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NEW SOUTH WALES STATE CORONER'S COURT

SENIOR DEPUTY STATE CORONER: J MILLEDGE

5 THURSDAY 23 DECEMBER 2004

**INQUEST INTO THE DEATH OF JOHN ALAN RUSSELL, ROSS BRADLEY  
WARREN and GILLES JACQUES MATTAINI**10 **PART HEARD**

Mr P Lakatos assisting the Coroner  
Mr P Saidi for the New South Wales Police Service

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HER HONOUR: Look I can't thank you all enough for your  
commitment to these inquests, and it shows. I mean here  
we are on the eve of Christmas Eve and I've got you here  
20 making your submissions, and it's, I know it's been an  
onerous thing for you to have to turn your mind to at this  
time of year, but I thank you all for doing that. This  
year has been a rather awful time for me with my mother  
almost dying in the middle of the year and spending many,  
25 many weeks in hospital, so it pushed, it meant the middle  
of my year was really lost, I couldn't honour the  
commitments that I had elsewhere because I couldn't leave,  
I'm an only child and my father was elderly and I couldn't  
leave home. So all the things that I was meant to do in  
30 the middle of the year I had to push to the end, and as a  
consequence the timetable was in upheaval and this was one  
of the casualties, so I do apologise for that. It's  
certainly not an indication of a lack of commitment on my  
part but it is an indication of a lack of time. How I  
35 propose to deal with the matter now is I'll take your  
submissions. I'm going to call for an urgent transcript,  
because I haven't asked you to commit them to writing, and  
then within a couple of days of getting the transcript  
I'll be in a position where I'll be able to be solid on my  
40 finding, because it's going to be recommendations and  
that's what is concerning me, not my finding. I could  
give that now, because I've listened to everything, but I  
just want to be tight on the recommendations, that's all.  
So do any of you have any problems with that?

45

LAKATOS: No.

HER HONOUR: Now I'm happy to excuse all of you on the  
next occasion when I give my finding, it'll be in writing  
50 and I can send it out to you, if that suits you, but I'll  
be in touch with all of you in any event, so if you all  
decide you want to be here and the time that I've chosen  
doesn't suit you we can be flexible, or do it at 8 o'clock  
in the morning or something. All right. Thank you.

55

LAKATOS: Your Honour, my submissions will be  
comparatively brief, however--



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HER HONOUR: Yes, there's no need for fulsome submissions, that's true.

5 LAKATOS: What I should say is that your Honour was good  
enough to indicate the reasons for the delay and  
implicitly accept total responsibility. I should say that  
I've been out of the jurisdiction and to that extent some  
probably responsibility for that delay falls with me as  
10 well and I think I should put that on record as well, I've  
been out of the State on work requirements for lengthy  
periods of time so.

15 HER HONOUR: You have been very busy but your office, you  
were always in contact with us Mr Lakatos to say that you  
would always make time to re-visit this matter and I'm  
very grateful to you for that.

20 LAKATOS: Thank you your Honour. Your Honour the  
submissions, which will be brief, will cover these broad  
headings. One is the fact of death, namely does the  
evidence establish that each of the three persons died.  
The second is the date and place of death of each of the  
persons. The third is the manner and cause of death. The  
25 fourth is responsibility of any known person for the  
deaths. The fifth, your Honour, is some observations  
concerning the respective investigations.

HER HONOUR: Indeed.

30 LAKATOS: The sixth then is possible recommendations.  
Your Honour one of the problems with this inquiry is, of  
course, that it deals with events which have occurred more  
than a decade ago.

35 HER HONOUR: That's exactly right.

40 LAKATOS: Accordingly, much of it is historical and  
accordingly, some of the general areas of recommendations  
that I'd urge your Honour to consider have probably been  
dealt with and therefore it may be that strict  
recommendations may not be necessary. It is also the case  
that my learned friend, Mr Saidi, has provided material,  
in written form, as to the present procedures.

45 HER HONOUR: Good, that's excellent.

50 LAKATOS: And I will go to those very briefly. In effect,  
your Honour, the recommendations will be that these things  
need to be looked at, not because the systems on paper  
appear to be deficient but simply in order to audit or  
monitor how the systems are working.

HER HONOUR: Indeed, indeed, spot on, thank you.

55 LAKATOS: Your Honour the first heading was fact of death,  
and the ultimate submission your Honour is that there is  
sufficient evidence from which to infer that each of the  
persons, the subject of these inquests, has died, and



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those persons of course are Gilles Mattaini, Ross Warren and John Russell. As your Honour will recall the evidence disclosed that Mr Mattaini disappeared in September of 1985 and hasn't since been seen alive. Mr Warren  
5 disappeared on 22 July 1989 and likewise, he hasn't been seen alive. Mr Russell went missing on 22 November '89 and his body was found at the base of the cliff at Marks Park between Bondi and Bronte. The evidence clearly supports a finding that Mr Russell is dead.

10 Mr Mattaini disappeared in '85. His friends gave evidence in this inquiry your Honour will recall, Mark Hubert, Jacques Musy and Antony Wyzynski, and they gave evidence as to the circumstances in which they last had contact  
15 with that gentleman. It appears from the material before this inquest, both from Detective Sergeant Page, formerly so known, and the witnesses, that a reporting of Mr Mattaini's disappearance was not made in a timely fashion and first appeared to hit the deck, as it were,  
20 some time in 2000.

HER HONOUR: Yes.

25 LAKATOS: Accordingly, this was the first investigation some decade or more after his disappearance. Mr Warren, as I've said, disappeared in 1989. Your Honour will recall in the brief that there was material there which suggested that he had been sighted from time to time in South Australia and other places. I think your Honour  
30 will have little trouble in finding that those claims either lacked credibility or had not been confirmed.

HER HONOUR: Yes, no, that's true.

35 LAKATOS: And of course Mr Craig Ellis was the witness who gave evidence of last seeing his friend, Mr Warren, in November of 1989.

