would want to support the historical slander that gays and paedophiles can be understood under a common moniker. Failing to distinguish the direction of animus and as a consequence over-including anti-paedophile animus under anti-gay animus would be to lend inadvertent support

to this historical slander. Mason (???) argues that paedophiles should be not be accorded hate crime victim group status even if they have been targeted due to hostility against their identity (see also Chakraborti & Garland, 2012, 2015; Garland 2016: 635). Whatever the normative argument, it is clear that whilst sound public policy aims to support gays as a vulnerable minority group, public policy does not afford the same protective support to paedophiles, and nor would it be sensible, just or proper to conflate them. In short, we opted to distinguish these cases because we believe as a matter of public policy, it is important to distinguish the primary animus from what may be a secondary animus that sets up a different public policy response.

It was agreed that many if not the majority of the cases involved offenders who had a bias toward their own incipient identity. These offenders were possibly reacting against their perceived vulnerability to a sexual identity challenge. Whilst this may be the bedrock for all bias, it may be perceived on a continuum that involves more or less reflexivity and supporting gestures (like the involvement of others in the reactive (criminal) action).

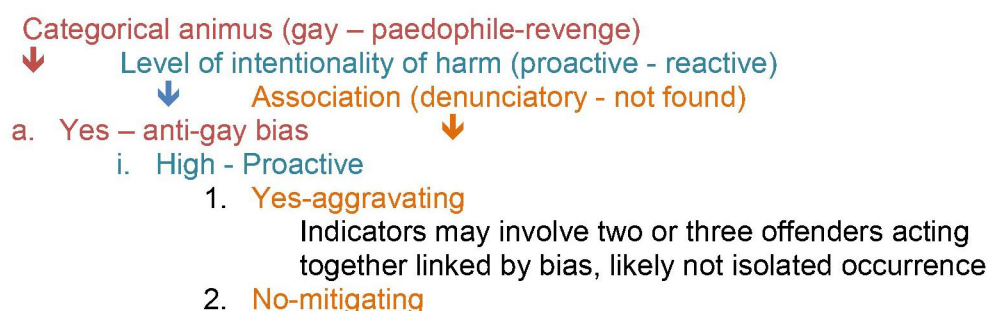
Other differences in coding

There is a distinction in coding that was identified in discussions with police concerning the understanding of the term “evidence.” Police team members of Parrabell have categorised as SBC cases where there is evidence that may support a court case that the crime was a bias crime. In contrast, we have coded as II cases where there the evidence that may support a court case is ambiguous and requires further probing (to provide further information that the file or file summary is unable to provide). The detectives noted that Intel officers may use a different threshold.

We paid little attention to the extent of violence as a factor. Whilst expressive violence is an important indicator of motive, it is not clearly connected to the experimental bias (anti-gay bias). We also queried the inclusion of a case under SBC where the only evidence cited was an isolated bias statement that was not connected to any other indicators of bias, including motive, other than the act of the violence.

Our Coding Instrument

The academics subcategorized the cases into clusters as follows in terms of the identification of the victim with a target of bias (gay, paedophile, no bias, II), level of predation or animus (proactive, reactive), and the offender’s denunciatory non-identifications with the vulnerable group (which provides a context of offender support as an isolated or organised event) as aggravating or mitigating.



Indicators may show solitary offender, possibly isolated occurrence.

- ii. Low - Reactive
 - 1. Yes-aggravating
Indicators suggestive of conflict of motives
 - 2. No-mitigating
HAD is possible
- b. Yes- anti-paedophile-revenge bias
 - i. High - Proactive
 - 1. Yes-aggravating
Indicators may involve two or three offenders acting together linked by bias, likely not isolated occurrence
 - 2. No-mitigating
Indicator of PTSD likely present, other trigger
 - ii. Low - Reactive
 - 1. Yes-aggravating
Suggest possibly stimulated by complex motives
 - 2. No-mitigating
HAD is possible
- c. No = no bias
- d. Insufficient information

We found (as below) that (x cases) did not clearly identify the victim with a vulnerable group or with the group that is the object of this investigation (gays). The academic researchers also did not find in many cases (x cases) that the violent act expressed an animus toward that group. We found only a few cases that suggested that the offender may have an association with others linked by a commitment to a denunciation of a targeted group. Many other cases may have involved post-hoc explanations of actions that may have expressed a gender or sexual identity conflict on the part of the offender.

What the academics did:

Comments on efficacy and quality of SP's review, the outcomes of the review [Do the researchers agree with SP outcome/determinations?]

Recommendations for future of policing, community engagement, training and development of bias crime indicators/processes

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