

1991

**AUDIT
OF
ANTI-SEMITIC
INCIDENTS**

ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH



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Foreword

The Shock of 1991: An Anti-Semitic Riot

In 1991, for the first time in recent memory, a mob's cries of "Kill the Jew" echoed on an American street. The awful threat embodied in those words was soon realized: Yankel Rosenbaum, a 29-year-old Jewish scholar, was stabbed by a group of young rioters during unrest in Brooklyn's Crown Heights on the night of August 19, following the tragic accidental death of a black child in an automobile mishap. Rosenbaum died later in a local hospital.

The Crown Heights outburst, with its dozens of assaults and acts of vandalism, was the most dramatic and disturbing eruption of anti-Semitic violence in America in many years. These attacks were among the most noteworthy of the anti-Semitic incidents reported to ADL during 1991—the fifth straight year of increased anti-Jewish acts nationwide.

Introduction

There were 1,879 anti-Semitic incidents reported to the Anti-Defamation League during 1991. Reports from 42 states, the District of Columbia and the Virgin Islands resulted in the highest overall total of incidents ever recorded in the thirteen year history of the annual audit.

The 1991 total surpasses last year's 1,685 such incidents by more than 11%. The 1,879 incidents include a small but still troubling rise in 1990's total in the vandalism category—929 in 1991 from 927 in 1990, the 2nd highest number yet recorded. But in addition, the category of anti-Semitic harassment, threats, and assaults soared to the highest level ever reported. There were 950 such incidents in 1991—a 25% increase over the 758 noted in those categories in 1990. For the first time in the history of the ADL Audit, these more personalized incidents—in which Jewish individuals were menaced by mail or phone threats, verbal abuse or physical attack—surpassed the total of incidents in the vandalism category.

The most disturbing area of increase occurred in the category of assault against Jewish individuals. In 1991 there were 60 reported cases of physical attack, including one murder: that of a young Jewish scholar in Brooklyn's Crown Heights—a heinous act that could well be called the first lynching of a Jew in the United States since that of Leo Frank in 1915.

The past year also saw the greatest number of serious crimes yet reported. There were 49 vandalism episodes of arson, bombing and cemetery desecration, a 29% jump over previous the high of 38 noted in both 1990 and 1989.

Anti-Jewish incidents on U.S. college campuses rose again to their highest levels ever, continuing an alarming trend that has been manifest for the last four years. Acts of politically related anti-Semitism—coming largely during Operation Desert Storm in January and February—also multiplied.

On a positive note, Skinhead-related anti-Semitic incidents are down significantly, although still of concern. Effective law enforcement action at the federal, state and local levels against violent neo-Nazi Skinhead activity has sent a firm and clear message to such gangs that their criminal behavior will not be tolerated.

Serious Crimes of Vandalism

In 1991 there were 12 incidents of arson, 8 of attempted arson, 6 bombings, one attempted bombing and 22 cemetery desecrations—a combined total of 49 particularly serious vandalism incidents—representing the highest total ever reported in this sub-category.

In the first months of 1991 there was a rash of arson events in California which were directed at Jewish institutions. A Thousand Oaks synagogue was targeted three times and a nearby Ventura synagogue reported four attempted-arson attacks during the same period. In January, a North Hollywood synagogue had been fire-bombed and further north a fire was set at a San Francisco synagogue after a failed attempted arson ten days earlier.

In Brooklyn, New York, two Yeshivas suffered extensive damage as a result of arson attacks, one in May and another in July.

Arsonists also targeted Jewish-owned private property in 1991. In Knoxville, TN, a Jewish-owned business was set afire. A local Skinhead gang is believed to be responsible for that crime and other related vandalism directed at the owner and his property. In New Jersey, arson was reported at a Jewish-owned home in Haddonfield, in August. In November, in Jupiter, FL, the lawn of a Jewish homeowner was torched. In December, in Oak Park, Michigan the shrubs of a rabbi's home were set on fire; in July, in Holmesburg, PA, two acts of attempted arson were reported at the commercial property of a Jewish individual.

Bombing incidents were reported in four states during 1991. In Boca Raton, FL, a smoke bomb was thrown at congregants as they entered a synagogue. During the services shots were fired through the window. Two separate bombings of Jewish-owned automobiles were reported in Philadelphia, PA, on the same day in January. Both vehicles had Jewish religious articles displayed on their dashboards. Also in January, in San Francisco, a Jewish senior citizens home was bombed. In Beverly Hills, in June, a device with "explosive capability" was found in a public playground along with anti-Semitic leaflets. It was disarmed. In Colorado, in June, a Jewish homeowner reported that twice her property was bombed.

During 1991, a total of 22 cemetery desecrations were reported. There were four each in New York, Louisiana and Mississippi. There were three in New Jersey, two in Colorado and Massachusetts and one each in Maryland, Ohio and Minnesota.

Harassment, Threats and Assault

In 1991 there were 950 incidents of harassment, threat and assault directed at Jewish individuals and their institutions. It is the first time in the history of the annual Audit that the total in this category surpasses that of the vandalism incidents. While all incident totals have been rising steadily since 1986, harassment, threats and assaults have leapt dramatically in the last four years. From 1987 to 1988 a 41% increase was reported, followed by a 28% increase in 1989, and then a 29% increase in 1990. The 1991 increase is 25%. Thus, in the last 5 years all such incidents nearly tripled (193%).

The most disturbing aspect of this year's record totals are the unprecedented reports

of physical assaults perpetrated against Jewish individuals. There have been sixty such incidents including one murder—during the Crown Heights outburst—which in turn triggered at least two dozen other reported assaults during the tense days which followed that event. Between 1979 and 1989 the yearly total of anti-Semitic assaults averaged just over twenty. In 1990 the total rose to 30. In 1991 that figure doubled.

The murder of Yankel Rosenbaum by a mob in Crown Heights was by far the most serious act of anti-Semitic assault in 1991. (For a more detailed discussion of the many incidents involved in the Crown Heights rioting, see page 14.)

Another significant development: In what is probably the most notable damage award ever in an anti-Semitic harassment case, a Chicago (IL) jury on March 27, 1991 returned a \$1.8 million verdict against a Chicago woman and her adult son in a lawsuit arising out of their harassment of their next door neighbor, a Jewish woman, and her family. This is the largest known judgment to date in a lawsuit brought under Illinois' Ethnic Intimidation Statute (now called Hate Crime Statute).

The lawsuit against Lucille Olsen and her adult son, Neil Olsen, alleged that the Olsens had conducted a campaign of harassment against Sherry Del Dotto, her husband Larry Del Dotto, and their daughter. The Olsens' conduct included repeated anti-Jewish statements, white supremacist slogans, threats of physical violence, and a pattern of harassing conduct which occurred during 1984 and 1985 when the Del Dottos and Olsens were next door neighbors.

Sherry Del Dotto sought the assistance of the Anti-Defamation League in 1985. Suit was filed in August, 1985 and the Del Dottos were granted injunctive relief, designed to prevent further acts of harassment. The case came to trial on March 20, 1991 on issues of liability and damages. After a six-day trial the jury returned verdicts totalling \$1.8 million against the Olsens.

What accounts for the surge in reported incidents of anti-Semitic harassment, threat and assault?

ADL has noted with deep concern the erosion of longstanding barriers against the expression of anti-Semitism. In the worlds of politics, culture, and education (see page 7 for a discussion of campus anti-Semitism) Jew-baiting, anti-Semitic scapegoating and conspiracy accusations have become not only more common, but more casually tolerated and rationalized. Such ideas, and the words that express them, have consequences.

The vastly increased level of harassment and assault incidents in recent years, including 1991, may signal a change in the tactics of many individuals wishing to express anti-Jewish hostility. It would appear that there is a new willingness by those inclined toward anti-Semitism to engage in direct, provocative confrontation with Jews, a kind of "in-your-face" intimidation, reflective of that erosion of the taboo against such open bigotry.

Many observers have noted a decline in civility in American life, a coarsening of both public and private discourse, with a corresponding rise in many people's willingness to employ and tolerate ethnic slurs, stereotyped insults and other forms of hateful speech. It is difficult, if not impossible, to measure this perceived phenomenon, but nowhere is it reflected more clearly or disturbingly than in the proliferation of bigotry and violence

in the lyrics of some of the best-selling popular music of the day. Taboos have fallen—but are standards of taste and mutual respect, especially in those areas closest to today's youth, crumbling too?

Vandalism: Most Active States

Despite a continued high level of anti-Semitic vandalism incidents nationally, several traditionally most-active states experienced slight decreases. For example, for the second straight year, New Jersey reported a modest decline. California, which saw a significant rise in 1990, also reported a small but welcome decline. And in Florida, which reported a slight drop in 1990, such episodes were down significantly. Maryland, which had risen sharply in the previous year, showed an encouraging decrease in 1991.

On the other hand, New York's total surged, after dropping in 1990, due largely to the Crown Heights outburst. Michigan also showed an increase after a 1990 decrease. And Massachusetts remained at its 1990 total, which was a slight drop from 1989.

The most active states were as follows: (see Appendix B for complete figures).

In 1991, New York led all states with 254 (up 68) reported vandalism incidents followed by California 124 (down 5) and New Jersey with 102 (down 5).

Next are Massachusetts with 68 (no change), Pennsylvania with 49 (up 5), Florida with 43 (down 22), Maryland with 41 (down 15), Illinois with 27 (down 6), Texas with 24 (up 19), Connecticut with 21 (up 5) followed by Michigan with 20 (up 4) and Colorado with 17 (down 18) and Ohio also with 17 (down 6).

In the next group, Georgia reported 14 (up 5), Louisiana 13 (up 8). Next were New Mexico with 11 (down 4), Virginia with 9 (down 6) followed by Minnesota with 8 (down 19) and Tennessee with 6 (up 2).

19 remaining states each reported five or fewer incidents.

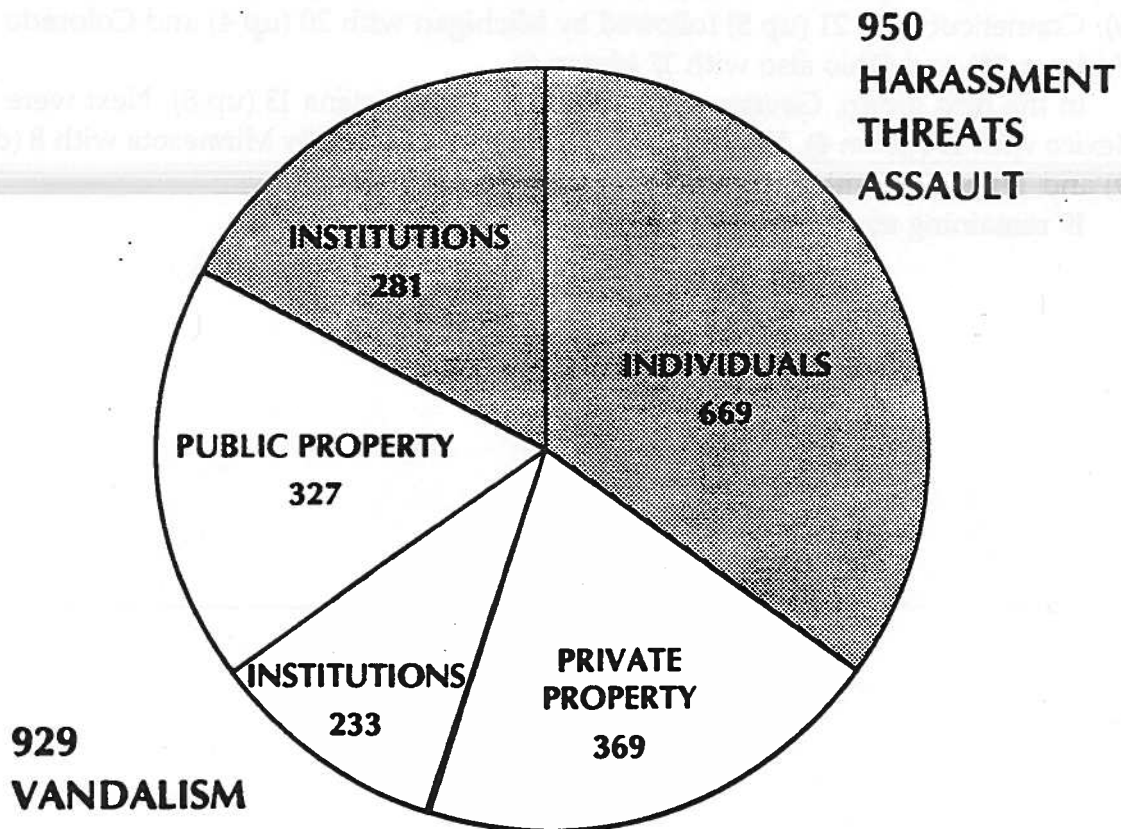
1991 Vandalism: Geographic Breakdown

Ten Northeastern states plus the District of Columbia combined for a total of 549 incidents—59% of the national total. Last year there were 493 incidents reported in that region—53%. New York in 1991 had 254; followed by New Jersey, 102; Massachusetts, 68; Pennsylvania, 49; Maryland, 41; Connecticut, 21; New Hampshire, 4; Maine and the District of Columbia each with 3, and two each in Delaware and Rhode Island.

In the West, seven states reported a total of 162 incidents—17% of the national total. California reported 124; Colorado, 17; New Mexico, 11; Washington, 4; Arizona, 3; Oregon, 2; and Utah 1.

In the South twelve states reported a total of 131 vandalism incidents—14% of the total. They are Florida, 43; Texas, 24; Georgia 14; Louisiana 13; Virginia, 9; Tennessee, 6; South Carolina, 5; Alabama, Mississippi and North Carolina each with 4; Arkansas, 3 and Kentucky, 2. In addition, there was also one vandalism reported in St. Croix in the Virgin Islands.

Nine Mid-Western states accounted for 86 incidents—9% of the national total. Those states are: Illinois, 27; Michigan, 20; Ohio 17; Minnesota, 8; Wisconsin, 5; Missouri and Iowa each with 3; Indiana, 2 and Nebraska, 1.



1991 Anti-Semitic Incidents

Campus Incidents

Anti-Semitic acts on American college campuses in 1991 remained at the disturbingly high level of 1990—though the dramatic trend of increase (72%) over the previous three years may have leveled off. There were 101 anti-Semitic incidents reported at 60 college campuses. Twenty-three of those campuses experienced more than one occurrence of anti-Semitic activity. In 1990 there were 95 incidents at 57 campuses with 11 experiencing multiple anti-Semitic episodes.

Recent ADL audits have reported on the increasing anti-Semitic incidents directed at individual Jewish students as well as places of Jewish activity on campus including Hillels, fraternity/sorority houses and dorms and offices of Jewish students and professors.

See Appendix D for a listing of 1991 Campus Incidents.

Among the many campus incidents of concern were the following:

On the campus of Cal State Northridge, in the Los Angeles area, a Sukkah erected by members of the Hillel Jewish Student Center was defaced with swastikas and anti-Semitic writing. (The Sukkah is a temporary ceremonial hut built to celebrate the Jewish harvest holiday of Sukkot.) The September 1991 incident was reported to the dean's office and to the campus police, as well to the Anti-Defamation league and to the press. No suspects have been found.

Fifty-two mezuzas were stolen early Sunday morning, November 17, 1991, from the doorposts of dormitory rooms at Barnard College of Columbia University in New York City. The New York Police Department's bias unit and campus security office conducted an investigation. Barnard also stepped up security in the residence halls. However, the culprits have not been found.

In a positive outgrowth of the incident, many non-Jewish students at Barnard expressed solidarity with the victims of the vandalism. And the college president called a meeting to discuss student concerns about the theft, calling it "a very serious offense" and "an act of bias that is deeply disturbing."

And in one of the year's most unusual but distressing displays of prejudice, a group of student actors preparing for a dramatic production on the Holocaust became targets of anti-Semitic abuse. Judy Yordon, a professor of theater at Indiana's Ball State University, instructed the mostly non-Jewish cast of *The Ghetto* to wear yellow Stars of David to better understand the stigma Jews experienced under the Nazi regime. This exercise in sensitivity, however, provoked unexpected hostility toward the students.

Cast member Matthew Socey wrote in the *Ball State Daily News* that while waiting at a bus stop, he saw a man roll down his car window to yell, "Fucking Kike" at him. Other cast members attested that they had received neo-Nazi and Holocaust-denial literature. English instructor John Pea experienced the most dangerous response to the yellow star when, according to Socey, a driver motioned for him to cross the street, then gunned his car forward. (Mr. Pea apparently escaped injury.) African-American student actress Debbie Thomas encountered one student who pointedly refused to participate in a required class dialogue with her because of the star. "I've never experienced racism that was so blatant as that," Thomas said.

Although these displays of prejudice and contempt revealed a latent anti-Semitism, the community's response was overwhelmingly favorable toward the actors and the production itself. Over 2,000 people including a group of Holocaust survivors attended five sold-out performances of the play. Ball State Professor Susan Weintrob also affirmed that events surrounding the performance had sensitized the public at large to the persistence of anti-Semitism.

A Troubling Atmosphere on Campus

In addition to the many acts of vandalism and other overt instances of campus anti-Semitism recorded in the ADL Audit, other developments—subtler but ominous—have contributed to a sense of unease and concern for Jewish students at many American institutions of higher learning.

Holocaust Denial on the Campus: Re-Cycling the Big Lie

Increasingly over the past few years, certain extremist activists and “intellectuals” have sought to exploit the academic tradition of open inquiry to promote their agendas of bigotry, intimidation, and historical distortion. For the Jewish community, no issue on college campuses is more sensitive in this regard than “Holocaust revisionism”—the doctrine which denies the facts of the Holocaust and contends that the Nazi genocide was a Zionist fabrication used to gain sympathy for Jewish causes.

Recent activity by advocates of this myth has contributed to an atmosphere in which students who defend the veracity of the Holocaust are accused of censoring thought and debate. In fact, Holocaust “revisionism” corrupts free inquiry by masking a deeper ideology of anti-Semitism.

Holocaust denial still has virtually no foothold in established university circles. Although a Northwestern University engineering and computer science professor, Dr. Arthur R. Butz, is the author of an early “revisionist” book titled *The Hoax of the Twentieth Century*, most of this literature is produced by individuals with questionable academic credentials and no qualification in history whatsoever. Yet, efforts to promote this lie have intensified.

For example, the most prominent recent distributor of the materials is Bradley R. Smith. He has edited the newsletter of the Institute for Historical Review, which is closely tied to the best-financed and most active anti-Semitic propaganda organization in the country, Liberty Lobby. Smith has been promoting Holocaust “revisionism” on college campuses by taking out full-page advertisements on the subject in student newspapers.

These ads state that Jews were merely confined by the Nazis to special work camps because of their influential role “behind international communism.” Disputing the figure of 6 million deaths, these ads claim that typhus was the principal cause of death among camp inmates, and that gas chambers were “life-saving” fumigation chambers to delouse clothing and prevent disease. Although many campus newspapers, including those at Harvard, Brown, Yale, the University of Texas at Austin, the University of California at Berkeley, the University of Pennsylvania, and the off-campus, conservative *Dartmouth Review*, have refused to print

the ad, others—including those at Duke and the University of Michigan have felt compelled to publish it in the interests of free speech. The Duke history department issued a statement urging recognition of the difference between interpreting history and denying it altogether.

In fact, the constitutional right of extremists to express offensive propaganda places college newspapers under no obligation to accept such ads. As one editor who rejected the Smith ad, Steven M. Markowitz of the University of California at Berkeley, told *The New York Times*, his paper's editorial policy forbade "racist, sexist or violence-inciting advertisements." Moreover, advertisements which dispute historically documented facts undermine the journalistic obligation to the truth—one of the values free speech is supposed to protect. Will ads be published which deny the internment of Japanese Americans, the enslavement of Blacks, or the Stalinist gulag? For now, it is only the fact of the Jews' mass murder that is being placed in the deceptive context of "open debate."

Taking Holocaust-denial onto college campuses is consistent with other efforts to mainstream the hate movement. Having failed to influence American society through violence and intimidation, right-wing extremists now further their agendas by distorting legitimate concerns into vehicles for bigotry, and mask their anti-Semitism through the code words "revisionism" and "historical review."

Given the horrifying legacy of bigotry, there is an additional grim irony in that Holocaust "revisionism" is being expressed by some radical figures on campus. Typically, these activists have masked Holocaust-denial rhetoric as part of a critique of Zionism, as one member of the Islamic Movement of North America demonstrated: "The triangle of power finds the Americans at the top, but they're controlled by the Zionists below. The Americans do not control their own society. . . . There is no bigger terrorist nation in the world than the United States of America. They make Nazi Germany's terror look like nothing." Perhaps even more outrageous is the accusation offered by the anti-Semitic Pan-African revolutionary Kwame Ture (who has told campus audiences that "the only good Zionist is a dead Zionist") in a 1990 speech at the University of Minnesota: ". . . the Zionists joined with the Nazis in murdering Jews, so they would flee to Palestine."

Campus Anti-Semitism/Anti-Zionism: "Political Correctness"

Today, in addition to traditional bigotry, Jewish students bear the brunt of highly-organized anti-Zionist campaigns, reflecting a discomfoting reality: being pro-Israel, it seems, is not politically correct.

Jewish students face a double challenge not encountered by most other campus minorities. First, as this Audit illustrates, they experience traditional anti-Semitism. But the combination of domestic anti-Semitism and international anti-Zionism can

result in unrelenting tension for Jewish students, faculty and administrators.

At some campuses, absurd and offensive distortions of the concepts of "diversity" and "multi-culturalism" have left Jewish students feeling vulnerable and isolated.

A typical illustration: At the University of Washington at Seattle, a proposed compulsory requirement for Humanities and Social Science credits included Ethnic Studies courses. But various arguments were advanced within a student-faculty task force opposing the appropriateness of including Jews as a minority worthy of such study. This, despite the obvious minority status of American Jews and the long history of that virulent form of racism called anti-Semitism.

In short, it seems that many advocates of the laudable concepts of curriculum diversity and multicultural sensitivity do not recognize anti-Semitism as a form of racism.

An unfortunate corollary is the tendency toward rationalizing the prejudices of "people of color," by claiming that racism is defined by the exercise of power over others; since, this slippery logic goes, racial minorities are not "empowered," they are simply not capable of being racist. Thus, anti-Semitism is excused, or even justified.

So, while Jews have excelled in academe and are fully accepted as students, faculty and administrators, at the same time the misuse of "political correctness" by some campus groups often delegitimizes Jewish values and concerns.

Anti-Zionist sentiment in the form of extreme and uninformed hostility to Israel and its supporters has caused consternation for Jewish students on many campuses. During last year's Persian Gulf War, anti-war sentiment was often mixed with anti-Zionist rhetoric. Moreover, some radicals within Black or Arab student groups have expressed anti-Semitism in the guise of anti-Zionism. A blatant example was a January 1991 editorial titled "What Is Zionism?" in the student newspaper at Morehouse College in Atlanta. The editorial stated in part:

Zionism is a well organized and financed international conspiracy which controls the economic and political life of the United States and Europe; using this strangle-hold to steal and colonize the land of Palestinian people. It utilizes terror and murder to achieve its goal. . .

Anti-Semitism of Extremists and Demagogues on College Campuses

Stridently anti-Semitic speakers including Louis Farrakhan, Kwame Ture, rap music figure "Professor" Griff, and Professor Leonard Jeffries, have become popular with Black student unions around the country.

Openly anti-Semitic representatives of the Nation of Islam are also accorded

warm campus receptions including Conrad Muhammad, who spoke at Emory University last year, and Dr. Khalid Abdul Muhammad, who addressed the Columbia Black Students Union at Columbia University in the fall of 1990. (Muhammad referred to Columbia as "Columbia Jewniversity" in "Jew York City.") Another anti-Semitic speaker making the rounds on campus was Abdul Alim Musa, a member of the Islamic Movement of North America. During his appearance at the University of Washington on May 23, 1991 which was co-sponsored by the Black Student Union and the Muslim Student Association, Musa stated that U.S. policy was "controlled by an influential Jewish community, determined to keep minorities repressed and powerless."

At Southern Connecticut State University in 1991, Griff devoted twenty minutes of his lecture to an anti-Semitic diatribe, including the accusation that Jewish doctors injected black babies with AIDS.

There have been other disturbing indications of anti-Semitism by campus black activists as well.

A conflict arose at UCLA in February of 1991 over an anti-Semitic article that was published in *Nommo*, the Black student newspaper. The article was a defense of the content and display of the notorious anti-Semitic tracts *The Protocols of the Learned Elders of Zion* and *The International Jew* at a local function in Los Angeles in October of 1990. The author of the article wrote approvingly that the *Protocols* "present information which some believe confirms the theory that so-called Jews have plotted to control the world economically." When a meeting was arranged between UCLA's Jewish Student Union (which had filed a grievance with the school's communications board) and the staff of *Nommo*, the two Jewish representatives of the Jewish Student Union were jeered and mocked by members of the *Nommo* staff and members of the African Student Union. *Nommo* refused to acknowledge that the article was anti-Semitic.

In May, 1991 *Nommo* published anti-Semitic remarks by Darlene Webb, one of its editors, and a letter to the editor that urged hatred toward Jews. Entertainment Editor Webb's farewell statement was specifically directed at the Jewish news magazine *Ha'Am* and its staff. "Silly rabbits," she wrote, "they think I don't like them because they're Jewish. That's ridiculous. I don't like the majority of them because they're typical cave-dwelling. . . white, zionist (sic) fucks."

The case of Prof. Leonard Jeffries, chairman of the Black Studies Department of the City College of New York, presents another kind of campus concern: anti-Semitism and racism by a faculty member, rather than from student groups. In addition to his infamous off-campus speech in July 1991 which was laced with anti-Semitic conspiracy accusations, Jeffries has promoted in his classes a bizarre theory of Blacks' racial superiority based on their higher level of the skin pigment melanin. Thus, Jeffries and his supporters carry Afro-centrism to an absurd and perverse

extreme.

These anti-Semitic developments illustrate the disturbing fact that many Black student leaders and representatives—in effect, a significant portion of the future leadership of the Black community—repeatedly invite and enthusiastically support speakers who are well-known for their Jew baiting. These student leaders thus offer a respectable platform for anti-Semitic prejudice and ignorance—while generating tension among Jewish students who feel that they are “under siege.”

1991 Skinhead Incidents

Neo-Nazi gangs known as "Skinheads" continued to perpetrate anti-Semitic and other racist crimes in 1991. For the second year in a row the number of "Skinhead" anti-Semitic incidents has dropped. This year there were 62 such incidents reported in 16 states compared to 87 in 21 states the previous year. The high mark year for Skinhead incidents was 1989 when 116 were reported in 24 states.

Still the Skinheads' message of hate, their menacing posture and their violent nature are troubling to all concerned Americans: blacks, Jews, Hispanics, immigrant minorities and gays continue to be targeted by Skinhead-gang members for brutal assault, threats and vandalism.*

Of the 1991 Skinhead-related incidents, 36 were vandalism, including an arson of a Jewish-owned business, and 26 were either harassment or threats directed at Jewish individuals and their institutions.

Police in Pennsylvania and in Connecticut made arrests of four Skinheads in connection with two of the incidents.

Law enforcement authorities in areas where Skinheads visibility is most prominent believe that dozens of additional vandalism incidents—particularly at public urban sites—are most likely the work of Skinheads, but do not contain a specific identifiable Skinhead "signature" such as the name of a gang or certain symbols.

Arrests

During 1991 in 14 states there were 52 individuals arrested in connection with 41 of all reported incidents. Of those arrested, twenty-five—48%—were 21 years of age or older. It is the highest percentage ever noted for that age group. Only once, since 1979, did the percentage for that age group exceed 20% (22% in 1987).

In 1990 110 individuals were reported arrested in 17 states in connection with 59 incidents.

A Look at Some Noteworthy Incidents

The following examples illustrate the considerable news coverage, community response and ADL counteraction which stemmed from several anti-Semitic incidents in 1991:

Brooklyn, New York

A hateful rampage engulfed the Lubavitch Hasidic community of Crown Heights in Brooklyn in August. It was the most dramatic and disturbing anti-Semitic outburst seen in the United States in many years. Tragically, it included the murder of a 29-year-old

*See also ADL Special Report, "Neo-Nazi Skinheads: A 1990 Status Report," and other ADL materials on this subject.

Orthodox Jewish scholar from Australia, Yankel Rosenbaum, who was attacked by a mob of young blacks shouting "Kill the Jew."

Following an accident on August 19 in which a car in the Lubavitch grand rabbi's entourage jumped the curb and slammed into two children, killing one, Gavin Cato, and critically injuring the other, his cousin Angela Cato, many young blacks surged through the streets over the next three days chanting "Arrest the Jews" and "Heil Hitler," attacking Hasidic Jews, smashing property and burning cars. Yankel Rosenbaum was walking along a street when the mob attacked him. Several demagogic speakers added to the hateful atmosphere, feeding the emotional flames with anti-Semitic scapegoating and rumors. New York City Mayor David Dinkins described the killing as a racial murder and a "lynching." One of Rosenbaum's attackers was arrested and charged with murder.

The Crown Heights Emergency Committee is an *ad hoc* group formed in the first days of the disorders in that Brooklyn community. It includes representatives of all major institutions of the community—i.e., schools, synagogues, service agencies, and representatives of the Jewish Community Council, as well as local residents.

The following is a representative sampling of the more than 100 incidents of personal assault, harassment and property damage reported to the Emergency Committee during the 3 day period of rioting, August 19-21, 1991. It should be noted that additional incidents took place sporadically over many weeks following the initial disturbances. In addition, many of these incidents were not reported to the New York Police Department for a variety of reasons—among them the fact that many of the victims were fearful of leaving their homes during a sustained period of serious violence.

Also, many incidents involving anti-Semitic expression may not have involved criminal activity, so that such incidents were not officially recorded as bias-related crimes.

During the August rioting, a total of 23 Jewish individuals suffered some serious bodily injury.

—Two men received serious slash wounds, requiring stitches, caused by thrown bottles;

—Another man beaten by a crowd of youths suffered a broken collarbone and a concussion;

—A child, burned in a street fire, was hospitalized for his injuries and remains in treatment for psychological trauma;

—Another individual was pulled from his car and beaten; another car was surrounded by a mob which smashed the windshield with a concrete block, injuring one passenger.

—Another individual was severely slashed in the face with a broken bottle, requiring reconstructive surgery.

Among the property damage claims recorded by the Crown Heights Emergency Committee were the following:

—On two occasions, bullets have been fired into a local synagogue;

—Virtually every Jewish home on President Street in Crown Heights, as well as a synagogue there, suffered many broken windows.