40 I say this your Honour, that there is a bare, theoretical possibility that Mr Mattaini and Mr Warren are not deceased, and if that's the correct conclusion, of course, there is capacity under the Coroner's Act to make a finding as to uncertainty of death. The Court has to  
45 conclude that each of the persons has died and it requires, that conclusion requires to be made to a level of satisfaction to a high degree of probability. Your Honour whilst the possibility of life theoretically remains it is my submission that the fact that neither of  
50 those two men has been seen since their respective disappearances, and that many years have passed, in the case of Mr Mattaini it's now 19 years, in the case of Mr Warren it's now approximately fifteen, makes it open, and in a compelling case to be found that both of those people have since died. And that finding can be made, in  
55 my submission, to the requisite standard of proof.

The finding, with respect, is supported by the surrounding circumstances of those mens disappearances. The fact that



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they were then in their mid twenties and early thirties. The fact that neither had an immediate or recent history of attempted suicide and each was generally in good spirits when last seen alive. The fact that Mr Mattaini was last seen in the Bondi area, Mr Warren's abandoned vehicle was last located at Marks Park and his keys were found on a ledge in some honeycombing rocks beneath that particular rocky outcrop.

Further there is a high suspicion, and that's perhaps the highest that it can be put, that having regard to the evidence that this inquiry has heard concerning the activities of certain young people, that in the eighties and the nineties Marks Park was an area frequented by gay men, and it was also an area where there was a significant number of deaths on the one hand and assaults on the other of gay men. And the evidences seems to point to, but no firm conclusion can be made, that Mr Mattaini and Mr Warren may have come to a similar end. But, as I say, in my respectful submission whilst there is a grave suspicion as to that fact the evidence is not certain enough to allow a conclusion.

As to the date and place of death, which is the next matter your Honour has to deal with in terms of the specific findings, the facts are clear in relation to Mr Russell. The Court can find to the requisite standard that he died on or after 22 November 1989 and that he met his death at Marks Park between Bondi and Bronte.

So far as Mr Mattaini is concerned neither the date nor the place of his death are known. As I have indicated the last sighting of him alive was at Bondi on or about 15 September 1985. He was first missed from his employment on 19 September 1985. In my submission it is open to find that his death occurred either between those dates or at some time thereafter. However, there is no persuasive evidence of the place of his death. So we have an approximate time but, unfortunately, where he died is not known, his body never having been found.

Similar considerations apply in relation to Mr Warren. He was last sighted at 8.15 - I'm sorry, I withdraw that. Mr Ellis I think it was, gave evidence that at 8.15 on 23 July 1989 Mr Warren left his premises, Mr Ellis's, in Albert Street, Redfern. There was evidence from Mr Rossini, who met up with Mr Warren later on that evening, who last since him approaching midnight of that day. So the last known sighting of Mr Warren was about midday somewhere in around Oxford Street. As is already noted Mr Warren's abandoned car and keys were found the following day in Marks Park. In my submission it is open to find that Mr Warren met his death on or after 23 July 1989 at Marks Park between Bondi and Bronte.

The next heading your Honour is manner and cause of death. In my submission your Honour the situation, so far as the evidence discloses, is that the manner and cause of the



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deaths of Mr Mattaini and Mr Warren remain unknown. As I  
have said there are real suspicions that they met their  
deaths by foul play and by being the subject of gay hate  
attacks, however there is no reliable evidence that this  
5 conclusion can firmly be drawn. In relation to  
Mr Mattaini the evidence suggested that he had had a  
previous suicide attempt, although this was some time  
before his disappearance, and was linked to his unhappy  
time as a soldier conscripted into the French army, and  
10 that evidence was given by his friend, Mr Musy, on 1 April  
at transcript page 48.

On the present state of the evidence your Honour it is  
submitted that your Honour should bring in an open finding  
15 in relation to the deaths of Mr Mattaini and Mr Warren.

In relation to Mr Russell his brother, John Russell, and a  
friend known in these proceedings as Mr Smith, gave  
evidence about the last days he was seen alive. Your  
20 Honour on 2 July 1990 the then State Coroner, or the  
Coroner, at the first inquest gave the following finding:  
"That Mr Russell died of the effects of multiple injuries  
sustained then and there, when he fell from a cliff to the  
rocks below, but whether he fell accidentally or otherwise  
25 the evidence does not enable me to say.". The possibility  
your Honour of an accidental fall has to be considered,  
having regard to Mr Russell's blood alcohol reading of  
.255 grams per 100 mls of blood. As to how he came to  
fall the evidence does not enable firm conclusions to be  
30 drawn, other than to state that when he fell he was in the  
company of persons unknown. This inference, I submit, can  
confidently be drawn for the evidence of Senior Sergeant  
Ingleby, amongst others, who is one of the investigating  
officers who noted "some hair adhering to the left hand of  
35 the body behind the left index finger".

Your Honour there are two particular matters which support  
the conclusion of death by foul play. The first are the  
40 presence of the hairs, which I've already adverted to, and  
the second is the position of Mr Russell's body when he  
was found at the base of the rocks.

Dr Cala, a forensic pathologist who was, I think, the  
chief forensic pathologist in South Australia at the time  
45 he gave evidence, considered these matters. Your Honour  
he made a number of conclusions. The first was that Mr  
Russell's injuries were consistent with a fall of about 11  
metres, and that's to be found at transcript page 9 on 2  
April 2003. The second conclusion was that Mr Russell's  
50 body was in an unusual position, with his legs towards the  
sea, causing Dr Cala to wonder, and I quote from  
transcript page 10, "whether he's been deliberately thrown  
off the cliff". The third conclusion your Honour is that  
the body position was not consistent with a person having  
55 fallen down backwards while drunk.

HER HONOUR: Yes.



