Anatomy of Moral Panic: The "List of 88" and Runaway Constructionism

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Abstract

This article explores a high-profile review of cases of alleged historical investigatory police bias in New South Wales (NSW), Australia, referred to in *The New York Times* article, "When Gangs Killed Men for Sport: Australia Reviews 88 Deaths." The title of the article contains the terms of a well-known feature of moral panic—a discovered crime fact and demand for an enforcement response disproportionate to the fact. Our analysis explores the response to the review of the list of cases, *Strike Force Parrabell*, as an illustration of runaway constructionism. Demand group-interest in the positive designation of the cases (as bias crime) was a means of acknowledging the prejudicial conduct of police during a time of wider attitudinal change. In spearheading the verification of this list of cases, demand groups and crusaders placed a high semiotic burden beyond its capacity as a comparable objective measure. The fitness of the list of 88 cases as a totem for police and societal wrongdoing requires evidence regarding disproportionality based on valid and reliable measures. Despite worldwide interest in NSW for its comparative high ranking in gay bias homicides, however, such ranking does not exist. Nonetheless, despite the impossibility that it stands in as proof of decades long prejudice, corruption or criminal negligence, the list of cases appears to do so anyway. As such, it is illustrative of the occupation of media frames and formats by weak data or of the runaway character of crime stories in an era of "fake news."

Introduction

This article explores a prominent media controversy that had roots in the Sydney environs of New South Wales (NSW), Australia, between the 1970s and the 1990s, concerning the incidence of homicides of gays and real, alleged or perceived New South Wales Police (NSWP) investigatory bias. In the context of well-publicized gay bashings and against the backdrop of the decriminalization of homosexuality and the emergence of bias or hate

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crime legislation, it was alleged by various actors that full investigation and proper categorization of a list of crimes was not being carried out as a consequence of police animosity towards gay men. Impelled by an NSWP civilian[1] with access to data from detectives and other police, and supported by a prominent journalist, a robust demand group, and one or two sympathetic academics, a list was drawn up under the moniker of gay-hate-related homicides. Over a short period of time, this list grew to the figure of 88.

The "list of 88" (or "the list") was alleged to represent gay-bias homicides between the period of 1976 and 1999. Reference to "the list" began to circulate in the mainstream press and gay popular press (e.g., the *Sydney Star Observer*) whenever the problem of lethal violence directed at gay men was discussed publicly. Moral crusaders would point to "the list" as a proxy for a variety of social ills. The number was marshaled as indicating an epidemic of gay hate said to prevail in NSW in the period in question. It was proffered as a shorthand indication of the indifference of police and other authorities to the problem of gay-hate homicide. It became the empirical reference for the allegation both that there was an epidemic of gay-bias homicide and that police were ineffectual or indifferent to this very significant social problem.

In 2016, "the list" became the subject of a NSWP-commissioned report to make findings and report back to the community on the police investigations regarding these homicides. In *Strike Force Parrabell*,[2] a team of approximately thirteen detectives utilized the National Institute of Justice bias-crime instrument to review the cases and provide a public finding regarding the categorization of the crimes, as solved or unsolved and as bias crimes or not. The findings of the two parties were compiled in the *NSW Police Force Strike Force Parrabell Final Report* (hereinafter, the "*Parrabell* report"), which was released in 2018. Both academic investigators and the police task force determined that most of the homicides on "the list" either did not involve gay-bias or that there was insufficient information to make a determination. Fewer than half of the 85 or 86 cases[3] were classified as gay-hate-related. Some deaths were deemed probable suicides, others accidental drug overdoses. One case was determined to have taken place in another jurisdiction (Tasmania) (see Fig. 1).

Despite its retrospectivity, the attendant elements associated with a moral panic are evident. Organs of mass opinion reflected or stoked public anxiety about the extent of gay-hate-sponsored violence. There was reference to a "tip of the iceberg" scale or extent in that "the list" was alleged to represent what had already definitively been uncovered so far. The paradox is that at the point where the empirical basis of the controversy ought to have suffered a fatal setback—the release of the *Parrabell* report—it was resuscitated in media commentary. While the homicides had abated insofar as potential gay-bias homicides ceased being added to "the list," a retrospective panic kept these suspect deaths at the forefront of public consciousness and fueled ongoing consternation that NSWP had gotten away with squelching an epidemic of gay-hate homicide.

In reviewing the incidence of gay-bias homicide in NSW as represented in "the list," this article provides an examination of a denouement of a moral panic. The first section provides a brief overview of the literature on moral panics in order to draw attention to conceptual issues at play. The second section explores the socio-legal contours that saw

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[1] A non-sworn NSWP employee.

[2] The word, "Parrabell," has no significance. It was assigned randomly by a computer that generates phrases for police task and strike forces. This helps police delineate one task from another.

[3] The academic team reviewed 85 cases and the NSWP examined 86 cases because one case was Tasmanian and one (NSWP) or two (academic team) others were undergoing further processing.
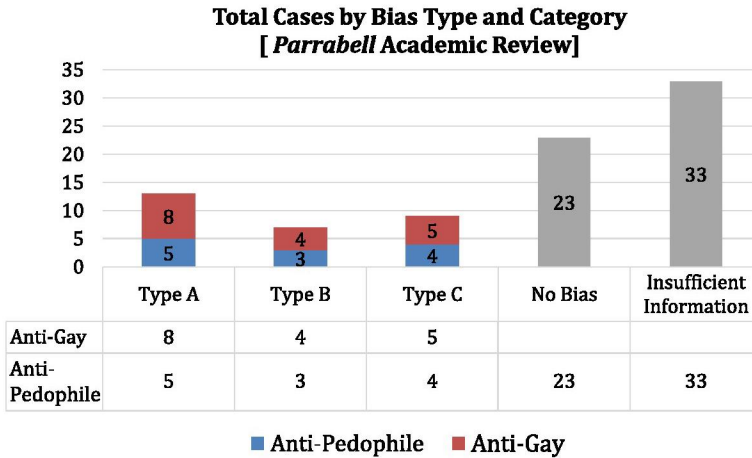
Total Cases by Bias Type and Category
[*Parrabell* Academic Review]

	Type A	Type B	Type C	No Bias	Insufficient Information
Anti-Gay	8	4	5		
Anti-Pedophile	5	3	4	23	33