—Numerous car windows were smashed, and several cars were burned and destroyed. A van belonging to a Yeshiva was burned, and its windows broken. Several

cars were defaced with swastikas.

—Several new, as yet unoccupied condominium buildings suffered arson damage estimated at over \$60,000.

—A swastika was painted on the door of a Jewish family's apartment. Beyond these overt acts of violence, the Crown Heights Jewish community suffered harassment in the form of a sign set up on a street corner reading "The Jew Is The Devil," and a nearby loud-speaker broadcasting viciously anti-Semitic speeches for several days and nights running.

Finally, amid this chaotic and violent atmosphere, a Jewish resident of Crown Heights named Brocha Estrin, a Holocaust survivor from Russia, jumped to her death from her third floor apartment on President Street. According to a leader of the Crown Heights Jewish community, her suicide "was a direct result of fear placed on her by strangers outside of the community using Nazi tactics."

Los Angeles, California

One firebombing, four arsons and four attempted arsons at three different synagogues in the Los Angeles area angered and frightened Jewish residents. The arsons occurred between January and April.

The January arson caused \$250,000 in damage to the synagogue and charred every room except one. ADL participated in a press conference held by the rabbi and issued a statement condemning the act. Additionally, the Los Angeles office along with the Jewish federation cosponsored a conference on Security for Religious Institutions. The Los Angeles City Council and the County Board of Supervisors offered rewards totalling \$35,000 for the arrest of those responsible for the firebombing. A rally was held outside the burned-out synagogue attended by 200 Christians and Jews from throughout Southern California to denounce hate. One Christian minister said: "If you touch one synagogue, you touch every Christian church in America." The local media covered the arson, the press conference, the security conference and the rally.

As noted, this arson was followed by a series of arsons and attempted arson in other areas of Los Angeles. ADL had held another security conference in Ventura County just prior to an arson there, which gave the temple administrators the necessary tools for dealing with vandalism and for handling the media. Also ADL contacted all the local synagogues and alerted them to possible copy-cat incidents, and the local police to increase patrols at all local synagogues. The arsons and attempted arson were also covered fully by the media. In late April, authorities apprehended someone they suspected of involvement in at least some of the arsons.

Boca Raton, Florida

Between the 15th of May and the end of July, Orthodox Jewish congregants of two Boca Raton synagogues were the victims of vandalism, smoke bombs, drive-by shootings, BB gun shootings, verbal assaults and harassment.

ADL worked with local police to get them to respond and to take the incidents seri-

ously and to be aware of and sensitive to the anti-Semitism. ADL consulted with the rabbis and synagogue leadership and security guards were employed. ADL also was able to get regular security patrols by the police and the private Boca Del Mar Development security increased for the protection of the rabbis and congregants. Several of the incidents were covered in the local press.

The Boca Raton Criminal Intelligence officers believe that all the episodes were related and possibly may be related to a Skinhead presence in the general area.

Dayton, Ohio

In November, two synagogues in Dayton were desecrated with spray-painted swastikas and the word "Jude" on the steps of one of the synagogues. Community and religious leaders including representatives from the Muslim community united in support of the Jewish community to denounce the desecrations which occurred on the 53rd anniversary of Kristallnacht. ADL was at the press conference and in contact with the Dayton police to offer assistance. Additionally ADL and the Jewish Federation posted a \$1,000 reward for the arrest and conviction of those responsible for the vandalism.

The local media covered the vandalism and the press conference. The Greater Dayton Christian Council offered to help defray the expenses of cleaning up the synagogues on behalf of the Christian community.

Knoxville, Tennessee

A group of Skinheads harassed and threatened, as well as physically attacked, a local store, its employees and its Jewish owner. Anti-Semitic materials have appeared on a bulletin board in the store, a rock has been hurled through the store window with a note—embellished with a swastika—that said "Don't let Jew bastards run the country," anti-Semitic graffiti was painted on the store's front door and a molotov cocktail was thrown which burned the store's carpet and caused other minor damage.

ADL worked with both the police and store's owner providing information on local Skinheads, urging protection for the store and its owner, and also helping the victim to deal with the effects of these hate crimes. Following the arson, the incidents ceased.

Johnson, Vermont

In the spring of 1991 ADL was informed that an official at Johnson State College in Vermont was made the target of an ongoing campaign of anti-Semitic harassment which included threats and letter of intimidation over a six month period. This official had fired someone for using anti-Semitic epithets against a Jewish woman on campus and for pushing her against a wall. Someone who had read about the ongoing anti-Semitic campaign against the college dean called ADL.

Over the ensuing months, the ADL office was in touch with a Vermont state representative, the Chancellor of the entire Vermont state college system as well as the president

of Johnson State College to stop the harassment against the dean and to get anti-prejudice program up and running on all the Vermont campuses.

Unfortunately the perpetrator(s) were never apprehended; the victim left the Johnson State campus to pursue a Ph.D. Through the efforts of the Chancellor, ADL has been invited to address the presidents of all the Vermont state colleges/universities on responses to hate crimes, training police to properly investigate and pursue perpetrators on campuses, and the status of racism and anti-Semitism on American campuses today. ADL has also shared information about our Campus of Difference program with the Chancellor, as well.

A Resurgence of Politically-Related Incidents

There were 52 anti-Semitic incidents linked by their perpetrators to the Persian Gulf war committed in 14 states across the country from the start of Operation Desert Storm on January 16 through February 14. Another 28 such incidents were reported over the next few months, for a total of 80. Hate mailings and threats included swastikas and statements such as "Death to Jews," "All Jews will burn and die in hell," and "Keep checking for those letter bombs."

At least 20 Jewish institutions received phone and/or mail threats. One California country club frequented by Jews received a phone threat that said: "Kill Every Jew. . . On Behalf of Iraqi people."

Seven cars on a Pennsylvania street were painted with the words: "Death to Israel" and "Saddam Rules." Another incident at Rutgers University in New Jersey showed a missile aimed at a Jewish star with the statement, "Now Jews should die."

One Jewish-owned business in New Jersey received the following phone threat: "Jew Bastard. . . I hope Hussein burns Israel." These incidents represented a continuation of the pattern of Persian Gulf-related anti-Semitic incidents that began soon after the Iraqi invasion of Kuwait in August 1990. ADL noted 25 such episodes in the second half of 1990, as the crisis heated up.

It should be noted that such politically related acts of anti-Jewish animus cannot be considered mere expressions of political criticism. Rather, the violence and bigotry of the incidents cited place them beyond the bounds of legitimate debate. And while the Gulf crisis may be over, the danger of renewed political anti-Semitism in a presidential election year overcast with economic dark clouds will require continuing vigilance.

Conclusion

ADL's 1991 Audit findings represent the fifth consecutive year of significant increases in reported anti-Jewish acts. In the vandalism category (where the 1991 total was slightly ahead of that of 1990) the last five years have seen a jump of over one third. Acts of assault, threat and harassment (which soared by 25% in 1991) over the same period have increased by nearly 200%.

One of the major factors noted in recent years showed continued signs of increase in 1991—the rise of anti-Jewish incidents reported on college campuses. While the rate of increase slowed in 1991, these acts have doubled over the past 4 years. At the same time, another important factor again declined—namely, anti-Semitic acts by neo-Nazi Skinheads. To be sure, the violent crimes of such gangs remain a matter of serious concern; law enforcement agencies, both local and federal, have paid greater attention to this problem in recent years.

In 1991, the most serious forms of anti-Semitic vandalism—bombings, arson, and cemetery desecrations—continued to rise even beyond the high level of 1990. Such serious types of violence had also risen sharply in 1988 and 1989.

In addition, 1991 saw a significant rise in direct physical assaults against Jews; the year's total of 60 doubled that of 1990.

Another factor that had virtually disappeared in 1989 after leaping to prominence in 1988—i.e., anti-Semitic acts linked by their perpetrators to events in the Middle East—again came to wide attention in 1990. Then, in 1991, the Persian Gulf War brought with it a significant number of anti-Semitic acts, largely in the form of hate mail to Jewish organizations, blaming them and the Jewish community for the war or making other hostile statements. Such politically-related anti-Semitism calls for especially intensive monitoring—especially in the election year of 1992, with some candidates ready to scapegoat the Jewish community or engage in Israel-bashing.

Many observers have noted the possible correlation between, on the one hand, a perceived decline in civility, a coarsening of public expression and popular culture, in American society and, on the other, the dramatic rise in bias crime, particularly in the area of personal harassment, which the 1991 Audit figures reflect. This, combined with the pressure associated with a deteriorating American economy during the past year, may well have contributed to the new record-setting levels of anti-Jewish acts.

Yet numbers in themselves cannot tell the whole story. It should be remembered that behind each of the incidents noted here is an individual victim, a family, a community, targeted for intimidation—indeed, a form of terrorism. The lasting pain of scars, emotional as well as physical, inflicted by crimes of hate must not be underestimated.

The nationwide increase in anti-Semitic acts demands an ever more forceful response through those means available to official authorities and community leaders in a democratic society: firm enforcement of appropriate laws, regular and creative educational programming against prejudice, and enhanced public awareness of the nature and dimension of the hate crime phenomenon. ADL's active monitoring efforts, its "A World of Difference" project and its other counteraction and educational programs—including the publi-

cation of this Audit report—are geared toward those goals.

Despite the year's troubling statistics, the overall picture retains some positive features. Forty-six states and the District of Columbia now have statutes dealing with hate crimes, many patterned after ADL model legislation. Numerous states and localities are working to improve communication between community groups and law enforcement authorities, while such officials, increasingly sensitized, are developing better reporting and investigative procedures on bias crimes. The new federal Hate Crime Statistics Act has begun operation. Today, public officials, educational administrators and community leaders are responding more frequently to hate-motivated incidents with sympathy and solidarity toward victims, and a determination to reject and overcome the affront to decency and threat to pluralism presented by acts of gross or violent prejudice.

ADL's Counteraction Program: I

ADL has developed and supported a combination of preventive and counteraction measures over the past twelve years to enable the Jewish and other communities to protect themselves against vandalism and other forms of bias crimes, and to respond effectively should they occur. Major elements of this broad-ranging program are detailed here.

Conferences on Security and Bias Crime

In cooperation with law enforcement authorities, educational and other religious and ethnic organizations, ADL offices on both the local and national levels have carried out programs of public education, emphasizing the need for effective security at houses of worship and other community-based institutions.

In November, ADL in cooperation with the League for Human Rights of B'nai B'rith in Canada, convened the first comprehensive "Conference on Anti-Semitism Around the World." It brought together scholars, journalists, religious and community leaders from the U.S., Canada, Israel, South America, the U.S.S.R., Germany, Poland, and Romania to assess the phenomenon of anti-Semitism in a rapidly changing world. The diverse reports and discussions illustrated that there are common anti-Semitic threads as well as distinctive differences in countries around the world.

Following Abraham H. Foxman's keynote address, the conference heard assessments from columnist Richard Cohen (*Washington Post*) and Professor Julius Lester (University of Massachusetts, Amherst) on anti-Semitism among Black Americans, its root causes, manifestations and ways of dealing with the problem. Research scholars Gary Tobin (Brandeis University) and Leonard Dinnerstein (University of Arizona) addressed the issues, of how to define and analyze attitudes of the public toward Jews; the special characteristics of anti-Semitism in Canada were examined; a number of scholars led by Rumanian Chief Rabbi Moshe Rosen discussed anti-Semitism in a post-communist Eastern Europe and Soviet Union; and former New York City Mayor Edward I. Koch presented the closing speech, "Fighting Anti-Semitism: Where Do We Go From Here." Koch urged that anti-Semites be publicly identified and that "good people everywhere must join the battle to make anti-Semitism unacceptable."

Around the U.S. throughout 1991, ADL-sponsored security and bias-crime conferences on anti-Semitism, security, hate crimes training and extremists have brought together all community elements—institutional leaders, clergy, educators, parents and law enforcement officials—to discuss bias-oriented attacks, and to grapple with the how-to's of stronger security measures. The conferences have also focused on the very difficult questions having to do with the whys of anti-Semitism and racism. ADL—both regionally and nationally—participated in various grass roots anti-bias activities such as the Northwest Coalition against Malicious Harassment, Inc. and the Stockton (New Jersey) State College Human Relations Coalition.

During 1991, ADL regional offices have organized, co-sponsored or participated in more than 40 such meetings, covering the following states: Arizona, California, Colorado,

Connecticut, Delaware, Florida, Georgia, Illinois, Maine (Maine saw its first-ever hate crimes conference held in Portland during May), Massachusetts, Michigan, Minnesota, New York, New Jersey, Ohio, Pennsylvania, Texas and Washington, D.C.

In addition to involvement in these security conferences, ADL staff members have been invited to brief law enforcement officials, at the local, state and federal levels on hate groups, bias crime legislation and other security-related topics throughout the year. For example, ADL's Charles Wittenstein (Southern civil rights coordinator) made a presentation on hate groups and hate crimes at the National Organization of Black Law Enforcement Executives (NOBLE) Georgia chapter meeting. Jodi Goodman (Houston regional office), along with ADL lay leaders made six presentations on hate crimes and who commits them, what the officers' roles are and what the laws are to six police cadet seminars during the year for the Houston police department. Dick Lobenthal (Detroit regional office) lectured the Midwest Gang Investigators Association annual conference on extremist groups.

By coordinating police and local institutional leadership, ADL seminars, conferences and training have established greater community awareness of practical bias-crime prevention measures, stronger support among cooperating agencies and heightened sensitivity by public officials for the citizens they serve. They have also helped community members to understand how important it is to report bias crimes whenever they occur.

Hate Crimes Statistics Act

As part of its overall hate crime countaction effort, ADL has played a leading role in the implementation of the federal Hate Crime Statistics Act. Under the Act, signed into law in April, 1990, the Department of Justice is required to collect data on crimes which "manifest prejudice based on race, religion, sexual orientation, or ethnicity." The Act also requires the Attorney General to publish an annual summary of the findings.

In the year since the data collection mandate was given to the FBI and its Uniform Crime Reporting Section, considerable progress has been made toward effective national implementation of the Act. Working closely with UCR professionals, ADL provided input and expertise. The FBI developed implementing guidelines and a training manual on the Act, documents which have now been distributed to over 16,000 law enforcement agencies around the country.

In early April, ADL represented other human relations organizations which had helped to shape the Bureau's HCSA outreach and education efforts at a press conference announcing the FBI's implementation program. In the Fall, the Bureau began a series of training seminars for state and local law enforcement officials. As we go to print, the FBI has trained over 1000 representatives from law enforcement agencies in almost all of the 315 cities and counties in the U.S. with a population of more than 100,000. ADL resources on hate groups and hate crimes are referred to in the FBI training materials and the League's 17-minute police training video—produced in cooperation with the New Jersey Department of Law and Public Safety—has been highlighted at many of the FBI seminars and at other law enforcement conferences.

Training sessions have featured presentations on the utility of the data from law enforcement officers from areas where hate crime data already are being collected, discussions on the nature of prejudice and the special impact of bias-motivated criminal activity, as well as appearances by human relations groups, including ADL, to describe their expertise in analyzing and responding to hate crime.

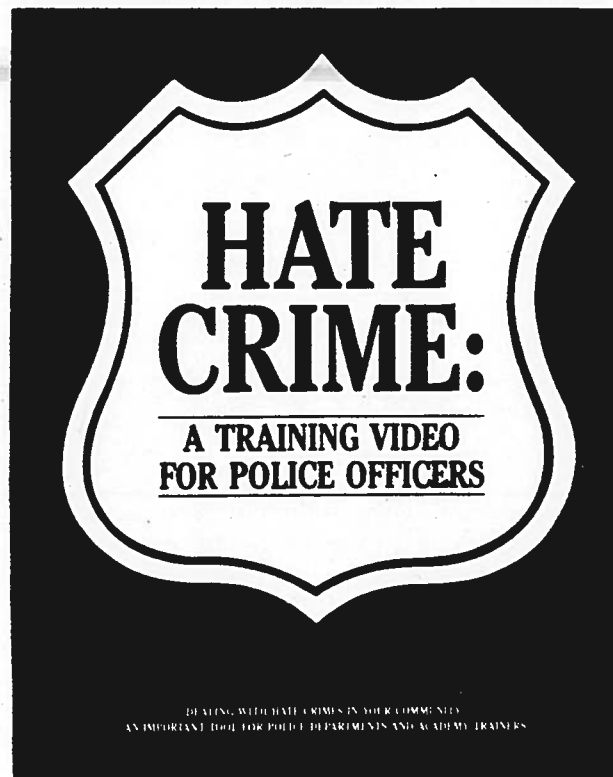
In addition to the FBI conferences, in the past year ADL professionals have participated in panel discussion on hate crimes at a number of meetings of national law enforcement groups, including those sponsored by the International Association of Chiefs of Police, the National Sheriffs Association, the National Association of Black Law Enforcement Executives, the Justice Research and Statistics Association, the Police Executive Research Forum, the International Association of Directors of Law Enforcement Standards and Training, and the Federal Law Enforcement Training Center.

ADL Hate-Crime Police-Training Video

The accuracy and uniformity of bias-crime data collected will only be as good as the "reporters." Thus, effective training for police officials on how to identify, report, and respond to hate crimes will be critical to ensure the success of the important new initiative represented by HCSA.

To help meet this need, ADL has produced a new law enforcement training film on hate crimes, in association with the New Jersey Department of Law and Public Safety. This seventeen-minute video is designed to be shown at police training academies and to individual law enforcement agencies across the country.

The film portrays actual incidents of criminal activity motivated by prejudice. It dramatically illustrates the impact of this type of crime on the victim and the victim's community. Most importantly, the film concisely outlines appropriate law enforcement response—by showing how to identify hate crimes and how to deal with the victim's trauma, and by underlining the importance of treating the criminal action seriously. The film has been endorsed by the International Association of Chiefs of Police, the National Organization of Black Law Enforcement Executives, the Fraternal Order of Police, and the Police Foundation. Former Attorney General Richard Thornburgh wrote the Foreword for the twenty-four page discussion manual for trainers that accompanies the film.



Security Handbook

In 1991 ADL published a convenient pocket size security pamphlet which was based on its 1986 practical counteraction tool: *Security For Community Institutions*. Both the pamphlet and the handbook (first issued in 1984) continue to be widely distributed across the United States. They aim at preventing—and coping with—destructive violence against persons and property, particularly that motivated by religious or racial prejudice. Prepared in cooperation with the Crime Prevention Section of the New York City Police Department, the handbook and the new pamphlet are based on ADL's experience in monitoring and countering anti-Jewish vandalism and other crimes directed at Jews and Jewish-owned property. They reflect the knowledge gained by the League in working closely with law enforcement agencies and in co-sponsoring security conferences and workshops. The ADL security handbook has received endorsements from local and federal law enforcement officials.

Both the handbook and the security pamphlet detail security measures and procedures for community institutions; suggest proper reaction when incidents occur; provide information on security programs carried out by the New York City Police Department's Crime Prevention Section and its Bias Incident Investigating Unit. The handbook provides additional material such as a model form for reporting incidents to local police departments, as well as the text of model state statute developed by ADL as a tool to assist law enforcement agencies in dealing with the problem of vandalism against religious and ethnic institutions. Both the pamphlet and the security handbook have been shared with churches, ethnic organizations and other community groups which are also vulnerable to bias crimes.



Education

The Campus and the Workplace

In 1989, ADL announced the creation of the Mildred and Samuel Levine Institute for College Campus Affairs Programming to combat bias incidents and expressions of all forms of prejudice on campuses. The Institute's first event that November was a national conference on campus prejudice held at the University of Pennsylvania. And the Institute published "Combatting Bigotry on Campus: The Problem and Strategies for Counteraction," a report distributed during the conference. The Institute followed up by also publishing the conference's proceedings.

During 1991 the Mildred and Samuel Levine Institute sponsored a National Teleconference for Jewish students on the Persian Gulf War in February, and an October 1991 conference in Los Angeles called Dealing with Diversity on Campus: Tools for Jewish Students.

During 1990, ADL expanded its efforts against prejudice by adding two new programs: "A Campus of Difference" and "A Workplace of Difference." Both projects are modeled after ADL's seven-year-old educational and media program, "A World of Difference," which trains educators in K-12 in 25 regions across America to combat prejudice by increasing students' awareness of cultural and ethnic diversity and helping them learn to value it. When corporate and academic communities wanted information and guidance in dealing with growing racial, religious and ethnic tensions they were experiencing, ADL created the new programs to respond to those needs.

"A Campus of Difference" has been offered at over 45 campuses across the country including Columbia, NYU Law School, Mt. St. Vincent's College, the University of Texas, Sarah Lawrence College, Syracuse University, Yale University, Morrisville College, SUNY Oneonta, and Occidental College. Also, a video called "Facing Difference: Living Together On Campus," which features college students talking about the problems they have faced in a highly diverse college environment, is now being disseminated widely.

AT&T, Security Pacific Corporation, the New York City Commission on Human Rights, Security Pacific Banks, NA, Southeast Banks, and Bellcore are among those businesses and agencies which have availed themselves of the new model programming of "A Workplace of Difference." Full-day workshops allow participants in both programs to interact and openly discuss issues of diversity, prejudice and discrimination.

Meeting the diversity awareness needs of our nation's law enforcement agencies presented a new training challenge to ADL, leading to the creation of a special training program specifically aimed at law enforcement professionals. The program has been offered at the National FBI academy, the Houston Police Department, the Little Rock Police Department, the Albany Police Department, and other law enforcement agencies.

During 1991 ADL coordinated all of its educational efforts to combat prejudice under one umbrella forming the A WORLD OF DIFFERENCE Institute. In addition to ADL's ongoing programs a number of new initiatives will be taken. Through intensive training programs the Institute will assist educators in their efforts to combat prejudice and to value diversity.

In the Schools

The nation's schools must be included in any program designed to address the problem of bigotry. Confronting and eliminating prejudice should be an educational priority at all levels of education—school systems, individual schools, administrators, teachers, and professional education organizations.

ADL disseminates an extensive catalogue of print and audiovisual materials for schools. Included are books, curricula, and videos on prejudice reduction, multicultural education, the Holocaust, and ways of strengthening our democratic society. This catalogue of materials is utilized by more than 100,000 teachers, administrators, and curriculum developers.

Some examples: On the elementary level—a handbook "Teacher They Called Me A—!" has 69 classroom activities on such topics as Race and Ethnicity, Religion, Differences in Life Styles, Discrimination Against the Disabled, and the Influence of Gender on How Children Are Treated.

On the secondary level of classroom activity manual, "Being Fair and Being Free," teaches students the evils of prejudice in their own lives, in other countries, and in other times.

A large variety of excellent videos such as "Behind the Mask," "Names Can Really Hurt Us," and "Shadows Between Friends" show elementary and/or high school students facing prejudiced behaviors and learning about the evils of prejudice.

An updated series of 12 "Sports Posters" features famous athletes declaring: "If You Really Believe in America, Prejudice is Foul Play."

ADL, the National Urban League, and the League of United Latin American Citizens (LULAC) have formed a coalition to improve education. A major goal for this coalition is to work with schools to help them develop programs that teach the importance of intergroup respect and understanding within our democratic, pluralistic society. The coalition has produced two full-color posters that indicate their educational priorities. One features a "Report Card For Better Schools." The other presents a multicultural group of children and explains: "Learning and Playing Together Today; Living and Working Together Tomorrow." These posters are available for purchase.

In cooperation with the National PTA, ADL has prepared and the National PTA has distributed a pamphlet entitled "What To Teach Your Child About Prejudice and Discrimination." In clear and direct language the pamphlet assists parents and teachers in telling youngsters how to treat others with respect and how to deal with prejudice directed against themselves.

ADL, together with the New York State Department of Education has developed a pamphlet for high school students, "Hate Can Hurt, Let's Stop Prejudice." The pamphlet has been widely utilized to initiate discussions among youngsters on how to deal with prejudiced behaviors.

To meet the threat of anti-Semitism, the ADL has produced two educational videos with discussion guides, plus three pamphlets under the overall title "Confronting Anti-Semitism." The two videos, "A How-To for Jewish Youth" and "A Family Awareness Project"

simulate various scenarios such as anti-Jewish "jokes" and comments, and school policies that conflict with religious observances.

The pamphlets "Guidelines for Jewish Parents" and "Guidelines for the Jewish Community" help parents to aid young victims of hate, and Jewish communities in confronting modern anti-Semitism. The third pamphlet in the series offers "Guidelines for the Christian Community" on facing anti-Semitism.

This multimedia program is designed for schools, religious organizations, and community groups.

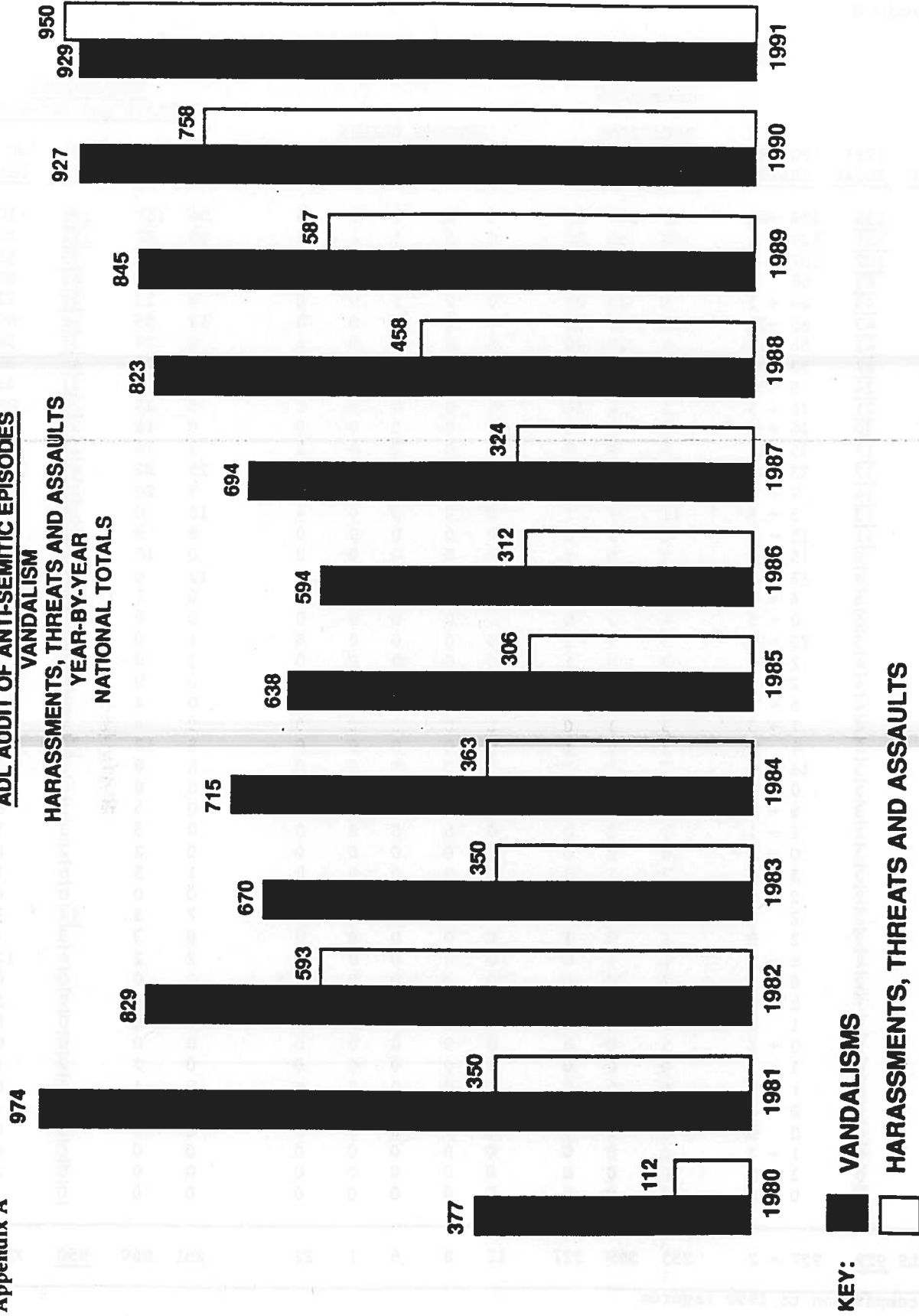
ADL Publications on Hate Crime, Extremism and Prejudice



Appendix A

**ADL AUDIT OF ANTI-SEMITIC EPISODES
VANDALISM**

**HARASSMENTS, THREATS AND ASSAULTS
YEAR-BY-YEAR
NATIONAL TOTALS**



KEY: ■ VANDALISMS

□ HARASSMENTS, THREATS AND ASSAULTS

NOTE: 1979 report recorded only "Anti-Semitic incidents," without separate category of threats, harassments, etc. The 1979 total was 129.