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LAKATOS: Although this was not an impossible scenario, and once again that conclusion was adverted to at transcript page 10. Dr Cala said that he could not exclude suicide but, and I quote again from transcript  
 5 page 12, "given the factors that's unlikely". In my respectful submission the surrounding circumstances give rise to significant suspicions of foul play, whilst the evidence adduced does not permit the absolute exclusion of  
 10 the proposition the death was occasioned accidentally. This possibility remains slight, the preponderance of the evidence being in support of a finding that death occurred by foul play, and that is the finding I would invite your Honour to come to.

15 HER HONOUR: Indeed, yes, I agree with that.

LAKATOS: The next heading your Honour is the responsibility of any known person for the deaths. Your Honour when this inquest commenced a number of persons of  
 20 interest were identified in connection with the investigation. Generally the evidence disclosed that a number of young persons appear to have been involved in attacks upon gay men in the period of the late eighties and the early nineties. This investigation, or re-  
 25 investigation, disclosed the involvement of a number of young persons in a number of murders. The murder of Richard Johnson in January 1990, of a Thai national, Mr Ratana Jarutaporn in July of 1990, the attack or the assault of a person who was known in these proceedings as  
 30 Mr Brown, at South Bondi on 18 December '89, the assault of another witness in these proceedings, DM, who was assaulted on 21 December 1989, and the respective murders of Messrs Allen, Tonks and Keam in the period  
 35 December '88 through to May of 1990. I won't detail who was charged and convicted of various offences--

HER HONOUR: No.

LAKATOS: --in relation to those matters. Suffice to say  
 40 each of those persons was subjected by Detective Sergeant Page to considerable scrutiny in an effort to determine whether or not they were linked in any way with the disappearance and/or the deaths of the three gentlemen here involved. I should say as a matter of completeness  
 45 your Honour that a number of other witnesses gave evidence of assaults upon them in the same period, those being  
191, who was assaulted on 12 November '89 at Bondi, a witness known as Mr Jones, who was assaulted in Moore Park in 1988, and a 1156, who was  
 50 assaulted in December '89 at Centennial Park.

As your Honour has heard the inquiry has disclosed that in 1990 and 1991 the homicide squad investigated Mr Johnson's  
 55 murder. In the course of those investigations listening device warrants were obtained with a view of recording conversations with persons linked to that murder. Those conversations made a number of general references to attacks on gay men which occurred about that time.



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Accordingly Detective Page's investigation focused attention upon those persons to see whether or not links could be established. In the present investigation conducted by Detective Sergeant Page telephone intercept warrants were obtained for extended periods in September and December 2001 and in excess of 17,000 calls were intercepted. In addition listening devices were used in an attempt to obtain further evidence relating to the subject deaths and disappearances. New material was gathered. Unfortunately, as I've said, that material did not help solve the mystery of who was involved in the respective deaths and disappearances of these men.

As I have indicated your Honour that general material painted a very sad picture of perhaps a seamy side of life as it was occurring in that stage, that mainly predominantly young men, although some women were said to have been involved, were involved in systematically assaulting and robbing gay men, purely for the simple reason (a) of the fact that apparently they got kicks out of doing that, (b) that they could rob such people and (c) that they did so with the impunity, they thought, that these persons would not report it to police and therefore their crimes would be left undetected. Unfortunately as I've said your Honour this significant investigation by Detective Sergeant Page led to very little further light being shed upon the deaths of the three men we have now inconsideration.

What should be said concerning the various persons of interest to the extent that people will listen is that Mr Mattaini disappeared, as I've said, in September of 1985. Each of the persons of interest in this case were somewhat less than 18 years of age in 1989, therefore whatever view one might have about their potential connection, unproved, with the deaths or disappearance of Mr Russell and Mr Warren it seems patently clear none could have been involved in the disappearance of Mr Mattaini in 1985, they would have been of too tender years for that conclusion to be drawn.

HER HONOUR: Yes.

LAKATOS: Your Honour the investigation carried out by Detective Sergeant Page had, as its purpose, the solving of the mystery surrounding the disappearance and deaths of these three men. In terms of the Coroner's Act the purpose was to determine the manner and cause of death of each of them. It is unfortunate that this purpose could not be achieved. However, although the investigation was belated in some respects it was extensive and very thorough, and in my submission it serves to emphasise the value that our society places on the life of a citizen where the death of the citizen occurs in suspicious or unnatural circumstances.

HER HONOUR: Yes.



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LAKATOS: It is submitted that a thorough investigation of such deaths, even if there is no conclusive finding, is a worthy end in itself if that's all that can be achieved.

5 HER HONOUR: Indeed.

LAKATOS: At least it can be said that all that was reasonable to be done in investigating the circumstances surrounding the deaths was done, and in my submission it's a matter entirely for your Honour but certainly some form of appreciation ought to be extended to Detective Sergeant Page--

15 HER HONOUR: Absolutely.

LAKATOS: --for the huge and extensive effort that he's put into this particular investigation.

20 HER HONOUR: Absolutely.

LAKATOS: The second last heading your Honour is this, it is some observations concerning the respective investigations, and by the investigations I mean to focus not upon Sergeant Page's but upon the earlier ones.

25 HER HONOUR: No, the earlier ones, yes.

LAKATOS: As I've said there was no investigation of Mr Mattaini's disappearance because the trail had gone cold, there was no timely reporting, and unfortunately not much could be done some 15 years or more after the event. There were shortcomings in my respectful submission of the disappearance into Mr Warren's death, and those are these, in my submission your Honour heard evidence from former Detective Sergeant Bowditch who was, in effect, the senior officer involved in coordinating and controlling that investigation. In my submission the pre-emptory conclusion by Mr Bowditch on 28 July, and I note that was some six or seven days after Mr Warren's appearance, that "Investigating police are of the opinion that the missing person has fallen into the ocean in some manner and it is anticipated that in the near future his body will surface and be recovered.", that's at transcript page 34 of the day he gave evidence, and that your Honour was 2 April 2003. He indicated after some close questioning by me why he chose to use the words "has fallen into the ocean", those being words of fairly neutral import suggesting some accidental or other non-criminal way of the matter occurring, why he chose those words when six to seven days later one could not be confident of having excluded foul play.