■ Anti-Pedophile   ■ Anti-Gay

Fig. 1 Total cases by bias type and category (*Parrabell* academic review)

this panic emerge. This presents the range of factors that primed moral crusaders to propose that a problem of gay-hate homicide prevailed. This article then draws on theories of homicide-causation and gay-hate literature to tease out *how* and *when* a homicide might be identified as gay-hate-related and to associate this with the circumstances under which "the list" emerged. In the fourth section, we examine the method and findings of the *Parrabell* report against the moral panic disproportionality problematic. We explore the media's role in promulgating panic in popular culture through "the list" and the fertile associations that accompanied it. In the concluding section, we note the resilience of the contested referent (the "list of 88") in claims-making by the Standing Committee on Social Inclusion (NSW 2019) and suggest that criminological endeavors to reset homicide "facts" (and to recalibrate societal perceptions of a so-called problem) may also confront an entrenched discourse (in media-crusader alliances).

We trust that the findings of this case study provide support for the continued "resonance" of disproportionality (Cohen 2002: xxviii) and will have value for researchers interested in the resilience of moral panics. Crime facts become contested property as stand-ins for or foundations that buttress a crusade; actors become invested in them and encounter review posed by challengers as ideological opponents. The "list of 88" served as a monument announcing police indifference or wrongdoing regarding historical gay bias investigations and the gap between official and cultural understanding. The lack of fitness or proportionality between the signified (88 homicides) and the signifier (an epidemic of gay bias crime) remains illustrative of the runaway character of crime stories in an era of "fake news."[4]

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[4] The authors are, themselves, two of the three academics who were commissioned to re-evaluate the 88 cases comprising the *Parrabell* report. We are, therefore, using numbers and facts that we had a hand in producing and have an interest in defending. That said, we were brought into this debate as inter-state academics with no stake in the outcome. It is acknowledged that the NSWP, who contracted our services, will have known that any number significantly fewer than 88 would have been a reasonably favorable outcome.

The Elements of Moral Panic

"Moral panic" is a loaded concept—one more likely to result in argument than consensus. Developed by Young (1971) and Cohen (2002 [1972]) and elaborated by Goode and Ben-Yehuda (1994) and Garland (2008), among others (e.g., Critcher 2009; Hier 2008; Young 2009), "moral panic" is understood to embrace a public outburst of sentiment—a societal reaction—that draws attention to the extent or scale of a social problem, intimating the dangers of inattention to certain widely accepted values. Goode and Ben-Yehuda (1994) define "moral panic" as requiring a strong consensus in a volatile, overly hostile reaction to a group, accompanied by a proffered remedy. The term stems from Cohen's (2002) and Hall and colleagues' (1978) observations that the British media were sensationalizing young people's common expressive transgressions in an effort to foster support for a reactionary, punitive policy that could address this "social problem." The concept has been used widely in criminology (Goode and Ben-Yehuda 1994; Hall et al. 1978) and popularized in the media (Altheide 2009; Critcher 2003), and it has supported a constructionist criminology located in a modernist ethics and ontology that has since been superseded (Horsley 2017; Hunt 1999).[5] For Cohen (2002 [1972]) and many following his example, the point of the specter of the "moral panic" is to raise the concern that elite interests manipulate societal reaction to produce tighter social control or more robust regulatory restrictions. The attribution of targets, interests and mechanisms (including disproportionality) is easy to assume and hard to prove. Hunt (1999) prefers the term "moral regulation" to "moral panic," rejecting the latter on the grounds that it always already exaggerates or is irrational about the social problem and depends too much on a conspiratorial (and presumptively cohesive) state and conservative popular media reaction (see Critcher 2009).

Garland (2008: 21) avers that proper consideration of a social problem in the terms of a "moral panic" involves its symbolic meaning and social relations in historical temporality, which is to say, "why this folk devil, why this group, in this place and why this moment." In addressing why this, here and now, the quintessential *this* or type of "moral panic" involves an alleged discovery of a significant amount (quantitatively or qualitatively) of previously unnoticed morally-outrageous conduct (see also Gusfield 1967). What also features in any anatomy of a "moral panic" is an expression of volatility, urgency or immediacy (Goode and Ben-Yehuda 1994). A "moral panic" also benefits from and requires the presence of "moral crusaders" (Gusfield 1967) or "entrepreneurs" (Becker 1963), who provide the organs of mass media with data or information. These enlist the support of other actors in developing a "social fact" about which there is a policy or remediation urgency. As suggested above, "moral panics" depend on some shared "consensus" and a medium (mass or social media) through which to express outrage to a public or common audience (Goode and Ben-Yehuda 1994)—an audience that is primed to recalibrate affect and acknowledge the "hitherto unreported form of deviance," most often committed by an outsider group who may constitute a "folk devil" (Garland 2008: 14). This provides connective tissue between the newly-apprehended phenomenon and the demand to amplify societal reaction. As Garland (2008: 13) suggests, "moral panics" vary in "intensity, duration and impact,"

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[5] As Horsley (2017: 86) notes, radical criminology in the 1960s and 1970s was concerned not with the causes of "crime" (which needs to be placed in scare quotes) or the nature of harm, but with the role of the state in promoting a social order in the service of elites. Left realism emerged in response to an acceptance among critical criminologists that actors' needs and interests in crime experiences (victim and offender) are situated in class and community in relation to the state and market.

which is to say some are short-lived; while they may burn brightly, they may be of limited lasting impact.

With regard to Garland's (2008:21) question, "why this folk devil?," we are going to find that the attribution or target is more complicated than is found in classic "moral panic" literature. The disproportionality problem for the "moral panic" thesis concerns how to unpack the elements that have been compiled to produce the ideological outcome (Cohen 2002). There are many factors that contribute to the view of a social problem as needing immediate public policy attention. One of these is the nature and scale of an underlying deviance, according to which there is a disproportionate absence of requisite societal reaction. Thus, it is necessary to come to grips with the empirical foundation of a (purported) "moral panic" before we can make claims regarding the schism between "fact" and "false news." Cohen (2002: xxix, xxviii) notes that "the core empirical claims within each narrative can usually be reached by the most rudimentary social science methodology" but that the reaction is packed with emotion and symbolism that "cannot be translated into comparable sets of statistics."