Appendix B

THE 1991 ADL AUDIT OF ANTI-SEMITIC VANDALISM AND OTHER INCIDENTS

STATE	VANDALISM						HARASSMENTS, THREATS and ASSAULTS								
	1991 TOTAL	'90/'91 CHANGE	LOCATIONS			SERIOUS CRIMES				CEM. DES.	TARGETS		1991 TOTAL	'90/'91 CHANGE	
			INST	PVT	PUB	ARS/att	BMB/att	DES.	INST		IND				
NY	254	186 +68	51	147	56	3	0	0	0	4	34	157	191	110 +81	
CA	124	129 - 5	33	58	33	5	5	1	1	0	40	82	122	91 +31	
NJ	102	107 - 5	12	33	57	1	1	0	0	3	18	75	93	55 +38	
MA	68	68 0	8	15	45	0	0	0	0	2	19	50	69	66 + 3	
PA	49	44 + 5	9	13	27	0	2	2	0	0	4	22	26	22 + 4	
FL	43	65 -22	20	11	12	1	0	1	0	0	13	35	48	60 -12	
MD	41	56 -15	4	19	18	0	0	0	0	1	8	29	37	56 -19	
IL	27	33 - 6	8	9	10	0	0	0	0	0	20	26	46	39 + 7	
TX	24	5 +19	5	9	10	0	0	0	0	0	10	11	21	21 0	
CT	21	16 + 5	1	4	16	0	0	0	0	0	3	23	26	23 + 3	
MI	20	16 + 4	7	9	4	1	0	0	0	0	8	16	24	25 - 1	
CO	17	35 -18	5	9	3	0	0	2	0	2	3	18	21	28 - 7	
OH	17	23 - 6	10	2	5	0	0	0	0	1	25	22	47	32 +15	
GA	14	9 + 5	4	4	6	0	0	0	0	0	3	20	23	13 +10	
LA	13	5 + 8	11	1	1	0	0	0	0	4	18	0	18	6 +12	
NM	11	15 - 4	2	1	8	0	0	0	0	0	8	9	17	9 + 8	
VA	9	15 - 6	2	6	1	0	0	0	0	0	0	10	10	8 + 2	
MN	8	17 - 9	3	1	4	0	0	0	0	1	12	9	21	21 0	
TN	6	4 + 2	2	3	1	1	0	0	0	0	0	1	1	1 0	
SC	5	0 + 5	4	1	0	0	0	0	0	0	0	0	0	0 0	
WI	5	23 -18	3	1	1	0	0	0	0	0	1	0	1	4 - 3	
AL	4	2 + 2	3	0	1	0	0	0	0	0	3	0	3	2 + 1	
MS	4	2 + 2	4	0	0	0	0	0	0	4	0	0	0	0 0	
NH	4	5 - 1	3	0	1	0	0	0	0	0	0	2	2	3 - 1	
NC	4	1 + 3	3	1	0	0	0	0	0	0	0	4	4	5 - 1	
WA	4	4 0	3	0	1	0	0	0	0	0	8	12	20	12 + 8	
AZ	3	11 - 8	1	0	2	0	0	0	0	0	6	0	6	8 - 2	
AR	3	0 + 3	2	0	1	0	0	0	0	0	0	0	0	1 - 1	
DC	3	6 - 3	0	1	2	0	0	0	0	0	0	5	5	8 - 3	
MO	3	2 + 1	1	2	0	0	0	0	0	0	0	3	3	1 + 2	
IA	3	0 + 3	0	3	0	0	0	0	0	0	0	2	2	0 + 2	
ME	3	3 0	2	1	0	0	0	0	0	0	1	5	6	1 + 5	
DE	2	2 0	1	1	0	0	0	0	0	0	0	0	0	0 0	
IN	2	2 0	0	2	0	0	0	0	0	0	7	5	12	7 + 5	
KY	2	2 0	1	0	1	0	0	0	0	0	0	3	3	1 + 2	
OR	2	6 - 4	1	1	0	0	0	0	0	0	2	2	4	12 - 8	
RI	2	0 + 2	2	0	0	0	0	0	0	0	0	0	0	0 0	
NE	1	2 - 1	0	1	0	0	0	0	0	0	6	3	9	3 + 6	
UT	1	1 0	1	0	0	0	0	0	0	0	0	0	0	0 0	
VI	1	0 + 1	1	0	0	0	0	0	0	0	0	0	0	0 0	
AK	0	1 - 1	0	0	0	0	0	0	0	0	0	2	2	1 + 1	
KS	0	1 - 1	0	0	0	0	0	0	0	0	0	1	1	0 + 1	
NV	0	0 0	0	0	0	0	0	0	0	0	1	0	1	1 0	
VT	0	0 0	0	0	0	0	0	0	0	0	0	5	5	0 + 5	
*HA	0	1 - 1	0	0	0	0	0	0	0	0	0	0	0	0 0	
*ID	0	2 0	0	0	0	0	0	0	0	0	0	0	0	2 0	
*MT	0	0 0	0	0	0	0	0	0	0	0	0	0	0	1 0	
1991															
TOTALS	929	927 + 2	233	369	327	12	8	6	1	22	281	669	950	758 +192	

*For comparison to 1990 figures

State Hate Crimes Statutory Provisions

	AL	AK	AZ	AR	CA	CO	CT	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO	
Bias-Motivated Violence and Intimidation					✓	✓	✓		✓			✓	✓		✓						✓	✓	✓	✓	✓	✓
Civil Action					✓	✓	✓		✓			✓	✓		✓							✓	✓			✓
Criminal Penalty					✓	✓	✓		✓			✓	✓		✓							✓	✓	✓	✓	✓
Race, Religion, Ethnicity					✓	✓	✓		✓			✓	✓		✓							✓	✓	✓	✓	✓
Sexual Orientation					✓		✓		✓				✓		✓							✓		✓		
Gender					✓		✓								✓								✓	✓		
Other ¹					✓		✓						✓		✓											
Institutional Vandalism	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Cross Burning or Religious Symbol Burning					✓		✓		✓	✓		✓		✓							✓					
Interference with Religious Worship					✓				✓			✓										✓	✓	✓	✓	✓
Wearing of Masks, Hoods & Disguises							✓		✓	✓		✓						✓					✓	✓		
Data Collection²			✓		✓		✓		✓			✓	✓		✓						✓	✓		✓		
One or More Sections Based on/ Similar to ADL Model			✓		✓	✓	✓		✓			✓	✓		✓			✓			✓	✓	✓	✓	✓	✓

¹ "Other" includes mental or physical disability or handicap, (CA, CT, IL, IA, OK, WA, WV, WI), political affiliation (CA, IA, WV) and age (CA, VT).

² States with data collection statutes including sexual orientation are CA, CT, FL, MD, MA, MN, OR.

	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
Bias-Motivated Violence and Intimidation	✓		✓	✓	✓		✓		✓	✓	✓	✓	✓	✓			✓			✓	✓	✓	✓	✓	✓
Civil Action										✓	✓	✓	✓	✓						✓	✓	✓	✓	✓	✓
Criminal Penalty	✓		✓	✓	✓		✓		✓	✓	✓	✓	✓	✓			✓			✓	✓	✓	✓	✓	✓
Race, Religion, Ethnicity	✓		✓	✓	✓		✓		✓	✓	✓	✓	✓	✓			✓			✓	✓	✓	✓	✓	✓
Sexual Orientation			✓	✓	✓						✓									✓				✓	
Gender				✓			✓		✓											✓				✓	
Other											✓									✓		✓	✓	✓	✓
Institutional Vandalism	✓		✓		✓	✓		✓		✓	✓	✓	✓	✓			✓	✓				✓	✓	✓	✓
Cross Burning or Religious Symbol Burning	✓				✓			✓						✓	✓		✓			✓	✓	✓			
Interference with Religious Worship			✓			✓	✓	✓			✓			✓	✓	✓								✓	
Wearing of Masks, Hoods & Disguises								✓		✓	✓			✓							✓		✓	✓	✓
Data Collection						✓ ³					✓	✓	✓	✓				✓			✓				
One or More Sections Based On/ Similar to ADL Models	✓		✓	✓	✓		✓		✓	✓	✓	✓	✓	✓			✓	✓		✓	✓	✓	✓	✓	✓

³ Executive Directive from N.J. Att. Gen.

* The **District of Columbia** has laws regarding bias-motivated violence and intimidation including provisions for civil action and criminal penalties (sexual orientation is included); institutional vandalism; cross burning; interference with religious worship; and data collection; and its legislation is similar to the ADL model.

Appendix E

Listing of College Campuses Reporting Anti-Semitic Incidents

CA	5/27/91	Claremont College Hillel, phone threat
CA	8/91	Claremont College Hillel, phone threat
CA	9/91	Cal. State-Northridge Hillel, vandalism
CA	9/12/91	San Francisco City College, vandalism
CO	2/11/91	Univ. of Colorado-Boulder, vandalism
CO	11/20/91	Univ. of Colorado-Boulder Hillel, phone threat
CT	2/6/91	Trinity College-Hartford, harassment
CT	2/22/91	Southern Conn. Univ. New Haven, harassment
CT	8/10/91	Yale Univ.-New Haven, 3-vandalism—1 harassment
CT	9/11/91	Wesleyan Univ.-Middletown, 5-vandalism—1 harassment
CT	11/9/91	Univ. of Hartford, vandalism
FL	4/16/91	Florida Atlantic Univ., vandalism
FL	10/17/91	Univ. South Florida-Tampa, vandalism
FL	11/4/91	Univ. of Miami Hillel, phone threat
GA	1/91	Univ. of Georgia-Athens, harassment
GA	1/30/91	Morehouse College-Atlanta, harassment
GA	3/23/91	Emory Univ.-Atlanta, vandalism
IL	2/6/91	Northwestern Univ.-Chicago Hillel, phone harassment
IL	5/29/91	Spertus College-Chicago, harassment
IL	6/10/91	Governors State Univ.-Univ. Park, harassment
IL	9/91	Northwestern Univ., harassment
IL	11/21/91	Univ. of Illinois-Champaign Hillel, vandalism
IN	1/24/91	Univ. of Indiana-Bloomington Hillel, harassment
IN	7/91	U. Indiana-Bloomington Jewish frats, 2-vandalism
IN	10/91	Ball State Univ.-Muncie, 3-harassment
IA	8/91	Univ. of Iowa-Iowa City, vandalism
IA	10/30/91	Grinnel College-Grinnel, vandalism
KS	5/10/91	Wichita State Univ., harassment
MD	1/15/91	Univ. of Maryland-College Park, harassment
MD	2-4/91	Frostberg State Univ., 1-vandalism 1-harassment
MD	5/17/91	Baltimore Culinary College, harassment
MD	6/2/91	Univ. of Maryland-College Park, vandalism
MA	1/91	Wheaton College-Attleboro, vandalism
MA	2/91	Brandeis University-Boston, harassment
MA	3-6/91	Harvard Univ.-Boston, 5-vandalism
MA	11/1/91	Smith College-Northampton, vandalism
MA	11/91	Wellesley College, 2-vandalism

MI	5/91	Oakland Univ. Rochester, vandalism
MI	11/91	Univ. of Michigan-Ann Arbor, harassment
MN	2/4/91	Univ. of Minnesota-Minneapolis, harassment
MN	6/15/91	Univ. of Minnesota-Minneapolis, vandalism
MN	10/15/91	Univ. of Minnesota-Minn. Hillel, harassment
NJ	1-10/91	Rutgers Univ.-New Brunswick, 3-vandalism
NJ	5/14/91	Rutgers Univ.-Livingston, vandalism
NJ	5/91	Rutgers Univ.-Busch, 3-vandalism
NJ	2/5/91	Monmouth College, harassment
NJ	10/91	William Patterson College, 2-vandalism
NM	1-3/91	Univ. of New Mexico-Albuquerque, 1-harassment 1-vandalism
NM	1/29/91	St. Johns College-Santa Fe, harassment
NY	7/91	Brooklyn College, harassment
NY	10/30/91	Queens College, harassment
NY	9-11/91	Cornell Univ.-Ithaca, 2-harassment
NY	11/17/91	Barnard College-NYC, vandalism
NC	11/91	Duke University, harassment
NC	11/25/91	Guilford College-Ashville, vandalism
OH	8/30/91	Ohio State Univ.-Columbus Hillel, harassment
OH	12/91	Ohio State Univ.-Columbus, assault
OH	10/6/91	Univ. of Cincinnati Hillel, 2-vandalism
OH	12/5/91	Ohio Wesleyan-Delaware, harassment
PA	2/91	Univ. of Pittsburgh, 2-vandalism
PA	9/9/91	Univ. of Pennsylvania, vandalism
PA	10/13/91	Penn State Univ., vandalism
PA	11/16/91	Keystone Jr. College-La Plume, vandalism
TN	7/4/91	Univ. of Tennessee-Knoxville Hillel, vandalism
TN	10/91	Univ. of Tennessee-Knoxville, 1-vandalism 1-harassment
TX	11/27/91	Univ. of Texas-Austin, assault
TX	12/91	Univ. of Texas-Austin, vandalism
VT	3-5/91	Johnson State College-Johnson, 5-harassment
WA	1/31/91	Central Univ. Washington-Ellensburg, harassment
WI	2/12/91	Univ. of Wisconsin-Milwaukee, vandalism

ADL AUDIT OF ANTI-SEMITIC INCIDENTS
REPORT FORM

Report # _____
Date _____
Submitted _____
Staff _____
Member _____

Regional
Office _____

Date of Incident / /
mo. day yr.

City _____

State _____

1. Type Of Incident:

A. VANDALISM

(circle) GRAFFITI, ARSON, ARSON-ATTEMPT, BOMBING, BOMBING-ATTEMPT,
CEMETERY DESECRATION, OTHER

JEWISH INSTITUTION (name/location) _____

PRIVATE JEWISH-OWNED PROPERTY (name/location) _____

PUBLIC LOCATION _____

Other Details (wording of graffiti, damage estimate, etc.) _____

B. HARASSMENT, THREAT OR ASSAULT

INSTITUTION (name/location) _____

INDIVIDUAL (name/location) _____

(circle) PHONED, MAILED, VERBAL, PHYSICAL, OTHER

Other Details (wording of threat or slur, injuries, etc.) _____

2. Was incident reported to police? Yes No

3. Arrests Yes No

Names, Ages, Descriptions, Case Status, etc. _____

4. Did incident receive media coverage? Yes No (attach examples)

5. Community response? Describe: _____

RESEARCH DEPT. USE
Received _____
Included _____
Excluded _____
Pending _____

Anti-Defamation League of B'nai B'rith

NATIONAL OFFICE 823 United Nations Plaza, New York, NY 10017	(212) 490-2525
WASHINGTON OFFICE 1100 Connecticut Avenue, N.W. (Suite 1020), Washington, D.C. 20036	(202) 452-8320
REGIONAL OFFICES	
ALBUQUERQUE 215 Central Avenue, N.W., Albuquerque, NM 87102	(505) 843-7177
ARIZONA The First Interstate Tower, 3550 North Central Avenue (Suite 914), Phoenix, AZ 85012	(602) 274-0991
ATLANTA (Southeast) 3384 Peachtree Road, NE (Suite 660), Atlanta, GA 30326	(404) 262-3470
BOSTON (New England) 1 Lincoln Plaza, (Suite 301), Boston MA 02111	(617) 330-9696
CHICAGO (Greater Chicago/Wisconsin) 309 West Washington, (Suite 750), Chicago, IL 60606	(312) 782-5080
CLEVELAND (Northern Ohio) 505 Terminal Tower, Cleveland, OH 44113	(216) 579-9600
COLUMBUS (Ohio/Indiana/Kentucky) 529 E. Engler Street, Columbus, OH 43215	(614) 621-0601
CONNECTICUT 419 Whalley Avenue, New Haven, CT 06511	(203) 787-4281
DALLAS (Northwest Texas/Oklahoma) 12800 Hillcrest Road (Suite 219), Dallas, TX 75230	(214) 960-0342
D.C. (D.C./MARYLAND) 1100 Connecticut Avenue, N.W. (Suite 1020), Washington, D.C. 20036	(202) 452-8310
DENVER (Mountain States) 300 South Dahlia Street (Suite 202), Denver, CO 80222	(303) 321-7177
DETROIT (Michigan) 4000 Town Center (Suite 420), Southfield, MI 48075-1405	(313) 355-3730
HOUSTON (Southwest) 4635 Southwest Freeway (Suite 400), Houston, TX 77027	(713) 627-3490
LOS ANGELES (Pacific Southwest) 10495 Santa Monica Boulevard, Los Angeles, CA 90025	(213) 446-8000
MIAMI (Florida) 150 SE Second Avenue (Suite 800), Miami, FL 33131	(305) 373-6306
MINNEAPOLIS (JCRC-ADL of Minnesota/the Dakotas) 1111 3rd Avenue South, Minneapolis, MN 55404-1000	(612) 338-7816
NEW JERSEY 741 Northfield Avenue, West Orange, NJ 07052	(201) 669-9700
NEW ORLEANS (South Central) 535 Gravier Street (Suite 501), New Orleans, LA 70130	(504) 522-9534
NEW YORK CITY 823 U.N. Plaza, New York, NY 10017	(212) 490-2525
NEW YORK STATE P.O. Box 508, Troy, NY 12181	(518) 271-6011/6012
OMAHA (Plains States) 333 South 132 Street, Omaha, NE 68154	(402) 333-1303
ORANGE COUNTY 2700 North Main Street (Suite 500), Santa Ana, CA 92701	(714) 973-4733
PALM BEACH COUNTY The Commerce Center, 324 Datura Street (Suite 223), West Palm Beach, FL 33401	(407) 832-7144
PHILADELPHIA (Eastern Pennsylvania/Delaware) 230 South Broad Street 20th Floor, Philadelphia, PA 19102	(215) 735-4267
PITTSBURGH (Western Pennsylvania/West Virginia) 1101 Porter Building, 601 Grant Street, Pittsburgh, PA 15219	(412) 471-1050
SAN DIEGO 7851 Mission Center Court (Suite 320), San Diego, CA 92108	(619) 293-3770
SAN FRANCISCO (Central Pacific) 121 Steuart Street, (Suite 401), San Francisco, CA 94105	(415) 546-0200
SEATTLE (Pacific Northwest) Plaza 600 Building, Suite 720, 600 Stewart Street, Seattle, WA 98101	(206) 448-5349
ST. LOUIS (Missouri/Southern Illinois) 10926 Schuetz Road, St. Louis, MO 63146	(314) 432-6868
VIRGINIA/NORTH CAROLINA 6330 Newtown Rd., Suite 326, Norfolk, VA 23502	(804) 455-9002
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JERUSALEM 30 King David Street, Jerusalem, Israel 94101	011-972-2-251-171
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COMMITTEES

JUDICIARY, CHAIRMAN
MAJORITY POLICY COMMITTEE

House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

AGENDA

PUBLIC HEARING ON HB 1353 HATE CRIMES

10:00 AM Room 140 Main Capitol April 22, 1992

Introductory Remarks by Prime Sponsor Babette Josephs

Claudia Brenner, Survivor
Appalachian Trail Attack, Adams County

Rita Addressa, Director
Philadelphia Lesbian & Gay Task Force

Michael Geer, Director
Pennsylvania Family Institute

Scott Feigelstein, Exec. Dir. Rev. Mary Merriman
Anti Defamation League Lancaster County
of B'Nai B'rith

Alan M. Rubenstein
District Attorney
Bucks County

Philadelphia Bar Association
Susan St. Antoine, Esq.

Anthony R. D'Augelli, Ph.D.
Asst. Professor of Human Development
Penn State University

Jackie Schulze, President
Harrisburg Chapter of Parents and Friends of Lesbians and Gays

Carl H. Summerson,
Hearing Examiner
PA Human Relations Commission

Kevin E. Vaughan, Exec. Dir.
Phila Commission on Human Relations
Mayor's Commission on Sexual Minorities



THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1353 Session of
1991

INTRODUCED BY JOSEPHS, MURPHY, STURLA, HARPER, DALEY,
RICHARDSON, ROBINSON, ITKIN, DeWEESE, HECKLER, PISTELLA,
ROEBUCK, COHEN, BISHOP, VEON, EVANS, NAHILL, JAMES, KUKOVICH,
ACOSTA, CARN, PRESTON, RITTER, MICHLOVIC, WAMBACH AND TRICH,
MAY 8, 1991

REFERRED TO COMMITTEE ON JUDICIARY, MAY 8, 1991

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further defining the offense of ethnic
3 intimidation to include sexual orientation; and changing the
4 designation of the offense.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Section 2710 of Title 18 of the Pennsylvania
8 Consolidated Statutes is amended to read:

9 § 2710. Ethnic intimidation and other bias-related offenses.

10 (a) Offense defined.--A person commits [the offense of
11 ethnic intimidation] an offense under this section if, with
12 malicious intention toward the actual or perceived race, color,
13 religion [or], national origin or sexual orientation of another
14 individual or group of individuals, he commits an offense under
15 any other provision of this article or under Chapter 33
16 (relating to arson, criminal mischief and other property
17 destruction) exclusive of section 3307 (relating to

1 institutional vandalism) or under section 3503 (relating to
2 criminal trespass) or under section 5504 (relating to harassment
3 by communication or address) with respect to such individual or
4 his or her property or with respect to one or more members of
5 such group or to their property.

6 (b) Grading.--An offense under this section shall be
7 classified as a misdemeanor of the third degree if the other
8 offense is classified as a summary offense. Otherwise, an
9 offense under this section shall be classified one degree higher
10 in the classification specified in section 106 (relating to
11 classes of offenses) than the classification of the other
12 offense.

13 (c) Definition.--As used in this section, ["malicious
14 intention" means the] the following words and phrases shall have
15 the meanings given to them in this subsection:

16 "Malicious intention." The intention to commit any act, the
17 commission of which is a necessary element of any offense
18 referred to in subsection (a) motivated by hatred toward the
19 race, color, religion [or], national origin or sexual
20 orientation of another individual or group of individuals.

21 "Sexual orientation." Heterosexuality, homosexuality or
22 bisexuality.

23 Section 2. This act shall take effect in 60 days.

An Epidemic of Stigma

Public Reactions to AIDS

Gregory M. Herek and Eric K. Glunt
Graduate School of the City University of New York

ABSTRACT: *The AIDS epidemic has been accompanied by intensely negative public reactions to persons presumed to be infected by the human immunodeficiency virus (HIV). In this article, we define such reactions as AIDS-related stigma. We discuss two major sources of this stigma: the identification of AIDS as a deadly disease and the association of AIDS in the United States with already stigmatized groups, especially gay men. We describe some of the social and psychological processes that contribute to AIDS-related stigma and offer suggestions for eradicating stigma through public policy and individual education.*

A Massachusetts teacher was ordered to take a medical leave and then to resign when rumors circulated that he was being treated for AIDS. After demonstrating to school officials that his medical problems were associated with a blood disorder not related to AIDS, he was allowed to return to teaching. Threatening phone calls and harassment continued, however, and he felt compelled to take a leave of absence (Shipp, 1986).

In White Plains, New York, a mail carrier refused to deliver mail to an AIDS Task Force office for two weeks because he feared catching the disease ("Mail Service Ordered to AIDS Center," 1987).

In Arcadia, Florida, three brothers tested positive for human immunodeficiency virus (HIV). After word spread of their infection, their barber refused to cut the boys' hair, and the family's minister suggested that they stay away from Sunday church services. Eventually, the family's house was burned down (Robinson, 1987).

In the *American Spectator*, Christopher Monckton (1987) wrote: "Every member of the population should be blood tested every month to detect the presence of antibodies against [AIDS], and all those found to be infected with the virus, even if only as carriers, should be isolated compulsorily, immediately, and permanently" (p. 30).

In 1987, 1,042 incidents of harassment against gay people were reported to the National Gay and Lesbian Task Force (NGLTF) that involved references to AIDS; two thirds of the local groups who reported incidents to NGLTF expressed the belief that fear and hatred associated with AIDS have fostered antigay violence (NGLTF, 1988).

In a 1986 Op/Ed piece in the *New York Times*, William F. Buckley, Jr., proposed that "everyone detected with AIDS should be tattooed in the upper forearm, to protect common-needle users, and on the buttocks, to prevent the victimization of other homosexuals" (p. A27).

Understanding the AIDS epidemic in the United States requires understanding the phenomenon of widespread, intensely negative reactions to HIV-infected persons. These negative reactions have shaped the behavior of infected individuals and have limited the effectiveness of prevention efforts.

Persons infected with HIV must bear the burden of societal hostility at a time when they are most in need of social support. Attempts to avoid such hostility may compromise individuals' health: Fear of being harassed, of facing job discrimination, and of losing insurance coverage, for example, deters individuals from being tested for HIV infection and seeking early treatment for symptoms.

At a societal level, the opprobrium attached to AIDS directly interferes with research and public health efforts to monitor the epidemic by, for instance, discouraging physicians from reporting cases (King, 1986). Further, prevention efforts are hampered by social disapproval of behaviors that can transmit AIDS. The Centers for Disease Control, for example, withheld funding for educational programs that included explicit instructions for engaging in safe sex behavior (Panem, 1987), and the U.S. Senate has twice endorsed an amendment by Jesse Helms (R-NC) that would prohibit federal funds for AIDS education materials that "promote or encourage, directly or indirectly, homosexual activities" ("Limit Voted on AIDS Funds," 1987). By constricting the scope of risk-reduction education, such actions contribute to the epidemic's spread.

In the present article, we refer to these and similar phenomena as *AIDS-related stigma*. Under this rubric, we include all stigma directed at persons perceived to be infected with HIV, regardless of whether they actually are infected and of whether they manifest symptoms of AIDS or AIDS-related complex (ARC). We purposely avoid using terms that imply individual pathology, such as "AIDS phobia" or "AIDS hysteria." Instead, we base our analysis on the assumption that AIDS-related stigma is a socially constructed reaction to a lethal illness that has been most prevalent among groups that already were targets of prejudice.

A stigma is a mark of shame or discredit. The focus of social psychological research on stigma is not on the mark itself, however, so much as on the social relationships in which a particular mark is defined as shameful or discrediting (Goffman, 1963). In line with this ap-

jective of daily life (the "natural attitude") is to construct experiences that avoid this fundamental anxiety. AIDS-related stigmatization represents such a construction: Healthy individuals distance themselves from death by defining the illness as an affliction of others. Early news reports about AIDS "risk groups," for example, permitted most Americans (those who were not gay men, intravenous (IV) drug users, Haitians, or hemophiliacs) to see themselves as removed from the epidemic and protected from it.

With some serious illnesses, such attempts to maintain the natural attitude lead to attributions of individual character flaws to diseased persons. Cancer patients, for example, are portrayed as repressing emotions or lacking the will to be well (Sonag, 1977). Although considerable victim-blaming on the basis of individual characteristics has also occurred with AIDS, blaming the social groups to which most Americans with AIDS belong has been much more common. We turn now to this second source of AIDS-related stigma.

AIDS and Preexisting Stigma

Because of the characteristics it displays as an illness, AIDS probably would have been stigmatized to some extent regardless of whom it infected. Through an accident of history, however, AIDS in the United States has been largely a disease of already stigmatized groups. Most adults diagnosed with AIDS in this country are men who were infected through homosexual behavior (63%). The second most common route of HIV transmission in the United States has been through sharing intravenous needles for illegal drug use (19%). Another 7% of cases fit both categories. Additionally, Blacks and Hispanics are disproportionately represented in all transmission categories except hemophilia (Centers for Disease Control, 1988).

In short, the American epidemic of AIDS has been socially defined as a disease of marginalized groups, especially gay men. Consequently, the stigma attached to AIDS as an illness is layered upon preexisting stigma. The result is that as public perceptions of AIDS become inextricably tied to perceptions of the groups among which it is most prevalent, the stigma of disease and death become attached to the groups themselves. AIDS has become a symbol: Reactions to AIDS are reactions to gay men, drug users, racial minorities, or outsiders in general. This linkage of AIDS with stigmatized groups has been an integral part of the history of the epidemic. A name initially proposed for the syndrome was Gay-Related Immune Deficiency (GRID) (Shilts, 1987a), and press coverage has referred to AIDS as the "gay plague" (Vertmeulen, 1982). Indeed, little press coverage of AIDS occurred until 1983, when it was discovered that individuals outside of the "risk groups" of homosexual and bisexual men and IV drug users could be infected (Baker, 1986; Panem, 1987). Shilts (1987a) pointed out that the *New York Times* published only six stories about AIDS during 1981 and 1982, none of them on the front page. In contrast, the *Times* printed 54 stories in 1982 about

This article is dedicated to the memory of Richard S. Berzok. We thank Carolyn Talar and Suzanne Quiellette Kobasa for helpful comments on the manuscript and Anne Forsglieri for her valuable technical assistance. Correspondence concerning this article should be addressed to Gregory M. Herek, CUNY Psychology Graduate Program, 33 West 42 St., New York, NY 10036-8099.

¹ Unless otherwise indicated, data from public opinion polls were obtained through the Roper Center, University of Connecticut at Storrs. We thank Professor Bliss Siman of Baruch College, City University of New York, for her assistance in securing these data.

As an illness, AIDS manifests the characteristics of stigma described by Jones et al. (1984). First, it is an incurable and progressive condition and, because it is transmissible, people infected with HIV are often perceived as placing others at risk; survey data show that almost all Americans have heard of AIDS and that most know it is transmitted through blood and sexual contact (Singer, Rogers, & Coran, 1987). Second, people with HIV infection often are blamed for causing their condition through risky behavior; approximately half of Americans agree that "most people with AIDS have only themselves to blame" (Gallup poll, July 10, 1987) and that "in general, it's people's own fault if they get AIDS" (Gallup poll, October 23, 1987). Finally, in face-to-face encounters, the symptoms of AIDS-related illnesses are frequently visible to others, often disfiguring, and likely to disrupt an individual's social interactions.

Like other life-threatening illnesses, AIDS confronts even the noninfected with the reality of death, provoking what Schutz (1962) described as the "fundamental anxiety." When people interact with a person with AIDS, hear AIDS discussed, or simply read about it in a newspaper, they are reminded of their own mortality; their day-to-day sense of reality is challenged in a profoundly disturbing way. According to Schutz, the pragmatic ob-

Illness and Stigma

approach, we are concerned here with the social psychological processes through which people are discredited when they are perceived to be infected with HIV. We will briefly examine individual attitudes and behaviors that express fear or hostility toward persons with AIDS, as well as institutional policies that impose hardships on particular individuals or groups without slowing the spread of AIDS. We also will offer suggestions for combating stigma at both the individual and institutional levels.

Sources of Stigma

AIDS is now perceived as a lethal disease that can be transmitted by specific behaviors and is most prevalent among gay men and users of intravenous drugs. This definition of the syndrome results in a dual stigma: first, from identification of AIDS as a serious illness; second, from the identification of AIDS with persons and groups already stigmatized prior to the epidemic (Des Jarlais, Friedman, & Hopkins, 1985; Herek, 1984).

the discovery of poisoned Tylenol capsules in Chicago in October of that year; four of those stories were on the front page. Seven people died from poisoned Tylenol; of the 634 Americans who had been diagnosed with AIDS by October 5, 1982, 260 had died. Shilts argued that the epidemic was virtually ignored by the nongay media because it was merely a "story of dead and dying homosexuals" (p. 191).

AIDS-related stigma interacts with preexisting stigma in complex ways. If a diagnosis of AIDS or ARC reveals a man's previously hidden homosexuality, for example, a double stigma immediately results. Using Goffman's (1963) terminology, being identified as a person with AIDS transforms a man from discreditable (secretly gay) to discredited (publicly gay). Such marking of individuals as outsiders (because they are gay or because they have AIDS) can increase a community's solidarity by clearly demarcating its boundaries (Durkheim, 1895/1982). The frequent use of the phrase "the general public" as a counterpart to "risk groups" conveys this distinction between in-group and out-group; gay men, IV drug users, and their sexual partners are not part of "the general public." Similarly, persons who did not contract AIDS through homosexual behavior or drug use have often been categorized as "innocent victims" (Albert, 1986). For example, a *Newsweek* caption early in the epidemic described a teenage hemophiliac and an infant with AIDS as "the most blameless victims" ("The Social Fallout From an Epidemic," 1985). The opposite, of course, is a "blameable victim," that is, one who was infected with HIV during stigmatized behavior.

Because of its prevalence among already stigmatized groups, AIDS can easily be exploited for ideological and political purposes. A Houston mayoral candidate (and former mayor), for example, publicly joked that his solution to the city's AIDS problem would be to "shoot the queers" (Shilts, 1987b). Such political uses of AIDS, in turn, heighten the stigma associated with the disease and the groups most affected by it.