HER HONOUR: Indeed.

55 LAKATOS: And he said "He simply chose not to use a formula which took into account other possibilities.". In my respectful submission, and I put this to him as a matter of fairness, but it's also the basis of a, in my



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5 submission a cogent argument, that the vice in stating  
such a firm conclusion so early in the investigation was  
potentially to impede or discourage further timely and  
thorough investigation. As I put to Mr Bowditch the  
effect might well have been for those who are minded to  
10 monitor or check what had been done by looking at this  
running sheet, compiled by a very senior detective, that  
it seemed that this was an accidental death, might  
discourage anybody minded to be more thorough to simply  
say "Well if that's a senior investigator's opinion that's  
good enough for me."

HER HONOUR: Indeed, exactly.

15 LAKATOS: Another aspect of Mr Bowditch's involvement  
which was less than satisfactory was that it was his  
evidence that he caused to be deployed police divers to  
search for Mr Warren. This evidence was not supported or  
confirmed by any police documents to this effect, and that  
20 is to be found at transcript page 29 on 2 April. It is a  
matter of some concern, and I put it no higher, of course  
there remains, so much time having gone, the possibility  
that records have been lost, but I simply flag that to say  
that there is no record of that having occurred.

25 HER HONOUR: It's amazing, that's right, nothing.

LAKATOS: Secondly, and again in relation to Mr Bowditch,  
he indicated that some officers, Detectives Sharrock,  
30 Glasscok and Ryan, were involved in the investigation.  
Each of those your Honour were approached and statements  
taken from them and each of them said that they did little  
or nothing in relation to that investigation. And those  
propositions were put to Mr Bowditch at transcript pages  
35 30 to 32 inclusive of 2 April. He says he can't explain  
that, he blamed it on lack of poor record keeping or loss  
of records. However, it seems to be that once again  
whatever was done was done in a comparatively half hearted  
fashion.

40 Finally, as your Honour put to Mr Bowditch, at no time did  
he, Mr Bowditch, ever submit a P79A Form to the Coroner.

45 HER HONOUR: I know, yes.

LAKATOS: In my submission these matters indicate at least  
a lack of commitment by the senior investigator to conduct  
a thorough inquiry. Indeed what occurred in my  
submission, so far as Mr Bowditch's responsibility was  
50 concerned, appeared to be a mechanical response which  
lacked urgency or purpose. If this attitude was  
widespread, and I underline the if, amongst police  
officers in that period it was rightly a cause for great  
concern. However, subsequent steps put in place have  
55 sought to address some of these problems, and I'll briefly  
allude to those.



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Miss Thompson gave evidence, as did Mr Toolen, and I'll summarise their evidence very briefly, and my learned friend Mr Saidi has placed before this Court further evidence relating to upgraded systems of investigation. I say this your Honour, with the greatest respect to those matters, it is important to keep in mind when one looks at systems that even though the systems on paper may well be adequate these may not be the complete answer to any given problem, as we all know.

10

HER HONOUR: Yes.

LAKATOS: There is an addition that there is a commitment by people to ensuring that such systems operate properly, and of course this is a human issue.

15

HER HONOUR: Absolutely.

LAKATOS: It follows that some of the recommendations that I'd ask your Honour to consider are really not so much that things should be done, because I'll take you to indications that the systems are in place that they are being done, but whether or not there is cause to monitor how the systems are working.

20

Your Honour the investigation of Mr Russell's death also were characterised by a number of shortcomings. It is fair to say that there was a less than adequate performance, and I choose words as neutrally as I can do, of a then junior plain clothes constable first class, who was assigned to the role of officer in charge, in that the evidence suggests that the hair adhering to the hand of the deceased was not sent away for testing. Secondly there was no evidence that the cigarettes and the Coke bottle found near the deceased were fingerprinted. Thirdly there was evidence that the initial assessment by the junior plain clothes constable was that the deceased fell from the cliff. This seems a little surprising in the circumstances where there was hair, apparently not of Mr Russell's, adhering to his hand.

25

HER HONOUR: Indeed.

LAKATOS: However, that of course, the falling, was one available cause of death, but in my submission by no means the most obvious one given the circumstances. It should be said in fairness to that officer, who is now no longer in the Police Force, that she later reassessed her views when attention was drawn by other officers to the fact that attacks on gay men by the time the first inquest came about in 1990 the relevant officer had gone and done some further investigation, so she reviewed what she had done. And to that extent, with respect to Mr Bowditch, she is one step better, and in fact one might say that if there was any cause for her lack of diligence it was because perhaps she was a little too junior to the task.

30

The second shortcoming in relation to Mr Russell's



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5 investigation was the fact the relatives were not kept  
informed of the status of the investigation in a timely  
fashion. The third was there was a lack of proper exhibit  
security in relation to the hair sample, which had been  
lost by the time the first coronial inquiry came about in  
1990, and that appeared to be on the basis that there was  
a belief by the officer that the scientific officers would  
be looking after that, and the scientific officer believed  
that the officer in charge would be looking after it. As  
10 it happens it appears to have fallen through the cracks  
and nobody was looking after it.

15 Thirdly there appeared to have been a lack of effective  
case management at that time. My friends have proffered,  
and I'll take your Honour to that, the Eagle Eye system  
which now appears to be the system which is operative, and  
I have to say that reading the system there appear to be a  
number of layers, which, if working properly, might well  
insure this would not happen today. It should be said  
20 that my comments concerning both former police officer  
Bowditch, and I think it was then officer Dunbar, Plain  
Clothes Constable Dunbar, who investigated Mr Warren, were  
not representative of the officers who were then  
operating. The evidence of Senior Sergeant Ingleby, your  
25 Honour would have in mind, was one where he was a person  
who had all of these possibilities in mind and, almost off  
his own bat, continued an investigation along the lines of  
the gay hate crimes.