We cannot set aside that the phenomenon's measurement is marred by the underlying problem of how an object is to be viewed objectively (Garland 2008: 22), but we are, nevertheless, dependent on the purported disproportionality of the moral opprobrium. (And it is this that elicits the term "panic"). Too much moral outrage to the societal reaction side of the ledger suggests that it is not a problem, whatever its scale, that demands such extensive and intensive response, and moral panic analysis "has always sought to do this" (Critcher 2009: 30). In other words, the use of the term suggests a view that the emotive response supersedes or is too large in relation to the objective stimulus. "Moral panics" reflect commonly-held or widespread perceptions, as supported or incited by media, but they are perceptions that, by definition, exceed some other, less inflated, measure.

In our study, the target or folk devil is something of a curious hybrid that is stipulated in "the list." It consists of the "bigger than you think" incidence of gay-bias homicide and the "greater than you think" prejudice or worse of the NSWP. In failing to acknowledge the purported prevalence of gay-hate homicides alleged by moral crusaders, police can be cast as anti-heroes whose indifference and apathy has concealed a "epidemic" of violence and murder. With regard to Garland's question, "why this group?," the answer can be found in the context: there was a cloud of cultural, legal, religious and social hostility that still attached to gay men despite decriminalization in 1984. The stigma meant that assaults and lethal violence directed at gay men were already marked with less disapproval than violence directed at persons who were not similarly burdened with such legal or social stigma. Because gay men were, in fact, a vulnerable social class, moral crusaders were correct to support changes to police organizational culture. This also answers the question, "why this place and moment?" Sydney and its surrounding environs were heralded as the epicenter of gay life in Australia. Sydney's concentration of gay men in the inner-city suburbs, its Mardi Gras parade and its dominant role in promoting gay rights could lead one to posit that the city's gay denizens were a target for hatred particularly by those who despised their transition from outlaw status. There was a cultural shift that saw gays moving from covert or furtive socialization to pride in being "out and about." The transition in visibility was provocative for and resented by cultural conservatives in the post-Stonewall years and its Australian equivalent (Willett 2000). Of all Australian cities, Sydney expressed the greatest tension between ascending and declining mores.

Where law enforcement reformers, identity groups and mainstream media converge on one side of an issue and become invested in a result, it is not surprising that there will be an absence of robust inquiry into the generative mechanisms. Facts, once marshaled to support a panic, may grow too big to carry the weight; deflating them, on the other hand, is not so

newsworthy. In the case we are investigating, we hope to show how the data, once inflated, become a prized possession; it becomes short-hand proof that the reform is necessary and just; it is also resistant to review and revision, as if to discredit the number is to discredit the social movement and reform. Thus, we seek to provide an account of the resilience of the "false facts" despite their very public correction. Our contention is that once crusaders and media invest in a moral panic—and absent a powerful countervailing interest—the facts become a stand-in for the laden, figurative representation of the social wrong that cannot be wound down.

Gay Bashings and Official Inaction: A Suggestive but Not Definitive Precursor to a Moral Panic

Before the last three decades of the twentieth century, consensual homosexual sex was a crime in all states and territories of Australia, and many men were prosecuted and imprisoned for crimes including "gross indecency" or "sodomy" (Carbery 2010; Dalton 2011). Before its removal from the Diagnostic and Statistical Manual of Mental Disorders (DSM) in 1973, homosexuality was understood psychiatrically as a disorder that could be treated. Men attracted to other men lived furtive, secret lives with the threat of exposure and criminal prosecution hanging over their heads. During the Cold War period (Willett 1997; Wotherspoon 1989), the popular tabloid newspaper, *The Truth*, ruined lives and careers by regularly publishing stories that exposed gay men as sexual deviants (French 1986; Murdoch 1998). In the 1980s, the HIV/AIDS epidemic did much to pathologize gay men as dirty and diseased. Public health anxiety added to the social hostility. Repudiated as a class of people addicted to casual sex and "spreading AIDS," public health responses—including the infamous death-dealing Grim Reaper with a bowling ball television advertisement (Donovan 1995; Lupton 1993)—contributed to a climate of fear where gay men were understood as sexual subjects synonymous with death and suffering.

Prior to its decriminalization in Australia, public entities, including the police, suppressed homosexuality with some vigor. Police would rely, in part, on sting operations (Dalton 2007). Spiritual and religious doctrine was also interpreted to propagate the view that homosexuality was a crime and that men who participated in homosexual sex were indulging in the gravest of sins—unnatural sex (Henderson 1996). Altogether, legal, media, medical, popular and religious discourses played a role in admonishing homosexuality and homosexuals. Tomsen (2009: 44) sums up the historical situation: "male homosexuals were regarded as fully deviant and heavily criminalised." Despite its decriminalization in the 1970s and 1980s (1984 in NSW) in most states and territories in Australia (Bull et al. 1991), a robust segment of Australian society maintained prejudices against homosexuality well into the 1980s.

Between the 1970s and well into the late 1990s, the state of NSW and many of its criminal justice and media actors formed a view that homophobic violence was a social problem that required attention (Mason and Tomsen 1997; Mouzos and Thompson 2000). The paradox is that the emergence of a normative gay masculinity (with many gay men out and about in public) created a newly *visible target* for the anger of marginalized youth, who were infuriated by their presence in public (Tomsen 2009). In this precarious space, gay men were derided and reluctant to make accusations of victimhood. As we shall see, the extent and causes of this homophobic violence is hard to pinpoint with any degree of cause-and-effect specificity. Nevertheless, as the following parts explore, a confluence of

cultural, legal and social factors helped shape conditions that permitted homophobia to be named, in media stories and criminal justice counts of violent assaults of gay men or men perceived by their assailants to be gay, and framed, as justice system-abetted homophobia.