The definition of AIDS as an ideological and political issue is exemplified in the following comments by Republican columnist Patrick Buchanan (1987):

There is one, only one, cause of the AIDS crisis—the willful refusal of homosexuals to cease indulging in the immoral, unnatural, unsanitary, unhealthy, and suicidal practice of anal intercourse, which is the primary means by which the AIDS virus is being spread through the "gay" community, and, thence, into the needles of IV drug abusers [and to others]. (p. 23)

Buchanan further suggested that the

Democratic Party should be dragged into the court of public opinion as an undicted conspirator in America's AIDS epidemic [for] seeking to amend state and federal civil rights laws to make sodomy a protected civil right, to put homosexual behavior, the sexual practice by which AIDS is spread, on the same moral plane with being female or being black. (p. 23)

In his attempt to link AIDS with the opposition political party and with homosexual behavior exclusively, Buchanan not only made illness a politicized issue, he

also ignored the worldwide epidemic. AIDS is overwhelmingly an epidemic of heterosexual transmission (Institute of Medicine, 1986).

The federal government's initial slow response to AIDS can be understood in part as a response to this politicization of stigma. Although other organizational variables also were important (Panem, 1987), antigay sentiment appears to have played an important role in the Reagan administration's failure to confront the epidemic (Shilts, 1987a).

Other groups also have responded to AIDS on the basis of its association with stigmatized sexuality. The Catholic Church, for example, argued against civil rights protection for gay people in a statement that was widely interpreted as referring to AIDS: "Even when the practice of homosexuality may seriously threaten the lives and well-being of a large number of people, its advocates remain undeterred and refuse to consider the magnitude of the risks involved" (Congregation for the Doctrine of the Faith, 1986, p. 8). AIDS was equated with homosexual behavior and was used to justify antigay discrimination and hostility.

We have cited examples of AIDS-related stigma occurring at the level of groups and institutions. The construction of AIDS at this level helps to shape individual beliefs, attitudes, and behaviors related to the epidemic.

The Social Psychology of AIDS-Related Stigma

We have mentioned some of the social psychological processes related to stigma (e.g., Goffman, 1963; Schutz, 1962). In this section, we will explore these processes more extensively, with special attention to insights contributed by psychologists.

AIDS as Illness: Stigma, Anxiety, and Decision Making

AIDS evokes anxiety because of its association with death. Research on risk assessment (e.g., Slovic, 1987) further illuminates the characteristics of AIDS that evoke anxiety: It is a new illness that is uniformly fatal; it is caused by an unseen infectious agent that can remain latent in the body for an unknown period of time; the epidemic is perceived as both out of control and potentially catastrophic. Because of these characteristics, individual judgments and decisions associated with AIDS are often made under conditions of anxiety and are thus likely to be defective.

Anxiety evoked by AIDS, for example, may lead people to believe that not enough time remains to weigh carefully the strengths and weaknesses of various alternative solutions to an AIDS-related problem (e.g., whether to vote for a political candidate who advocates mandatory HIV testing, how to respond to a coworker with AIDS, whether to send one's child to a school where an HIV-infected child is enrolled). This belief is likely to foster a hypervigilant style of decision making in which the easiest or most readily available perceived solution is embraced

The first author's research, for example, has demonstrated the utility of a functional approach to heterosexuals' attitudes toward lesbians and gay men (Herek, 1984, 1986, 1987). Within this perspective, attitudes are understood according to the psychological needs they meet. Antisocial attitudes appear to fit into two broad functional categories. First, antisocial attitudes can help a heterosexual person to fit experiences (past or anticipated) with lesbians and gay men into existing cognitive categories, thereby guiding future behavior with the goal of maximizing benefit to oneself. Second, expressing antisocial attitudes can help an individual to increase self-esteem, reduce anxiety, or secure social support.

The psychological functions served by attitudes concerning AIDS may be closely related to those served by attitudes toward gay people. For example, people with AIDS may be assigned to a cognitive category already existing for gay people; the affect resulting from negative experiences with gay people may be transferred to people with AIDS. Negative stereotypes of gay people (e.g., as preying on young people) may be imputed to people with AIDS as well. Alternatively, a fundamentalist Christian might condemn homosexuality as a way of affirming her or his sense of self as a good Christian and thereby increasing self-esteem. AIDS might be interpreted as God's punishment for homosexuality, and expressing a similar condemnation for people with AIDS might bolster self-esteem. Or a person whose hostility toward gay people is based on unresolved intrapsychic conflicts may experience similar anxieties associated with AIDS; because AIDS links homosexuality with death, it may offer a focus for anxieties associated with both.

Strategies for Eradicating AIDS-Related Stigma

We have pointed to both individual and societal levels of AIDS-related stigma. Because of the dialectical relation between cultural ideologies and individual attitudes, any attempt to eradicate AIDS-related stigma must target both levels. AIDS-education programs must be designed not only to impart information to individuals but also to reduce the stigma attached to AIDS. Public policy not only must respond to the technical issues of treatment and prevention but also must help to establish clear social norms of respect and compassion for HIV-infected persons.

Changing Individual Attitudes

To the extent that individuals respond to AIDS primarily as a threat to personal well-being (their own or that of their loved ones), they will be most influenced by educational programs that clearly present factual information about AIDS in a context that reduces anxiety (e.g., by reassuring the audience that sufficient time is available in which to make careful decisions) while explicitly countering the misuse of cognitive heuristics.

Understanding the social psychological processes underlying AIDS-related stigma will require examination of the dynamics of antisocial attitudes.

As noted earlier, AIDS-related stigma is complicated by the epidemic's association with already marginalized groups. Consequently, most individuals do not respond to AIDS simply as a lethal and transmissible disease. Rather, they respond to it as a lethal and transmissible disease of gay men and other minorities. AIDS thus provides many people with a metaphor for prejudice—a convenient hook on which to hang their hostility toward out-groups. Approximately one fourth of the respondents to the *Los Angeles Times* polls, for example, consistently have agreed that "AIDS is a punishment God has given homosexuals for the way they live" (28% on December 5, 1985; 24% on July 9, 1986; and 27% on July 24, 1987). Several researchers have found that respondents who express negative attitudes toward gay people are more likely than others to be poorly informed about AIDS and are more likely to stigmatize people with AIDS (Gabay & Morrison, 1985; Herek, in press; Lennon & McDevitt, 1987; O'Donnell et al., 1987). These data suggest that

AIDS and Stigmatized Minorities

Because HIV is transmissible, for example, an individual might equate AIDS with other, previously encountered transmissible diseases, such as influenza. The consequence could be an overestimation of the danger of transmitting AIDS through media other than semen and blood. Those displaying this hypervigilant style of decision making might, then, endorse a policy of quarantine for persons infected with HIV. Because of the felt need to decide quickly, the individual would be unlikely to consider carefully the serious flaws (e.g., public health and civil liberties) of a quarantine policy. He or she may misuse cognitive heuristics, such as the availability heuristic, which involves assessing an event's probability by the ease with which various instances of it can be brought to mind (Tversky & Kahneman, 1974).

Even when public officials attempt to allay fears and counteract this process, their pronouncements on AIDS may be greeted with skepticism. This disbelief is fueled in part by another inappropriate use of the availability heuristic: Prominent examples of public officials' dishonesty in other situations (e.g., Watergate, Three Mile Island) can be easily recalled (see Morin, 1984); the fact that these earlier situations are not directly comparable to the AIDS epidemic is not recognized.

Public misunderstanding of scientists' use of probabilistic statements in describing the risks posed by AIDS further exacerbates the problem. A scientist, for example, might accurately say that the risk of HIV transmission through saliva is theoretically possible but extremely unlikely; as a person trained to know that the null hypothesis cannot be proved, however, the scientist will refrain from saying that such transmission is impossible. Lay people may misinterpret this phrasing, however, to mean that such transmission is possible or somewhat likely and may adopt a heuristic of "better safe than sorry" or "you can't be too careful" to guide their behavior.

Individuals whose responses to AIDS result primarily from its associations with stigmatized minorities, in contrast, are unlikely to be affected by educational campaigns that provide only facts about AIDS. Educational programs for them must also address the preexisting stigma. For example, an individual who advocates quarantine for persons with AIDS because of an underlying hostility toward gay men is not likely to be influenced by factual discussions about the ineffectiveness of quarantine; the individual's antigay prejudice also must be confronted.

Stigma and Public Policy

Eliminating AIDS-related stigma requires government action in at least three areas. First, an individual's HIV status must remain confidential; given the inevitably damaging effects of being identified as HIV-infected (Batchelor, 1987), stiff penalties should be attached to unauthorized disclosure of this information. Second, discrimination on the basis of HIV status should be prohibited; as noted by Admiral James D. Watkins, chair of the Presidential Commission on the Human Immunodeficiency Virus Epidemic, the fear of discrimination "will limit the public's willingness to comply with the collection of epidemiological data and other public health strategies, will undermine our efforts to contain the HIV epidemic, and will leave HIV infected individuals isolated and alone" ("Excerpts From Report," 1988, p. A16). Third, public education efforts must directly confront AIDS-related stigma. This means providing clear and explicit information about how AIDS is and is not transmitted to reduce fears of contact with HIV-infected persons, as well as to educate the public about safer personal practices.

Confronting stigma also means that AIDS-education programs must be designed to reduce the antigay prejudice that is so closely linked to AIDS-related stigma. Public policy that perpetuates antigay prejudice must be viewed as a major obstacle to stopping the epidemic. State sodomy statutes, for example, create the untenable situation in which safe-sex educational programs necessarily encourage criminal conduct; such laws should be overturned as part of an effective response to AIDS. The lack of legal sanctions against antigay discrimination in housing, employment, and services means that most HIV-infected individuals in the United States must legitimately fear discrimination based on presumptions about their sexual orientation even if AIDS-related discrimination is illegal; laws should be enacted prohibiting discrimination based on sexual orientation.

Although we have focused on the connection between AIDS-related stigma and antigay prejudice, other types of prejudice that fuel AIDS-related stigma should not be ignored. The stigmatization of IV drug users, for example, often leads to the assumption that behavior change is impossible in this group and consequently that AIDS-prevention efforts would be wasted. Increased street demand for sterile needles, however, indicates an awareness among drug users of how AIDS is transmitted and a desire to reduce personal risk (Des Jarlais et al., 1985). Public policy must encourage innovative approaches to

AIDS education among drug users, while also expanding the availability of drug-treatment programs to assist users in overcoming their drug dependency.

As already noted, Blacks and Hispanics are over-represented among people with AIDS in most categories of transmission. Because of preexisting racism, both individual and institutional, White policymakers have remained ignorant of the special needs of minority communities. Although increasing numbers of public officials, researchers, and educators realize that the content of risk-reduction programs must be tailored to the target communities, they often do not know how to accomplish this objective. Two issues of stigma thus must be confronted: (a) the stigma attached to AIDS, homosexual behavior, and intravenous drug use within minority communities, and (b) stigmatization of the minority communities by the prevailing White culture.

Psychologists have multiple roles to play in the effort to fight AIDS-related stigma. First, psychologists must educate themselves about the epidemic sufficiently so that they understand how their own reactions to AIDS may have inadvertently stigmatized persons who are HIV-infected. Second, psychologists should address problems resulting from AIDS-related stigma within their own area of expertise. Clinical psychologists, for example, should be sensitive to the concerns of persons with AIDS and persons such as gay men or Haitians who are likely to be stigmatized because of their membership in a suspect group. Health psychologists should assure that intervention programs directly address AIDS-related stigmatization and attempt to reduce it in their target populations. Social psychologists should utilize their knowledge of attitudes and prejudice to initiate research on how AIDS-related stigmatization can be eliminated. Finally, all psychologists should promote public policy that will deter stigmatization of persons with AIDS.

AIDS-related stigma is a problem for all of society. It imposes severe hardships on the people who are its targets, and it ultimately interferes with treating and preventing HIV infection. By attacking AIDS-related stigma, we create a social climate conducive to a rational, effective, and compassionate response to this epidemic.

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ILLNESS, STIGMA, AND AIDS

Imagine a disease that arouses great fear throughout the United States, especially in New York and other large cities where it is rampant. Imagine that the disease has no cure and is fatal to most people who manifest its symptoms. Physicians prescribe a variety of treatments but with little success.

Imagine that people who get sick are widely assumed to have engaged in immoral behaviors—probably related to sexual behavior or consumption of drugs. Imagine that the illness strikes disproportionately among Blacks, ethnic minorities, immigrants, and the poor. Many members of these groups even believe the epidemic to be the product of a conspiracy against them by the powerful of society. If someone famous gets sick or dies from the illness, considerable speculation arises about that person's secret life.

Imagine that the lack of effective treatments leads society to focus on prevention efforts. Attempts are made to change “immoral” behaviors that are thought to predispose people to the disease. A movement arises to shut down public establishments where such behaviors occur, because they are viewed as breeding grounds for the disease. Imagine that many people explain the disease as a punishment from God for sin, while others claim it is Nature's retribution for maladaptive behavior. Some commentators regard the epidemic as fortunate: It has provided a dramatic opportunity for battling unnatural and unhealthy behaviors.

become a symbol. Reactions to AIDS are reactions to gay men, drug users, racial minorities, or outsiders in general.

The frequent use of the phrase "the general public" as a counterpart to "risk groups" conveys this distinction between the dominant in-group and the stigmatized out-group. Gay men, IV drug users, and their sexual partners are not part of "the general public." Similarly, persons who did not contract AIDS through homosexual behavior or drug use often have been categorized as "innocent victims" (Albert, 1986). *A Newsweek* caption early in the epidemic, for example, described a teenage hemophiliac and an infant with AIDS as "the most blameless victims" ("Social Fallout From an Epidemic," 1985). Of course, the opposite of a blameless victim is a "blamable" victim. Guilt is assigned if HIV infection occurred during stigmatized behavior.

In the past, the treatment and prevention of epidemic diseases have often been hampered by stigma attached to both the illness and to social groups manifesting the illness. Social ostracism and hostility toward bubonic plague in the fourteenth century, for example, encouraged diseased persons to hide their illness from members of their own community or to flee to other towns, spreading infection in the process (e.g., Defoe, 1960). Plague-inspired anti-Semitic riots drove healthy and infected Jews alike to eastern Europe, often spreading illness (McNeill, 1976). In a similar fashion, AIDS-related stigma, layered upon preexisting prejudice against gay men and others, has hindered effective societal response to the epidemic in several ways. Negative reactions have shaped the behavior of policymakers, legislators, caregivers, and infected individuals and have limited the effectiveness of prevention efforts. The Centers for Disease Control withheld funding for educational programs that included explicit instructions for engaging in male homosexual behavior without transmitting HIV (Panem, 1987). The U.S. Senate twice endorsed an amendment by Senator Jesse Helms of North Carolina that prohibited federal funds for AIDS education materials that "promote or encourage, directly or indirectly, homosexual activities." ("Limit Voted on AIDS Funds," 1987, p. B12). By constricting the scope of risk-reduction education, such actions contribute to the epidemic's spread.

The use of AIDS as an ideological and political issue was exemplified by the comments of columnist Patrick Buchanan (1987): "There is one, only one, cause of the AIDS crisis—the willful refusal of homosexuals to cease indulging in the immoral, unnatural, unsanitary, unhealthy, and suicidal practice of anal intercourse, which is the primary means by which the AIDS virus is being spread through the 'gay' community, and, hence, into the needles of IV drug abusers" and to others. Buchanan further suggested that the "Democratic Party should be dragged into the court of public opinion as an unindicted co-conspirator in America's AIDS epidemic" for "seeking to amend state and federal civil rights laws to make sodomy a protected civil right, to put homosexual behavior, the sexual practice by which AIDS is spread, on the same moral plane

with being female or being black" (p. 23). AIDS and gay rights were thus equated with and linked to the opposition party.

The federal government's slow response to AIDS can be understood in part as a result of the politics of stigma. Antigay sentiment appears to have played an important role in the Reagan administration's failure to confront the epidemic. Shilts (1987) documented in painful detail the federal government's refusal to respond to AIDS during the Reagan administration—the cutbacks in funding to the CDC, followed by refusals to allocate resources to AIDS research, followed by refusals to request congressional funding for AIDS research, followed by refusals to spend the funds that Congress had allocated over the Reagan administration's objections (see also Panem, 1987).

Then-President Reagan did not even make explicit public statements about AIDS until 1987—more than five years and tens of thousands of lives into the epidemic. The Administration's reasoning was evident in remarks made at the 1985 International Conference on AIDS by then-Secretary of the Department of Health and Human Services, Margaret Heckler: "We must conquer AIDS before it affects the heterosexual population and the general population. . . . We have a very strong public interest in stopping AIDS before it spreads outside the risk groups, before it becomes an overwhelming problem" (quoted in Shilts, 1987, p. 554). Although AIDS already afflicted more than 9,000 people at the time, and more than 4,000 people had died—most of them gay or bisexual men—Heckler and the Reagan administration did not see it as an "overwhelming problem," because it had not affected the "general population" (which did not include gay men).

A similar pattern can be seen in responses by the news media to the epidemic. Initially, AIDS received very little press coverage. When it did, the new disease was often referred to as a "gay plague" (Kinsella, 1989). The *New York Times* published only six stories about AIDS during 1981 and 1982, a period when 634 Americans had been diagnosed with AIDS, 260 of whom had died—most of them in New York. None of the six stories made the front page. In contrast, the *Times* printed 54 stories in 1982 (four of them on the front page) about the discovery of poisoned Tylenol capsules in Chicago in October of that year. Only seven people died from poisoned Tylenol (Shilts, 1987). In 1983, however, infected individuals were discovered outside of the "risk groups" of homosexual/bisexual men and IV drug users. AIDS was reported in female partners of IV drug users, blood transfusion recipients, and babies born to women with AIDS. Around this time, scientists also realized that infected people could "carry" and transmit the virus without themselves manifesting any physical symptoms of AIDS. In other words, AIDS had "innocent" victims. Suddenly, the previously minimal AIDS coverage in the *New York Times* (measured by number of stories devoted to AIDS each week) took a major jump (Baker, 1986; Panem, 1987). As Shilts (1987) argued, the epidemic was virtually ignored by the nongay media as long as it was merely a "story of dead and dying homosexuals" (p. 191).

Reactions of the Nonstigmatized

The cultural construction of AIDS as a stigmatized condition of stigmatized groups is clearly expressed in the behaviors and attitudes of many nonstigmatized individuals. Healthy people make hurtful and insensitive remarks; tell or laugh at AIDS jokes; reject or isolate people with AIDS; vote for quarantine laws or for politicians who support them; and perpetrate or tolerate discrimination, harassment, and even violence (see Herek & Glunt, 1988). Survey research consistently shows that a significant minority of the American public endorses quarantine of HIV-infected persons, universal mandatory testing, and even such draconian measures as tattooing of infected individuals, even though public health officials consistently have argued against such measures as ineffective and repressive (e.g., Blendon & Donegan, 1988; Schneider, 1987; Singer & Rogers, 1986; Stipp & Kerr, 1989). People with AIDS are more negatively evaluated than are persons with other diseases, even by health care workers (Katz et al., 1987; Kelly, St. Lawrence, Smith, Hood, & Cook, 1987; Triplet & Sugarman, 1987). Avoidance of people with AIDS and overestimation of the risks of casual contact are common among caregivers (Blumenfeld, Smith, Milazzo, Seropian, & Wormser, 1987; Kelly, St. Lawrence, Smith, Hood, & Cook, 1987; Knox, Dow, & Cotton, 1989; Mejta, Denton, Krens, & Hiatt, 1988; O'Donnell, O'Donnell, Pleck, Snarey, & Rose, 1987; Rubin, Reitman, Berrier, & Sacks, 1989; Wallack, 1989; Werzt, Sorenson, Liebling, Kessler, & Heeren, 1987; Wiley, Heath, & Acklin, 1988). Two complementary social psychological approaches to understanding such attitudes and behavior are discussed here. The first approach is drawn from social cognition research and decision-making theory. The second derives from research on attitudes and prejudice.

AIDS, Anxiety, and Social Cognition

The first approach suggests that many seemingly irrational reactions to AIDS reflect simple errors of judgment, inappropriate use of cognitive heuristics, and stress-related defective decision making. This approach begins with several observations about the AIDS epidemic: AIDS is a new illness that is uniformly fatal; it is caused by an unseen infectious agent that can remain latent in the body for an unknown period of time; the epidemic is perceived as both out of control and potentially catastrophic. Because they are likely to arouse anxiety (Slovic, 1987), such perceptions can affect public reactions to AIDS in several ways. They lead to estimations of ever higher levels of risk associated with AIDS and to a strong desire to have that risk reduced; this, in turn, can lead to a willingness to impose strict regulation to achieve such a reduction (Slovic, Fischhoff,

& Lichtenstein, 1981). Personal decisions made under the influence of such anxiety are likely to be defective: They fail to consider available information adequately, to seek needed new information, and to evaluate the likely consequences of any proposed action in terms of the full array of one's short-term and long-term goals (Herek, Janis, & Huth, 1987; Janis & Mann, 1977).

One pattern of defective decision making that probably occurs in connection with AIDS is *hypervigilance* (Janis & Mann, 1977). Consider the following example. A person learns that one of her coworkers has been diagnosed with AIDS. She knows that AIDS is a life-threatening disease. She has been bombarded with public education messages that AIDS is incurable but preventable. She believes these messages but is unclear about exactly how to prevent HIV infection. Lacking a clear understanding of how HIV is transmitted, she recalls other viral illnesses with which she has experience, such as influenza. She also recalls that experts never say that casual transmission (e.g., through saliva) cannot occur; they simply say that such transmission hasn't been observed. She calculates that her own risk of infection from her coworker is high. She feels that she must do something to protect herself but perceives serious drawbacks to every alternative that she can call to mind (e.g., she could quit her job but would suffer financially; she could continue to interact with her coworker but might get infected this way). Discovering that some other employees are demanding that the coworker with AIDS be forced to take a disability leave and fearful that she will become infected unless she does something, she joins the protest. When challenged with expert opinion and company policy concerning nondiscrimination on the basis of HIV status, she states her newly adopted guiding rules: "Better safe than sorry" and "You can't be too careful."

This example includes the key antecedents of hypervigilance. The decision maker experienced intense stress due to several simultaneous perceptions: (a) that severe losses are imminent if she does nothing; (b) that losses are also imminent if she takes action; (c) that a satisfactory solution is possible; but (d) that she must do something now—sufficient time is not available to search carefully for a solution. Time pressures also led the woman in our example to use the *availability* heuristic inappropriately: Lacking information about AIDS, she relied on comparisons to an easily recalled situation (influenza) with which she had experience (Tversky & Kahneman, 1974). Janis (1989) summarized the hypervigilant pattern as "Try anything that looks promising to get the hell out of this agonizing dilemma as fast as you can. Never mind any other consequences" (p. 80). Hypervigilance may underlie a "do something" syndrome observed in some public opinion surveys about AIDS, that is, a willingness to endorse any AIDS-related policy that promises action regardless of its likely costs, consequences, or effectiveness (Schneider, 1987).

AIDS, Attitudes, and Prejudice

Along with anxiety, AIDS evokes prejudice. Social psychological research on attitudes, therefore, also is relevant to understanding AIDS-related stigma. In the sections below, I discuss the cognitive dimensions along which AIDS-related attitudes appear to be organized, the motivations underlying those attitudes, and the relationship of AIDS-related attitudes to antigay prejudice.

The dimensions of attitudes concerning AIDS. In my own research with Eric Glunt at the Graduate Center of the City University of New York (Herek & Glunt, 1988, in press), I have found that public reactions to AIDS appear to be organized principally along two psychological dimensions. These dimensions, which have emerged repeatedly in factor analyses of responses from different samples, correspond to the two levels of conflict that Brandt (1987) observed in the history of public response to sexually transmitted diseases in the United States: One factor focuses on issues of blame and responsibility, as well as the conflict between compassion and coercion in perceptions of people with AIDS. We labeled this factor the *coercion/compassion* dimension of AIDS-related attitudes. The other factor includes items that pit the opposing philosophies of moralism and secular rationalism against each other. We labeled this factor *pragmatism/moralism*. These two dimensions of AIDS-related attitudes were not highly correlated in preliminary research, suggesting that an individual's position on one dimension does not predict her or his position on the other.

Although the same two dimensions emerged in separate analyses of responses from White and Black respondents, we observed racial differences in the variables that predict individuals' positions on the dimensions. Among Whites, individual attitudes toward gay men were among the best predictors of responses to the attitude items. Whites who expressed general prejudice against gay men were also more likely to view people with AIDS as responsible for their illness and to endorse measures such as a quarantine for dealing with AIDS (elements of the coercion/compassion dimension). These people were also more likely to reject governmental policies such as distributing condoms and clean needles (elements of the pragmatism/moralism dimension). Blacks' reactions to AIDS, in contrast, appeared to reflect deep distrust of scientists and the government, as well as a perception of the epidemic in terms of its effect on the African American community. Whites' attitudes appeared to be premised on an "outsiders' " view of the AIDS epidemic, whereas Blacks' attitudes reflected the perspective of "insiders." This did not seem to result from some affinity between Black respondents and gay people: Indeed, we suspect that many of the African Americans in our sample equated "gay men" with "gay White men." Rather, Blacks focused on the disproportionate representation of African Americans

among people with AIDS. Although many Black males with AIDS contracted HIV through unprotected homosexual behavior, our data do not permit us to assess whether the African American respondents in our sample were aware of this fact. Because of the relatively small representation of African Americans in our research to date, all of our conclusions about their attitudes must be stated provisionally here. Data collection with a larger national Black sample currently is in progress.

From these findings, we concluded that public attitudes concerning AIDS reflect conflicts that have been present in policy debates concerning other illnesses, especially sexually transmitted diseases. We also concluded that the attitudes of Whites and Blacks may have different antecedents. Understanding AIDS-related stigma among White Americans requires understanding the social psychological bases for heterosexuals' attitudes toward gay people. Understanding AIDS-related stigma among African Americans, in contrast, requires an analysis of individuals' perceptions of how AIDS fits in the historical context of African Americans' treatment by White society.

Two conceptualizations of attitudes. At least two social psychological conceptualizations of attitudes are relevant to understanding AIDS-related stigma. The first is exemplified in the work of Fishbein and Ajzen (1975; Ajzen & Fishbein, 1980). Their theory of reasoned action conceives of behavior as shaped largely by the intention to behave, which results from attitudes toward the specific behavior which, in turn, are shaped by beliefs about the utility of the behavior for meeting personal goals and by perceived social norms governing the behavior. Within this framework, attitudes are assumed to be primarily instrumental, that is, strategies for organizing thought and behavior based on the inherent benefits or detriments associated with the attitude object. Broader ideologies or general attitudes are assumed to have minimal immediate relevance to understanding specific behaviors.

A contrasting perspective can be derived from research on symbolic politics, which generally has focused on racial attitudes (e.g., Kinder, 1986; Kinder & Sears, 1981, 1985; see also Sniderman & Tetlock, 1986a, 1986b). Symbolic racism is conceptualized to be a general ideology that is abstracted from specific situations and specific calculations of an individual's own self-interest. Its origins lie in the "preadult acquisition of traditional values (particularly individualism and self-reliance), and of racial fears and stereotypes" (Kinder, 1986, p. 154). It is not simply racism, but rather the conjunction of racism with traditional values. An example would be Whites' anti-Black attitudes based on the belief that Blacks receive unfair preferential treatment in affirmative action hiring programs.

Applied to AIDS, each perspective emphasizes different variables as antecedent to attitudes. The reasoned action perspective highlights the importance of concerns about personal health and safety, such as the fear of becoming infected with HIV. The symbolic politics perspective

highlights the importance of AIDS as a symbolic issue that juxtaposes fears and stereotypes of out-groups (gay men, IV drug users, racial minorities) and traditional American values (e.g., sexual morality, beliefs that people get what they deserve). Using these two perspectives in a series of empirical studies, Pryor, Reeder, and Vinacco (1989) examined two kinds of reactions to AIDS: willingness to have one's own child in a classroom with a child with AIDS, and willingness to be enrolled in a course with a professor with AIDS. They observed that their respondents' AIDS-related attitudes included both symbolic (operationalized as attitudes toward homosexuality) and instrumental components.

Such a finding inevitably raises the question of how the relative importance of symbolic and instrumental issues differs among individuals. In this regard, I have found the *functional approach* to attitudes to be very useful. The functional approach is based on the premise that people hold and express particular attitudes because they derive psychological benefit from doing so, and that the type of benefit varies among individuals. Attitudes are understood according to the psychological needs they meet—the functions they serve. These functions are different for different people. Two people can hold the same attitude for very different reasons (see Herek, 1986, 1987; Katz, 1960, 1968; Katz & Stotland, 1959; Sarnoff & Katz, 1954; Smith, 1947; Smith, Bruner, & White, 1956).

In my own research, I have found that attitude functions can be classified into two broad types. Instrumental attitudes, those that benefit people primarily by helping them to organize the various objects of the world according to their own self interests, serve evaluative functions. These functions derive from the actual characteristics of the attitude object, that is, whether it provides rewards or punishments. Alternatively, the functions of symbolic attitudes derive principally from consequences of their expression—that is, speaking them aloud, writing them down, communicating them to another person, or even simply articulating them to oneself. In the case of expressive functions, the attitude object is a means to an end. By expressing a particular attitude, the person receives psychological benefit: increased self-esteem from affirming values central to self-concept (the *value-expressive function*), increased social support from expressing opinions consonant with those of important others (the *social-expressive function*), or a reduction in anxiety (the *defensive function*).

Applied to AIDS, the evaluative functions are most clearly related to concerns about personal risk of exposure to HIV. The expressive functions are associated with the metaphorical (Sontag, 1988) or symbolic aspects of AIDS. These functions are not always distinct. Consider parents' attitudes about sending their children to school where an HIV-infected student is enrolled. At first glance, such attitudes clearly involve evaluative functions. They reflect the parents' assessment of the risks faced by their children in the classroom with an infected child.

Such attitudes probably also serve expressive functions. They provide an opportunity for parents to affirm their feelings of love for their children as well as an occasion to assert to the community, "I am a good parent." If other parents are banding together to respond to the infected student (whether to protest the child's presence or to welcome her or him), the parent can receive support by expressing socially approved sentiments.

Attitude functions are affected by characteristics of the person and the situation. Someone with a strong need for affiliation, for example, is likely to hold attitudes concerning AIDS that increase his or her acceptance by friends, while someone else who is strongly committed to a political ideology is likely to hold attitudes about AIDS that reinforce that commitment. Additionally, situational cues can increase the salience of individual needs and thereby affect attitudes. A situation that makes personal values salient will lend itself to a value expressive function more than will a situation that highlights intrapsychic conflicts (Herek, 1986).

