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## Violence Against Lesbians and Gay Men

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# Violence Against Lesbians and Gay Men

by Suzanne B. Goldberg and Bea Hanson\*

## I. Introduction

**F**aggot! Dyke! Pervert! Homo!" Just words? Or rhetoric that illuminates and fuels hatred of lesbians and gay men? How often are these words supplemented by the use of a bat, golf clubs, a hammer, a knife, a gun? Studies indicate that lesbians and gay men experience criminal victimization at rates significantly higher than other individuals and are the most frequent victims of bias crime.<sup>1</sup>

Since lesbians and gay men live all across the country—in large cities, small towns, and rural areas—we can be targets of bias crime no matter where we live. From the attacks against the lesbian-run Camp Sister Spirit outside of small town Ovett, Mississippi, to the brutal murder of Rebecca Wight on the Appalachian Trail, to the constant barrage of antigay and antilebian assaults in gay "meccas" such as San Francisco's Castro District and New York City's West Village, violence against lesbians and gay men continues to rise.

According to the National Gay and Lesbian Task Force, antigay and antilebian violence nearly tripled between the years 1988 and 1992 in five major cities across the country from 697 incidents in 1988 to 1,898 incidents in 1992.<sup>2</sup> The FBI's first report under the Federal Hate Crimes Statistics Act, released on January 5, 1993, included mention of 928 incidents of antigay and antilebian violence reported to law enforcement agen-

cies across the country. According to the New York City Police Department Bias Incident Investigations Unit, more bias-motivated homicides of gay men in New York City have occurred in the last three years than of all other groups combined.

Anyone can be the target of an antigay or antilebian bias attack regardless of sexual orientation. Bias is based on the perpetrator's perception that the victim belongs to the targeted hate group. For example, cases of heterosexual assault have included two sisters walking down the street arm in arm who were perceived to be lesbians and attacked. The perpetrator's mere belief that these two women were lesbians spurred the attack. In the same way that Chinese, Korean, and other Asian people were targeted for attack during the internment of Japanese-Americans in the United States during World War II, anyone can be the target for bias crime based on the perpetrator's ignorance and the irrationality of the crime.

The FBI, through the Federal Hate Crimes Statistic Act of 1990,<sup>3</sup> established guidelines to collect data on bias crime, including antigay and antilebian violence. The collection of these statistics is entirely voluntary and most frequently depends on the ability or willingness of the responding police officer to identify the crime as a bias attack, of the precinct's commanding officer to confirm the crime as bias-motivated, and of the department chief to have a mechanism to collect bias crime data and report the crimes to the FBI. In most areas of the country,

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<sup>1</sup>Prevalence studies have repeatedly documented the high levels of crime in the lives of both lesbians and gay men. A compilation of surveys in eight U.S. cities, nine states, and six regional or national samples (7,424 total respondents) revealed the following: the median proportion of respondents who were verbally harassed was 80 percent; 44 percent were threatened with violence; 33 percent had been chased or followed; 25 percent were pelted with objects; 19 percent experienced vandalism; 17 percent were physically assaulted; 13 percent were spat upon; and 9 percent experienced an

assault with an object or weapon. HATE CRIMES: CONFRONTING VIOLENCE AGAINST LESBIANS AND GAY MEN 20 (Greg Herek & Kevin Berrill eds., 1992) [hereinafter HATE CRIMES]. See also New York State Governor's Task Force on Bias-Related Violence: Final Report (Mar. 1988).

<sup>2</sup>These numbers are based on a longitudinal study of antigay and antilebian incidents reported to five gay and lesbian victim service agencies in Boston, Chicago, Minneapolis/St. Paul, New York City, and San Francisco. NATIONAL GAY AND LESBIAN TASK FORCE POLICY INSTITUTE, ANTI-GAY/LESBIAN VIOLENCE, VICTIMIZATION, AND DEFAMATION IN 1993 at 9 (1994).