In the late 1980s and early 1990s, the issue of gay bias violence and homicide was being discovered as a social problem. In Australia—and in NSW, in particular—according to Moffatt and Poynton (2006), a more than doubling in recorded crimes of assault between 1990 and 2007 mirrored by victimization rates *and* the absence of evidence in changes in reporting was a good reason to believe that assaults were rising in this period. Comstock (1991) found that in 1990, gay men were more likely than straight men to experience stranger violence. Dean and colleagues (1992) found that in 1990, gay men between the ages of eighteen and twenty-four experienced six times more violence than did gay men in that age group in 1985. Contemporaneous Australian research, including that from the Victorian agency, Gay Men and Lesbians Against Discrimination (GLAD 1994), reported that a high number of men and women in Victoria were subject to physical abuse, threats of violence or assault in public. In NSW, the *Streetwatch Report* from the Gay and Lesbian Rights Lobby and the Counter and Counter Report in 1994 used surveys to find a high rate of victimization. As reported by Mason (1993: 5), the New South Wales Anti-Discrimination Board (1992) noted an "increase in reports of HIV- and AIDS-related discrimination and crimes against gay men." Altogether, it is likely that there was a significant amount of violence in the wider community and that, in totality, there would have been official under-reporting and recording (Tomsen 2009: 45). Victims did not wish to draw attention to their sexuality or risk being subject to police ridicule or animosity in a social context that placed them on the liminal edge. Relatedly, the recording and reporting of homophobia in the terms of a bias crime awaited the legal and administrative devices that supported such record-keeping.[6]

Bartlett (2006: 576) made the argument that "gay sexual killings constitute a coherent class for study." Using case records from the Crown Prosecution Service and reported case law from the UK, Bartlett (2006) identified seventy-seven deaths that were gay-related. He referred to Tomsen's (2002a) study of the deaths of seventy-four men (see footnote 8 below), noting that it was closely comparative to what he was doing. But he noted caveats. For instance, querying the line between "casual relationship and domestic arrangement" (Bartlett 2006: 574) opted for inclusiveness; cases were included where there was an "identified perpetrator," but the use of news reports "to buttress the data set" would not be "satisfactory for formal statistical purposes" (Bartlett 2006: 575). Like Tomsen, Bartlett developed profiles of the cases, finding that most of the homicides involved a lone perpetrator acting out an impulsive or expressive (unplanned violent) act. Most occurred where there was drinking in a private place (home, hotel); they were divided evenly between stranger and non-stranger relationships in which the perpetrator was less than half the median age of the victim and tended be more socially marginalized. Bartlett (2006: 574) acknowledged, however, that collected this way, any number "cannot be considered a complete sample of gay sex-related murders in the period."

Bartlett was well aware that in the United States (US), reports of the extent of anti-gay and anti-LGBTQI violence had been criticized for being grounded on unreliable official bias crimes data that involved discrepancies in jurisdictional definitions and differences in the workings and practice of police agencies (Boyd et al. 1996; Haider-Markel 2002;

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[6] In this regard, a continuous data set permitting comparisons before and after official designation of the social problem is unavailable.

McDevitt et al. 2002; Nolan and Akiyama 1999; Perry 2001), while victimization studies (conducted in the US between the years 1977–1989) showed violence to be widespread. According to Ringland and Baker (2009: 7), increases in actual assaults may well have been occurring while there *were* changes to recording and reporting practices (e.g., mandatory reporting).[7] There is no strong evidence that there is a "particular pattern to the size of the increase in assault," however; the increase in assaults in "outdoor public place" was not as high as other categories, although the rate of increase in residential places was over 100% (other places had still higher rates of increase) (Ringland and Baker 2009: 7). In that volatile period, Jacobs and Henry (1995: 387) concluded that "the socially constructed claim that hate crime has reached epidemic proportions flies in the face of history." The empirical foundation did not support the summary or comparative statements about the extent of the phenomenon.

Our argument, however, is that it is necessary to recognize this shortcoming in the available data as a true impediment to retrospective assertions about the extent of the problem. In the absence of reliable data, the danger is that unreliable and anecdotal information that may have been enough to raise the issue's status is then relied upon in a makeshift empirical argument. Where the issue traffics with positive social science, this is too much constructionist inference; reference to facts to ground disproportionality that is weak or indifferent to reliability or validity has the capacity to turn against protagonists.

In sum, the means and capacity to investigate bias or hate crime depends on reliable and consistent legislative conceptualization and the conversion of that into police devices capable of identifying the suspected criminal element. This, alone, makes the retrospective attribution of events or cases difficult, if not impossible, in most instances. Although the rise in assaults and survey research is suggestive, this does not enable support or corroboration of the claim that there is a rise, much less an *epidemic*, in anti-gay homicide in a location.

Advocating and "The List"

In part, due to advocacy and moral crusading for law enforcement reforms, scholars and activists have developed and elaborated the putative empirical basis of bias crime (Mouzos and Thompson 2000; Tomsen 2002a). There is now a large body of work that is concerned with the *extent* or *incidence* of such crimes, particularly its underreporting and underrecording. The frequency of anti-gay bias is reported in victimization studies (Miller and Humphreys 1980), police reports (Nolan and Akiyama 1999; Perry 2001), court records (Bartlett 2006; Tomsen 2009), news media reports (Bartlett 2006; Comstock 1991; Miller and Humphries 1980), and by dataset comparisons of regular homicides against anti-gay homicides (Bartlett 2006; Mouzos and Thompson 2000). This work is directed at reform and has helped to raise the profile of a social problem. As we noted above, however, crime depends on construction and official recording. Where it attracts less consensus,

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[7] In this regard, it is important to note that the recording of bias crime awaited the introduction of §21A(2)(h) of the Crimes (Sentencing Procedure) Act 1999 (NSW) in 2003. As per the act, it is an aggravating factor at sentencing where "the offence was motivated by hatred for or prejudice against a group of people to which the offender believed the victim belonged (such as people of a particular religion, racial or ethnic origin, language, sexual orientation or age or having a particular disability)."

construction and record will be subject to wide variations of interpretation. And if crime, in robust objective facticity, is weak or empirically wanting, then bias crime is at the weak end of an anemic concept.

In this regard, there are wide variations in bias crime measurement across jurisdictions because different assumptions or conditions and tools of attribution are used. As an example, Garland and Hodkinson (2014) promote relative group dominance and subordination where attempting to identify which groups ought to be included. In practice, legislation is not well-disposed to incorporate relative vulnerability contexts in determining bias crime. What some jurisdictions have done is provide an adequate or more than adequate account for subjective or victim-centered views of bias. England and Wales adopt the Association of Chief Police Officers (ACPO 2005) definition: "Any hate incident, which constitutes a criminal offence, perceived by the victim or any other person, as being motivated by prejudice or hate." In NSW and many other jurisdictions, the victim must be in a listed vulnerable group.