AIDS and attitudes toward gay people. Because of the ways in which AIDS has been socially constructed in our culture, most individuals do not respond to AIDS simply as a lethal and transmissible disease. Rather, they respond to it as a lethal and transmissible disease of *gay men and other minorities*. AIDS thus provides many with a metaphor for prejudice—a convenient hook upon which to hang their preexisting hostility toward out-groups. Approximately one fourth of the respondents to *Los Angeles Times* polls, for example, consistently have agreed that "AIDS is a punishment God has given homosexuals for the way they live"—28% on December 5, 1985, 24% on July 9, 1986, and 27% on July 24, 1987⁵ (see also Blendon & Donelan, 1988). Respondents who express negative attitudes toward gay people are more likely than others to be poorly informed about AIDS and are more likely to stigmatize people with AIDS (D'Augelli, 1989; Goodwin & Roscoe, 1988; Herek & Glunt, 1990; Pryor, Reeder, & Vinacco, 1989; Stipp & Kerr, 1989). Further, gay men with AIDS are more likely to be negatively evaluated than are heterosexuals with AIDS (Triplet & Sugarman, 1987).

Antigay hostility has long existed in the United States. Despite their achievement of greater visibility and acceptance in recent years, lesbians and gay men continue to be targets of widespread institutional prejudice. Whereas racial, ethnic, and religious minorities also suffer from such prejudice, gay people are unique in that overt discrimination and intolerance against them are officially condoned by governmental, religious, and social institutions. Discrimination in housing and employ-

⁵I thank Bliss Siman, of Baruch College of the City University of New York, for her assistance in obtaining these data through the Roper Center, University of Connecticut at Storrs.

News You Can Use

(Continued from page 7)

AIDS, Homicide Fuel Higher Black Death Rates, Studies Show

The rising death rate of young black men from AIDS and homicide is probably the primary reason that blacks have a lower life expectancy than whites, according to a report issued by the National Center for Health Statistics of the Centers for Disease Control.

Significant differences in infant mortality rates are also a contributing factor, according to the report.

According to data collected for 1989, death rates for blacks between the ages of 25 and 34 was 280.6 per 100,000 population, as compared to 118.3 per 100,000 population for whites. While death rates in this age group among both groups is rising, the increase has been steeper for blacks.

Among black infants, there were 17.7 deaths per 1,000 and 8.2 deaths per 1,000 white infants.

While differences in death rates among middle-aged and elderly Americans were less pronounced, the CDC noted that improvements in the prevention and treatment of heart disease, the nation's leading cause of death, show more marked effect on whites than blacks.

The reasons for these dissimilarities has less to do with race than with social and economic factors, the CDC says. "The causes of death that are acting on youth are acting much more intensively for black youth than they are for white youth," said Harry Rosenberg, chief of mortality statistics for the CDC. "There is a risk of attributing these differences to race-specific factors" that would be inappropriate, he says.

In another study, surveying the results of mandatory HIV testing of almost 140,000 disadvantaged youth applying for Job Corps benefits, increases in HIV seroprevalence by age were most dramatic for black and Latino students in Northeastern cities. In these areas, the yearly increase in infections was 4.3 per 1,000, reaching 24.8 per 1,000 (or 1 in 40)

in 21-year-olds. While rates for whites did not vary by region of the country, both blacks and Latinos had the highest rates in the Northeast and in the southern states.

Other data collected in the study showed that seroprevalence in this study population was only slightly higher in males (3.7 per 1,000) than women (3.2 per 1,000), or a male-to-female ratio of 1.2:1. This ratio among reported diagnosed AIDS cases is 5.1:1, indicating either an increase in HIV infection among young women or a relative reduction in new infections among gay and bisexual men.

Most MDs Would Rather We Go Away, Study Says

Half of the physicians responding to a survey said that they would not treat AIDS patients if they had the choice, reports a recent article in the Journal of the American Medical Association (11/27/91; 266:2837-42).

The survey was conducted among 1182 randomly-selected U.S. internists and general practitioners in 1990 to evaluate attitudes about taking care of HIV+ people. Of the doctors participating in the survey, approximately one-half had cared for between 1 and 10 people with AIDS, with 23% having cared for more than 10 and 24% never having dealt with an AIDS patient.

"While 68% of the respondents felt they had a responsibility to treat people with HIV infection, 50% indicated they would not work with AIDS patients if they had a choice," says a summary of the JAMA article in the January issue of AIDS Clinical Care.

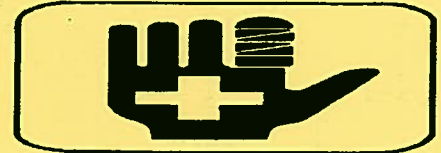
"The percentage who acknowledged both this responsibility and an aversion to treat was constant" regardless of the particular physician's experience with HIV patients, the report said.

The physicians also indicated an anti-gay bias, according to the survey. Over one-third (35%) of those surveyed said they agreed with the statement, "homosexuality is a threat to many of our basic social institutions." Injection drug users face even more serious discrimination; 55% said they had a negative attitude toward those who've used drugs intravenously.

AIDS Clinical Care said that the results of the study "suggests that the responsibility of providing care to people

with AIDS is not being equally shared among primary care physicians, and that physician attitudes may be contributing to the current distribution of care."

This "suggestion" is pronounced in the Philadelphia area. Since the beginning of the epidemic, gay and lesbian physicians have cared for the overwhelming majority of people with HIV/AIDS, and even today, the numbers of physicians knowledgeable about AIDS care is far outstripped by the growing numbers of people needing care. Efforts such as the AIDS Educational Training Center, based at Hahnemann Hospital, and Philadelphia FIGHT, based at Graduate Hospital, have helped to raise the general level of understanding of AIDS treatment in some settings, but the number of experienced or educated physicians remains dangerously low in this region. The JAMA study provides the first clear academic evidence that personal fears and biases of physicians is a contributing factor to the overall denial of appropriate care to many people living with HIV-related diseases.



More Evidence Supports Rarity of Provider to Patient HIV Infection

A report in the New England Journal of Medicine confirms that provider-to-patient transmission of HIV remains extraordinarily rare.

In a "look-back" investigation of patients of an HIV+ family doctor, researched with the Minnesota Department of Health found that after conducting ELISA and Western blot testing on 321 patients of the doctor, none tested HIV+, despite the fact that for almost a year the doctor had a weeping dermatitis on his hands cause by mycobacterium marinum. The doctor reported wearing gloves during this higher-risk period.

Patients tested were those who had undergone vaginal delivery or vaginal, rectal or oral examinations.

The cost of the study was estimated to be \$130,000, or about one-third of the state's entire annual budget for tracking AIDS cases.

(More News You Can Use on Page 10)

STATEMENT OF

ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH

ON HOUSE BILL 1353

AMENDING TITLE 18 OF

PENNSYLVANIA CONSOLIDATED STATUTES

BEFORE

JUDICIARY COMMITTEE

HOUSE OF REPRESENTATIVES

PENNSYLVANIA

WEDNESDAY, APRIL 22, 1992

HELLO, MY NAME IS SCOTT FEIGELSTEIN AND I'M THE REGIONAL DIRECTOR OF THE EASTERN PENNSYLVANIA-DELAWARE OFFICE OF THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH.

THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH IS A CIVIL RIGHTS AND HUMAN RELATIONS AGENCY THAT HAS BEEN FIGHTING ANTI-SEMITISM, RACISM AND OTHER FORMS OF BIGOTRY AND DISCRIMINATION FOR ALMOST 80 YEARS. ADL APPRECIATES THIS OPPORTUNITY TO PRESENT ITS VIEWS ON HOUSE BILL 1353.

THE ADL WAS FORMED IN RESPONSE TO THE LYNCHING OF A JEW IN ATLANTA, GEORGIA BY A MOB FOR A CRIME HE DID NOT COMMIT. WHILE THE PURPOSE OF ADL AS DEFINED IN OUR CHARTER IS TO END THE DEFAMATION OF THE JEWISH PEOPLE, THE FOUNDERS OF ADL RECOGNIZED THAT THE SECURITY OF JEWS IN THIS COUNTRY WAS CLOSELY LINKED TO THE SECURITY OF ALL AMERICANS. CONSEQUENTLY, WORKING TO SECURE AND DEFEND THE RIGHTS OF ALL AMERICANS HAS BEEN AN INTEGRAL PART OF ADL'S MANDATE.

SINCE 1979, THE ADL HAS COMPILED AND PUBLISHED AN ANNUAL AUDIT OF ANTI-SEMITIC INCIDENTS REPORTED TO OUR 31 REGIONAL OFFICES. OUR 1991 AUDIT (COPY ATTACHED), RELEASED LAST MONTH, DOCUMENTED A TOTAL OF 1,879 ANTI-SEMITIC INCIDENTS AROUND THE NATION, AN 11% INCREASE. THIS REPRESENTS THE HIGHEST TOTAL EVER REPORTED IN THE 13 YEAR HISTORY OF OUR AUDIT, AND MARKS THE FIFTH STRAIGHT YEAR OF INCREASING LEVELS OF ANTI-SEMITIC ACTS NATIONWIDE. THE ADL AUDIT IS AS ACCURATE AS WE CAN MAKE IT: NEVERTHELESS, IT IS

REASONABLE TO ASSUME THAT MANY INCIDENTS ARE SIMPLY NOT REPORTED TO US.

WE HAVE LEARNED THAT HATE CRIMES CALL FOR A SPECIAL RESPONSE BECAUSE THEY HAVE THE POTENTIAL TO INFLICT A UNIQUE HURT, EVOKE PAINFUL MEMORIES, AND CREATE FEAR, ANGER AND A SENSE OF ISOLATION IN THE VICTIM AND HIS OR HER COMMUNITY. IN ADDITION, HATE CRIMES HAVE THE POWER TO DAMAGE THE FABRIC OF OUR PLURALISTIC SOCIETY, RAISE THE LEVEL OF TENSION, AND FRAGMENT OUR COMMUNITIES.

BY ALL INDICATIONS, HATE CRIMES ARE INCREASING IN OUR STATE AND NATION. ADL BELIEVES THAT HOUSE BILL 1353 WILL ADD ANOTHER IMPORTANT WEAPON TO THE ARSENAL NEEDED TO COMBAT BIAS RELATED CRIMES IN OUR STATE SO THAT PROGRAMS MAY BE DEVELOPED TO REDUCE AND COUNTER SUCH CRIMES. GOVERNMENT OFFICIALS AND CIVIC LEADERS WILL NOT BE IN A POSITION TO CONFRONT HATE CRIMES EFFECTIVELY UNTIL THE ENTIRE SCOPE OF THE PROBLEM IS BETTER KNOWN. IN ADDITION, PROMPT, ACCURATE REPORTING OF HATE CRIMES RAISES COMMUNITY AWARENESS AND AS A RESULT, VICTIMS WILL COME FORWARD WHO MIGHT OTHERWISE HAVE BEEN RELUCTANT TO DO SO.

HISTORICALLY, ANTI-SEMITISM HAS BEEN A GOOD BAROMETER OF THE SOCIAL HEALTH OF THE COMMUNITY OR NATION AND THUS, BY ALL INDICATIONS, STATISTICS REFLECTED IN OUR AUDITS ARE PARALLELED IN OTHER MINORITY COMMUNITIES.

ADL STRONGLY AGREES WITH U.S. SENATOR ORRIN HATCH WHO, IN TESTIFYING IN SUPPORT OF THE FEDERAL HATE CRIMES STATISTICS ACT,

STATED THAT NO ONE "SHOULD BE BEATEN UP, VANDALIZED OR OTHERWISE CRIMINALLY ASSAULTED, REGARDLESS OF WHAT THAT PERSON MAY BE OR WHAT THAT PERSON'S LIFESTYLE IS - AND WHETHER OR NOT THEY ARE HOMOSEXUAL...WE MAY DISAGREE WITH THAT LIFESTYLE, BUT THEY ARE HUMAN BEINGS AND THEY SHOULD NOT BE BRUTALIZED IN THIS FASHION. IT IS HAPPENING ALL OVER OUR COUNTRY TODAY."

BY SOME ESTIMATES, UP TO 50% OF MORE OF ALL HATE CRIMES ARE DIRECTED AGAINST INDIVIDUALS, GROUPS OR INSTITUTIONS BECAUSE OF THEIR SEXUAL ORIENTATION. (ACCORDING TO THE NATIONAL GAY AND LESBIAN TASK FORCE, IN 1989 THERE WERE 7031 REPORTED INCIDENTS OF VIOLENCE AND HARASSMENT OF GAYS NATIONWIDE.)

BASED ON THESE STATISTICS, AND IN THE INTERESTS OF JUSTICE, ADL STRONGLY SUPPORTS THE INCLUSION OF SEXUAL ORIENTATION IN TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED STATUTES AND URGES SWIFT PASSAGE OF HOUSE BILL 1353.

Hate Crimes Against Lesbians and Gay Men

Issues for Research and Policy

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ABSTRACT: *Antigay hate crimes (words or actions that are intended to harm or intimidate individuals because they are lesbian or gay) constitute a serious national problem. In recent surveys, as many as 92% of lesbians and gay men report that they have been the targets of antigay verbal abuse or threats, and as many as 24% report physical attacks because of their sexual orientation. Assaults may have increased in frequency during the last few years, with many incidents now including spoken references to the acquired immunodeficiency syndrome by the assailants. Trends cannot be assessed, however, because most antigay hate crimes are never reported and no comprehensive national surveys of antigay victimization have been conducted. Suggestions are offered for research and policy.*

Hate crimes are words or actions intended to harm or intimidate an individual because of her or his membership in a minority group; they include violent assaults, murder, rape, and property crimes motivated by prejudice, as well as threats of violence or other acts of intimidation (Finn & McNeil, 1987). Hate crimes, which are also called *bias crimes*, are especially serious because they potentially victimize an entire class of people. Based on an individual's minority status, they assail the victim's identity and intimidate other group members.

Public awareness of hate crimes has increased recently. Numerous government-commissioned reports have documented the problem and offered policy recommendations (e.g., Attorney General's Commission, 1986; Finn & McNeil, 1987; Governor's Task Force, 1988). Legislation mandating the collection of bias-crime data has been enacted in several states, including Maryland, Pennsylvania, and Connecticut (Finn & McNeil, 1987). Legislation with a similar intent was passed by the U.S. House of Representatives in 1988 ("Congress Bill on Hate," 1988); it has been reintroduced in both houses of the 101st Congress (H.R. 1048; S. 419). Special units for investigating bias crimes have been established by the police departments of Boston, New York, Baltimore County (MD), Nassau County (NY), and San Francisco, and by the Kotenai County (ID) Sheriff's Department (Finn & McNeil, 1987).

Lesbians and gay men are principal targets of hate crimes. In a report to the National Institute of Justice, for example, Finn and McNeil (1987) observed that "ho-

mosexuals are probably the most frequent victims" of hate violence (p. 2). A statewide survey of 2,823 junior and senior high school students in New York revealed greater hostility toward gay people than toward racial or ethnic minorities; students' responses often included threats of antigay violence (Governor's Task Force, 1988).

Antigay hate crimes have serious consequences. In addition to the physical and psychological harm they inflict on the victims, antigay assaults create a climate of fear in gay communities. Lesbians and gay men often feel forced to hide their sexual orientation in public (e.g., by not holding hands with a lover or not displaying a lover's picture at work). Fear of antigay harassment also functions to enforce rigid norms of gender-appropriate behavior. Gay people and heterosexuals alike may refrain from certain behaviors (e.g., men might not touch other men; women might not excel at tasks that require physical exertion) and avoid certain gestures or clothing styles because they fear being labeled as gay.

Antigay hate crimes are of concern to psychologists for a variety of reasons. First, they threaten the well-being of our colleagues, students, clients, research participants, friends, and family—including those who are heterosexual—because anyone might be perceived as gay by assailants. Second, antigay hate crimes violate the human rights and civil liberties of a historically stigmatized minority group; psychologists repeatedly have stated their commitment to removing this stigma (e.g., American Psychological Association [APA], 1975). Third, psychologists have special knowledge relevant to addressing the problem of antigay hate crimes. Psychological expertise on prejudice and aggression is relevant to understanding the motivations of assailants and developing prevention programs. Survivors of antigay attacks often experience psychological problems that require clinical intervention beyond that needed by other assault victims. Finally, hate crimes are of concern to psychologists because they attack basic values: Like cross burnings, lynchings, and desecrations of synagogues, they effectively limit individual rights of expression, association, and privacy.

Because antigay hate crimes only recently have been recognized as a problem, social science knowledge about them is sketchy. Their prevalence remains largely undocumented, and their causes and aftermath have not been systematically studied. In this article, therefore, I use information from disparate sources to define the problem and identify issues for empirical research and public policy.

Victimization of gay people is not a new phenomenon in the United States. Men were executed for sodomy in the American colonies as early as 1624. Throughout the past three centuries, lesbian and gay Americans have been routinely subjected to many forms of institutional violence including felony imprisonment and fines, castration and castration, forced psychiatric treatment, dishonorable discharge from the military, and general social ostracism (Katz, 1976).

Despite their achievement of greater visibility and acceptance in recent years, lesbians and gay men continue to be targets of widespread institutional prejudice. Although racial, ethnic, and religious minorities also suffer from such prejudice, gay people are unique in that overt discrimination and intolerance against them often are officially condoned by governmental, religious, and social institutions. Discrimination in housing and employment on the basis of sexual orientation remains legal in every state except Wisconsin. Lesbian and gay male couples generally are denied the community recognition, legal protection, and economic benefits accorded to married heterosexual partners. Indeed, sexual intimacy between same-sex partners remains illegal in one half of the states, and the constitutionality of such laws was upheld by the United States Supreme Court in 1986 (*Bowers v. Hardwick*).

Antigay hate crimes must be understood, in part, as a logical outgrowth of this pervasive norm of intolerance. This climate of condemnation fosters antigay hate crimes and keeps them invisible. It discourages individuals from disclosing their homosexual orientation and from reporting bias crimes motivated by antigay prejudice.

Scope of the Problem

Antigay bias crimes take many forms. In Bucks County, PA, for example, two men were convicted of first-degree murder of a gay man. The victim was found dead with multiple stab wounds and his throat slit; his car had been set on fire (Correll, 1988; National Gay and Lesbian Task Force [NGLTF], 1988). In Portland, ME, three women were assaulted after their assailant directed antilebian epithets at them; all three women required medical attention, and one of them suffered a fractured jaw, several broken teeth, and bruised ribs (NGLTF, 1987). In Boston, a gay man leaving a local bar was attacked by three assailants who raped him with bottles, lit matches, and other implements while repeatedly stating that "this is what faggots deserve" (NGLTF, 1987). In Philadelphia, an 18-year-old lesbian required stitches on her head and face after being assaulted by her lover's former boyfriend; the man had waited for her outside her lover's home and had accused her of seducing "his girlfriend" (Aurang, Adessa, & Bush, 1985). In Stockton, CA, a well-known gay minister was found dead in the trunk of his car; his skull was crushed, his throat was slashed, and there were multiple stab wounds in his chest (NGLTF, 1987). In Greensboro,

NC, a cross was burned outside the home of a gay man who hosted a health group dealing with AIDS (NGLTF, 1988).

Although such victimization and harassment are facts of life for most gay people, the problem has received scant attention from social and behavioral scientists. Only a few published studies document the prevalence of antigay victimization. Bell and Weinberg (1978), for example, reported that 35% of the 684 men and 2% of the 293 women in their sample had been robbed or assaulted at least once in connection with their homosexuality. Jay and Young (1977) found that 27% of their 4,400 male respondents reported experiencing physical abuse at least once in connection with their homosexuality, whereas 77% had experienced verbal abuse. For their 1,000 lesbian respondents, the proportions were 14% and 71%, respectively. Of the 289 gay men and lesbians who responded to a questionnaire distributed by Minneapolis Gay Community Services in 1979, 72.3% reported that they had experienced verbal harassment because of their sexual orientation; 23.2% had suffered physical assault; and 5.9% (including 10 male respondents) had been raped in an antigay assault (Anderson, 1982).

Additional data on antigay hate crimes are contained in reports prepared by various lesbian and gay organizations. In 1984, for example, the National Gay and Lesbian Task Force conducted a survey of 654 lesbians and 1,420 gay men (total $N = 2,074$) in eight U.S. cities (Bertol, 1986). Nearly all of the respondents had experienced some type of harassment, threat, or attack: more than one fifth of the men and nearly one tenth of the women had been physically assaulted because of their sexual orientation (see Table 1). In a recent survey of Philadelphia residents by the Philadelphia Lesbian and Gay Task Force (PLGTF; Gross, Aurand, & Adessa, 1988), 46% of the male respondents ($n = 291$) and 20% of the female respondents ($n = 146$) reported that they had experienced criminal violence during the previous year because of their sexual orientation. Additionally, 75% of the male

This article is dedicated to the memory of Steve Kennedy, and to all others who have not survived the epidemic of antigay violence. I thank Kevin Berrill for his ongoing assistance and his comments on an early draft of this article, and Diana Christensen for information on San Francisco's Community United Against Violence. I also thank Susan Cavin (Rutgers University), Anthony D'Augelli (Pennsylvania State University), John Martin and Laura Dean (Columbia University), and David McKlaman and Peggy Peterson (University of Illinois at Chicago) for their permission to reproduce as yet unpublished findings from their research.

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The rape of men by other men is largely an invisible problem in contemporary American society, assumed by most people to occur only in prison populations. In reality, however, it is a serious problem and often is part of antigay violence. Contrary to popular stereotype, the perpetrators of male rape often identify themselves as heterosexual (Grotz & Burgess, 1980). As with rape of women by men, male rape is a crime of violence more than a crime of sexuality (Anderson, 1982; Grotz & Burgess, 1980; Kaufman et al., 1980).

Table 1
Combined Data for Antigay Violence (Survey Studies) in Percentages

Type of incident	PLGTF ^a (1986-1987)		PLGTF ^a (Lifetime)		NGLTF ^b	Yale ^c	Penn ^d	Rutgers ^e
	Male	Female	Male	Female				
Verbal abuse	75	57	92	81	86	65	72	57
Verbal threats	36	10	62	32	44	25	25	16
Objects thrown	15	5	41	13	27	19	13	11
Chased or followed	21	9	43	23	35	25	22	16
Spat upon	9	7	19	12	14	3	6	1
Hit, kicked, or beaten	6	2	24	7	19	5	4	4
Assault with a weapon	4	3	12	5	9	1	1	1
Vandalism or arson	6	7	19	12	19	10	16	6
Sexual assault	1	6	6	3	NA			
Sexual assault/harassment					NA	12	15	8
Police victimization	14	5	26	15	20	NA	NA	NA
School victimization	NA	NA	67	33	37	NA	NA	NA
Incidents not reported	NA	NA	76	78	NA	90	93	88

^a PLGTF = Philadelphia Lesbian and Gay Task Force (Gross et al., 1988). The figures reported in column 1 are incidents for male and female Philadelphia residents that occurred in the year prior to the survey; figures in column 2 are lifetime totals. Total sample size for the PLGTF studies = 437, with 146 female respondents (33%) and 291 male respondents (67%).

^b NGLTF = National Gay and Lesbian Task Force (Bemsl, 1986). *N* = 2,074, including 654 female respondents (32%) and 1,420 male respondents (68%).

^c Yale = Yale Sexual Orientation Survey (Herek, 1986a). *N* = 215, including 93 female respondents (43%) and 117 male respondents (54%). Gender was not specified by 6 respondents; percentages were reported only for gay or bisexual members of the sample (*n* = 186).

^d Penn = Pennsylvania State University (D'Augelli, 1988). *N* = 132, including 49 female respondents (37%) and 83 male respondents (63%).

^e Rutgers = Rutgers Sexual Orientation Survey (Cavin, 1987). *N* = 141, including 84 female respondents (60%) and 57 male respondents (40%).

respondents and 57% of the female respondents reported that they had been verbally harassed during that period. Seventy-three percent of the men and 42% of the women reported that they had experienced criminal violence at some point in their lives because of their sexual orientation; 92% of the men and 81% of the women reported receiving antigay verbal abuse at some time.

Data about antigay victimization also are contained in several as yet unpublished research reports by social and behavioral scientists. For example, David J. McKirnan (personal communication, August 18, 1988) reported that 84% of the 2,652 gay male subjects in his Social Indicators Study (e.g., McKirnan & Peterson, 1988) had experienced antigay verbal harassment at least once, and 42% more than once; for the 748 lesbian respondents, the figures were 71% and 35%, respectively. He also found that 44% of the gay men had been the target of physical assault or vandalism at least once, and 31% more than once; for lesbians, the figures were 22% and 13%, respectively. In a panel study of 624 gay men in New York City by John L. Martin and Laura Dean (e.g., Martin, 1987), 12.2% reported in 1987 that they had experienced some form of antigay violence during the previous year (L. Dean, personal communication, August 22, 1988). A substantial proportion of the 166 gay and bisexual students, faculty, and staff at Yale University who completed a survey conducted by the author (Herek, 1986a) had experienced some form of antigay victimization on campus (see Table 1). Similar patterns were observed at Pennsylvania State University (D'Augelli, 1988) and Rutgers University (Cavin, 1987).

Is Antigay Victimization Increasing?

Observers recently have speculated that the prevalence of antigay hate crimes is increasing, possibly spurred by public reactions to the AIDS epidemic (Kim, 1988). The number of acts of antigay violence and victimization reported to the NGLTF Violence Project, for example, has risen steadily: from 2,042 in 1985 to 4,946 in 1986 (an increase of 142%) to 7,008 in 1987 (an increase of 42%; NGLTF, 1986, 1987, 1988). From 1985 to 1986, the New York City Gay and Lesbian Anti-Violence Project (AVP) recorded an 83% increase in its victim caseload (NGLTF, 1987); in 1987, the AVP served 14% more clients (NGLTF, 1988). The caseload of San Francisco's Community United Against Violence (CUAV) increased by 50% from 1984 to 1985, by 14% in 1986, and by another 11% in 1987; CUAV reported also that the number of clients requiring medical attention rose by 23% from 1986 to 1987 (NGLTF, 1988).

These annual increases may simply reflect higher rates of reporting as organizations achieve greater visibility in local communities and as general awareness of the problem of antigay hate crimes increases. Survey data from gay samples, however, also support the hypothesis that victimization is increasing. Approximately twice as many respondents reported antigay criminal violence in the 1987 PLGTF survey than had reported it in a 1984 survey (Gross et al., 1988); the proportion of respondents who reported verbal harassment also increased substantially (up from 48% of males in 1984 to 75% in 1987, and from 39% of females in 1984 to 57% in 1987). A

sexual assault, the problem of underreporting may be especially serious, with male sexual assault victims even less likely to report than female victims (Kaufman, DiVasto, Jackson, Voorhes, & Christy, 1980). The problems necessitate a multimethod approach to data collection.

Case studies available in popular literature (e.g., Bell, 1978; Correll, 1988; Freiberg, 1986) and scientific reports (e.g., Swigert, Farrell, & Yoels, 1976, p. 395) are rich sources for hypotheses about the causes, aftermaths, and perpetrators of hate crimes (see Miller & Humphreys, 1980). Once hypotheses are developed, they can be tested with at least three different types of data (see O'Brien, 1985, for a general discussion of each).

One source frequently used in research on criminal victimization is information collected by law enforcement agencies (e.g., Uniform Crime Reports). Unfortunately, these data are of limited use in research on antigay victimization because most criminal justice records currently do not include data on hate crimes. Some jurisdictions that monitor hate crimes do not include antigay attacks under this rubric (Finn & McNeil, 1987). Even when relevant data are collected, local advocacy groups estimate that only a small proportion of antigay crimes are ever reported. Underreporting is a problem with all categories of crimes in the United States; National Crime Surveys indicate that only 60% of aggravated assaults with injury and 40% of simple assaults were reported in 1980 (O'Brien, 1985). For antigay hate crimes, the problem is even more serious: Perhaps as few as 10% are reported. In the 1987 PLGTF survey, for example, only about one-fourth of the 133 Philadelphians who experienced antigay criminal violence (24% of the 110 men and 22% of the 23 women) reported all such incidents (Gross et al., 1988). In a survey by Gay Community Services in Minneapolis, only 9.3% of the respondents who had been assaulted reported it to another agency (Anderson, 1982). Of the 96 Yale respondents who had experienced harassment, only 10% reported the incident to the police or campus authorities (Herek, 1986a).

Before law enforcement agencies can gather adequate data on antigay victimization, they must obtain the trust and cooperation of local gay and lesbian communities, and they must establish uniform reporting procedures across jurisdictions. Neither condition exists today. Even if these criteria eventually are met, many antigay hate crimes will go unreported. Thus, researchers must use other sources to supplement law enforcement agency data.

Surveys of victim populations are a second common source of data for studies of criminal victimization. Information from known victims can be used to develop descriptions of perpetrators, the circumstances under which crimes occur, and the aftermath. The New York AVP and the San Francisco CNAV already gather information of this sort. Such data are limited in that they represent only the experiences of individuals who reported their victimization. Unreported hate crimes can be studied through questions about victimization in surveys

Empirical inquiry into antigay hate crimes must overcome all of the methodological problems associated with other types of research on crime and victimization, as well as the problems created by the stigma attached to homosexuality in American society. Underreporting of victimization is especially serious because lesbians and gay men often do not trust local law enforcement personnel and fear additional harassment and recriminations (e.g., job discrimination) if their sexual orientation becomes public. When antigay violence takes the form of

Sources of Data

As researchers, clinicians, faculty members, and practitioners, psychologists have a unique role to play in preventing antigay hate crimes and reducing their negative consequences.

Directions for Research

gan administration.

athly toward gay people and civil rights issues by the Rea-pronouncements from the Catholic Church, and announce the rise of antigay religious fundamentalism, antigay likely contributors to an increase in antigay attacks in-erosexuals' preexisting hostility toward gay people. Other-igay sentiment than a focal event that crystallizes her-McDevitt, 1987). Thus, AIDS may be less a cause of an-ably predate the epidemic (e.g., Herek, 1988; Lennan &bigory is explained by antigay attitudes, which presum-gests, however, that much of the variance in AIDS-related-well be more vulnerable to attack. Attitude research sug-become more visible since the advent of AIDS, they may gay people? To the extent that lesbians and gay men have

Is the AIDS epidemic fueling the victimization of AIDS in 1986 (NGLTF, 1987).