<sup>3</sup>The Federal Hate Crimes Statistics Act, Pub. L. No. 101-275, 104 Stat. 140 (1990).

there is no mechanism for reporting bias crimes to the FBI. For example, in 1992, while 41 states participated in collecting data for the Hate Crimes Statistics Act, the vast majority of jurisdictions in those states did not participate in their state reports.<sup>4</sup>

## II. Identifying a Bias Crime

**T**o be classified as a bias crime, the offender's criminal act must have been motivated, in whole or in part, by bias. Again, the responding officer determines if the case is potentially bias related. In many jurisdictions, if hate crime has any other motive (such as robbery), the incident is not considered bias motivated. Any biased attitudes of the responding officer may result in the officer ignoring the bias element of the crime. Also, particularly for antigay crimes, the victim may decide to hide or to deny any bias nature fearing further victimization by the police. Advocates for lesbian and gay crime victims can play an important role in documenting the epidemic of bias crime by calling the National Hate Crimes Hotline at 1-800-347-HATE to report all incidents.

The Hate Crimes Statistics Act establishes the following objective evidence to help determine whether the crime was motivated by bias. These are merely guidelines. A bias crime does not need to include all of the following elements in order to be considered bias motivated.

- The offender and the victim were of different racial, religious, ethnic/national origin, or sexual orientation groups.
- Bias-related oral comments, written statements, or gestures that indicate bias were made by the offender.
- Bias-related drawings, markings, symbols, or graffiti were left at the scene.
- Certain objects, items, or things that indicate bias were used or left behind by the offender(s).
- The victim is a member of a racial, religious, ethnic/national origin, or sexual orientation group that is overwhelmingly outnumbered by members of another group in the neighborhood where the incident took place.
- The victim was visiting a neighborhood where previous hate crimes had been committed against other members of the victim's racial, religious, ethnic/national origin, or sexual orientation group where tensions remain high against the victim's group.

- Several incidents have occurred in the same locality, at or about the same time, and the victims are all of the same racial, religious, ethnic/national origin, or sexual orientation group.
- A substantial portion of the community where the crime occurred perceives that the incident was motivated by bias.
- The victim was engaged in activities promoting the victim's own racial, religious, ethnic/national origin, or sexual orientation group.
- The incident coincided with a holiday relating to, or a date of particular significance to, a racial, religious, or ethnic/national origin group.
- The offender was previously involved in a similar hate crime or is a member of a hate group.
- Indications were that a hate group was involved.
- A historically established animosity exists between the victim's group and the offender's group.
- The victim, although not a member of the targeted racial, religious, ethnic/national origin, or sexual orientation group, is a member of an advocacy group supporting the precepts of the victim group.<sup>5</sup>

A recent analysis of data on antigay and antilesbian violence indicates that "more than half of socially active lesbians and gay men (i.e., those who frequent the institutions and organizations through which questionnaires are typically distributed) experience some form of anti-gay/lesbian violence."<sup>6</sup> Surveys vary whether victimization is greater among gay men and lesbians of color or white gay men and lesbians, but, among lesbians, a greater proportion of lesbians of color seem to experience violence.

Although perpetrators of antigay and antilesbian violence have not been thoroughly studied or surveyed as a specific group, gay and lesbian antiviolence organizations across the country have organized information to yield a profile of perpetrators by age, gender, racial and ethnic identity, and behavior. According to these profiles, perpetrators outnumber their victims in one-half of antigay and antilesbian attacks; perpetrators are most frequently between 14 and 24 years of age; most perpetrators of heterosexual violence attack members of their own race; most attacks are by groups of male perpetrators or groups of male and female perpetrators; perpetrators come from all races, classes, and cultural and ethnic backgrounds.<sup>7</sup>

<sup>4</sup> United States Department of Justice, FBI Law Enforcement Bulletin (Mar. 1994).

<sup>5</sup> United States Department of Justice, Federal Bureau of Investigation Hate Crime Data Collection Guidelines (1993).

<sup>6</sup>GARY DAVID COMSTOCK, VIOLENCE AGAINST LESBIANS AND GAY MEN 37 (1991).

<sup>7</sup>*Id.* at 56-69. New York City Gay and Lesbian Anti-Violence Project, Anti-Gay and Anti-Lesbian Violence in 1993: New York City (Mar. 8, 1994).

## Violence Against Gay Men: A Case Study

Joe and his boyfriend Bob were on their way home from the movies and decided to stop at a neighborhood bar for a drink before heading home. Many gay people live in the neighborhood, and the bar is known to have an eclectic mix of people—gay and straight, neighborhood residents and people visiting from out of town. Joe and Bob sat down at a table, ordered two beers, and began critiquing the movie they had just seen. At the next table a group of three young men, who apparently had been at the bar drinking for some time, were being quite boisterous. The three guys noticed Bob and Joe and started making generalized antigay remarks, saying that there were “too many faggots in this neighborhood,” and “faggots deserve to get AIDS and die.”