It is also possible to see a second group of scholarship that is concerned with hate crime victimology (Barnes and Ephross 1994; Iganski 2008). For this scholarship, the emotive language of bias or hate is less important than that the target is *vulnerable* (Chakraborti and Garland 2015; Perry 2001; Stanko 2004). In what Mason (2014) calls a "politics of justice" framework, the concept of hate crime is underpinned by ideas of equality, justice and the right to live a life free from abuse and harassment. Groups whose actions do not sit comfortably within this (and Mason cites pedophiles as one such group) should not be accorded hate crime victim group status, even if they have been targeted due to hostility against their identity (see also Chakraborti and Garland 2012, 2015; Garland 2016: 635).

Tied to the question of *who* may be recognized is the question of *how* the event of bias crime may be apprehended or profiled. Although some researchers and scholars concentrate on behavioral and transactional dimensions or factors in the unique or distinct properties and motivators of anti-gay bias or hate crime (e.g., Tomsen 2002a; Turpin-Petrosino 2015), law enforcement tools have derived clumsily from findings that tend to generalize across a variety of bias crime groups or categories.[8] An example of this is the tool used by NSWP, the Bias Crime indicators Review Form (BCIRF), which draws its indicators from the National Centre for Hate Crime Prevention (see Table 1).

As noted above, in addition to the identification of a problem by moral entrepreneurs, knowledge of crime depends on categorization of behavior as illegal and the practices of actors working in official capacity to develop instruments of collection and dissemination. In order to support informed interdiction against perpetrators, NSWP Gay/Lesbian Client Consultant Sue Thompson, together with Detective Sergeant Steve McCann, developed NSWP capabilities with respect to identifying gay-hate-related homicides, work that was further developed as a working list of cases (Thompson 2018). In this, she was supported by community activists (the Gay and Lesbian Rights Lobby (who set up the Lesbian and Gay Anti-Violence Project) and other researchers, including Tomsen (1996) and Tomsen and George (1997), who reviewed court records to document the phenomenon.

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[8] Perhaps the most overwhelming view is that gay-bias crimes are those which more than other crimes inflict great harm upon their victims (Iganski 2008). The intensity of the harm, in both objective and subjective experience of extreme brutality, has been noted in these studies as being greater than in other assaults (Archer 1994; Berrill 1990; Campbell 1986; Garnets et al. 1990). A study by Miller and Humphreys (1980) found that anti-gay murders are marked by "extreme brutality," in which the victim is "more apt to be stabbed a dozen or more times, mutilated and strangled."

Table 1 Ten-point bias indicator review form as used by New South Wales Police for *Strike Force Parrabell* Review

Items [as suggested by evidential *prompts* as gleaned during the process of detection]	Evidence indicator	Score [yes or no]
1. Differences	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 offense.	
2. Comments, written statements, gestures		
3. Drawings, markings, symbols, tattoos, graffiti		
4. Organized hate groups (OHG)		
5. Previous existence of bias crime incidents		
6. Victim/witness perception		
7. Motive of offender/s		
8. Location of incident	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 offense.	
9. Lack of motive	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.	
10. Level of violence	Insufficient information—insufficient information has been recorded to make a determination with regard 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.	

The first version of "the list"— "Possible Anti-Gay/Gay Hate Murders List," as it came to be known—was developed in 1989 and contained approximately fifty deaths. The data were secured in a registered police file and ring folder that contained gay-hate homicide materials. As "the list" grew in number over time, various versions found their way to different folders at different times. To complicate matters, versions of "the list" were created in the cross-fertilization of police working parties, conference documents, official submissions (to various NSW governmental department) and other internal NSW police initiatives linked to understanding and combatting gay-hate violence (Thompson 2017).

Mouzos and Thompson (2000) published a report that drew on a list of twenty-nine homicides, occurring between 1989 and 1999, which were identified as "possible homosexual hate related," according to the Hate Crime Data Collection protocol on the NSW Computerised Operational Policing System (C.O.P.S.). The report by Mouzos and Thompson (2000) relied on cases compiled by Thompson after consultation with detectives, witnesses, general duties officers and researchers who read coroners' files and court transcripts. They relied on this to compare the crimes to the other male victims of homicides in this period and concluded that during the review period, "approximately four men were killed each year in New South Wales in attacks related to prejudice or homophobia which may be linked to notions of gender and masculinity" (Mouzos and Thompson 2000: 2).

In time, "the list" came to number 88.[9] This number of alleged murders started to be discussed and debated in public—primarily, in newspapers and in the Sydney gay and lesbian press. Over time, people, including Tomsen, other academics, gay rights campaigners, gay and lesbian historians and other interested parties, sought to use versions of "the list" to explore the incidence and character of gay-hate violence and homicide during the period of 1980 to 2000 (Bartlett 2006; Mason and Tomsen 1997; Mouzos and Thompson 2000; Tomsen 2002a, 2009; Plummer 2005). Tomsen and George (1997: 56) asserted that the NSW police were "complacent" about anti-gay violence, while journalists (e.g., Blue 2016) have contended that some police may have been participants. This is a point later acknowledged by the NSWP in a media release connected to their record on this issue (NSWP 2018). The gay advocacy group, ACON, championed "the list," pointing to its existence as evidence that NSWP had failed to investigate properly the deaths of gay men and obfuscate the seriousness of the problem. They argued that "the list" demonstrated that the NSWP was not invested sufficiently in protecting gay men from homophobic violence. At times, ACON were scathing in their admonishment of the NSWP and they used "the list" as evidence of neglect of their community.

In sum, individuals and organizations made use of "the list" to alert the public to a measurement of the extent of the problem of homicidal violence in Sydney over a period of approximately twenty years. Whether their efforts are understood as motivated by an interest in directing resources to a policy gap or a concern to find justice for victims of homicide, once "the list" started to circulate, it came to be used as shorthand to describe the problem as a large number.