New York City AVP organization included references to proximately one fourth of the incidents reported to the "plague-carrying fagot" during a violent assault). Ap-experienced was AIDS-related (e.g., being called a of the women said that the violence or harassment they PLGTF study (Gross et al., 1988), 13% of the men and 1% in 1987; this includes 5% of the physical assaults. In the AIDS in 681 (14% of the incidents reported to NGLTF. The perpetrators of antigay attacks made references to indicate that AIDS is often in the awareness of assailants (e.g., Kim, 1988). Reports to gay and lesbian organizations in the United States, initially struck gay and bisexual men immunodeficiency syndrome (AIDS) epidemic, which, victimization often cite public reactions to the acquired Attempts to explain the possible increase in antigay study.

similar trend toward increased victimization is apparent in John Martin's panel study of gay men in New York City. In 1985, 8.8% of the men reported that they had experienced some form of antigay violence during the previous year; the proportion dropped slightly to 6.6% in 1986, but rose significantly in 1987 to 12.2% (L. Dean, personal communication, August 22, 1988). Martin's data are especially valuable in monitoring trends because they were obtained from a single sample in a longitudinal

conducted with samples from lesbian and gay communities. This is the approach followed by NGLTF and PLGTF. The generalizability of these data also is limited, however, because probability samples are not employed (nor are they possible with an invisible population). To address this problem, questions about antigay victimization could be included in other surveys with national probability samples (e.g., National Crime Surveys); underreporting still would be likely, however, because of many gay and bisexual respondents' fears about disclosing their sexual orientation, even in an anonymous survey.

A third data collection strategy is to survey perpetrator populations. Self-report studies of perpetrators can take two forms. One approach is to interview convicted or admitted perpetrators; the respondents, of course, are not necessarily representative of all antigay victimizers. Alternatively, groups of potential perpetrators (e.g., adolescent and young adult populations) can be surveyed about their past antigay behavior. Neither of these approaches has yet been used in published empirical research on antigay hate crimes, although some journalistic accounts follow this model (e.g., Weissman, 1978).

Areas for Empirical Inquiry and Intervention

Documentation and description. One of the first priorities for social science research on antigay bias crimes must be systematic documentation of the problem with data from more representative samples of gay women and men across the United States. Sampling people who are not well-integrated into the gay community will pose a particular challenge to researchers, but it is important because such individuals may be at greater risk for some types of criminal victimization than are openly gay people (e.g., Harry, 1982; Miller & Humphreys, 1980; for an autobiographical account, see Bauman, 1986). In addition, small-scale studies of student populations, employees, and similar groups can contribute to our general understanding of bias crimes and can be valuable tools for influencing local policy and increasing public awareness. Several researchers have conducted campus surveys, for example, and have submitted their results to university officials who were considering adoption of nondiscrimination policies (Cavin, 1987; D'Augelli, 1988; Herek, 1986a).

Descriptions of the perpetrators of antigay hate crimes and the situations in which they occur are also needed. Data currently available suggest that the bulk of reported attacks are perpetrated by male assailants,² usually juveniles or young adults in groups, who are not known by the victim (NGLTF, 1987). For example, more than one half of the 213 incidents reported in 1986 to San Francisco's CUAV involved two or more assailants (112, or 53%); at least 94% were perpetrated by male assailants (the sex of assailant was not reported in another 3%); and at least 42% of the attackers were under 21 years of age (the assailant's age was unknown in another 8% of attacks).³ This tentative profile of attackers should not

lead researchers to ignore other manifestations of antigay hate crimes, including victimization at the hands of hate groups, family members, and law enforcement officials.

Organized hate groups (e.g., the Ku Klux Klan) regularly target gay people in their rhetoric. A Georgia extremist group called the Crusade Against Corruption, for example, published a pamphlet titled "Praise God for AIDS," which included such statements as "AIDS is a racial disease of jews and negroids that also exterminates sodomites," and urged that "those high risk AIDS groups must be SEGREGATED far away from us White people so as to protect innocent White people from AIDS" (in NGLTF, 1987). Similarly, a recent issue of the *Thunderbolt*, published by the National States Rights Party, carried the front-page headline, "Bisexuals Infect White Women with AIDS" (Fields, 1988), and reported that "most bisexuals are Negroes who often seek affairs with White females" (p. 1). Such rhetoric reveals clear linkages between antigay prejudice and bigotry directed at other minority groups in American society. Janet Caldwell (1988) of the Center for Democratic Renewal in Atlanta reported that gay people are now included with Jews and Blacks as favorite targets for hate groups.

Families constitute another setting in which antigay hate violence and harassment often occur, instigated by siblings, parents, a spouse, children, or others. In the Philadelphia PLGTF study (Gross et al., 1988), for example, 19% of the male respondents and 25% of the female respondents reported that they had experienced some sort of victimization from a family member. According to Barbara Fox (1983), Executive Director of New York's Institute for the Protection of Lesbian and Gay Youth, the problem most frequently observed with gay adolescents is rejection by the family, which often includes violence. Family violence frequently forces lesbian and gay youth onto the streets where they are subject to further victimization. Antigay victimization in families is probably even less visible than are other forms of antigay hate crimes because crimes that occur in a family or home setting are generally less likely to be reported (O'Brien, 1985).

Yet another important category of perpetrators includes law enforcement personnel. Nearly 10% of the incidents reported to CUAV in 1986, for example, involved verbal or physical harassment by police. In the PLGTF study of Philadelphia residents, 26% of the male respondents and 15% of the female respondents reported that they had experienced antigay harassment or violence from the police at least once (Gross et al., 1988).

Causes and antecedents. Research on the immediate causes of antigay hate crimes (e.g., motivations of perpetrators, situational influences) will be useful in developing preventive strategies. Such research also will contribute to psychological knowledge of aggression and prejudice. Although different factors are likely to be involved with different types of perpetrators and situations, some preliminary hypotheses can be drawn from the scientific literature on attitudes toward lesbians and gay men (see Herek, 1984, 1986b, 1987, 1988). For example, an-

² This fits a pattern observed for most assaults (O'Brien, 1985).

³ Data from CUAV were obtained from CUAV Quarterly Reports, provided by Diana Christensen.

phobia after the incident and subsequently withdraw from other gay people (Bohn, 1984). In other words, antigay hate crimes often succeed in inflicting psychological as well as physical harm on their victims.

Immediate Policy Recommendations

Despite the scarcity of systematic studies of antigay hate crimes, several policy issues are immediately apparent. Obstacles to documenting hate crimes should be removed; resources should be provided for research, and programs should be initiated whose effectiveness can be systematically observed. Space limitations require that recommendations be only briefly mentioned here. (For more detailed recommendations, see Committee on the Judiciary, 1986; Finn & McNeil, 1987; Governor's Task Force, 1988; Gross et al., 1988; NGLTF, 1988.)

Federal and State Legislation

An immediate priority for Congress should be passage of the Hate Crimes Statistics Bill (H.R. 1048; S. 419), which mandates the collection of statistics on bias crimes (including those motivated by antigay prejudice) by the Department of Justice. In addition, deterrents to reporting bias crimes should be eliminated: All Americans should be protected from discrimination in employment, housing, and services based on sexual orientation or Human Immunodeficiency Virus (HIV) status; laws that criminalize consenting sexual conduct between adults should be abolished. To encourage research, Congress should provide additional funding to agencies such as the National Institute of Justice and the National Institute of Mental Health for empirical studies of antigay and AIDS related bias crimes.

Lawmakers also should clearly identify antigay hate crimes as intolerable by establishing more severe criminal penalties for them and authorizing their victims (or victims' survivors) to file civil suits against the assailants. Legislators also must address the problem that juvenile perpetrators of antigay violence face minimal punishment or rehabilitation; sentencing juvenile offenders to community service and holding parents financially liable for damages related to bias crimes are among the possible strategies for addressing this problem.

Services for Victims

Lesbian and gay survivors of hate crimes often need psychological counseling, advocacy programs for assistance in dealing with the criminal justice and health-care systems, and legal assistance for securing compensation for property damage and personal injury. Thus, training for mental health professionals and social service providers should include explicit attention to the needs of lesbian and gay survivors of bias crimes. The importance of confidentiality should be stressed in such training. Social service and victim service agencies should establish in-service training programs for their staff that address the survivors' needs and should develop outreach programs to local lesbian and gay communities to encourage utilization of their services.

igay assaults by groups of young male assailants may be explained in part as attempts to obtain acceptance from peers and solidify group membership (Weissman, 1978) while simultaneously externalizing intrapsychic conflicts concerning gender and sexuality. Many male members of this age group who manifest delinquent activities also strongly reject culturally defined feminine characteristics and embrace what they perceive to be masculine characteristics (Horwitz & White, 1987). Attacks against gay people may provide a means for such male youths to affirm their masculinity by attacking someone who symbolizes (consciously or not) an unacceptable aspect of their own personalities (e.g., homoerotic attractions or a perception that they are not sufficiently masculine). The intense rage often associated with antigay assaults lends credence to this hypothesis. A gay person may also serve as a symbol of the out-group; by attacking her or him, members can demonstrate their loyalty and increase group solidarity. Whether or not this hypothesis is supported by subsequent empirical research, it can guide the framing of research questions; additional hypotheses will be needed to explain hate crimes perpetrated by hate groups, family members, and police officers.

Community organizing and prevention. Research also is needed to evaluate the effectiveness of different programs for preventing antigay bias crimes or mitigating their effects. For example, researchers should assess the effectiveness of local anti-violence projects' efforts in organizing street patrols in predominantly gay neighborhoods and in monitoring court appearances when antigay bias crimes are prosecuted (see Bohn, 1984). The effectiveness of educational programs aimed at students, families, social service providers, and criminal justice personnel should be assessed. Social science theory and data might be employed to design more effective educational programs (for an example, see Herek, 1984, 1986c).

Problems faced by survivors. Psychologists' skills are needed to develop and evaluate strategies for providing the variety of psychological and social services needed by people who experience antigay victimization. Along with the problems faced by other crime victims (e.g., Niderbach, 1987), lesbian and gay survivors often are blamed by others for their assault and accused of inviting or deserving the attack. In addition, if their sexual orientation becomes public knowledge as a result of an attack, they subsequently may experience heightened discrimination in employment, housing, or services. As Bohn (1984) noted, the experience of antigay victimization and its aftermath can significantly lower self-esteem and evoke strong feelings of guilt, shame, or depression in the lesbian or gay survivor (see also Anderson, 1982). Suicidal ideation may result (Miller & Humphreys, 1980). The survivor may experience high levels of internalized homo-

* For example, Miller and Humphreys (1980) commented on the "gruesome, often vicious nature" of the antigay murders that they studied. "Seldom is a homosexual victim simply shot," they noted. "He is more apt to be stabbed a dozen or more times, mutilated, and strangled" (p. 179).

Criminal Justice Personnel

Sensitivity to the needs of survivors of antigay hate crimes is necessary at all levels of the criminal justice system, including police personnel, district attorneys, and judges. In-service and academy and professional training programs should be instituted to sensitize personnel to the needs of lesbians and gay men, including discussion of why antigay bias crimes are serious, how to identify and report them, and how to work with the victims of such crimes.

Law enforcement personnel will be better sensitized to the needs of gay crime victims if they have opportunities for positive interactions with openly gay colleagues, which will be facilitated by recruiting openly lesbian and gay individuals at all levels of the criminal justice system. Furthermore, police and district attorneys should engage in extensive outreach to the lesbian and gay communities and, when possible, should appoint formal liaisons. Such liaisons might help to develop collaborative programs between police and community groups for directly reducing violence, for example, through monitoring neighborhoods.

Community Education

Finally, programs are necessary for reducing the bigotry that underlies antigay hate crimes. Federal, state, and local funds should be available for developing and implementing programs designed to reduce prejudice against all minority groups, including lesbians and gay men.

Because school-age youth are overrepresented among the perpetrators of antigay bias crimes, interventions in public and private schools are especially important. Elementary and secondary schools should inaugurate programs to foster tolerance and an appreciation of diversity. Teachers and staff should receive explicit training in sensitivity to lesbian and gay issues to prepare them to foster tolerance and reduce conflicts in their students; such training should be reflected in licensing and professional degree requirements. Schools also should enact clearly stated antidiscrimination policies.

College and university officials should speak out strongly against antigay victimization. They should train staff (including security personnel) to recognize antigay bias and to act against it. Any instances of antigay harassment or victimization should be penalized, and this response should be publicized throughout the campus community. Colleges also should include sexual orientation in their antidiscrimination policies and should actively seek openly gay or lesbian faculty, staff, and students.

Although more data are needed to understand the full extent of the problem, the existence of antigay hate crimes is indisputable. Opposition to these crimes is not controversial: A democracy as diverse and pluralistic as the United States cannot tolerate intimidation of any citizens because of their minority group status. Nor can a profession pledged to "respect the dignity and worth of the individual and strive for the preservation and protection of fundamental human rights" stand by while vic-

timization occurs (APA, 1981, p. 633). Through our research, teaching, advocacy, and practice, psychologists can confront the menace of hate crimes and the bigotry that feeds them.

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“FEMICIDE”: SPEAKING THE UNSPEAKABLE

By Jane Caputi and Diana E.H. Russell

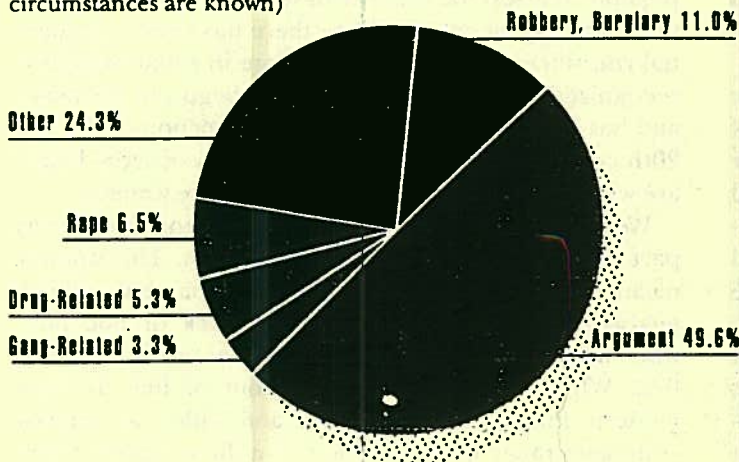
Canadian novelist Margaret Atwood once asked a male friend why men feel threatened by women. He replied: “They are afraid women will laugh at them.” She then asked a group of women why they feel threatened by men. They answered: “We’re afraid of being killed.”

However disproportionate, these fears are profoundly linked, as was demonstrated on December 6, 1989, at the University of Montreal. That day, 25-year-old combat-video aficionado Marc Lépine suited up for war and rushed the school of engineering. In one classroom, he separated the women from the men, ordered the men out, and, shouting “You’re all fucking feminists,” opened fire on the women. During a half-hour rampage, he killed 14 young women, wounded nine other women and four men, then turned his gun on himself. A three-page suicide note blamed all of his failures on women, whom he felt had scorned him. Also found was a hit list of 15 prominent Canadian women.

Unable to complete an application to the school of engineering, Lépine felt humiliated by women he defined as “feminists” because they had entered traditional male territory. His response to the erosion of white male exclusivity was a lethal one. It was also an eminently political one.

Femicide: Related Circumstances California, 1988

(Out of 689 willful femicides where related circumstances are known)



In the massacre’s aftermath, media reports regularly denied the political nature of the crimes, citing such comments as Canadian novelist Mordecai Richler’s: “It was the act of an absolutely demented man [which does not] lend itself to any explanation.” This despite Lépine’s clear explanation of his actions. *Whether individual hate killers are demented is beside the point.* In a racist and sexist society, psychotics as well as so-called normals frequently act out the ubiquitous racist and misogynist attitudes they repeatedly see legitimized.

Lépine’s murders were hate crimes targeting victims by gender, not race, religion, ethnicity, or sexual orientation. When racist murders—lynchings and pogroms—occur, no one wonders whether individual perpetrators are crazy or have had bad personal experiences with African Americans and Jews. Most people understand that lynchings and pogroms are motivated by political objectives: preserving white and gentile supremacy. Similarly, the aim of violence against women—conscious or not—is to preserve male supremacy.

Early feminist analysts of rape exposed the myths that it is a crime of frustrated attraction, victim provocation, or uncontrollable biological urges, perpetrated only by an aberrant fringe. Rather, rape is a direct expression of sexual politics, an assertion of masculinist norms, and a form of terrorism that preserves the gender status quo.

Like rape, the murders of women by husbands, lovers, fathers, acquaintances, and strangers are not the products of some inexplicable deviance. Murder is simply the most extreme form of sexist terrorism. A new word is needed to reflect this political understanding. We think *femicide* best describes the murders of women by men motivated by hatred, contempt, pleasure, or a sense of ownership of women. Femicide includes mutilation murder, rape murder, battery that escalates into murder; historical immolation of witches in Europe; historical and contemporary immolation of brides and widows in India; and “honor crimes” in some Latin and Middle Eastern countries, where women believed to have lost their

The authors would like to thank Joan Balter, Sandy Butler, Candida Ellis, Marny Hall, and Helene Vann for their invaluable comments on this article.

Murder: Relationship of Victim to Offender
Texas, 1988

Relationship	Number	% of Total*
Acquaintance	572	42.2
Stranger	250	18.5
Wife/common-law wife	88	7.3
Friend	88	5.0
Other-known to victim	88	5.0
Husband/common-law husband	55	4.1
Other family	51	3.8
Son/stepson	34	2.5
Girlfriend	33	2.4
Neighbor	28	2.1
Brother	20	1.5
Father/stepfather	18	1.3
Boyfriend	15	1.1
Ex-wife	15	1.1
Daughter/stepdaughter	11	0.8
Mother/stepmother	8	0.4
Homosexual relationship	5	0.4
Sister	5	0.4
Ex-husband	2	0.1
TOTAL	1,355	100.0

* Relationship was known in 1,355 of 2,053 murder cases.

common-law) account for 38 percent of all women murdered between 1976 and 1987 in the United States. Violent crimes against women have escalated in recent decades. Some believe this increase is due to women reporting them more. But Russell's research on (largely unreported) rape, for example, establishes a dramatic escalation during the last 50 years. Although it is not yet possible to assess the number of sex murders in any given year, virtually all experts agree there has been a substantial rise since the early 1960s. A surge in serial murder is recognized by criminologists to have begun in the 1950s, and has become a characteristic phenomenon of the late 20th century in the U.S. The vast majority of serial killers are white men and most of their victims are women. We see this escalation of violence against females as part of a male backlash against feminism. This doesn't mean it's the *fault* of feminism: patriarchal culture terrorizes women whether we fight back or not. Still, when male supremacy is challenged, that terror is intensified. While women who stepped out of line in early modern Europe were tortured and killed as witches (estimates range from 200,000 to 9 million killed), today such women are regarded as cunts or bitches, deserving

virginity sometimes are killed by male relatives.

General male identification with killers demonstrates how rooted femicide is in sexist culture. For example, engineering student Celeste Brosseau, who had complained about the sexism of the engineering faculty at the University of Alberta, was subjected to hundreds of her "fellow" students chanting "Shoot the bitch!" when she participated in an engineering society ski-night shortly after Lepine's assassinations.

The misogyny motivating violence against women also distorts press coverage of such crimes. Rape, femicide, and battery are variously ignored or sensationalized in the media, depending on the victim's race, class, and "attractiveness." Police, media, and public response to crimes against women of color, poor women, lesbian women, women working as prostitutes, and drug users, is particularly abysmal—usually apathy laced with pejorative stereotyping and victim-blaming. Moreover, public interest is disproportionately focused on cases involving nonwhite assailants and white middle-class victims, such as the uproar over the 1989 Boston murder of Carol Stuart, a pregnant white woman who, her husband falsely claimed, was shot by a black robber. (She had been murdered by her affluent, white husband.)

Femicide is the ultimate end of a continuum of error that includes rape, torture, mutilation, sexual slavery (particularly in prostitution), incestuous and extramarital child sexual abuse, physical and emotional battery; sexual harassment; genital mutilations (clitoridectomies, infibulations); unnecessary gynecological operations (gratuitous hysterectomies), forced heterosexualization, forced sterilization, forced motherhood (criminalizing contraception and abortion), psychosurgery, abusive medical experimentation (e.g., some efforts to create new reproductive technologies), denial of protein to women in some cultures, cosmetic surgery and other mutilations in the name of beautification. Whenever these forms of terrorism result in death, they become femicides.

Federal statistics do not reveal the scope of violence against women. Surveys by independent researchers show rates of female victimization that should shatter us all. For example, in Diana Russell's random sample survey of 930 San Francisco women: 44 percent reported being victimized by rape or attempted rape, 38 percent by child sexual abuse, 16 percent by incestuous abuse, 14 percent by wife rape, and 21 percent by marital violence.

As with rape and child sexual abuse, femicide is most likely to be perpetrated by a male family member, friend, or acquaintance. Ironically, the patriarchy's ideal domestic arrangement (heterosexual coupling) is the most potentially femicidal situation. Husbands (including

whatever happens to them. "Why is it wrong to get rid of some fuckin' cunts?" Kenneth Bianchi, convicted "Hillside Strangler," demanded to know. "Kill Feminist Bitches!" is a revealing graffito found on the Western Ontario campus after the Montreal massacre.

Law enforcement officials have noted the growing viciousness in slayings. Justice Department official Robert Heck said: "We've got people [sic] now killing 20 and 30 people [sic] and more, and some of them just don't kill. They torture their victims in terrible ways and mutilate them before they kill them." For example:

- Teenager Shirley Ledford screamed for mercy while Roy Norris and Lawrence Bittaker of Los Angeles raped and mutilated her with a pair of locking pliers, hit her with a sledgehammer, and jabbed her in her ear with an ice pick. The men audiotaped the torture femicide from beginning to end.

- In 1987, police found three half-naked, malnourished African American women "shackled to a sewer pipe in a basement that doubled as a secret torture chamber" in the home of Gary Heidnik, a white Philadelphian; 24 pounds of human limbs were stockpiled in a freezer and other body parts were found in an oven and a stew pot.

Such atrocities also are enacted upon women by their male intimates. The case of Joel Steinberg, who murdered his adopted daughter, Lisa, and tortured his companion, Hedda Nussbaum, for years, is extreme but not unique. In 1989, a California man was sentenced to 32 years in prison for torturing his wife in a 10-hour attack. After she refused anal sex, Curtis Adams handcuffed his wife, repeatedly

forced a bottle and then a broomstick into her anus, and hung her naked out the window—taking breaks to make her read Bible passages adjuring women to obey their husbands.

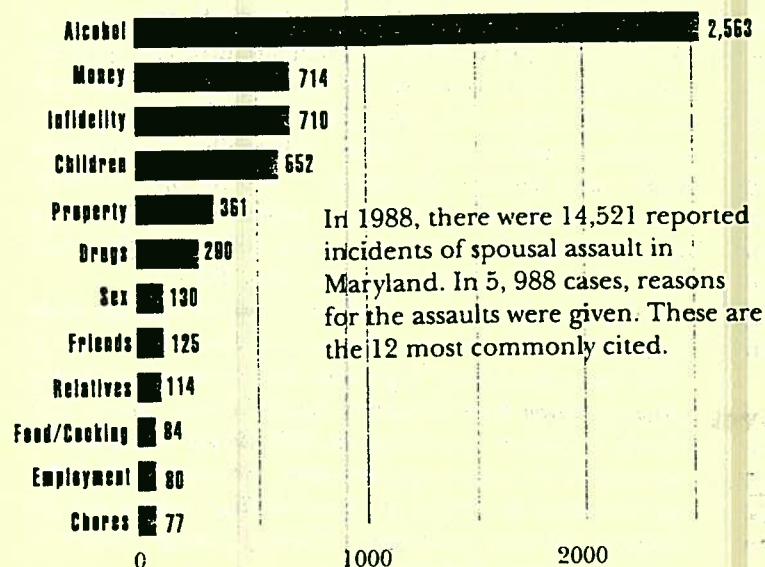
A sense of entitlement is a major cause of sexist terrorism. Many males believe they have a right to get what they want from females. Consider the hatred exhibited in response to a trivial challenge to male dominance: female students at the University of Iowa complained about the loud stereos of male students on the floor above. A response in graffiti titled "The Top 10 Things To Do To The Bitches Below" was found in the men's bathroom and then published in the university newspaper, including exhortations to beat the women "into a bloody pulp with a sledgehammer and laugh" and instructions on "how to mutilate female genitalia with an electric trimmer, pliers, and a 'red-hot soldering iron.'" Similarly, a suggestion was made in the University of Toronto engineering students' newspaper that women "cut off their breasts if they were sick of sexual harassment."

To see where these students get such gruesome ideas, we only need look to pornography and mass media "gorenography." An FBI study of 36 sex serial killers found that pornography was ranked highest of many sexual interests by an astonishing 81 percent. Such notorious killers as Edmund Kemper (the "Coed Killer"), Ted Bundy, David Berkowitz (the "Son of Sam"), and Kenneth Bianchi and Angelo Buono (the "Hillside Stranglers") were all heavy pornography consumers. Bundy maintained that pornography "had an impact on me that was just so central to the development of the violent behavior that I engaged in." His assessment is consistent with testimony from many other sex offenders, as well as research on the effects of pornography.

Femicidal atrocity is everywhere normalized, explained as "joking," and rendered into standard fantasy fare, from comic books through Nobel prizewinning literature, box-office smashes through snuff films. Meanwhile, the FBI terms sex killings "recreational murder."

Just as many people denied the reality of the Nazi Holocaust, most people refuse to recognize the gynocidal period in which women are living—and dying—today. Some husbands and fathers act as full-time guards who threaten to kill if defied. "Dedicated Bible reader" John List was convicted this year in New Jersey for mass murder, after escaping detection for 18 years. List complained that his wife refused to attend church, an action he "knew would harm the children." His daughter wanted to pursue an acting career, making him "fearful as to what that might do to her continuing to be a Christian." In a

Domestic Violence: Reasons for Assault Maryland, 1988



In 1988, there were 14,521 reported incidents of spousal assault in Maryland. In 5,988 cases, reasons for the assaults were given. These are the 12 most commonly cited.

Rape: Relationship of Victim to Offender Kansas, 1988

Relationship	Number	% of Total
Acquaintance	217	28.5
Stranger	213	28.0
Friend	47	6.2
Wife/common-law wife	32	4.2
Ex-girlfriend	31	4.1
Girlfriend	18	2.5
Ex-wife	15	2.0
Daughter/stepdaughter	28	2.8
Other family/in-law	14	1.8
Sister	8	1.0
Granddaughter	2	0.3
Niece	1	0.1
Baby-sitter	1	0.1
Neighbor	1	0.1
Unknown	141	18.5
TOTAL	782	100.0

Such rituals are modes of healing, but not cures. Feminists, collectively and internationally, must take on the task of formulating strategies of resistance as massive and formidable as the horrors that confront us.

Progressive people rightly favor an international boycott of South Africa so long as apartheid reigns: why do they/we so rarely consider the potential efficacy of boycotting violent and abusive men and their culture? In 1590, Iroquois women gathered in Seneca to demand the cessation of war among the nations. We must now demand an end to the global patriarchal war on women. The femicidal culture is one in which the male is worshipped. This worship is obtained through tyranny, subtle and overt, over our bruised minds, our battered and dead bodies, our co-optation into supporting even batterers, rapists, and killers. "Basically, I worshipped him," said Hedda Nussbaum. "We do not worship them... we do not trust them," wrote Alice Walker. In a myriad of ways, let us refuse nurture, solace, support, and approval. Let us withdraw our worship. **MS**

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rage over his loss of control, this godly man slaughtered his wife, daughter, mother, and two sons.

If all femicides were recognized as such and accurately counted, if the massive incidence of non-lethal sexual assaults against women and girls were taken into account, if incest and battery were recognized as torture (frequently prolonged over years), if the patriarchal home were seen as the inescapable prison it so frequently becomes, if pornography and gorenography were recognized as hate literature, then this culture might have to acknowledge that we live in the midst of a reign of sexist terror comparable in magnitude, intensity, and intent to the persecution, torture, and annihilation of women as witches from the 14th to the 17th centuries in Europe.

It is unspeakably painful for most women to think about men's violence against us, as individuals and collectively, because the violence we encounter, and the disbelief and contempt with which we are met when we do speak out, is often so traumatic and life-threatening that many of us engage in denial or repression of our experiences.

In November 1989, 28-year-old Eileen Franklin-Lipsker of Foster City, California, suddenly remembered having witnessed her father sexually abuse her eight-year-old school friend, Susan Nason, then bludgeon her to death. Twenty years later, she turned her father in to the police. Such remembrance and denunciation is the work of the culture feminist movement against violence against women: to disobey the fathers' commandments to forget, deny, maintain silence, and, instead, to turn in our abusive fathers, husbands, brothers, lovers, sons, friends.

The recollection and acknowledgment of history/experience that has been so profoundly repressed is what Toni Morrison in her masterpiece *Beloved* calls *rememory*. In an interview, Morrison noted that there is virtually no remembrance—no lore, songs, or dances—of the African people who died during the Middle Passage: "I suspect... it was not possible to survive on certain levels and dwell on it... There is a necessity for remembering the horror, but... in a manner in which the memory is not destructive." Morrison's concept of rememory is crucial as well for all women grappling with the torment of living in a femicidal world. We too must be able to face horror in ways that do not destroy, but save us.

Canadian feminists are working to have December 6 declared a national day of remembrance for the slaughtered women. We encourage women worldwide to claim December 6 as an international day of mourning and rage, a "Rememory Day" for all women everywhere who have been victims of sexual violence.

