

Submission
No 29

**INQUIRY INTO GAY AND TRANSGENDER HATE CRIMES
BETWEEN 1970 AND 2010**

Name: Statement of Scott Johnson's family

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Between 1970 and 2010

Standing Committee on Social Issues

INTRODUCTION

The family of Scott Johnson would like to thank the Standing Committee on Social Issues for the opportunity to offer this Statement as part of the Inquiry into Gay and Transgender Hate Crimes Between 1970 and 2010. We regret not being able to be present in person to provide testimony at this time but would be pleased to respond to any questions or provide such additional information as the Committee may request following this submission.

The Johnson family has become aware of the general conditions relating to the treatment of LGBTIQ individuals in the period addressed by this hearing and has learned of some of the facts surrounding instances of gay bashing that resulted in death or serious injury in the course of seeking to learn about the circumstances of Scott Johnson's death. However, we are not in a position to provide an overview of the issues that the Committee seeks to address. We are aware of a

comprehensive analysis being provided by Professor Stephen Tomsen to this Committee and find his submission consistent with our experiences.

In our view, the way we can be most helpful to the Inquiry is by providing information about our family's experiences, as explained below, from the time of Scott's death to the present.

RUSH TO JUDGMENT

Scott Johnson's body was found in December of 1988 at the foot of the cliffs in North Head at a popular gay meeting area known as a gay beat. At the time and for literally decades afterward, Scott's death was not treated as a homicide and was never seriously investigated. Even now, in November of 2018, a year after (former) New South Wales Coroner Michael Barnes ruled that Scott's death was a homicide, there is no ongoing investigation to ascertain the identity of the perpetrators.

Our experience with the police investigation into Scott's death can best be captured by examining the beginning and end of the process. Within hours of finding Scott's body, the New South Wales Police Force (NSWPF) concluded that Scott had committed suicide. Within 24 hours, the file containing evidence taken from the scene was marked: "No further action." The day after Scott's death, a statement was issued by

the NSWPF informing the press that there were “no suspicious circumstances” surrounding Scott’s death.

This set the Johnson family on a nearly three-decade effort to find out what really happened to Scott. At a third inquest into Scott’s death, twenty-nine years after the NSWPF determined that Scott had committed suicide, Coroner Michael Barnes issued an opinion stating that there was no credible evidence that Scott had committed suicide, or that his death was the result of misadventure, but that there was substantial and credible evidence that his death had been a homicide. While Coroner Barnes was not able to identify the perpetrator based on the record before him, he was convinced that Scott died either by being forced over the edge of the cliff by “gay bashers” or by being chased or driven over the cliff in an effort to escape his assailants. The NSWPF resisted such a homicide finding to the end, arguing in its final submission to the Coroner that he should render an open finding rather than rule that Scott’s death was a homicide, despite the overwhelming evidence pointing to foul play. The NSWPF’s disinterest in the case can be seen in the fact that nearly every witness called in the Barnes inquest was either identified by the Johnson family or had come forward in

response to publicity surrounding the inquests and the Johnson family's investigation into Scott's case.

The question that has not been resolved and which haunts the Johnson family is why the NSWPF jumped so quickly to conclude that Scott's death was a suicide, and why the NSWPF was so terribly eager to close the investigation prematurely. A related question is why the NSWPF has persisted for three-decades in its refusal to earnestly investigate Scott's death, instead supporting a far-fetched suicide theory right up to the time of its last filing with the Coroner in late 2017. The Johnson family believes that by confronting these questions the Committee can begin to address the issues posed by this Inquiry, namely whether there were impediments that prevented the delivery of justice to victims of LGBTIQ hate crimes in the past and whether these impediments have been removed by current policy and practice.

POOR POLICE WORK

The following details are all chronicled in testimony in the 2017 Inquest. The NSWPF immediately treated Scott's death as a suicide without bothering to conduct an investigation. The NSWPF knew nothing about Scott when it reached its conclusion. It did not seek out psychiatric records that might disclose mental illness. It did not speak to

family members – in fact, the NSWPF has NEVER asked Scott’s family about his mental health, up to and including its preparation for the inquest conducted by Coroner Barnes in 2017. The decision to blame suicide, which appears to have been made on the spot when Scott’s body was found, also degraded the investigation. The four police officers attending the scene all held the rank of Constable; contrary to Manly police protocol as we understand it, no detective bothered to investigate the scene. Predictably, only a perfunctory physical search of the area was performed to discover whether any evidence or clues could be found to help explain what happened to Scott. No forensic team visited the crime scene, and thus, no fingerprints from Scott’s belongings were recovered and no pictures of the crime scene were taken at the location from which Scott fell. No cliff top photographs of Scott’s clothes were taken as they existed in place, thus forfeiting key information such as the appearance of Scott’s clothes and their position in relation to the cliff’s edge. Instead, the crime scene was photographed from a hovering helicopter, and Scott’s clothing was rearranged and moved to a nearby car park to be photographed.