Bob and Joe tried to ignore the comments, but the three guys kept repeating their abuse more and more loudly. Joe asked both the waiter and manager to intervene, but they refused to get involved.

Bob and Joe decided to leave, got up from their seats, and told the three men that they were “rude and obnoxious.” One of the three guys jumped out of his seat and said, “and you’re just a couple of faggots,” and pushed a chair at Joe, hitting him in the leg. Joe started walking toward the guy when another one of the three hit Joe over the head with a chair. Bob ran over to Joe, pushing one of the three guys hard.

Seconds later the police arrived and arrested all five men, charging them all with harassment, and charging Bob and the guy who hit Joe over the head with the chair with assault.

The task for Joe and Bob’s defense attorney is to get the charges against them dropped without dropping the charges against the three males who initiated the attack. This takes some cooperation between the defense attorney and assistant district attorney on the case. The background, motive, and pattern of escalation of the attack are crucial. It is important to examine how the attack began (harassment by the three men), the justification for the attack (antigay bias on the part of the three men and self-defense against further attack by Joe and Bob), and the level of injury (including the use of a weapon—a chair—in the attack against Joe). In this case, identifying and examining the real motive behind the case—antigay bias—enables the court to evaluate the case properly and not dismiss it improperly as a barroom brawl.

Once the charges get dropped, prosecuting the three males can be based on testimony by the two victims, any other witnesses willing to testify, an expert witness on patterns of antigay violence, and any medical documentation of injury. Here the prosecution’s discussion of antigay motive becomes crucial for prosecuting the case. The defense attorney is left to find an alternative motive that is usually a homosexual panic defense—we attacked them because they came onto us. This defense is based on the defense attorney playing on the homophobia of the judge and jury. In order to combat this, the role of the prosecution is not to overlook the antigay motive but to outline clearly the preceding harassment and course of behavior and escalation in the progression of bias crime.

The future appears as bleak as the present. The past two years have been marked by an unprecedented wave of hateful rhetoric, willful distortion, and organized campaigns against basic civil rights for gay men and lesbians. Examples of these activities include the campaigns to restrict civil rights in at least ten states, the carefully orchestrated opposition to the “Children of the Rainbow” curriculum in New York City, and the successful campaign to keep openly gay men and lesbians out of the military. These latest waves of antigay hysteria will undoubtedly result in continued bias violence.

### III. The Legal Landscape

Chances are that legal services advocates have lesbian and gay clients. It is also likely that, given the high rate of bias crimes committed against lesbians

and gay men, some legal services clients have been the victims of bias crimes based on their sexual orientation.<sup>8</sup>

The epidemic of violent crime targeted at lesbians and gay men thus translates to an important responsibility for advocates serving any client population. Whether prosecuting an assailant or counseling a client on a public benefits issue, it is important to know the landscape of laws that might protect your client as well as the social service supports that may be available. Even if you are not counseling your client on a criminal matter, this background is essential for a well-rounded picture of your client’s situation. Unfortunately, the dramatic rise in hate crimes against lesbians and gay men has not led to a corresponding jump in legal protections. Since no federal laws protect lesbians and gay men against discrimination or punish bias-motivated assaults based on sexual orientation, the legal position of lesbian and gay hate crime victims depends largely on where they happened to be assaulted.

<sup>8</sup>ROBERTA ACHTENBERG, *SEXUAL ORIENTATION AND THE LAW*, ch. 12 (Karen B. Molding ed., 1993) [hereinafter *SEXUAL ORIENTATION AND THE LAW*], from which much of

this material is drawn, is an excellent practitioner’s resource on bias crime issues as well as legal issues related to lesbians and gay men generally.

If Jack is called "faggot" when he is beaten up outside of a gay bar in Vermont, his assailant may receive an enhanced sentence under Vermont's penalty enhancement law. However, if Jana is called "dyke" as she is pummeled by a group of young men in Missouri, which has a hate crimes law that does not cover sexual orientation, her assailants will at most be punished under ordinary assault laws.