**VIOLENCE AND DISCRIMINATION
AGAINST LESBIAN AND GAY PEOPLE
IN PHILADELPHIA AND
THE COMMONWEALTH OF PENNSYLVANIA:**

A STUDY BY THE PHILADELPHIA LESBIAN AND GAY TASK FORCE

June, 1988

CHARTS

Larry Gross, Ph.D., Task Force Co-Chair and Professor of Communications

Steven K. Aurand, Task Force Board Member and Statistician

Rita Addressa, Task Force Executive Director

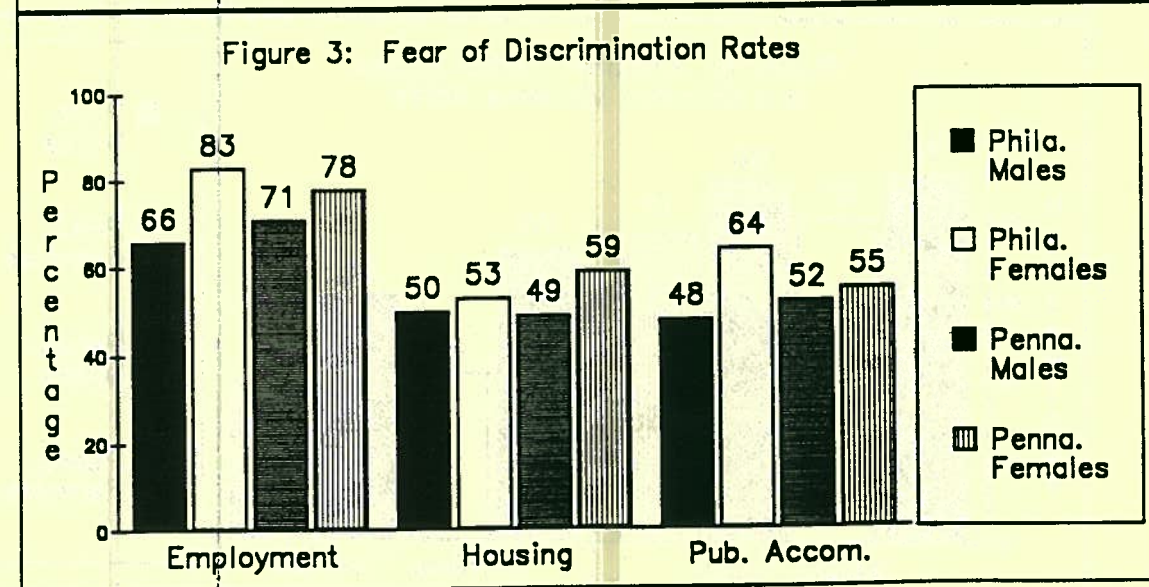
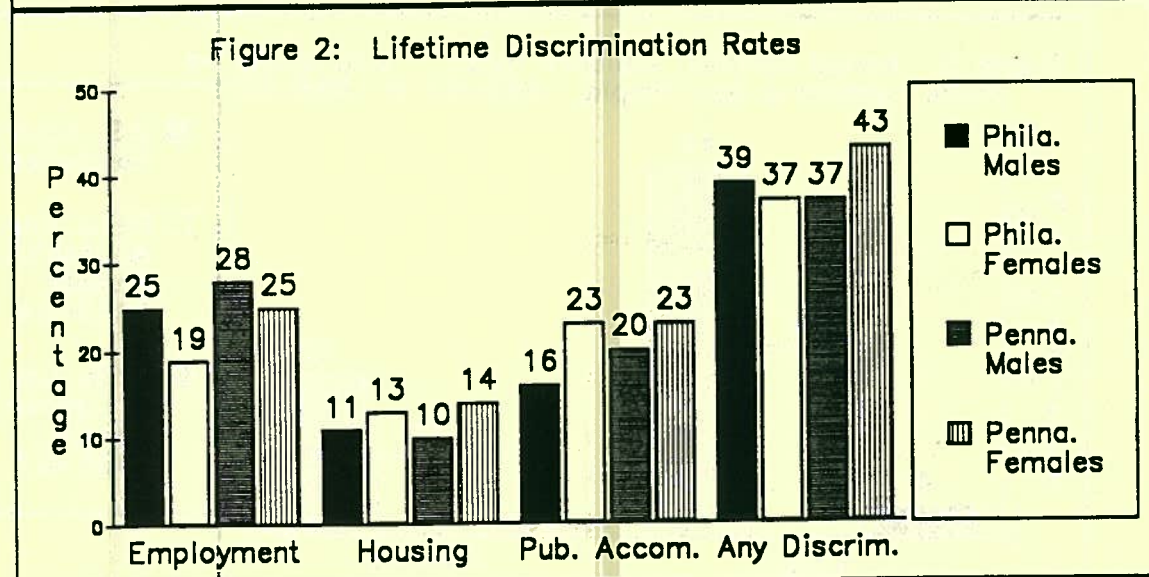
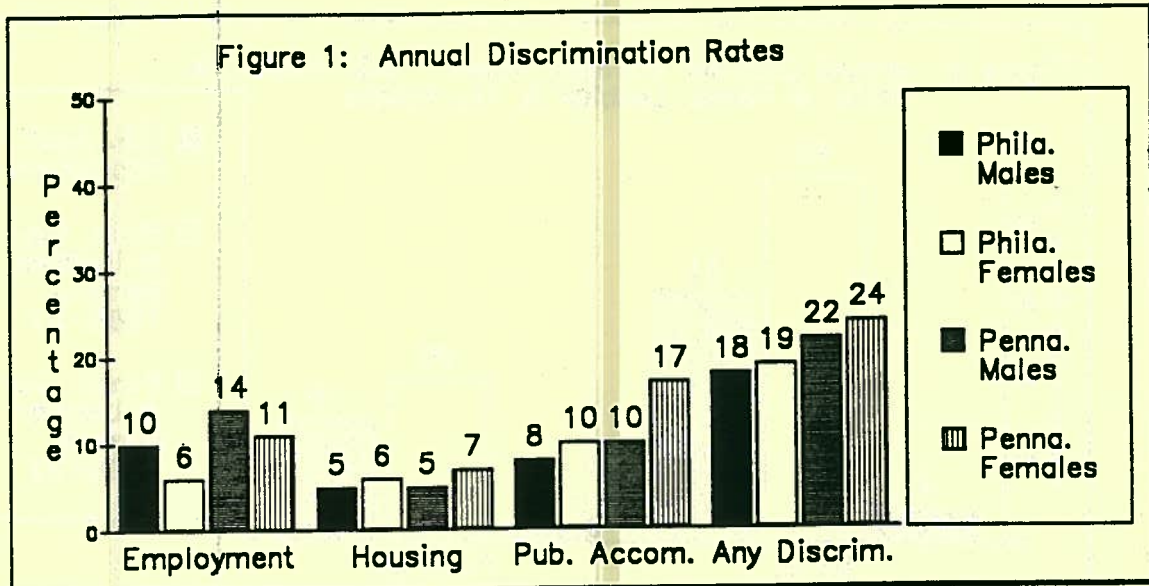
The full forty-page report can be ordered from PLGTF for a fee of \$5.00 per copy.

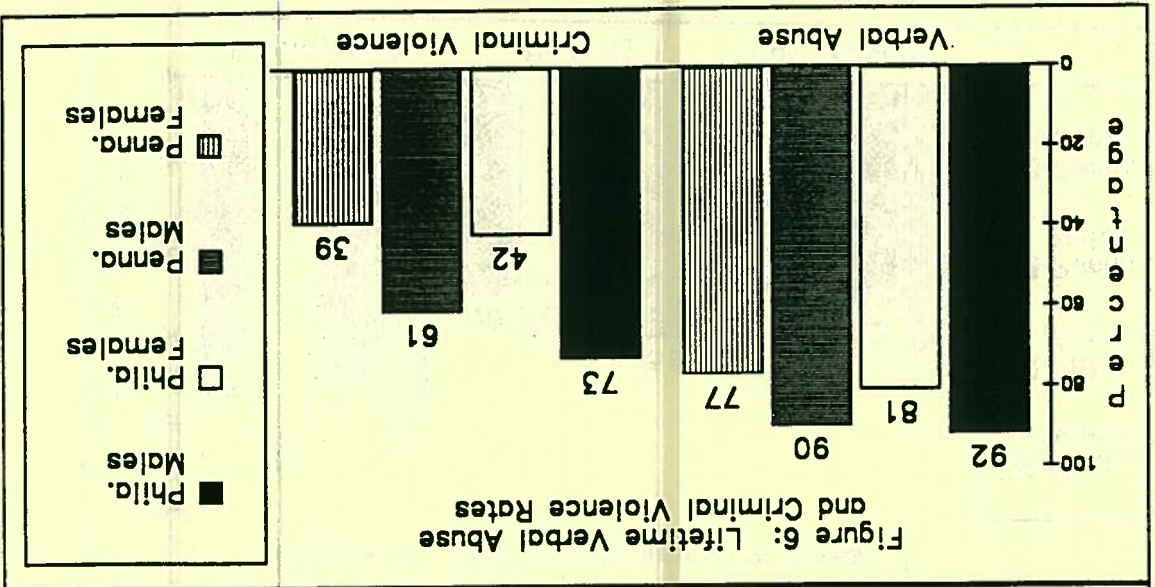
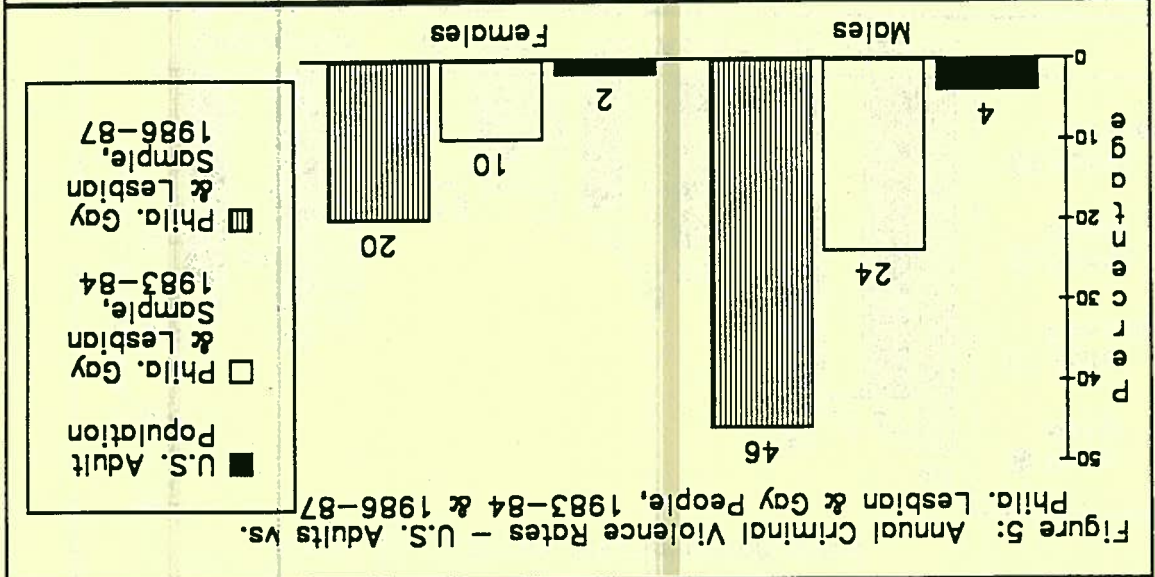
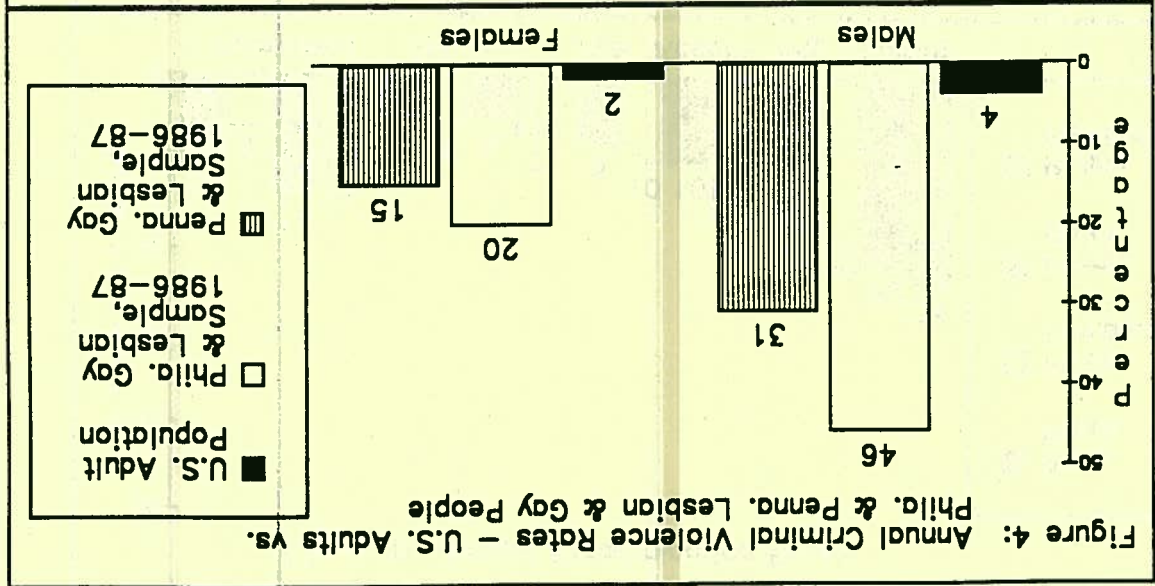
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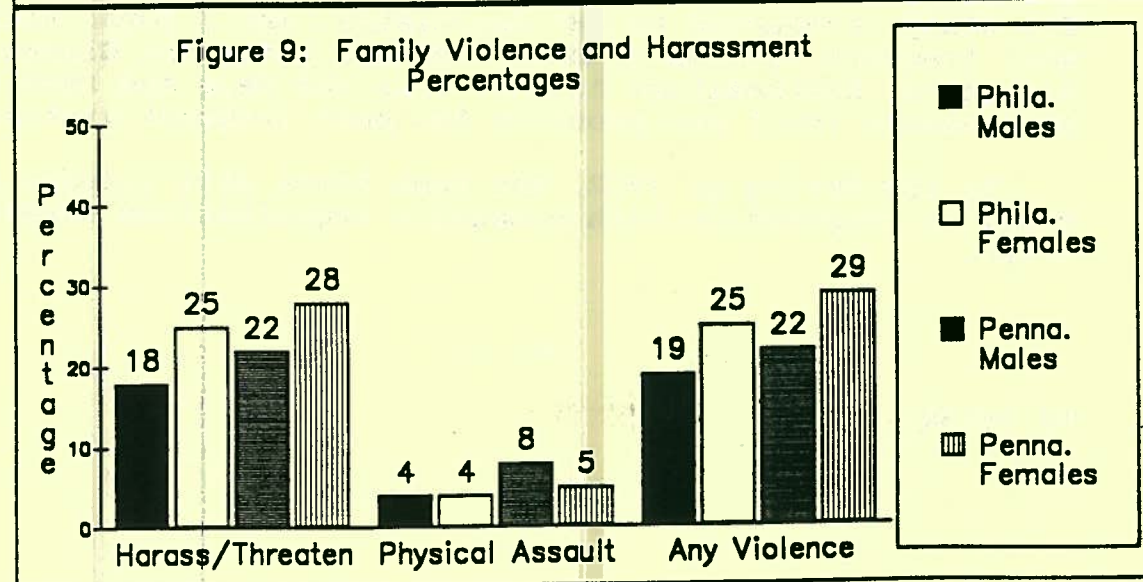
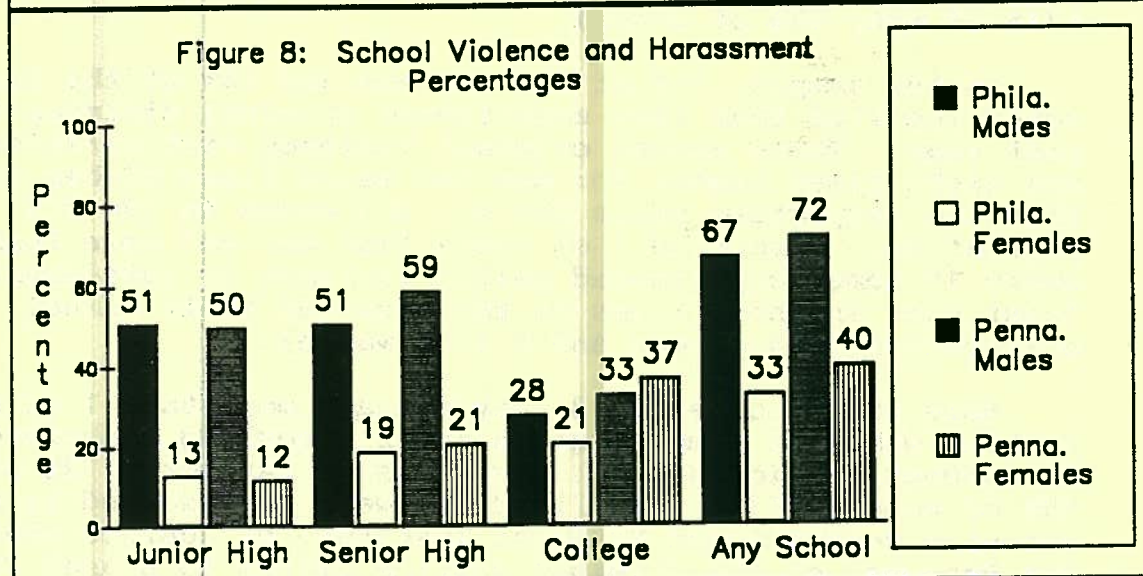
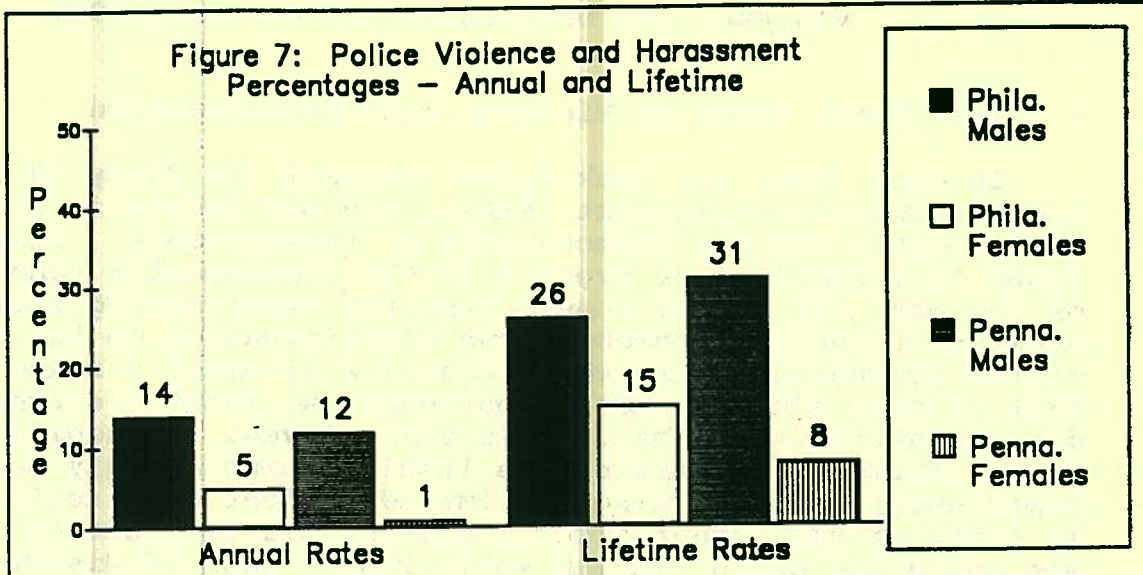
The charts on the following pages illustrate findings from the PLGTF 1987 survey. These figures are intended to accompany the full forty-page report. The List of Figures below provides page references to the full report, where a discussion of the findings can be found.

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PHILADELPHIA LESBIAN AND GAY TASK FORCE
1501 Cherry Street, Philadelphia, PA 19102
215-563-9584 and Hotline 215-563-4581

Violence and Discrimination Abstract 1991

I - Task Force Study on Violence and Discrimination

In June 1988, the Task Force released its Study of Violence and Discrimination Against Lesbian and Gay People in the City of Philadelphia and the Commonwealth of Pennsylvania. This study found that nearly 1 of every 4 of the Commonwealth sample (22% of the men; 24% of the women) reported experiencing employment, housing or public accommodations discrimination in the twelve months preceding the survey. Nearly 2 of every 5 respondents (37% of men; 43% of women) experienced at least one type of discrimination at least once in their lives. In addition to the direct forms of discrimination against lesbian women and gay men experience, many are also victimized by fear of discrimination. In terms of employment discrimination, nearly 7 out of 10 gay men and 8 out of 10 lesbian women report fear of discrimination (71% of men; 78% of women).

In the sample, 31% of the gay men and 15% of the lesbian women reported that they experienced criminal violence in the past year. These annual criminal violence victimization rates are eight times higher for men and seven times higher for women than the respective rates for men and women in the U.S. adult population. More than 1 of every four men and more than 1 of every 10 women experienced police violence or harassment at least once in their lives on the basis of their sexual orientation (31% of men and 8% of women).

More than 2 of every 3 gay men and more than 1 of every 3 lesbian women at some point in their schooling experienced harassment or violence by classmates or teachers (72% of men; 40% of women) [1]. These findings were underscored by a recently commissioned National Institute of Justice study called The Response of the Criminal Justice System to Biased Crime. The study, conducted by APT Associates, Inc., found that "the most frequent victims of hate violence today are Blacks, Hispanics, Southeastern Asians, Jews and Gays and Lesbians. Homosexuals (sic) are probably the most frequent victims.

In the Spring of 1992, the Task Force will release a new Study in cooperation with community organizations across the

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II - Task Force Anti-Violence and Discrimination Hotline

In February 1985, the Philadelphia Lesbian and Gay Task Force established a Hotline to provide for the continuing documentation of anti-lesbian and anti-gay violent victimization and discrimination and to provide direct assistance to callers.

III - Hotline Report Abstract: 1990

A total of 125 calls were documented during the one year January 1 through December 31, 1990 - 48 cases of discriminatory treatment, 52 cases of violent victimization, and 25 cases of police negligence, harassment, and/or physical abuse.

o Discrimination Calls: Of the 48 cases overall, nearly 2 of every 3 (62.5%) reported employment discrimination. Nearly 1 of every 5 (19.4%) Philadelphia discrimination incidents were reported to the Philadelphia Commission on Human Relations prior to contacting the Hotline.

o Violence Calls: Of the 52 cases overall, more than 1 of every 4 (28.9%) experienced assault and intimidation with a weapon. More than 1 of every 4 endured assault with no weapon (26.9%). Nearly 1 of every five (17.3%) callers was submitted to anti-lesbian/gay language. Non-Philadelphia callers (69.2%) were more likely than Philadelphia callers (51.3%) to report incidents to the police.

o Police Abuse Calls: Of the 25 case overall, more than 2 of every 5 callers (43.4%) experienced assault with or without a weapon. Other/negligence and denial of due process account for 2 of every five calls (40%). Less than 1 of every 3 (30.4%) of the Philadelphia incidents were reported to the Police Internal Affairs Unit while none of the non-Philadelphia incidents were reported.

IV - Hotline Report Abstract: 1985-1990

During the six year period March 1, 1985 through December 31, 1990, the Hotline documented 783 calls - 262 cases of discriminatory treatment; 390 cases of violent victimization; and 131 cases of police negligence, harassment and/or physical abuse.

o Discrimination Calls: Of the 262 documented cases of discrimination, nearly 2 of every five (37%) occurred outside of Philadelphia in areas which have no civil rights protections. Employment discrimination comprised 2 of every 5 Philadelphia calls (60%), and more than 2 of every 3 suburban and out of state calls. Only 16% of the Philadelphia callers filed a complaint with the Philadelphia Commission on Human Relations prior to calling the Hotline.

FYI: Rita Addressa, Executive Director and
Chloe Georas, Hotline Coordinator
May 3, 1991

=====
[1]. The Study was coauthored by Larry Gross, Ph.D. Professor of
Communications, Annenberg, University of Pennsylvania and Steve
Aurang, criminologist and consultant. An Executive Summary (20
pages) is available together with Hotline case histories.

During 1990 there were three homicides. In Philadelphia, a
transsexual and a gay man were murdered in December and June,
respectively. In Bucks County, another transsexual was murdered
in June.
In December 1987, a white gay man was found murdered in
Bucks County. In May 1988, a white lesbian woman was murdered,
and her lover seriously injured, on the Appalachian Trail in
Adams County, near Gettysburg. Between the period June through
July 1989, six white gay men and one Black gay man were brutally
murdered in Philadelphia.

Between July 1986 and March 1987, eight men who
self-identified as gay transvestites were reported murdered in
the Philadelphia area. Seven were Black men and one man was
Puerto Rican. Three were shot to death, two were stabbed to
death and one was bludgeoned to death. The bodies of two of the
men were found burned almost beyond recognition.

V - Reported Anti-Gay and Anti-Lesbian Murder:

o Police Abuse Calls: Of the 131 cases of police abuse,
more than 1 of every 4 (28%) involved unjust arrest or
detainment, or denial of due process. Neglect of duty or "other
abuse" was reported by 1 of every 5 callers. Anti-lesbian and
anti-gay language from a police officer was endured by 13% of
the callers. Nearly 1 of every 5 (18%) callers were physically
assaulted by a police officer, and another 14% were assaulted or
intimidated by an officer using a weapon. Nearly 1 of every 4
survivors of police abuse sustained some form of injury. Only
14% filed a complaint with the Police Internal Affairs Unit
prior to contacting the Hotline.

o Violence Calls: Of the 390 cases of violent
victimization, nearly 1 of every 3 callers (32%) alleged being
chased, threatened or verbally abused. Over 1 of every 5 calls
(22%) pertained to assault or intimidation with a weapon, and
nearly 1 of every 5 (19%) reported assault without a weapon.
Two of every five violence victims (40%) sustained some form of
injury. Twenty-three people in the Philadelphia area died as a
result of anti-gay murder during the six year period.

PHILADELPHIA LESBIAN AND GAY TASK FORCE

TYPES AND EXAMPLES OF ANTI-LESBIAN AND ANTI-GAY VIOLENCE

Verbal harassment is a primary characteristic that differentiates random violence from specifically-targeted anti-gay or anti-lesbian violence. Two examples include: "...Hey faggot...You're not leaving this train alive tonight" and "You dyke. I'll show you what it's like to be with a real man." Regardless of outcome (verbal exchange only; verbal exchange that escalates to violence) this characteristic indicates that a person's sexual orientation or perceived sexual orientation is the reason for, or a factor contributing to, victimization.

Besides verbal harassment that may or may not escalate to physical assault, there exist specific types of violence that are attributable to the perpetrator's conscious identification of an individual as lesbian or gay. Examples of hate-motivated acts of violence perpetrated against lesbian women and gay men include:

1. STREET CRIME - This involves individuals or groups of two or more people who cruise in cars and vans, or on foot in areas known to be frequented predominantly by lesbian and gay people. These people seek out members of the targeted class to verbally harass, rob, and/or physically assault them.
2. NEIGHBORHOOD-BASED VIOLENCE - Resident(s) are identified by neighbors as gay men or lesbian women and are subjected to verbal harassment that may or may not escalate to physical violence. Other characteristics of this situation include threats or continuous intimidation by neighborhood people. Landlord-tenant or tenant-tenant harassment and/or violence may also occur.
3. PICK-UPS FROM GAY-IDENTIFIED BARS, CLUBS, PARKS - The perpetrator gains access to individuals within the lesbian and gay community by frequenting gay-identified social gathering places and poses as a gay man or lesbian woman. Once trust is gained, the perpetrator may go home with the victim, physically assaulting him/her once they arrive at their destination, away from potential witnesses.
4. FAMILY/HOME VIOLENCE - Often, after a parent or sibling discovers a youth's sexual orientation, the youth may suffer verbal harassment and/or physical assault at home, forcing them onto the street. A lesbian or gay parent also faces verbal and/or physical abuse from his/her non-gay children. Violence is also perpetrated against lesbian and gay elders by family members or home health care attendants.

(please continue)

5. HARRASSMENT/ASSAULT AT THE WORKPLACE - An individual's sexual orientation is discovered by co-workers who then engage in verbal harassment that may escalate to physical violence.

6. AIDS-related hysteria has exacerbated the problem of anti-gay and anti-lesbian crime. As long as AIDS is portrayed in popular culture as a gay disease, lesbian and gay people will remain particularly vulnerable to the fear and hatred that ignorance of the virus engenders within society.

7. Vandalism - Occurs on two levels. It may be perpetrated against an individual: car tires slashed; windows of home broken; mailbox tampered with; or it may occur on an institutional level. A gay/lesbian community center, for example, may be vandalized because it is representative of gay and lesbian people as a class.

Homophobia is the common denominator applicable to all of the above-mentioned scenarios. Gay and lesbian people face a dual risk in terms of violent crime. There are those crimes (opportunistic crimes) that are committed because gay and lesbian individuals are perceived to be "easy targets". The assailant relies on a gay or lesbian's reluctance to report crime because of fear of disclosure or revictimization. As a result, gay and lesbian people, although they may experience the same kinds of violent victimization as the population generally, become likely targets for crime because of the perpetrator's perception that they would be less likely to go to the authorities.

Bias-crime, on the other hand, is perpetrated against lesbian and gay people because of fear or hatred on the part of the perpetrator. This type of crime, when committed against an individual, impacts on the entire group of which that person is a part.

KIF HLI.2 Green
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Attacks on Philadelphia Homosexuals Studied

PHILADELPHIA, June 10 (AP) — Nearly half of Philadelphia's homosexual men and one-fifth of the city's lesbians suffered violent crimes in a year because of their sexual orientation, a study by the Philadelphia Lesbian and Gay Task Force has reported.

The figures were almost 12 times the national annual criminal violence rate for all men and 10 times the rate for all women, the study said. In the state but outside Philadelphia, the rate for homosexuals was eight times higher than the national average.

"This study shows a very serious problem," said Larry Gross, a University of Pennsylvania communications

professor and co-chairman of the task force. But the problem is not new, he said.

"The results of this study are not going to be news to the state's homosexual population," he said. "We did this study to make clear the extent of this problem to the rest of society."

3,300 Questionnaires Sent Out

Last June, 3,300 questionnaires were mailed to members of various homosexual groups throughout the state. The results were compiled by Mr. Gross and Steven K. Aurand, a statistician and criminologist at the university.

The respondents were asked to comment on specific incidents of violence and discrimination from June 1986 to June 1987, as well as their lifetime experience. Of the 721 responses, 437 were from Philadelphia, where 46 percent of the gay men reported violent acts against them in the year.

No margin of sampling error was given with the study.

The report, which was made public Monday, was the second by the task force. An earlier report, based on responses from 167 Philadelphians, was released in 1986.

For the last 10 years, the task force's 1,000 members in Philadelphia have

advocated reform in many areas of gay and minority issues.

The survey also found that 73 percent of the gay men and 42 percent of the women experienced some form of violence during their lives, which included being chased, threats of violence, or being the target of thrown beer cans. Mr. Gross said that the perpetrators of the violence were usually young, heterosexual men.

High Rates Found in Schools

Two-thirds of the city's gay men and one-third of the women were the target of violence or harassment as students in school. Younger respondents reported more abuse than older ones, a trend Mr. Aurand noted with dismay.

"Some of the highest levels of violence or discrimination" were reported

in junior high schools, high schools and colleges, he said.

Rita Addessa, the task force executive director, said the report also included several recommendations to combat discrimination and violence. Those include enacting Federal and state legislation, such as a proposed amendment of state law to add sexual orientation to the list of protected categories; training the city's police in minority issues, including sexual orientation; and revising the Philadelphia school system's curriculum to reflect more accurately the contributions of gay men and women to society.

Ms. Addessa and Mr. Gross attributed the increase in reported violence against homosexuals to "AIDS hysteria" and an improved survey.