Thus, the vehicle of a list (irrespective of its precise number) was marshaled as an indicator of the truth of a social problem. To the extent that the wider community of NSW

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[9] Tomsen used a base line of seventy-four killings to represent approximately 14% of all homicides with male victims over a twenty-year period (Tomsen 2002a). This figure was developed from "press records" but identified "probable" anti-homosexual killings (2002a: 12). It was then used in Tomsen (2002b) and Tomsen (2009). Seventy-four is also used as base-line in (Tomsen 1998, 2002a, 2006; Tomsen and George 1997).

citizens know about the "problem" of murders in NSW during this two-decade period, they are invited by the media to consider the trope of "the list." That this list is an amalgam, based on a mélange of fact, conjecture and suspicion, is overlooked when news stories circulate under the moniker.

"The List" Reviewed

Pressured by a family member of one of the victims on "the list," Scott Johnson, the NSWP launched *Strike Force Macnamir* to review each of the thirty unsolved cases that may have involved anti-gay bias. Detective Chief Inspector Pamela Young led the Unsolved Homicide Team and determined that eight cases probably or possibly involved anti-gay bias, but she could not come to definitive conclusion that Johnson was one of them.

In 2013, a group of individuals with historical knowledge of the alleged murders gathered and recompiled "the list" at the request of the *Sydney Morning Herald* and a Member of the NSW Parliament. From 2013–2015, further reviews were conducted by the community activist and academic partners. Then it was determined that seventy-one and possibly ten more anti-gay homicides occurred between 1970 and June 1999. In 2017, "the list" was reinvigorated with fresh urgency when the *Sydney Morning Herald* published an article reporting that "the list," itself, would be scrutinized by homicide investigators in *Strike Force Parrabell.* That newspaper used the phrase "up to 80" murders, but when *The New York Times* published a prominent story that depended on "the list," it cited 88: "When Gangs Killed Men for Sport: Australia Reviews 88 Deaths" (Innis 2017). Simultaneously, ACON used "the list" of 88 in their 2018 report, *In Pursuit of Truth and Justice,* but they use the years 1990–2015, which further muddied the waters given *Parrabell* restricted its coverage to 1976–1999.

In 2016–2017, the NSWP began a further review of the case files and invited a three-person academic team to review their assessment of 86 of the 88 cases (including solved and unsolved), specifically to determine how many involved anti-gay bias crimes. Police investigators from *Strike Force Parrabell* applied the ten-point Bias Indicator Review Form (see Table 1) against a summary of the available evidence that had been checked according to those indicators. The police used a team that included representation from their Bias Crime Unit in making the assessment. The academics took the summaries from the police and re-interpreted the chances of bias against their own bias indicator assessment tool (see Table 2). In doing so, the academic researchers determined that what was necessary and sufficient was the evidence of proactive or predatory intent and communication with others (association) about that intent.

The police concluded that 27/86 cases (31%) involved bias or suspected anti-gay bias. The academic team found that 20/85 (24%) did so.[10] The academic team found that an additional twelve cases involved anti-pedophile bias (see Fig. 1). The academic team determined that the type of crime referred to in *The New York Times* headline above, defined as an act where offenders proactively target the victim in association with others, occurred in eight cases, and as far as could be determined, these were unconnected. In coming to

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[10] The academic and police teams had a different denominator due to reporting and deadline changes. The police reviewed a case that the academic team had excluded.

Table 2 The bias indicator assessment tool academic version

Type	Motivation	Indicators
A	*Associative and proactive* The offender has gone out of his way to place himself in a situation in which he can subordinate a person on the basis of his/her perceived identity **AND** The offender has engaged in bias *communications* in the course of carrying out a harmful act or activity against a person identified by that bias, (e.g., anti-gay) **and/or** the offender *associates* with others on the basis of a shared bias	Witness statements, comments Formalized hate associations Previous existence of hate crime incidents Location of incident [proximity to a "beat" may be significant]
B	*Proactive, non-associative* A non-associative offender has gone out of his way to place himself in a situation in which he can subordinate a person on the basis of his/her perceived identity	
C	*Reactive* An offender has reacted to a situation in a manner that suggests that an animus towards a vulnerable group contributed to the motivation for the crime	

its conclusion, the academic team developed its own assessment tool because it needed to differentiate the target of bias (was it anti-gay or anti-pedophile animus that may have motivated the offender?). It also used a concordance method to develop greater certainty regarding the attributions (see Table 2).[11]

For the year 1999–2000, Australia had a national homicide clearance rate of 86% (Mouzos and Muller 2001).[12] The AIC's National Homicide Monitoring Report (Bryant and Cussen 2015) indicated that in 2010–2011, NSW solved 69/77 homicides and improved that to 67/71 in 2011–2012—about 92%. Holmes and Fitzgerald (2017: 4) reported, however, that NSW murder clearance averaged 65% over the ten-year period between 2007–2016. Mouzos and Thompson (2000: 2) noted that in 78% of gay-hate-related homicide cases, an offender was charged.[13]

In the *Parrabell* report, 23 of 86 cases were unsolved, for a homicide clearance rate of 73%.[14] There is no significant increase in the unsolved cases in the peak period of activity between the years 1986–1995. There is, however, a very low clearance rate or percentage solved (20%) in the first five cases (1976–1980). Many (33) cases lack sufficient information to support a conclusion as to whether they involved bias. This is because there was no known offender identified or charged and/or the trace evidence collected did not permit such a determination.

At the same time, both *Parrabell* and the academic team did not find support for the Mouzos and Thompson (2000) determination that there were thirty-seven victims of gay-hate homicide in the period between July 1, 1989 and June 30, 1999. The *Parrabell* team found only twenty-seven cases in total and twenty cases in that period, using the inclusive tool. The academic team found seven gay bias homicides in this period, another twelve anti-pedophile animus homicides—or nineteen cases of animus-related homicides—with another nineteen for which there is insufficient information.