### A. Bias Crime Laws

After the U.S. Supreme Court upheld the constitutionality of a sentence-enhancement provision for bias-related crimes in *Wisconsin v. Mitchell*,<sup>9</sup> lesbians and gay men in 21 states could rest secure that crimes committed against them because of their sexual orientation would be prosecuted as bias-motivated assaults with enhanced penalties.<sup>10</sup> Unfortunately, however, many state legislatures have refused to pass bias crime laws that enhance punishments for those convicted of assaulting lesbians and gay men on the grounds that condemning such violence may be interpreted as providing protection to people—lesbians and gay men—of whom they disapprove.

Currently, the following impose specific criminal penalties on perpetrators convicted of committing bias crimes against lesbians and gay men: California, Connecticut, Washington, D.C., Florida, Illinois, Iowa, Minnesota, New Jersey, New Hampshire, Nevada, Oregon, Wisconsin, and Vermont. Some of these also provide for civil actions against perpetrators: California, Washington, D.C., Florida, Iowa, Minnesota, Nevada, Wisconsin, and Vermont.

Other states have laws in place that penalize hate crimes but do not cover sexual orientation: Maryland, Massachusetts, Michigan, Rhode Island, Texas, and Utah.

Additionally, the federal government, through the Department of Justice, collects statistics on bias crimes

including sexual-orientation-based acts. The Federal Hate Crimes Statistics Act does not include a penalty provision, however.<sup>11</sup>

In an important development on the federal level following the Supreme Court ruling on hate crime laws, the U.S. House of Representatives and Senate passed the Federal Hate Crimes Sentencing Enhancement Act of 1993. The Act, modeled after the Wisconsin law, will allow increased penalties for federal crimes when it is proven that the victims were targeted because of their "actual or perceived race, color, religion, national origin, ethnicity, gender, or sexual orientation." The Act will order the U.S. Sentencing Commissioner to create a schedule of sentencing enhancements to increase penalties for hate crime under federal law by at least three federal sentencing levels. The bill has become part of the Omnibus Crime Bill and is expected by many to become law.<sup>12</sup>

### B. "Homosexual Panic" Defense

Laws against bias-motivated violence form only part of the legal landscape. In contrast to protections, the "homosexual panic" defense may be asserted by an assailant to justify a crime committed against a lesbian or gay man. This defense claims that the defendant committed the violent act(s) either in self-defense against a sexual overture by the victim or out of temporary insanity or diminished mental capacity owing to extreme fear of homosexuality.<sup>13</sup> The theory has been used to appeal to the fear or hatred of gay people with some success by courts and juries to obtain lenient sentences and acquittals.<sup>14</sup>

Increasingly, the "homosexual panic" defense is being rejected by courts. Some courts have considered antigay motivation not as a shield from punishment but rather as an aggravating factor.<sup>15</sup> For example, in *Com-*

<sup>9</sup>*Wisconsin v. Mitchell*, 113 S. Ct. 2194 (1993).

<sup>10</sup>Many constitutional challenges to penalty-enhancement laws that included sexual orientation were pending at the time *Wisconsin v. Mitchell* was decided. In one, the defendant pled guilty to a charge of aggravated assault but reserved the right to challenge the constitutionality of the Vermont hate crimes law. After following a man who left a gay bar in Burlington, Vermont, with taunts such as "So are you a faggot or gay or what," the defendant and his brother pushed the victim into a park, struck him repeatedly and then left him to be discovered later by a police officer, his face covered with blood. After *Mitchell*, the Vermont law and the defendant's enhanced penalties were upheld by the Vermont Supreme Court. *State v. LaDue*, 631 A.2d 236 (Vt. 1993).

<sup>11</sup>Federal Hate Crimes Statistics Act, Pub. L. No. 101-275, 104 Stat. 140 (1990).

<sup>12</sup>The House bill, H.R. 1152, passed on Sept. 21, 1993;

*see also* S. 1522. The Act was introduced as an amendment to the Omnibus Crime Bill on Nov. 11, 1993, as S. 1607; *see also* H.R. 4092.

<sup>13</sup>*See* Gary David Comstock, *Dismantling the Homosexual Panic Defense*, 2 LAW AND SEXUALITY 81 (1992).

<sup>14</sup>HATE CRIMES, *supra* note 1, at 37.