30 HER HONOUR: Indeed he did.

LAKATOS: And that continued well into 1990, so almost a  
year of time where that senior officer of then 30 years  
standing continued his investigation.

35 HER HONOUR: Yes.

40 LAKATOS: And it has to be fairly said that no doubt there  
are other similarly committed police officers at that  
time, and no doubt there are today too. Unfortunately the  
two that were involved in this particular inquiry perhaps  
were not up to that mark. The re-investigation your  
Honour was, of course, conducted by Detective Sergeant  
45 Stephen Page, and as I've indicated, and perhaps at the  
risk of being repetitive, it is my very strong submission  
that his investigation was extensive and thorough and had  
the earlier investigations been conducted with some of the  
commitment shown by Page the results may have been  
different.

50 HER HONOUR: Yes.

55 LAKATOS: Even if the perpetrators weren't found after  
such a thorough investigation it would have permitted the  
relatives to have had an earlier resolution of a long  
standing problem.

HER HONOUR: Yes, indeed.



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LAKATOS: And allowed your Honour, and/or somebody in your Honour's position, to bring down a finding of death far earlier than has been able to be done.

5

The inquiry has heard evidence from two officers of, or former officers of the New South Wales Police Force. Firstly the gay and lesbian liaison co-ordinator, Susan Thompson, she gave evidence on 3 April, and the present senior programs officer, gay and lesbian and transgender issues, Mr David Toolen.

10

Miss Thompson gave evidence that since 1990 when she commenced in that position the following steps have been taken to influence police culture positively towards gay people with whom they'd had contact. The most important one was the setting up and the training of liaison officers. The second was the organisation of education days for patrol commanders. Your Honour may recall the evidence of Miss Thompson said that one of the biggest matters which would influence the change of culture by the general body of police is a lead from senior police officers, and the organisation of education days for patrol commanders and higher was an effort to influence the senior officers so that that influence could pervade--

25

HER HONOUR: Yes, filter down.

30

LAKATOS: --down to the lower ranks. Thirdly she spoke about the dissemination of information through the Police Service Weekly concerning gay and lesbian issues. And fourthly she spoke about providing workshops to selected high schools where there was known to be a problem with the students and gay and lesbian people. That of course was some time ago and Miss Thompson recommended that there be a dedicated gay and lesbian liaison officer rather than add on, that there be a better system of case management and that senior police show commitment to issues of gay and lesbian, latent gay and lesbian matters.

40

I should say your Honour that she was present when Mr Gary Burns gave evidence, I think it fair to say of Mr Burns's evidence that your Honour would accept wholeheartedly that the evidence that he gave of his own personal experiences, having been attacked, to the extent that they're relevant, may be found to be a fact. There was nothing to the contrary. Your Honour may well conclude that Mr Burns is a highly committed person in relation to these issues. Mr Burns remains, today, highly critical of police, and including he was critical in some respects of Detective Sergeant Page until I think he conceded that he may well have been mistaken about that criticism. It should be said that Miss Thompson was in court when Mr Burns gave evidence on the first occasion, she said specifically that she did not agree with Mr Burns's views about the present situation so far as the Police Service is concerned. She said she thought his views were not well founded and I quote at transcript page 57 where she gave evidence, and I

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think she gave evidence on 3 April 2003, "There has been huge improvements over that period of time.", so that was her view. Mr Toolen's position involved him in providing support for the 123 gay and lesbian liaison officers who are employed by the New South Wales Police Force in the form of training, advise and research. He stated that a review of the gay and lesbian liaison officers course was being undertaken to provide officers with more useful skills. He indicated that there were operational standards for policing beats, and that became exhibit 19 before your Honour. There was a standard operation procedure for policing beats, that was exhibit 20, and some guidelines for effective policing of beats, exhibit 21. There was also tendered, I think, a document termed Stakeholders of the Beat Policy, and I think that was 22 from memory. These policies, as at late 2003, had yet to be finalised, or some of them, and it may well be your Honour would be concerned I think to find out what the status of those policies are.

Your Honour as to what recommendations might usefully be made. Your Honour would be well aware that in July of 2002 the State Coroner, Mr Abernethy, made full recommendations in relation to the investigation of deaths of young women, Goodall, Robinson and Hickey. Those recommendations in broad terms your Honour related to a recommendation that the Police Force ensure its systems in relation to missing persons are linked to criminal investigations, so that in every case, unresolved missing person case, after a finite period an analysis is carried out in order to decide whether to formally treat and deal with the matter as a criminal investigation. The second was a suggestion that a systematic audit into old missing persons cases be undertaken and reported to the Coroner. The third was the New South Wales Police Force carry out similar audits in relation to no body investigations. And the fourth is additional staffing to the various agencies concerned with these matters. It may be timely that your Honour simply say that these things ought to perhaps be, attention be drawn to those.

There are a number of recommendations in relation to case management that may need to be made, if your Honour considers it appropriate. The first thing I should say is that the Eagle Eye system is a system which my friend has supplied me a copy of and I draw this to your attention. The system appears to disclose that there are four stages in an investigation, the initial reporting, the investigation, the ongoing management of long term missing persons cases and the finalisation, so four stages. There are seven officers involved in each of those stages, firstly the investigating officer, secondly the supervisor, a duty officer, case evaluator, investigations manager, crime manager and local area commander.

The system is broadly set up that the investigating officer carries fundamental primary responsibility for investigating these matters and a fundamental and primary



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responsibility for ensuring that exhibits are retained and properly accounted for. The other four or five, in varying degrees, have an overview requirement so that they need to check that certain things have been done. In  
 5 relation to particular case management and exhibit keeping, at the investigation stage the investigating officer is required to relevantly, exhaust all avenue of inquiries is one point, and there are a number of dot  
 10 points, I won't trouble the Court with all of them, but more relevantly to collect all information and material that may later identify the missing person, for example photographs, hair samples, fingerprints and dental records or charts or x-rays, and cause transfer of such  
 15 information and material to the missing persons unit.

