1994

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Suzanne B. Goldberg
Columbia Law School, sgoldb1@law.columbia.edu

Bea Hanson

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Recommended Citation
Suzanne B. Goldberg & Bea Hanson, Violence Against Lesbians and Gay Men, 28 Clearinghouse Rev. 417 (1994).
Available at: https://scholarship.law.columbia.edu/faculty_scholarship/1104

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Violence Against Lesbians and Gay Men

by Suzanne B. Goldberg and Bea Hanson*

I. Introduction

Flag! Dyke! Pervet! 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.1 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 antilesbian 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 antilesbian 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 1992.2 The FBI’s first report under the Federal Hate Crimes Statistics Act of 1990,3 established guidelines to collect data on bias crime, including antigay and antilesbian 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, 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).

1 These numbers are based on a longitudinal study of antigay and antilesbian 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).

2 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

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* Suzanne B. Goldberg is a staff attorney with Lambda Legal Defense and Education Fund, 666 Broadway, 12th Floor, New York, NY 10012, (212) 995-8585. Bea Hanson is director of client services, NYC Anti-Violence Project, 647 Hudson St., New York, NY 10014, (212) 807-6761.
II. Identifying a Bias Crime

To 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.

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 antigay/lesbian violence.” 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 heterosexist 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.


Violence Against Lesbians and Gay Men

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.

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.

8ROBERTA 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,\(^3\) 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.\(^4\) 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.\(^5\)

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.\(^6\)

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 overtube by the victim or out of temporary insanity or diminished mental capacity owing to extreme fear of homosexuality.\(^7\) 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.\(^8\)

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.\(^9\) For example, in Com-
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.¹⁷

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.¹⁸

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 antilesbian bias nature of a crime. If an antigay or antilesbian 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 decision-making 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

¹⁷Reported at 1990 Lesbian/Gay Law Notes 80.
¹⁸Laura 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.” 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 protestor 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.

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 accompanying 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. 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.

19SEXUAL ORIENTATION AND THE LAW, supra note 8, § 12.03[2][a].

21HATE CRIMES, supra note 1, at 34-35.
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; and survivors are often forced into nonbinding mediation when they attempt to pursue complaints through criminal court.

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.


\[^{23}\] 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.
A World of Difference

The Anti-Defamation League has established *A World of Difference* institute to combat prejudice and hate and to foster understanding, tolerance, and intergroup respect. Some of the group's objectives include providing an understanding of discrimination and its resulting harm, helping individuals recognize their own prejudices and take personal responsibility to combat discrimination, challenging stereotypes, and identifying factors that contribute to intergroup understanding.

*A World of Difference* provides training sessions in schools, businesses, college campuses, and law enforcement agencies specifically designed to meet the individual needs of the organizations. More than 110,000 educators have completed training programs through *A Classroom of Difference* in order to combat bigotry and encourage cooperation and respect among their students. *A Workplace of Difference* is a diversity awareness/diversity management training program for corporations, small businesses, and government agencies. More than 100 employers throughout the country have used the program to help create a working environment that respects diversity. *A Campus of Difference* offers antiprejudice workshops and diversity awareness education to faculty, students, administration, and support staff. Many colleges present this program during freshman orientation week to prepare new college students for living in a diverse community of peers of the opposite gender, other races, ethnic groups, religions, and sexual orientations. There are also two different *A Community of Difference* diversity awareness and antiprejudice programs. One is for communities, parents, and family organizations, and the other is for law enforcement professionals.

Each program is different, catering to the particular needs of the organization and its participants, but some core exercises are adapted to all of the programs. A typical workshop helps participants relax so that they feel comfortable while examining personal experiences and views. Participants engage in exercises that help them define themselves, and they are given a test that helps them identify what they do not know about other cultures. Videos of real-life situations allow partici-

Great spirits have always encountered violent opposition from mediocre minds.

Albert Einstein

Hate is not a family value.