<sup>15</sup>*See, e.g.,* *People v. Nitz*, 572 N.E.2d 895 (Ill. 1991), *cert. denied*, 112 S. Ct. 344 (affirming life sentence when defendant murdered and decapitated a gay man and had history of harassing gay men, stating "the sentence was necessary to deter others from committing the same crime."); *New Mexico v. Gonzalez*, (N.M. Dist. Ct. 1992), reported at 1992 Lesbian/Gay Law Notes 11 (sentencing two defendants to 40-52 years for killing two gay men, in which the court exceeded state sentencing guidelines for principal defendant because of antigay motivation of killings).

*monwealth v. Carr*,<sup>16</sup> the defendant argued that his rage about homosexuality provoked him into shooting two lesbians repeatedly, killing one and wounding the other, after he watched them make love at their campsite. Rejecting this defense, a unanimous panel of the Pennsylvania Supreme Court affirmed the trial court:

The sight of naked women engaged in lesbian love-making is not adequate provocation to reduce an unlawful killing from murder to voluntary manslaughter. It is not an event which is sufficient to cause a reasonable person to become so impassioned as to be incapable of cool reflection. A reasonable person would simply have discontinued his observation and left the scene; he would not kill the lovers . . . Whatever a person's views about homosexuality, the law does not condone or excuse the killing [of] homosexuals any more than it condones the killing of heterosexuals. Similarly, it does not recognize homosexual activity between two persons as legal provocation sufficient to reduce an unlawful killing of one or both of the actors by a third person from murder to voluntary manslaughter.<sup>17</sup>

Still, defense attorneys continue to manipulate "homosexual panic" by suggesting it as a proposed defense in an effort to achieve a plea bargain when negotiating with a prosecutor who seems unprepared or unwilling to respond to that defense. As a bargaining chip and in a variety of other forms, the "homosexual panic" defense unfortunately remains alive and well, and advocates must be on guard to refute it.

#### IV. Working with Survivors of Homophobic Violence

Violence against lesbians and gay men is compounded by fear and distrust of official agencies, including the police and criminal justice systems. Many lesbians and gay men are reticent to utilize available resources for fear that such service providers may be ill-informed or even openly hostile about their sexual orientation and its impact on their victimization. Others fear that if their sexual orientation becomes publicly known as a result of criminal justice proceedings,

they will lose employment, face eviction, or suffer rejection by family members. As a result, many gay and lesbian crime survivors never even report crimes against them to the police, or pursue the case through the criminal justice system. Repeated national surveys show that between 80 percent and 90 percent of all lesbian and gay victims of bias-related violence never report the attacks to any official authority and thus suffer the often devastating consequences of violence in isolation and silence.<sup>18</sup>

In addition, many lesbian and gay crime survivors who do report victimization frequently disguise the nature of the attack, naming it a random assault and omitting the bias nature of the crime for fear of further victimization by authorities.

To represent a client adequately, it is important for a legal service provider to know as many details about the crime as possible, especially the motive. However, it is not important to know the client's actual sexual orientation, merely that the crime was motivated by the perpetrator's perception that the client was gay or lesbian. The Hate Crimes Statistics Act criteria may be helpful in determining a possible antigay or antilebian bias nature of a crime. If an antigay or antilebian bias motive is suspected, but the victim is unwilling to discuss his or her perception of the motive of the crime, the following questions may be helpful:

- Do you have any idea about why these people would have done this to you?
- Do you think some kind of bias might have been involved?
- Is there anything about you in particular that you think they were going after?
- Where you were attacked is a gay area, and people get attacked around here because of that. Was there anything in the attack that might point in that direction?

As in other situations, it is important to include the family of the gay and lesbian crime survivor. The partner of the crime survivor should be given the same courtesy and offered the same information about the case as the spouse of any married heterosexual couple. In cases of homicide, the surviving partner should have the same access to information and have the same decisionmaking rights as a surviving spouse in a homicide case. An example when this did not happen is a recent court case in New York City in which the surviving partner (of an

<sup>16</sup>*Commonwealth v. Carr*, 580 A.2d 1362 (Pa. Super. Ct. 1990), *appeal denied*, 592 A.2d 42 (Pa. 1991).

<sup>17</sup>Reported at 1990 Lesbian/Gay Law Notes 80.

<sup>18</sup>Laura Dean et al., *Trends in Violence & Discrimination*

in *HATE CRIMES*, *supra* note 1, at 53. A survey conducted from 1988 to 1990 showed that only from 13 to 14 percent of gay male victims of bias violence reported their victimization to the police.

eight-year relationship) of a gay man who was brutally killed was not consulted before the assistant district attorney accepted a plea bargain that reduced the charges against the perpetrator from murder in the second degree to manslaughter in the second degree.