Thereafter, the duty officer, who is the next layer of supervision, is accountable for the collation of all such information and accountable for the transfer of such  
 20 information. So primary responsibility investigating officer under the Eagle Eye system, or the case management system, I think I have the name of it right, my friend will correct me, and then the secondary responsibility by the duty officer. The crime manager, three or four levels  
 25 up, has the responsibility of monitoring all outstanding missing person cases belonging to the Local Area Command.

There is a separate section called the Management of Long Term Cases, and relevant parts of those, and I'll do this very briefly, because this can be read, is that the  
 30 investigations manager is required to regularly inform those above him, or her, as to the status of the inquiries. At the next level the crime manager has to monitor all outstanding missing person cases. And then of course the overall responsibility lies with the local area  
 35 commander. Now if I might say the system appears to be a very complete one.

HER HONOUR: Yes, it does.

40 LAKATOS: And the point to be made about it is that if it works as it's written then it is highly unlikely that anything that occurred in these three events would occur again. However, in my respectful submission, it's always  
 45 timely to review systems and review performances.

Going then to the recommendations about case management, and I'll read these very briefly, and they are simply suggestions but they are, they would read as follows:

50 The New South Wales Police Force reviews its case management and monitoring systems so as to ensure that the investigations are pursued with due diligence and not allowed to be forgotten, an auditing function I hasten to  
 55 add because--

HER HONOUR: Yes.

LAKATOS: --for mine it is difficult to fault the



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completeness of this system if it operates properly.

HER HONOUR: Yes, yes.

5 LAKATOS: Secondly that the New South Wales Police Force  
considers its procedures in relation to the collection and  
retention of physical evidence and the exhibits relating  
to unsolved homicides and devises a scheme whereby such  
10 exhibits are securely stored.

10 Thirdly that the Police Force review its procedures  
in relation to the tracking of physical evidence when sent  
for analysis.

15 Fourthly that the New South Wales Police Force  
considers its procedures in relation to the rescue squad  
police being trained to take photographs and securing  
corpses to prevent evidence loss and contamination.

20 I should say one thing your Honour, my learned friend was  
good enough to give to me a document, which I think is  
before the Court, by I think an officer by the name of  
Baines. I've now lost the page but I think for these  
25 purposes I can summarise it. I think the officer's  
attention was drawn to the proposition as to what would  
happen to address the deficiency where a body is in an  
area inaccessible by normal police and--

30 HER HONOUR: Indeed, yes.

30 LAKATOS: --needs to be accessed by rescue or other police  
officers.

35 HER HONOUR: Yes.

35 LAKATOS: The effect of the document prepared by that  
officer was that where there are, in effect, suspicious  
deaths the forensic services people should be involved,  
and no doubt that's right. But there may well be  
40 situations where the body is so inaccessible that such  
officers cannot be and accordingly, the recommendation  
relating to the rescue squad really relates to perhaps  
those rare cases where such an incident happens in wholly  
inaccessible terrain.

45 Your Honour the last recommendation, and once again these  
are matters entirely for your Honour, would be (1) to  
address what occurred in these two cases relating to  
Mr Warren and Mr Russell, that is the recording, in  
50 somewhat definite terms, of a conclusion which is, to put  
it colloquially, perhaps half baked, and a recommendation  
in terms similar to this might be considered by your  
Honour as being appropriate, that is:

55 The New South Wales Police Force reviews its  
procedures in relation to the recording of possible causes  
of death at early stages of investigations in order to  
minimise erroneous conclusions based on incomplete



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information.

5 Now that's a very wordy way of saying it but simply to say  
that there needs to be a recognition that if truly the  
matter is open it should be recorded as truly open. Now  
of this involves, with respect, dealing with different  
people and different people express themselves in  
different ways, however, in my submission some  
10 standardised way of saying "These are the options, this is  
my choice but the other options remain open" needs to be  
pretty necessary.

HER HONOUR: Yes.

15 LAKATOS: Your Honour that is a comparatively short  
submission that I have, unless your Honour wishes to hear  
anything further.

20 HER HONOUR: No, an excellent submission, and I thank you  
very much Mr Lakatos.

LAKATOS: May it please your Honour.

25 HER HONOUR: Mr Saidi, are you in a position to address me  
now.

SAIDI: I am your Honour.

30 HER HONOUR: Thank you.

SAIDI: I don't want to traverse the earlier part of  
Mr Lakatos's submissions regarding cause and manner of  
death and matters of that kind.

35 HER HONOUR: Indeed, I think we're all at one with that.

SAIDI: There's no great controversy--

40 HER HONOUR: You support what he says don't you?

SAIDI: Yes, I do.

HER HONOUR: Yes.

45 SAIDI: I do, and I can indicate there's no controversy  
about it.

50 SAIDI: The areas that I want to cover your Honour relate  
to the climate which then existed, which was a climate I  
think that no one in society could really be proud of, and  
that is the culture of gay hate, a gay hate crime. The  
Police Service, whatever defects it may have suffered from  
during that period, was no more than a reflection of it  
was exhibiting the broader values and principles of the  
55 then society. Much I think to the credit of the Police  
Service and other governmental instrumentalities over the  
years rather than being a mere reflection of society's  
values I think it fairly could be said that they're taking



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affirmative action to indeed change society's views.

HER HONOUR: Indeed, yes.

5 SAIDI: And that that recognition that there's a role and  
a responsibility to take an affirmative role is, with  
respect, a very important one. The culture which then  
existed your Honour, and I won't set it out in detail but  
10 I'll make reference to it so your Honour, at a later point  
of time if you need to look at it closely, can easily find  
it. You will find it in the statement of Susan Thompson  
in Volume 1 of the brief, and that's her statement of  
31 July 2001, in which she, very helpfully, refers to the  
15 gay hate related homicides of men and other male  
homicides--

HER HONOUR: Yes.