The medical examiner conducted only a limited autopsy because he was informed by the NSWPF that Scott had committed suicide. The

medical examiner subsequently stated that he would have proceeded very differently and more thoroughly had he been aware of the fact that the manner of Scott's death was not actually known at the time.

Moreover, in releasing a statement to the public that no suspicious circumstances surrounding Scott's death existed, the NSWPF in effect discouraged members of the public who might have seen or known something relevant from coming forward with information.

In the first inquest held into Scott's death, which occurred in March 1989, the NSWPF claimed that enough evidence existed for a suicide ruling. However, no actual evidence of suicide was produced, and the most salient contrary evidence – that Scott died while at a gay beat – was somehow missed. The Officer in Charge of the investigation erroneously testified that the location where Scott's body was found was not a gay beat. The claimed basis of that testimony was that a search of police records showed that no cases of violence at Blue Fish Point had been recorded. The NSWPF asserted that whenever a gay beat is active, its existence will be known by police through a record of reports of prior violent activity at that location.

At the 2017 inquest, numerous witnesses testified that the Blue Fish Point area had been a gay beat for decades, before and after Scott's

death (and Coroner Barnes so found). An American investigative journalist hired by the Johnson family in 2007 was able to determine within one day of his first arrival in Australia that Blue Fish Point had long operated as a gay beat at the time of Scott's death. Yet up to and including the time of the NSWPF's first submission to the 2017 inquest, the NSWPF maintained that the area, which is only 1½ miles from the Manly police station, was not a gay beat. Ultimately, in the face of incontrovertible and uncontested evidence, the NSWPF did finally acknowledge, 29 years later, that where Scott had died was in fact a gay beat.

Ironically, the NSWPF was not only well aware of significant violence occurring at other gay beats in the Northern beaches during the late 1980s but was in the process of actually prosecuting cases of gay-bashing occurring at gay beats during the exact week that Scott died. Though the NSWPF learned within a few days of his death that Scott was gay, it evidently stubbornly neglected to even consider or investigate the possibility that Scott could have been the victim of gay-bashing violence. It remains a mystery to the Johnson family why the NSWPF pursued some gay-bashing cases, while virtually ignoring others, such as Scott's, which involved homicide. At the initial 1989 inquest, the NSWPF clung

to a fishy story of a years-past supposed suicide attempt and the psychologically inept claim that Scott had the type of personality traits that can lead to suicide. The most relevant information about Scott – that he was a happy, successful Ph.D. student who was eagerly planning for the future – was discounted, or worse, never competently explored or considered. No one from Scott’s family was interviewed by NSWPF before or after this first inquest.

Why was the NSWPF insistent on closing the investigation into Scott’s death so quickly before it even started? Why did the NSWPF hunker down and refuse to acknowledge its mistakes or conduct an investigation into a homicide for nearly three decades? Why does the NSWPF continue to ignore unsolved homicide cases which were not properly dealt with and never competently investigated?

ADVERSARIAL POSTURE OF NSWPF TO JOHNSON FAMILY

Both the Australian and United States legal systems are based on the adversarial system where parties with conflicting interests battle out their positions in adversarial litigation. The rules of criminal and civil procedure create the structure for this legal contest. The investigation into a death, however, is not and should not be an adversarial confrontation. Both the NSWPF and the Johnson family

should have been working together toward a common goal, namely ascertaining the truth of what happened to Scott and what and who caused his death.

Unfortunately, for reasons totally incomprehensible in the family's view, the NSWPF have perceived the Johnson family as adversaries and have resisted working together with the victim's family to find the truth. From the day the NSWPF found Scott's body to the time it filed its final briefs with the Coroner last year, the NSWPF have taken the position that Scott committed suicide, or alternatively, that the manner of death should be left open. Apparently because the Johnson family has refused to accept the illogic of a suicide determination, the NSWPF has treated them as adversaries and refused to objectively consider evidence amassed by the family. The NSWPF's dogged defiance was displayed in its insistence, contrary to all evidence, that Blue Fish Point was not a gay beat, that Scott was prone to suicide, and that Scott had a poor relationship with his family. The NSWPF seemed more invested in not admitting that it had erred in concluding a suicide had occurred than in searching for the truth or indeed in bringing Scott's killer to justice. That the family in effect had to, and successfully did, defeat the NSWPF's unfounded assertions in the third inquest on whether Blue Fish Point

was a gay beat and other issues is cold comfort to the Johnson family.