To return to our discussion above, a "moral panic" is defined as requiring a discovered disproportion between the underlying phenomenon and the level of official opprobrium that it is receiving (Garland 2008: 24). It depends upon a disjuncture between a phenomenon and a societal reaction. As we have illustrated, the information base regarding the phenomenon may be supported by evidence, albeit weakly. While we have provided some support

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[11] As is clear in the research, and recalling the point made by Mason (2014) that some groups do not merit inclusion as a vulnerable group, it is a perverse consequence if the instrument counts bias against pedophiles as bias against gays. Avoiding that, the team found a sizeable minority of the cases involved homicides between individuals separated by twenty or more years in which police noted or circumstances supported the former bias assessment. In addition, we deemed that the ten-point Bias Indicator Review Form did not offer a straightforward relationship between the factors and the designation of bias. Instead, the team used a simple three-point assessment relying on the expression, intentionality, and denunciatory communication of a proactive or associative animus connected to the criminal deed.

[12] Clearance rates are used to capture the gray area between reporting and recording definitively as a solved crime. Homicide data are thought to be the most reliable and comprehensive criminal indicators (Mosher et al. 2002). Homicide clearance is calculated by dividing the number of homicides cleared by the number of homicides recorded. The percent of cases that are solved and cleared will vary quite dramatically between jurisdictions and over time. In the US, clearance of a case is achieved when the case is closed through an arrest but also when a case is beyond law enforcement administration (e.g., the offender died, there is no chance of making an arrest due to other reasons) (Wellford et al. 1999).

[13] Whatever the artefact of the selection methodology, and setting aside for the moment our objection to this finding, or perhaps providing an explanation for it, our list of 85 (from the original 88) finds more-or-less the same number of clearances—one that may not be unusual or extraordinary.

[14] This increases the time period normally permitted in calculating a rate: here, the calculations are over five-year periods and (for the total) over twenty years.

for the view that gay men in the 1980s were fearful of some public places and reported *disproportionate assaults*, there is not, at present, any basis for a contention that Sydney or NSW experienced *more homicides* as a result of homophobic offenders than comparative cities or states and that those homicides occurred in greater proportion at a particular time.

Embedding the Panic: Emotions Outstripping Evidence?

Media play a significant role in exaggerating and distorting the frequency of crime (Critcher 2003). The audience expectation of news organizations and formats form a style that supports the search for a version of disorder claims and moral fixing that is consistent with moral panics. Often, news formats cannot contain a multitude of views and diversity of facts, so a media storyline concerning a social problem will have only three or four bullet points (Altheide 2009; Valkenburg et al. 1999). As Altheide (2009) illustrates, the fear narrative inclusive of a rising threat, consistent with "panic," builds the public appetite for the latest information. Crusader interest to inflate the problem interacts with the "rhetoric of numbers in front page journalism" (Roeh and Feldman 1984: 347) to reduce the problem into the symbol of the "fact." According to Altheide (2009: 79), "the logic of news formats accounts for the linkage of moral panics [now commonly used in media reports] to news coverage of select topics, problems and issues about social control." News producers "shape audience assumptions and preferences for certain kinds of information" (Altheide 2009: 80). In addition to the media, moral entrepreneurs and crusaders will double down on their stake in the outcome. Crusaders may draw down alarm but maintain the contention of disproportion.

Reference to an "epidemic" in the "problem" of suspected NSW gay-hate-motivated homicides received considerable media attention in NSW and Australia. The first reports were, somewhat unsurprisingly, featured in the Sydney gay press. Supported by victim surveys and anecdotal accounts, these raised the alarm about community safety. On August 8, 2013, after another police investigation into the matter, Sydney's *Star Observer* ran the following frontpage headline: "Sydney's Killer: The Gay-Hate Epidemic that Claimed 80 Men." In addition, some journalists (e.g., Rick Feneley) published regular "in depth" stories which referred to the lack of criminal justice attention to the phenomenon. As we noted above, it is in the form of a "moral panic" that the problem received international attention, with the article, entitled "When Gangs Killed Men for Sport: Australia Reviews 88 Deaths," appearing in *The New York Times* in 2017 (Innis 2017). This reporting was subsequently reproduced in *Forensic Magazine*, an irregular occurrence given that the news item itself was speculating about the precise number of murders.

To grasp the extent to which the so-called problem of gay homicide was being promulgated in the Australian media, we conducted a Westlaw™ search, using the terms "hate crime" (and/or "homosexual"), "gay homicide" and "gay-hate homicide," between the years 1970 and 2018.[15] The search resulted in 388 items being identified as discussing or

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[15] The term, "New South Wales," was also used to restrict findings to this state. The term, "bias," was also used, but yielded no additional results, possibly because journalists avoided using this term despite its currency in criminological parlance. Other newspaper search programs were deemed unsuitable to perform this search because they started digitizing news media results only from 2010 onwards (and this would have excluded a thirty-year period). For example, the popular search tool, Proquest™, suffered from this lack of digital reach into the past.

referring to the problem of gay-hate homicides in NSW. These items were examined individually and we removed irrelevant news articles from the pool.[16] One-hundred-forty-four items were determined to relate to general discussion of a so-called problem of gay-hate homicide in Sydney or the state of NSW. Twenty of the 144 items related to the discussion of homicides in relation to two television shows (the SBS television drama series, *Deep Water*, and the accompanying documentary *Deep Water: The real story*). The term, "killing for sport," appeared in the headlines or prominently in six articles. The case of the death of Scott Johnson was mentioned in one third ($n = 47$) of the total articles.[17] Reference to "the list" was made in fifty-seven.

The "list" of homicides did not just circulate in the news media. News items were augmented by visual media, which helped embed the notion of a "problem" of gay homicide in the public consciousness. It became a trope that underpinned a drama series, a documentary, a true crime book, and an interactive website positing the visitor as a vicarious detective searching for clues regarding thirty of the "unsolved deaths." The documentary, *Deep Water: The real story*, screened on SBS television in 2017. The SBS (Television Australia) dramatic mini-series, *Deep Water*, also screened in 2017 to critical acclaim and significant ratings. The true-crime genre book, entitled *Getting Away with Murder: Up to 80 men murdered 30 unsolved deaths*, was published by Vintage (McNab 2017), and an interactive website, entitled *The Gay Hate Decades: 30 unsolved deaths*, stimulated public interest in the homicides.