20 SAIDI: --at page 2 of her statement. She sets out a  
great deal of information relating to the gay hate  
scenario. She also, your Honour, sets out her research  
carried out, both published and unpublished research,  
which set out findings which include, for example, that  
25 22 percent of gay hate homicides between '89 and '99  
occurred in beat locations. And many other findings are  
set out, the results of research. Again going on to  
page 4, that often offenders are persons who indeed are  
young persons who belong to gangs. It's that situation  
which one needed to attack. As she points out on page 6  
30 at paragraph 10 that prior to 1990 police reaction to gay  
hate related crime could not be described generally as  
positive or pro-active. There was much hostility between  
the gay and lesbian community and police, particularly  
taking into account that homosexuality was only  
35 decriminalised in 1984. This led to a situation for a  
number of years when police were viewed as the enemy of  
gay people. I think that in the case of Mr Burns that  
whatever one may say about him his views are probably  
reflective of people of that period, rather than  
40 homosexuals who are part of society in the year 2004. He  
certainly is exhibiting those sorts of values, those sorts  
of beliefs and those sorts of attitudes towards members of  
the Police Service. However he exhibits them though there  
has to be recognition and one, and Sue Thompson, and  
45 accordingly one, if they accept what Sue Thompson has to  
say, has to recognise that the workings of society insofar  
as the relationship with gay persons, both male and  
female, was far from ideal in that period. It was within  
that context that one looks at the actions of Mr Bowditch,  
50 and any other police officer who was involved.

Moving on from there though from what was a situation of  
great difficulty one is now able to say, based on what  
Ms Thompson has to say in her statement, That because of  
55 the work which has been carried out, and your Honour will  
find this at page 7 of her statement, the result of the  
comprehensive and innovative strategies of the New South  
Wales police in gay and lesbian liaison over the last



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11 years, New South Wales has become viewed as a world leader in this area and are now assisting all other Australian states and territories and some overseas police jurisdictions in establishing similar gay and lesbian liaison programs, and in 1995 the New South Wales police were recognised for this work when the Australian heads of government awarded the Police Service joint winner of the Australian Violence Prevention Award for the work in this area.

10 Can I refer your Honour also to the policy statement on gay and lesbian issues, and your Honour would be able to read that for yourself when the time comes to deliver your findings, or prepare the findings, and also the statement, the organisational policy and development statement. What's clear your Honour is, and I just read the first paragraph of the policy statement, "The New South Wales Police Service is committed to the continuous improvement of police gay/lesbian relations and to the provision of customer service to lesbians and gay men which is appropriate and responsive to their needs based on professionalism, cooperation and understanding and which reduces violence, crime and fear in the gay and lesbian community." I think your Honour it can fairly be said now that our society and the values of the Police Service have progressed to such an extent that if any gay person, male or female, were to walk into a police station and say to a police officer over the counter "I've just been assaulted", or "I've just been the victim of a crime", that that matter would be investigated and it would be taken up and there would simply be no issue your Honour of that person being either sent away or discouraged, or the view taken that "You must have deserved it.". Homophobia no doubt exists in overall society, homophobia no doubt exists with any members of society and any member of the New South Wales police, but given the training which is now being given to the more senior officers, and given the training which is given now equally to the junior officers, one trusts that your Honour would be satisfied that at least there's been a great deal of movement in that direction.

I'd also refer you not merely to Ms Thompson's evidence and the evidence that my learned friend Mr Lakatos referred you to, I'd also commend to your Honour from pages 47 of the transcript of 3 April onwards through to perhaps up to page 49 or 50, where she gives an indication as to the significant improvements and changes which have taken place over the period of time. And the reference to the specialised, since 1990 the reference to the implementation by the police and the trialing and nurturing of the range of strategies to reduce homophobic hate violence, including the specialised police gay/lesbian liaison officers, the communication and education campaigns, working at schools to reduce youth involvement and anti gay violence et cetera. There have been targeted recruitment advertisements, both on the internet and with uniform police marching in the mardi



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gras parade, and many of the other matters which are referred to at page 49 and 50 of the transcript of evidence.

5 Mr Toolen in his evidence indicated there were 123 gay and  
lesbian police officers now spread throughout New South  
Wales, you'll see his evidence of that point at the  
transcript page 43, and Mr Toolen also went on and  
10 indicated in his evidence the extent of the improvement  
which has occurred.

There's only one other matter I want to raise and it's a  
slight digression in relation to Mr Toolen's evidence, and  
it relates to something that Mr Burns had to say. I just  
15 want to remind your Honour that at page 58 of Mr Toolen's  
evidence Mr Burns had told Mr Toolen during the course of  
a conversation that he had lied during the course of the  
inquest in his evidence given before you. Now I'm not  
20 here your Honour to, I don't want to take up time, it's  
not productive, and I don't want to attack Mr Burns, far  
from it, but what I do want to urge upon your Honour is  
this, that whilst Mr Burns has made a number of  
allegations against members of the New South Wales police,  
including David Toolen and other senior officers, I'd urge  
25 upon your Honour to consider the context in which Mr Burns  
gave his evidence and also the context that what Mr Burns  
had to say in relation to his alleged treatment is not, I  
would submit, representative of the treatment of other  
gays who come into contact with the police. What is  
30 difficult to do, and I say this with all due respect to  
Mr Burns, it's difficult to distinguish the treatment of  
Mr Burns because of the manner in which he projects  
himself, or the treatment of Mr Burns because he's a gay,  
and perhaps that's a major problem and one shouldn't  
35 confuse it.