Since the criminal justice system often disregards crimes against lesbians and gay men, compounding its disregard of women and people of color generally, your lesbian and gay clients might be more willing to mention a bias attack to you than to the police or the prosecutor's office, if they are willing to discuss the attack at all. As counseled in *Sexual Orientation and the Law*, a leading treatise on lesbian and gay legal issues, an attorney "who is informed of an attack upon a lesbian or gay client has a responsibility to both the client and society to encourage the victim not to feel ashamed of the attack and ensuing trauma, to report the incident for documentation, and to assist the client in obtaining the proper services and remedies."<sup>19</sup> Even if you do not have experience working on lesbian and gay issues, in your role as an advocate it is critical that you assist your client in negotiating a criminal justice and social services system that often ignores or is hostile to people who are lesbian and gay, even if they are crime victims.

Indeed, many antigay bias crimes are prosecuted as such only because of the work of a committed advocate who assists the victim in pushing the police and prosecutor's office to recognize the bias nature of the crime. It is not uncommon for the police to overlook the motive in a brutal antigay assault simply because they did not recognize the signs of an antigay assault.

Similarly, the police have been known to treat lesbian and gay victims as brutally as some assailants. Sometimes, lesbians and gay men are beaten or harassed simply for participating in civil rights demonstrations. For example, in *People v. Hennelly*, in which a civil suit against the New York police department was settled recently, a protester at an ACT-UP demonstration was left with permanent injuries as a result of a beating by New York police officers and then charged with "violent, tumultuous and threatening behavior" and resisting arrest. Charges were dismissed after a criminal court judge reviewed videotapes showing that only the police engaged in violent conduct.<sup>20</sup>

At other times, governmental antigay bias is manifested in the lack of police response to crimes against lesbians and gay men. In one of the case studies accom-

panying this article, the case of Brandon Teena exemplifies the horrors of a situation when the local police refused to investigate vigorously the rape of a woman who dressed as a man and dated women.

In many cases, even well-intentioned prosecutors may be unaware of the nature of the crime or unable to help the victim feel sufficiently at ease to assist in the prosecution. Also, well-meaning prosecutors can fail complainants by not identifying the antigay motive in a case, under the assumption that they are protecting the complainant's privacy. In reality, this strategy may backfire, leaving the judge and jury without an important clue about why the crime was committed.

By putting the victim in touch with gay-friendly social service agencies and urging the prosecutor to contact organizations with experience assisting with the prosecution of antigay bias crimes, you can help break the cycle of homophobic bias that interferes with the administration of justice. If there are no suitable social service agencies within your jurisdiction, you should not hesitate to refer your client to an out-of-state organization, even for a telephone contact. Similarly, out-of-state legal and advocacy organizations can provide valuable resources to a prosecutor's office such as suggested expert testimony and sample voir dire questions to identify antigay bias among jurors.

## V. Domestic Violence

Just as advocates have a responsibility to pay attention to their clients who may have been victims of antigay violent crimes, it is also critical to pay attention to domestic violence within lesbian and gay couples. Although this form of violence would not be classified as a bias crime, it is worth noting because it is often ignored by police, prosecutors, and social service agencies in the same way that bias crimes against lesbians and gay men are overlooked.

Violence against lesbians and gay men enters the home as well—from abuse by both relatives and domestic partners. Surveys show that between 16 percent and 41 percent of gay men and lesbians experience verbal insults and intimidation by relatives and from 4 percent to 8 percent are victims of physical violence by relatives.<sup>21</sup> Contrary to myth, same-sex relationships are not immune from domestic violence but appear to experience this tragedy at the same rate as heterosexual couples.

<sup>19</sup>SEXUAL ORIENTATION AND THE LAW, *supra* note 8, § 12.03[2][a].

<sup>20</sup>*People v. Hennelly*, N.Y.L.J., Oct. 7, 1991, at 24 (N.Y.

Crim. Ct. 1991).

<sup>21</sup>HATE CRIMES, *supra* note 1, at 34-35.