The true victory would have been to be able to work with the NSWPF to find out who was involved in Scott's death -- not to "prevail" in an inquest procuring a ruling that Scott's death was a homicide.

In taking an adversarial position against the Johnson family, the NSWPF has erected numerous barriers to conducting an actual investigation into Scott's death. One irksome NSWPF assertion was that it ought not investigate Scott's death further because to do so would unfairly drain resources needed for the investigation of other cold cases and would thus be unfair to other families waiting for cold case homicide investigations. The cynicism of the NSWPF's position is inescapable. If the NSWPF had spent the time and resources investigating Scott's death and discovering the truth as it spent resisting the family, the case could have been fully investigated two times over. Worst of all, the NSWPF's position unfairly pits victims' families against each other. The Johnson family, however, will not go down such a road and neither should the Committee. ALL victims' families as well as the public at large deserve a professional and thorough investigation into each and every suspicious death. This concept is not only solidly rooted

common law traditions but is also codified in the statutory laws of New South Wales.

The Johnson family also notes that it has received significant support, privately and publicly, from other families who have lost loved ones and who suspect that their relatives and significant others were the victims of gay hate crimes. It has never been brought to our attention that anyone has complained that too much time and resources have been dedicated to Scott's case to their detriment. To the contrary, many families of victims of gay-hate criminality have looked to Scott Johnson's case as shining a light on systemic problems and hope that Scott's case can bring attention to their cases as well. This is precisely the position that this Committee has taken in the present Inquiry. Hence, the NSWPF's argument that it cannot investigate Scott's death because to do so would be unfair to other victims reads as yet another pretext for inaction.

For the record, the Johnson family rejects the proposition that Scott's death was initially investigated properly in 1988-89 or that the work done by the NSWPF in relation to the second and third inquests in 2014-16 amounted to a competent, good-faith investigation. The NSWPF's 2014-16 investigation was almost totally focused on

advocating a suicide theory and on refuting or discounting potential leads and evidence of homicide generated by the Johnson family; it also, strangely, focused considerable yet futile effort to collect evidence which appears intended to be detrimental to the family's credibility. An example of the latter is the NSWPF using resources in 2016 to investigate the physical size of the apartment that Scott's brother Steve occupied in 1988 in Cambridge, Massachusetts, USA, presumably in a failed attempt to impeach a minor detail that Steve Johnson provided about his relationship to his brother Scott.

MANLY POLICE CULTURE IN 1988

Coroner Michael Barnes decided early in the process that the third inquest into Scott's death would not address any shortcomings of the NSWPF regarding either the competency of its past investigations regarding Scott's case or its alleged counterproductive antipathy toward Scott's family. The inquest's focus was strictly on what evidence could be presented to determine Scott's manner of death consistent with legal standards.

Hence, there was no inquiry into why the NSWPF in 1988-89 decided to claim that Scott committed suicide, decided to ignore crime scene processing protocols, and decided to forego conducting even a

cursory investigation. There was no attempt by the coroner to understand why the NSWPF for almost three decades maintained the fiction that Scott had not been murdered because his death didn't occur at a gay beat, even though it had been obvious from the outset that those were exactly the factual circumstances. There was no attempt to question the NSWPF's obsession with a suicide theory, even after the first inquest's ruling of suicide was vacated in the second inquiry in 2012. Deputy State Coroner Carmel Forbes ruled in that second inquest that insufficient evidence existed to conclude that Scott had committed suicide, yet the NSWPF remained committed to a suicide theory all the way through the third inquest.

The Johnson family does not dispute Coroner Barnes' wisdom in focusing on the then-present state of affairs, rather than on the past. However, if one wants to understand why many gay-bashing deaths such as Scott's were apparently not adequately investigated, whether anything has changed, and what ought to be done now to rectify the situation, it is not enough to just look at and analyze cold cases. One must also look at the past and present culture within the NSWPF. In Scott's case, for example, three of the senior detectives in the Manly police station were subsequently tried and imprisoned for official

misconduct including bribery during the period in which Scott died. To the family's knowledge, no one has ever sought to determine whether this type of corruption affected which homicides were investigated and which weren't and why. Likewise, as Coroner Barnes noted with reference to Scott's case in his November 2017 ruling, the question remains open whether some of the criminals who colluded with corrupt detectives were also perpetrators of gay-hate crimes. For these types of questions to be addressed seriously, a major commitment – whether by the NSWPF or by an independent agency – must be made to discovering the truth, wherever it leads.