The *Parrabell* report, which was released on June 28, 2018, received attention by major media outlets and featured as the top news story of the day. The *Daily Telegraph* (a prominent Sydney newspaper) ran the headline, "They are the 88 names that for years have haunted police." A day after release, a reporter from CNN International told one of the authors that the story was big news and intended to a run a story, which it dropped. *The New York Times*, which prominently printed the headline story as the *Parrabell* report was launched, did not publish a follow-up story upon the release of report, but did revisit the story after an arrest in the Scott Johnson case, on May 12, 2020 (Kwai 2020). At this point, a counter-narrative was needed; the number 88 had been reduced by two-thirds. Rejecting the story that the number had been exaggerated, the media scrum, in which we participated, focused its questions and storylines on the NSWP apology and the status of the investigation of cases (prominently, Scott Johnson) that were unresolved.

Unsatisfied with how the *Parrabell* report left the matter—and in support of the narrative that response had not met social need or problem scale—the NSW's parliament tasked the Standing Committee on Social Issues to establish an inquiry to review gay and transgender hate crimes covering a period between 1970 and 2010, including the cases in

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[16] For example, many items were what is termed "rolling news" and just reflected that a wire service was notifying the existence of a pending story. Other items related to the problem of gay-hate violence in the context of an assault. Such articles dealt only with individual cases. Other articles pertained, for example, to Sydney's Oxford Street and the problem of gay assaults in general. These items were also expunged. We did not seek to locate individual news items pertaining to each of the eighty-eight cases in the *Parrabell* report because many cases would initially not have been attributed with a name. In addition, these cases would usually have related only to an individual case of suspected murder. Our task was to identify news articles that canvased, discussed and explored the concept of a bias homicide investigations.

[17] This death intrigued the public and has been subject to three coronial inquests in NSW. In addition, the narrative of Johnson's tech entrepreneur brother's quest for justice afforded these stories a personal dimension that captured the public's imagination. Often, the case was used as a springboard so that the journalist could pose the question: was this death indicative of a wider pattern of homicidal violence?

the *Parrabell* report. Its cited sources and focus indicate that it was sympathetic to crusader claims-making. It offered actors, such as ACON, a vehicle to maintain or even expand the remit of the object of the regulation beyond contemporaneous problem development (e.g., bias crime, transgendered people). Some of the crusading actors then drew on state and media institutions (SBS, UNSW, UWS, *The Australian*, and *The Sydney Morning Herald*, as well as the NSWP).

In this regard, moral regulation is "as much about the identity of those who seek to regulate' as it is 'about those who come to serve as the object of regulation" (Hier 2002: 328). It also expresses obduracy and voraciousness as reformers push establishment moral regulation boundaries (Hunt 1999). In this situation, volatile and alarmist claims-making by crusaders had relatively open lanes, given that state-establishment stakeholders or authorities were more or less indifferent to how targeted parties were represented. After taking in much testimony from academics and interest groups, the Standing Committee on Social Issues published an Interim Report in mid-2019 making recommendations regarding training and awareness (NSW 2019).

Regarding the disproportionality argument, Hier (2008: 178) contends that "moral panic" analysis is stymied because it, in effect, cannot measure the gap between the "real" or objective threat of a problem and its representation. There is no doubt that such measuring must involve analysis of complex comparative crime and public opinion data, inclusive of fear of crime and homicide, as mentioned previously. While there will be variation and fluidity regarding what and where and how to measure social phenomena, numbers are at least a temporary point of fixity and accountability. In this analysis, we have attempted to quantify that dimension of inflation using what has been proffered in the first instance by panic protagonists. Thus, the number was interrogated *as* an indicator of disproportionality. It is no surprise that having invested so much in identifying the underlying problem *through* the short-hand of the number, interested actors were not keen to have the stand-in diminished. On November 9, 2018, four months after the release of the *Parrabell* report, the Standing Committee on Social Issues (NSW Parliament) made direct reference to *88 murder victims* in its opening address, despite that there was, by then, no basis on which 88 represented an objective quantity of anti-gay bias crime (NSW 2019).

Conclusion: A Panic Not Fully Extinguished

Garland (2008) comments that a "moral panic" must run its course. And so it does. Yet, and as Goode and Ben-Yehuda (1994) observe, it may also be resistant to abating fully. Crusaders dedicate themselves to right-sizing a putatively undersized societal reaction; they place "facts," in which there is some social movement and institutional investment, on the lip of the public imaginary (Hunt 1999). The stake in an interpretation or claim regarding facts, in this case, "the list," may, over time, become a significant investment of resources and reputation. Once loaded and so signified, its return to open-ended figuration is experienced as retreat or defeat. Once constructed as social fact, it stands in for the cultural claim sufficient to warrant policy change. Having pushed veracity with reference to the number, an attack on the quantity comes to stand-in for a diminution of the problem. Established normatively in this way, the number is politicized and made virtuous; it becomes a totem. Its interrogation represents a callous indifference to the sacred site. Its critical inspection is regarded as culturally regressive. It becomes a matter not for social science but cultural studies.

Thus, a social problem, in its panic construction, retains volatility. Members of the bipartisan political consensus, as represented in the Standing Committee on Social Issues, will find no advantage in being associated with an objective or critical examination of disproportion. On the contrary, the prudent political course is to side with official acknowledgment of disproportion in its extensiveness. For *The New York Times*, as well, the story was no longer bleeding in June of 2018, but it would run counter to media behavior to tell a story that it and *The Telegraph* participated in an alarmist campaign on the basis of a number that was factually so thin. It would be counter to the socio-cultural leanings of *The New York Times*. In that event, without an equivalence of outrage or moral opprobrium and media coverage—perhaps to call out an alarm over "fake news"—the original construction endures and retains potency. Mindful of volatile crusading in this pocket of moral regulation invested establishment opinion is supportive of at least *this* rendition of an identity politics rapprochement.

Thus, we see the number hoisted on a petard; it represents a memorialization inclusive of respect for victims and acknowledgment of official negligence (or worse). As it disperses its volatile energy, it leaves in place narrative traces—a messy forensics preserved by a cordon. Or so it would appear from a distance because, on close inspection, the police line seems to lose its integrity or solidity and the site seems to contain some items of no evidentiary value. If a plaque is to be posted, it might proclaim: "The 88 and all others forgotten by biased enforcement against gay homicide victims in NSW." And so, the number continues to haunt. It is not just the police who are vexed by the figure; the wider community is jolted by a "false news" imprimatur, whatever the social reality of the period in history the number is meant to represent.

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