## The Case of Brandon Teena

Brandon Teena was shot and killed, execution-style, on December 31, 1993, in a house just outside of Humboldt, Nebraska. Teena, who identified herself publicly as a man and had been romantically involved with several different women, had been the target of extreme harassment and assault by the same two men charged with her ultimate murder—crimes that went initially without charge or major investigation.

A week before Teena was killed, the two men charged with her murder abducted and raped her. That night, Christmas Eve, the men had gotten drunk, held Teena down and removed her clothes in front of Teena's girlfriend to prove that Teena was a woman. Later, according to police, the men abducted her to an area outside the city limits, raped her twice and beat her, causing boot-shaped bruises on her back and bloodying her face. Teena was able to escape from the bathroom where the men had locked her and instructed her to shower off before they would release her. She reported the rape, identifying the perpetrators immediately to police at the hospital where a test determined that she had recently experienced vaginal penetration.

The sheriffs' office claimed that it lacked sufficient evidence to make any arrests prior to her murder. However, Sheriff Charles Laux also explained that no arrests were made because the office was baffled by Teena's self-identification as a man even though she was a woman. Teena did not identify herself as a lesbian. "What kind of person was she? The first few times we arrested her [on check forgery charges earlier in the year] she was putting herself off as a guy. We were trying to figure out when she was telling the truth and when she wasn't," Laux said. There was no question, however, that Teena had been raped.

According to the director of the National Gay and Lesbian Task Force Anti-Violence Project and a spokesperson for the New York City Gay and Lesbian

Anti-Violence Project, the case reflects clearly elements of antigay bias. Three markers reveal the bias motivation of the crime: (1) the attention paid when Teena's earlier arrests led some of her friends to find out that she was physiologically female; (2) the forced exposure and rape by two men needing to prove Teena was a woman and denigrate her as such; and (3), ultimately, the deliberate execution-style murder of Teena, along with the other two adults in the household where she was staying.

Additionally, the slow police response to Teena's rape illustrates again that men and women—including lesbians and gay men—who do not conform to prevailing gender roles are often further victimized by the law enforcement agencies charged with protecting them.

The Teena murder illustrates a critical lesson to advocates that lesbian and gay clients, and others who do not fit within sex role stereotypes, can be so quickly disregarded by the criminal justice and social service system. While it may sometimes seem easier to disregard a client's sexual orientation or gender identity, if there is any indication that your client is being victimized on account of his or her sexual orientation or any other factor, it is important to integrate discussion of sexual orientation issues into your practice, or at least to provide appropriate referrals. Sometimes, as in Brandon Teena's case, intervention with law enforcement or other agencies can mean the difference between life and death.

[Note: Several articles provided the factual reports that form the basis for this case study. See Donna Minkowitz, *Love Hurts*, VILLAGE VOICE, Apr. 19, 1994, at 24; Kristina Campbell, *Transsexual, Two Others Murdered in Nebraska*, WASH. BLADE, Jan. 14, 1994, at 19; Ingrid Ricks, *Heartland Homicide*, THE ADVOCATE, Mar. 8, 1994, at 28; Larry Fruhling, *Charade Revealed Prior to Killings*, DES MOINES REGISTER, Jan. 9, 1994, at B1.]

Domestic violence within the lesbian and gay community is compounded by widespread denial and, as important, widespread lack of the resources and legal recourse available to heterosexual survivors. For example, police officers rarely follow mandatory arrest procedures when the situation involves partners of the same sex; family court is not typically available to gay and lesbian survivors; prosecutors often do not identify the domestic violence and further fail to encourage survivors

to press charges;<sup>22</sup> and survivors are often forced into nonbinding mediation when they attempt to pursue complaints through criminal court.<sup>23</sup>

Again, consult laws in your state to determine what recourse is available to gay and lesbian survivors of domestic violence, including whether mandatory arrest policies of batterers apply to same-sex couples in police procedures and the rights of same-sex couples to use family court.

<sup>22</sup>For an interesting and important discussion of the prosecution of a lesbian battering case, see Angela West, *Prosecutorial Activism: Confronting Heterosexism in a Lesbian Battering Case*, 15 HARV. WOMEN'S L.J. 249 (1992).

<sup>23</sup>State v. Hadinger, 573 N.E.2d 1191 (Ohio Ct. App. 1991), in which an Ohio appellate court upheld the application of a domestic violence law against a lesbian who battered her partner, may represent a hopeful trend toward bias-free condemnation of domestic violence in the judicial process.