LINKING AND INVESTIGATING RELATED CRIMES

It is the family's view that a new investigation is warranted and could be fruitful as many leads exist which have not been fully explored. Evidence was presented in the third inquest providing the identity of two gay-bashing gangs of special interest (members of those gangs testified with mostly evasion); as well, the former artillery school adjacent to the Blue Fish Point gay beat was exposed as a potential source of suspects but little has been done to generate or follow these and other potential investigatory leads.

Given the nature of gay-hate violence, it has always been the position of the Johnson family that the way to investigate Scott's murder is to see it in the broader context of anti-gay violence that was characteristic of the period and not to look at it as a unique occurrence. Our sincere hope is that an investigation be launched that includes all victims and all types of violent crimes that were aimed at the same population in the Greater Sydney area in the time period under investigation. If it can be established that certain perpetrators were committing gay-bashing crimes and that they used particular modes of operation, this could provide a relatively cost-effective way of facilitating the investigation of numerous cold cases...perhaps dozens. It is certainly conceivable that some unsolved cold cases may share the same perpetrators who may still be discovered and brought to justice.

Unfortunately, the NSWPF, through various representatives, has expressly informed the Johnson family that it rejects this approach to Scott's case and other alleged gay hate crimes, especially the cases of John Russell and Ross Warren, who were both gay men named in your inquiry. Though Messrs. Russell and Warren died in gay beat area cliff falls within months of Scott's death, the NSWPF believes their cases should be investigated as discrete events and should not be addressed in

the greater context of the culture of violence against gay men that prevailed at the time. The Johnson family was repeatedly told that the NSWPF, to the extent it would investigate Scott's case, would treat it as a unique event and would only follow leads that were directly connected with his death. There would be no investigation of general patterns of behavior of perpetrators of anti-gay violence in the area unless they could first be linked to Scott's specific case.

It is worthy of note in this context that Coroner Barnes in his findings followed the family's common sense approach and considered in his determination of homicide that the place where Scott died was a gay beat, that there was substantial anti-gay activity in the area, and that there were other cases where gays were found to have been attacked, wounded or killed, by anti-gay gangs. This is precisely the approach long advocated by the Johnson family and repeatedly rejected by the NSWPF.

SUMMARY

In this statement, based on the Johnson family's experience, we have raised certain questions that bear on the issues of whether there were impediments to members of the LGBTIQ community obtaining justice in the period of 1970-2010 and whether those impediments have

been removed. We have offered our personal experience as is relevant to these issues. In so doing we have highlighted certain questions:

- 1) Why was there a rush to judgment to call Scott's death a suicide?
- 2) Why was the NSWPF so reluctant to admit that the location where Scott Johnson died was a "gay beat"?
- 3) Why did the NSWPF adopt an adversarial posture toward the Johnson family?
- 4) Why did the NSWPF resist investigating Scott Johnson's death as part of a pattern of violence against gays and insist on investigating it as a unique event?
- 5) Why did the NSWPF seek to pit the Johnson family against other families of victims in the allocation of resources rather than committing to investigating systemic violence, which could in fact be a cost effective and efficacious way to help resolve multiple cold cases?
- 6) Why has the NSWPF not actively pursued any of the investigative questions that Coroner Barnes raised in his November 2017 verdict in Scott's case?

- 7) How did police corruption within the NSWPF in the 1980s and 1990s affect investigations into gay-hate homicides?

The Johnson family is not in a position to answer these questions but can suggest to the Committee that seeking answers to them might help answer the questions that are at the heart of the present Inquiry. These questions are germane not only to the NSWPF's handling of Scott's death, but also to the manner in which the difficulties that existed in the 1980s persist to the present day.

FINAL THOUGHTS

The Johnson family is extremely grateful to the Committee for inviting us to share our experiences and thoughts in this Inquiry. We once again indicate our willingness to respond to any specific questions you might have or to address any other topics you might feel would be helpful in achieving your objectives.

The Johnson family, as Americans, remain respectfully circumspect as to the changes that might be made to police procedures in New South Wales. We are supportive of the recommendations made by Professor Tomsen in his submission to the Committee. We do have members of our team here in the United States who have extensive

experience in law enforcement, including a past Attorney General of the State of Massachusetts. To the extent that we can be of assistance to you in crafting policies and practice going forward we would be more than willing to do so. Thank you again for your consideration of our views.

Steve Johnson,
On behalf of the Johnson family

7 November 2018