Your Honour in terms of the defects of the investigation,  
these are set out in clear terms, and I'd refer your  
Honour to Mr Page's statement, I'll give your Honour the  
40 page references for easy reference. The Russell  
investigation is referred to at pages 19, 91 and 99 of  
Mr Page's statement. Page 99 of the statement sets out a  
number of matters, including their being no formal  
procedure going back to 1989 for the receipt of exhibits  
45 at a crime scene section with continuity and records and  
matters of that kind, there was no accountable procedure.  
If your Honour wants a summary of the defects one would go  
to page 256 at paragraph 796 where the Warren  
investigation defects are set out and summarised and at  
50 page 257, paragraph 797, the Russell investigation defects  
are set out.

Mr Lakatos has referred to Mr Bowditch and I don't intend,  
and I don't wish to defend much of what Mr Bowditch's  
55 views were in that period, and I remind your Honour that  
when it came to Mr Bowditch, in fact when the torch was  
applied to the belly so to speak, it was in fact applied  
by myself.



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HER HONOUR: Yes.

5 SAIDI: And I hope your Honour sees that as a reflection  
of the concern--

HER HONOUR: Yes.

10 SAIDI: --that one had towards the views expressed by him  
and the attitude which was taken by him.

HER HONOUR: Indeed, indeed.

15 SAIDI: I'm not going to seek to substantiate his actions  
your Honour, nor would one consider it appropriate.

HER HONOUR: Yes.

20 SAIDI: What I can do though your Honour is say this, that  
there have now been significant improvements from those  
days where hopefully the Bowditch view of the world will  
not be repeated.

HER HONOUR: Yes.

25 SAIDI: Now before your Honour in evidence you will have  
documentation showing, for example, the methods and manual  
of the forensic services group, physical evidence  
30 procedure. I'd refer your Honour to s 8 headed Evidence  
Management, and in particular pages 8 and 28 which set out  
what the current procedure is. At page 8, paragraph  
2.2.6, there is a heading Preservation of Evidence on the  
Deceased, and also at paragraph 2.3.15 at page 28, under  
35 the heading of Jumping or Falling from a Height. Also  
your Honour there's the investigators guide to the  
physical evidence prepared by the forensic services group  
of the New South Wales police, references are made to the  
40 exhibits there. Unfortunately from my copy I can't give  
you the page references because they're either blacked out  
or for whatever reason I can't read them, but your Honour  
will see when going through it that there are guidelines  
and procedures set out for investigating police as to the  
retention of exhibits and what they're to do. There are  
45 also guidelines given under the heading of General Crime  
Scenes, what evidence to look for, what evidence to gather  
and what to do with that evidence. Guidelines are also  
set out under the heading of Deaths, Suspicious or Sudden,  
and again indicators are given to individual officers as  
50 to what to look for in that situation. Guidelines are  
given in relation to hair, how it should be gathered and  
obtained. So in the sense of what occurred in relation to  
the deaths of these persons your Honour will see that  
there are now procedures, guidelines and protocols in  
existence to ensure they don't happen.

55 Now one readily recognises your Honour that no amount of  
manuals, no amount of protocol, no amount of system  
management can prevent mistakes in future, and it is



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largely left to the motivation, the ability and the commonsense of police officers to do that which has to be done. But either way when you take the manuals now in existence, take the Eagle Eye system, take the accountability--

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HER HONOUR: Yes.

10 SAIDI: --what has certainly happened is that there has been a minimising of the possibility of errors occurring in the future. Just briefly if I can just remind your Honour about the recommendation which was made by the State Coroner in the Hickey, Robinson and Goodall inquest, that related, as your Honour would know, to the missing person situation. I think in the case of Goodall there was indeed no file opened up at all. In relation to the other two young ladies there were some severe criticisms made in terms of police follow-up in relation to their disappearance. Whether it be because of that situation, or otherwise, I think it's fair to say that the missing persons unit have now implemented a different procedure and protocol with appropriate follow-up to ensure that missing persons don't become lost in our society. How effective it is I can't say, no doubt the coronial jurisdiction will find out two or three or four years down the track, but at least some efforts are being made in order to improve that situation.

20

25

30 HER HONOUR: Good.

30

SAIDI: Your Honour I don't see any great need to go beyond that issue other than to come back to what I said initially. In the findings to be delivered I just submit that your Honour should bear one thing in mind, and it's this, that whatever criticism be made of the police officers in terms of their attitude, or attitudes towards gay persons, whether or not their actions were governed by that attitude or not, they operated in a society in those days which, even though it was only about 15 years ago, could be considered to have been a dinosaur society in relation to the treatment of gays. I'd ask your Honour to bear in mind, just from one's own experience and from the evidence, just how much one has moved on, and if any message were to be sent out to members of the gay community it is that they should be able to, and indeed they are able to, walk into any police station in New South Wales without any fear or favour and to obtain service which is required to be given to them That's all I'd wish to point out to your Honour.

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45

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HER HONOUR: Very good Mr Saidi, thank you very much, very good submission. Thank you, thank you both for the work that you've put into those excellent submissions, I'm greatly assisted by them. I'll just - all that's required now is for me to find a day, I'll set that now and at least we know where we are, and I'll set it for 9 o'clock so that if you want to be here you can, if you don't want to be here you don't, you needn't be. So I've just asked

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for the diary so I won't be a moment.

(Discussion on suitable date for adjournment)

5 HER HONOUR: The inquest into Mr Mattaini, Mr Russell and  
Mr Warren now adjourned for my finding and recommendations  
on 9 March 2005 at 9am. And at that time of course I will  
be letting my feelings known about Detective Page and the  
10 wonderful work that he did in bringing all of these  
matters together, but with Detective Page you Mr Lakatos,  
Mr Robinson and Mr Saidi, all of you have given these  
people dignity, and sadly that, I think it was a long time  
in coming but I'm very grateful to the commitment that  
15 you've shown in this matter and the decency that you've  
brought to the inquest as well.

LAKATOS: Thank your Honour.

20 ADJOURNED TO 9 MARCH 2005 AT 9AM FOR FINDING AND  
RECOMMENDATIONS

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