FEB 14 1992

Hate Violence Against Women: A Long Killing Season

Women and men in Canada, the U.S., and worldwide were stunned and appalled by the massacre of 14 women in the University of Montreal engineering school. There has been outrage, grief and intense questioning in the aftermath of this murder. People have wanted to know what could be the motivation for such an outrageous act, and there has been some relief drawn from the suicide note that many read as a statement of a deranged mind, suggesting that these killings were an isolated incident.

However, those of us who are longtime workers in the women's anti-violence movement know that these killings, while seeming to contain elements of madness, are simply one more piece of the more routine, less sensational hate murders of women that we deal with every day. According to the FBI, there are several thousand women killed by their husbands and boyfriends each year, and no separate record is kept of women killed by acquaintances and strangers. The FBI report also does not include the great numbers of women killed by rapists on the street and in their homes; the murders of prostitutes; the random killing of women. Almost all of these are women who die horrible deaths of brutality and terror with no public outcry and outrage for the waste of their lives.

N-B

These murders are the extreme end of a continuum of abuse of women that touches the lives of the majority of women and certainly threatens the life of every woman. These murders occur within in the larger context of violence against women: rape, marital rape, mutilation, incest, child sexual abuse, pornography, terrorization, trafficking in women, sadomasochism, prostitution, female slavery, and sexual harrassment on the street and in the workplace. Because our half of the human species is so endangered, we spend an extraordinary portion of our daily time and energy trying to protect ourselves for survival. Women pay for our survival with loss of freedom. Society pays for our destruction, as it pays for the destruction of other species, with loss of hope for the continuation of life on this planet.

After two decades of working to end violence against women and to support those victimized by it, we find that instead of violence diminishing, we see more and more evidence that it has increased. There is of course the age old question: are there more incidents of violence or are more women reporting violence because we have been so effective in our public education? The answer, I believe, is both., I believe we are in an open killing season against women and women are reporting crimes against their lives.

There is media and public response when the murder or assault of a woman is sensational either in numbers, in the esteemed worth of the victim, or when it is cross-race and the perpetrator is a man of color. Hence, the extensive coverage of the Montreal massacre, the rape of the white female investment banker in Central Park, and the Republicans' use of Willie Horton as the rapist most to be feared. Otherwise, when murders, rapes, battering, etc., of women are briefly reported daily in our papers and on television, the public, accustomed to the ordinariness of rape and murder of

women and desensitized to it, simply see it as one more trivial incident in the expected way of life for women. It's just one more woman violated or dead; turn the page; flip the channel.

To see how staggering these numbers are, let's look just at one state, the small (pop. 2.3 million), mostly rural state of Arkansas. At the Women's Project, for almost two years now we've been monitoring hate violence in Arkansas, and we are the only monitoring group in the United States that includes sexist violence along with racist, anti-Semitic and homophobic violence. In the first ten months of 1990, sixty-one women were murdered in circumstances where robbery was not the motive. In 16 cases, the killer was unknown, but where the killer was known, 19 were current or former husbands, 7 were boyfriends, 2 were family members, and the relationship of 11 was unknown. The women's ages ranged from 5 years old to 88. Some were raped and killed; all were brutal murders. They were stabbed, strangled, mutilated, shot (often in the face), beaten to death, dragged by cars, burned in trash piles. Some were urban, some rural; some rich, some poor; some white, some women of color.

A few examples will be enough to show the level of hatred and violence that was present in all the murders. In Blytheville, two days after her 2nd anniversary, a 24 year old woman was found stabbed approximately 130 times in the breasts, vagina, buttocks, both eyes and forehead. Her 27 year old husband was charged. A Greenbrier video clerk was abducted, raped, beaten to death, and dumped on a muddy hillside. The man charged was a stranger. In Little Rock an 82 year old woman was shot in an argument by her 93 yr. old husband over how \$5 had been spent. In Smackover, a 28 yr. old woman was shot three times in the head by a man who took her for a ride, made advances toward her and when she refused and fell from the car, he shot her and then had sex with her. In Mountain Home, a woman who had had a history of being battered by her husband was killed and remembered by him. The torso of her body was found floating in a cooler in a lake. In Jacksonville a 25 year old woman was killed by being tied by the neck to a car and dragged to death in what the coroner called one of the "most gruesome crimes" he had seen in 20 years.

Added to these brutal murders are the statistics from Arkansas Children and Family Services that indicate 1353 girls were sexually assaulted in 1988, and from the Arkansas Crime Information Center that 656 rapes were reported in 1988. In November the Arkansas Gazette reported that in the first six months of 1989, Little Rock had more rapes--19--than Washington, D.C.--90--a city three times its size. When we understand that only about 10% of all rapes are reported, these numbers become significantly larger. All in all, when the numbers of murders, rapes, and sexual assaults of girls are put together there emerges a grim picture of the brutal hate violence launched against women and girls. And there is still an accounting to be made of violence of pornography, incest, marital rape, and all the other forms of violence against women.

I don't believe Arkansas is an exception in this violence. From battered women's

programs, from rape crisis programs, from crime statistics, we know that women are beaten, raped and killed in every state of this country, every day. Because so many women are viciously beaten and their lives placed in jeopardy, this country has over 1100 battered women's programs, all filled to overflowing, and more being developed every day.

Wherever we live in the U.S., women live in a war zone where we may be attacked, terrorized, or abducted at any moment. Women are not safe in the home, on the street, or at the workplace. Or, as in Montreal, in a school setting on the eve of final exams for 14 women about to enter engineering jobs that only recently became accessible to them in a world that considers engineering "men's work." There is no safe place, no "proper" kind of woman whose behavior exempts her, no fully protected woman.

While we recognize the absence of safety in all women's lives, no matter what class or race, we also are aware that women of color have even less safety than white women. Women of color are the targets of the combined hatred of racism and sexism, and as such, they experience both racist and sexist violence against their lives from white people as well as sexist violence from men of color, and often racist responses and services when they seek help.

✓ Recently, the writers of a hate crime bill that went before Congress could not agree to put women alongside people of color, Jews, gay men and lesbians as targets of hate crimes. This seems to me a critical error in moral and political judgment, one reminiscent of the immoral decision the white women of the 19th century women's movement made when they decided to turn their backs on black women in order to secure the participation of white Southern women. We were told it was not politically appropriate to include women because A) their inclusion would insure the defeat of the bill, B) there were too many incidents of violence to document, C) other groups already document (not the case, unfortunately), D) and violence against women is not a hate crime because usually the victim knows or is related to the perpetrator--it is seen more as a cultural crime.

The U.S. Justice Department's guidelines to determine bias motivation for a crime include common sense (i.e., crossburning or offensive graffiti), language used by the assailant, the severity of the attack, a lack of provocation, previous history of similar incidents in the same area, and an absence of any other apparent motive. Under this definition, rape would be an apparent hate crime, often severe--including armed assault, beating and killing--often repeated in the same neighborhood or area, no other apparent motive, and almost always abusive woman-hating language.

The same would be true with our monitored cases of battering that ends in murder. In the majority of the cases, the woman was beaten (sometimes there was a long history of battering) and then killed. Rather than crossburnings or offensive graffiti, the hate material is pornography. Most telling is the absence of any other apparent motive. And then there are the countless beatings and acts of terrorism that don't end in murder but

do lasting physical and psychological damage to women. An example from Arkansas:

(A woman) reported battery and terroristic threatening. She said her neighbor/ex-boyfriend threatened her with a handgun, and beat her, knocking her down a flight of stairs where she landed on a rock terrace. (She) sustained permanent damage to her eardrum, two black eyes and extensive bruises and lacerations. She stated her assailant was not intoxicated; that he bragged of having been a Golden Gloves boxer; and he allegedly told her he could not be arrested for beating her since he struck her with his hands open. (Washington County Observer 8/17/89)

Men beat, rape and assault and kill women because they can; that is, because they live in a society that gives permission to the hatred of women.

This country minimizes hate violence against women because women's lives are not valued, because the violence is so commonplace that people become numb to it, because people do not want to look at the institutions and systems that support it, and because people do not want to recognize how widespread the hatred is and how many perpetrators there are among us on every level of society.

It is only when women's lives are valued that this violence will be ended. If 61 African Americans were killed by whites in Arkansas, our organization would be leading the organizing to investigate and end the murders; or if 61 Jews were killed by gentiles; or if 61 gay men or lesbians were murdered by heterosexuals--for all of these other groups we monitor violence against, we would be in the forefront of organizing on their behalf. But why not on behalf of these 61 murdered women? We talk about violence against women and help develop organizations that provide safety and support for victims, but even we sometimes get numbed to its immensity, to its everydayness, to the loss of freedom it brings with it.

All of us must stop minimizing this violence against women. We must bring it to the forefront of our social consciousness and name it for what it is: not the gentler, less descriptive words such as family violence, or domestic violence, or wife or spouse abuse, or sexual assault, but hate violence against women. We have made a mistake, I believe, by permitting a narrowing of the immensity of this issue by using domestic violence to describe one part of it; the only thing domestic about violence against women in all its many forms is that it happens within the borders of the U.S. It does not erupt naturally or by chance from the domesticity of our lives; it is not caused by relationship; it comes from a climate of woman hating.

For too long when women have named this violence as what it is, we have been called man-haters by people who want the truth kept quiet. "Man-hater" is a common expression but "woman-hater" is not, despite the brutal evidence of woman-hating that surrounds us: murder, rape, battering, incest. The common use of the word "man-hater" is a diversionary tactic that keeps us from looking at the hard reality of the

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source of violence in our lives. The threat of the label "man-hater" threatens women with loss of privilege and controls our behavior, but more importantly, it keeps us from working honestly and forcefully on our own behalf to end the violence that destroys us.

Social change occurs when those who experience injustice organize to improve or save their lives. Women must overcome the fear of organizing on behalf of women, no matter what the threat. We must organize together to eliminate the root causes of violence against us.

We must create a society that does not give men permission to rape and kill women. We all must believe that women's lives are as important as the lives of men. If we created a memorial to the women dead from this war against them--just over the past decade--our memorial would rest next to the Vietnam Memorial in Washington in numbers and human loss to this nation. The massacre must end.

Suzanne Pharr - Women's Project - Nov. 1990

REDEFINING HATE VIOLENCE

Pharr 2/91

Definitions of hate violence:

•According to the U.S. Department of Justice, guidelines for determining hate crimes include common sense (cross burning or graffiti), language used by the assailant, the severity of the attack, a lack of provocation, previous history of similar incidents in the area, and an absence of any other motive.

Department of Justice, FBI Hate Crime Data Collection Guidelines, 1990:

Hate crime - a criminal offense committed against a person or property which is motivated in whole or in part by the offender's bias against a race, religion, ethnic/national origin group, or sexual orientation group.

Hate Group - an organization whose primary purpose is to promote animosity and malice against persons belonging to a racial, religious, ethnic/national origin, or sexual orientation group which differs from that of the members of the organization, e.g., the Ku Klux Klan, American Nazi Party, etc.

•California Racial, Ethnic and Religious Task Force:

A hate crime is any act to cause physical injury, emotional suffering, or property damage which appears to be motivated all or in part by race, ethnicity, religion or sexual orientation.

•The Women's Project believes that violence by white people against people of color, by gentiles against Jews or Protestants against Catholics, by men against women, by heterosexuals against gay men and lesbians, etc., is institutionally supported violence because the perpetrating groups have power over the institutions of our society and control their policies, while the targeted groups do not have access to full institutional support for their lives. We use the terms of the California Attorney General's Commission on Racial, Ethnic, Religious and Minority Violence: This violence is any act of intimidation, harassment, physical force or threat of physical force against any person, or family, or their property or advocate, motivated either in whole or in part by hostility to their real or perceived race, ethnic background, national origin, religious belief, sex, age, disability, or sexual identity, with the intention of causing fear or intimidation, or to deter the free exercise or enjoyment of any rights or privileges secured by the Constitution of the United States.

I continue to be plagued by the question of why women were excluded from the 1989 Hate Crimes Statistics Act that mandated the Department of Justice to collect statistics on hate crimes against people of color, Jews, gay men and lesbians. One piece of the problem lies in the definition, I believe. When I read the national and state definitions of hate crimes, I find them inadequate not only because they exclude women but because they do not create a clear definition of hate violence as being violence from those who have power against those who do not. What is also lacking is the role that institutions and societal norms play in the creation of hate violence. I believe it is this lack of clarity in language and definition that allows the exclusion of women and permits people to extend this definition to cover a broad range of violence so that lines are blurred and confusion results.

When my co-worker, Kelly Mitchell-Clark, and I discuss hate violence with groups, we are often asked why we monitor only white against black violence, or gentile against Jew, heterosexual against gay and lesbian, men against women. They ask, for instance, why is black on white violence not a hate crime? Is it not about hatred? Is it not about race? These questions come from the same people who are moved by David Duke's assertion that he is simply seeking equal rights for all people, including white people--as if there is not imbalance of power. The final charge is that Kelly and I are practicing reverse racism. Hatred is hatred, they say, no matter what the source. But is all hatred equal?

No, all hatred is not equal, yet from reading the DOJ's definition, one could conclude that this is the case. In fact, we challenge whether the issue is even hatred at all. What is lacking from the Department of Justice's definition of hate crimes is that the perpetrators are institutionally supported in their violence. By our definition, the oppressions of racism, sexism, anti-Semitism, and homophobia are formulated on institutional power plus prejudice. Because people of color, Jews, women, gay men and lesbians do not have institutional support and power through full and just representation, and because institutions maintain racist, sexist, and homophobic policies, there is a social climate that promotes violence against those who do not have full power. And consequently those who are victims of violence are unable to receive their full civil rights because of lack of institutional enforcement. Hence, the impact of violence is greater on those who have little recourse through the protection of the law or public policies.

The violence the Women's Project chooses to monitor is not random and disconnected: it occurs in a context of institutional support. Viewed in this context, the prejudice, bigotry and violence of both individuals and organized white male supremacist groups cannot be minimized as being a result of sickness, happenstance, or aberration; it is not isolated. Because neither people of color nor women have full institutional representation or support, there can be no reverse racism or reverse sexism, nor can there be biased hate violence by people of color toward white people or by women toward men. People of color, women, gay men and lesbians can have personal power on an individual basis and they can be perpetrators of violence, but when they enter institutional systems, such as the courts, they are not supported; in fact, institutional power is more often used against them.

Once we begin to look at the list of people who are excluded from society's institutions and who experience consistent discrimination from their policies, then we begin to understand who has to be on the list of targets for what the DOJ calls hate violence. Women fall clearly into the category of a targeted group because the societal norm establishes women, along with people of color, Jews, gay men and lesbians, as being inferior, subordinate, as having lives of less worth than those who dominate society's institutions. The terrible violence that women experience from their husbands, boyfriends, family, acquaintances, and strangers is socially sanctioned violence. Seen

in the context of institutionally supported violence, lives of women of color, and especially lesbians of color, are thus the most endangered among the targeted groups because they experience violence based both on race and/or sexual identity (which are currently covered in the DOJ's definition) and on their gender from both white men and men of color (which is not covered in the DOJ's definition). To have only race and sexual identity included in the definition leaves out a major part of who women of color are and the violence they experience.

For there to be an understanding of violence against women and its connection to racist, religious, anti-gay and lesbian violence, I believe our language must come from an analysis that includes the systems and the institutions of this society that foster bias, bigotry and discrimination, and the role of individuals in perpetuating oppressions and violence. When naming the violence of both individuals and organized white male supremacist groups, we most accurately should call it institutionally supported violence, and whenever possible, include the specific systemic category: racist violence, anti-Semitic violence, homophobic violence, sexist violence. In this way, we see that it has societal roots, and is not just any violence or hatred that occurs. By defining the nature of the most pervasive violence of our society as institutionally supported violence, we are in control of the definition of our oppression and the strategies for ending it, rather than taking our lead from the very institutions that perpetuate the violence.

As well as a clearer definition, we need more accurate language to describe what we mean when we talk about violence by those who have institutional power and support against those who do not. Is indeed this violence about hate alone? Or is it something larger, far more complex that has hate as only one of its components? I was helped to understand how inaccurate and inadequate the use of the word hate was by Debbie Lee of the Family Violence Project of San Francisco who recounted a conversation with her co-worker, Leni Marin. They pointed out that hate is a psychological term that describes a raw emotion, something that many or perhaps all people experience in all kinds of circumstances. Hate can be grounded in many different things. Debbie and Leni believe, as we do here at the Women's Project, that the real issue is systemic oppression. To use hate as the defining term calls up serious questions about strategies. As Leni said, if hate is the problem, then what is the strategy for eliminating it--love? Love the Klan and the Aryan Nations and they will go away or convert to loving individuals? Love men more and they will stop battering, raping, and killing women?

This issue of strategies is complex. Certainly we need strategies for dealing with the human heart, and we need strategies for institutional change. We gained changes in policies, such as Civil Rights laws for protection, and still see discrimination and violence against people of color. We built battered women's shelters and got domestic violence laws passed, yet violence against women has increased during the last decade, according to testimony by the DOJ before Senator Biden's committee on violence against women. But we have also seen that institutional changes such as

affirmative action policies have enabled people of color and women to have a part in this society that they never had before. Even legislated integration, with its many failures, has at least shown some hope by bringing very different kinds of people side by side so the possibility of understanding and acceptance of differences is open. More than ever before, individuals have bridged the differences of race, religion, gender, and sexual identity, but equality and shared power have not been gained. There has to be more.

I believe the strategies for individual and institutional change are somehow the same. Institutional discrimination and individual prejudice, with their attendant violence, will end only when individuals whose hearts and minds long for social justice come together to speak the truth about their lives, excluding no one, valuing all, and seeking remedies that affect all. The strategy is building a massive social change movement. And no one can be left out in building a movement that seeks the transformation of abusive power to shared power, the transformation of marginalized and devalued lives to lives valued equally and fully, supported by institutions of our making.

Suzanne Pharr
Women's Project
February 1991

Group cites sharp rise in anti-gay violence

By Kim I. Mills
ASSOCIATED PRESS

WASHINGTON — Hugh Callaway wept yesterday as he told the story of being beaten, stood up against a wall and shot by a gang of youths who called him and his lover "faggots."

Callaway survived; his partner did not.

The attack, according to a gay rights group, was part of a surge last year in anti-gay violence that the group said was nurtured by a climate in which homosexuals were vilified by politicians and the entertainment media.

The National Gay and Lesbian Task Force Policy Institute released a survey counting 1,822 reported incidents of anti-gay violence in 1991 in New York, San Francisco, Chicago, Boston and Minneapolis-St. Paul. They ranged from reports of verbal harassment and police abuse to arson and murder.

The total was 31 percent more than the 1,389 reported incidents in the same cities in 1990, the group said. It counted incidents reported by gay victim service agencies in the five cities.

Callaway, of Dallas, told a news conference yesterday that he and his lover, Thanh Nguyen, were beaten and robbed in October in a park by three youths.

"Their hate for us and the viciousness of the beating seemed to intensify every time they called us a 'fag,'" Callaway said. When the men "got tired of beating us," one shot them "as casually as one does when

shooting tin cans off a fence post," he said.

One of the youths is awaiting trial on a murder charge. The other attackers have not been caught, Callaway said.

Dallas Police Sgt. Joe DeCorte disputed the idea that the attack was a hate crime, saying yesterday, "The motive for that crime was robbery. The individuals were there to steal the victims' jewelry and money."

But Callaway produced a letter in which Dallas Police Chief William M. Rathburn told him the incident "appears to be a hate crime, and it appears that robbery also was a motivation."

Kevin Berrill, director of the institute's Anti-Violence Project and author of the report, blamed the reported rise in anti-gay violence on "official gay-bashing in politics and popular culture."

He complained that Republican presidential hopeful Patrick J. Buchanan had made numerous anti-gay remarks — including an assertion that AIDS is nature's "awful retribution" against homosexual behavior — and that former Democratic presidential candidate Bob Kerrey and Vice President Quayle's press secretary, David Beckwith, had made insulting jokes.

Berrill also said that some "traditional values" groups portray homosexuals as evil and that there is "destructive stereotyping" in films such as *Basic Instinct*.

The survey found a 29 percent rise in reports of police abuse last year.

Anti-Gay Crimes Are Reported on Rise in 5 Cities

3-22-92 A12

Special to The New York Times

WASHINGTON, March 19 — Incidents of violence against homosexuals rose 31 percent last year, according to a survey made public today by a homosexual rights group. The group blamed political, religious and entertainment industry leaders for fostering a homophobic climate.

The survey of five cities by the group, the National Gay and Lesbian Task Force Policy Institute, found 1,822 reported incidents in 1991, as against 1,389 the previous year.

The incidents, compiled by victim assistance agencies in New York, San Francisco, Chicago, Boston and Minneapolis-St. Paul, included harassment, threats, physical assaults, vandalism, arson, police abuse and murder. More than three-quarters of the victims were male.

'No Surprise'

"The wide scope of anti-gay violence in 1991 should come as no surprise, given the stench of bigotry that routinely emanates from Hollywood, the halls of Congress, the pulpits of the religious right and other venues," said Kevin Berrill, director of the institute's Anti-Violence Project who wrote the report.

There are 24 million gay and lesbian Americans, Mr. Berrill said.

The report also complains of anti-gay comments by Patrick J. Buchanan, the conservative columnist who is challenging President Bush for the Republican nomination for President; Senator Bob Kerrey, the Nebraska Democrat who recently dropped out of the race for his party's nomination, and David Beckwith, Vice President Dan Quayle's press secretary.

Senator Kerrey was criticized when he told a sexual joke involving lesbians to Gov. Bill Clinton of Arkansas, who is seeking the Democratic Presidential nomination. The Nebraska Senator later apologized for his "inappropriate" remarks. The joke involved a fictitious account of another Democratic candidate approaching two lesbians in a bar.

Mr. Beckwith, referring to the public

reaction to Mr. Kerrey's joke, said, "The good news is that the lesbians are upset with Kerrey. The bad news is that they'll be coming our way to support us." He also publicly apologized for his remarks.

Mr. Buchanan has been singled out for criticism on several occasions by gay and lesbian groups. In a column, he once wrote in reference to the AIDS disease: "The poor homosexuals. They have declared war on nature and now nature is exacting an awful retribution." And a 30-second Buchanan campaign commercial, showing footage from a documentary about homosexuals, attacks President Bush for approving funds for the National Endowment of the Arts, which underwrote some sexually explicit projects.

The task force report said that movies like "Silence of the Lambs" and "Basic Instinct," which opens in theaters tomorrow, defamed homosexuals.

Movie Protests

Last year, protesters in San Francisco disrupted the filming of "Basic Instinct," a movie about a detective trailing a bisexual, female murder suspect.

Politicians and Hollywood are blamed for a hostile climate.

Members of gay organizations have shown up at preview screenings to protest the movie and say they plan to distribute leaflets or perhaps give away the movie's ending when it opens in theaters.

In the five metropolitan areas surveyed, physical assaults rose 15 percent, to 775; police abuse increased 29 percent, to 146 incidents; and vandalism swelled 51 percent, to 125 incidents, according to the study. It said there were eight anti-gay murders, compared with three the year before.

Threats and harassment were the most frequently reported types of incident with 1,255 episodes reported.

The task force statistics, broken down from each metropolitan area, found: New York had 592 incidents in 1991, up 17 percent from 1990; San Francisco, 473, up 11 percent; Boston, 209, up 42 percent; Chicago, 210, up 6 percent, and Minneapolis-St. Paul, 338, up 202 percent.

The police departments in the five metropolitan areas reported 362 anti-gay crimes in 1991, a 41 percent increase over the number documented the previous year, the report says.

The institute said its figures were higher than similar figures compiled by police departments because many victims of anti-gay crimes go to victim assistance agencies rather than the police.

Police departments in Boston and New York reported a drop in such crimes last year, of 21 percent and 14 percent respectively.

Philadelphia Police Attack

PHILADELPHIA, March 19 (AP) — A special panel has concluded that Philadelphia police officers beat protesters during President Bush's visit on Sept. 12 in part because of a fear of AIDS, homophobia and a lack of supervision.

The report, to be made public Friday, said officers yelled slurs and used nightsticks on peaceful demonstrators from the AIDS Coalition to Unleash Power, an advocacy group for people with AIDS.

The report said many police officials, including Commissioner Willie L. Williams, mistakenly believed the group intended to violently disrupt Bush's appearance at the Bellevue hotel.

The panel said it found no evidence that the group intended anything more than civil disobedience.

The report recommended a permanent police-civilian advisory board and said police and the news media should videotape future demonstrations, The Philadelphia Inquirer reported.

Several people were injured in the clash, including a man whose skull was cracked and inner ear perforated.

Mr. Williams and Mayor Edward G. Rendell declined to comment until the report was officially released. The board was appointed by Mr. Williams and included two high-ranking police officials.

None of the officers were identified in the 31-page report.

Lawrence Krasner, a lawyer and a member of the panel, said the advisory group would reconvene in 90 days to evaluate the city's and the police department's response to the report, and that the officers might be identified at that time.

"There may be a further report depending on what action is taken, to make sure our report is taken seriously," he said.

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The New York Times



Demonstrator Paul Arcure lies injured at the feet of an officer, in one of the photos reviewed by the advisory group. He was the most seriously hurt, with a cracked skull and perforated inner ear.

Report: AIDS fears and homophobia led city police to abuse protesters

By Joseph A. Slobodzian and Fredric N. Tulsky
INQUIRY STAFF WRITERS

An irrational fear of AIDS, hostility toward gays and a virtual absence of supervision caused some Philadelphia police officers to beat and mistreat protesters during President Bush's Sept. 12 visit, a police advisory group has concluded.

Officers called demonstrators "faggots," wore latex gloves, asked some of the eight people arrested if they had AIDS, used nightsticks on nonviolent protesters and ignored pleas

for medical assistance, the advisory panel's 31-page report said.

It also accused a sergeant and lieutenant of making identical "misstatements of fact" about the beating of a protester who suffered a cracked skull and perforated inner ear.

The seven-member panel was appointed by Police Commissioner William L. Williams and included two high-ranking police officials. It unanimously called on the city to form a permanent police-civilian advisory board, and urged that police and news media videotape future

demonstrations.

"The Advisory Group believes that many police officers behaved in an inappropriate and provocative manner," the report concluded, "and that three factors influenced their behavior: AIDSphobia, homophobia, and pressures associated with the presence of a high-ranking dignitary."

The report is scheduled to be signed and made public tomorrow. The Inquirer has obtained a copy. Spokesmen for Mayor Rendell and Commissioner Williams said neither would comment before the report

was officially released.

The report described how a group of police officers on the front lines between raucous Act Up protesters on Broad Street and the Bellevue hotel where Bush was speaking, Republican fund-raising event had control, screamed epithets at the demonstrators and struck them with batons. It said many police — including Williams — wrongly believed Up had set out to violently disrupt Bush's visit.

Two Act Up members purposely See DEMONSTRATION on A1

crossed a police barricade as a "voluntary" act of civil disobedience, the report concluded, but the panel found no evidence that any demonstrator purposely injured a police officer or that "Act Up came to the Bellevue with the intent of provoking a violent confrontation."

Though some Act Up members did plan to cross the barricades with a homemade coffin to protest the Bush administration's AIDS policies, the report said that when the coffin fell, striking a police sergeant on the shoulder and neck, it fell "under its own weight" after a tug-of-war between demonstrators and police — and was not thrown, as Williams and other officers had contended.

The report stopped short of accusing two unnamed officers of falsifying their reports.

Referring to the reports filed after the confrontation by "Sergeant A" and "Lieutenant B," the report said: "It is difficult to imagine that two officers could be so identically mistaken, given that their accounts are irreconcilable with all other available evidence. The advisory group also notes that those demonstrators whose behavior is inaccurately described were also the ones most evidently injured at the time of their arrest."

The arrests

The report described those arrests in graphic detail:

• Scott Tucker and Anna Forbes — who was spokeswoman for the city's AIDS office — ducked under the police barricade and were immediately surrounded by police. Officers threw Tucker down, kicked him in the ribs and heaved him face-down into a police van. When Forbes requested that her handcuffs be loosened, the report said, an officer asked her: "Do you have AIDS? ... Well, if you have AIDS, those cuffs can stay on for 40 hours." As she and Tucker were being searched, the report said, one officer told others to put on their latex gloves, warning, "Don't want to dirty your hands with these faggots."

• Coleman Terrell, who agreed to be identified in the report as HIV-positive, was bleeding from a head wound when he was arrested. Police officers told him "that I would have to lick up my blood from the van floor," Terrell testified. He said police delayed taking him to the hospital for treatment of his wound and later denied him access to medicine, even after his father tried to intervene. It was only after a friend contacted Mayor Goode, and Goode intervened, that police took Terrell to a hospital, the report said.

• Paul J. Arcure, the restaurateur who suffered the cracked skull, was shown in videotapes and photographs holding a picket sign just before an officer struck him on the head with a nightstick. Arcure testified that he heard the officer cry, "Let's get that faggot," before hitting him.

• Jim LeMaster was waiting for a bus when he started berating police for mistreating demonstrators, the report said. Two officers pushed him in the face and struck him in the throat, and one officer said, "Shut up, you little f---, we don't have to listen to you." The report said police dragged LeMaster over a barricade, tearing off his shirt on the way to a police van.

• A Channel 6 cameraman was pushed from behind by a uniformed officer without provocation, knocking the camera to the ground. The officer stepped away quickly to avoid being identified, the report said.

Williams has promised to have his department's Internal Affairs Division investigate every allegation of misconduct, the report said.

FEAR IN OFFICERS

While noting that only a few officers engaged in brutality on Sept. 12, the panel found rampant evidence of officers' fears.

Many officers wore latex gloves to the scene. Some believed Act Up members would try to infect police by hurling vials of contaminated blood or urine across the barricades, the report said. Some feared that the coffin carried by protesters contained the infected ashes of AIDS victims.

In fact, the report said, only two empty bottles — neither of them contaminated — were found on the street. And the "ashes" in the coffin were actually cat litter.

Besides calling for a police-civilian advisory board, the report made 11 other recommendations to Williams, including clear-cut supervision of police at demonstrations, mandatory training for all officers on crowd control and human relations, and education on AIDS and how the deadly immune-system disease is spread. Some of the recommendations echo steps the department has promised to take as part of a settlement of a lawsuit filed by protesters.

The report said videotape of the confrontation was the key to figuring out what actually happened. It urged police and journalists alike to videotape future protests, and added: "Had the news cameras not been present, it is unlikely that this Citizens Advisory Board would have been appointed."

The panel heard testimony from more than 35 eyewitnesses and looked at 150 photos and two videotapes of the confrontation.

Named by Williams shortly after the incident, the panel included Catherine Bachrach, executive director of Northwest Victim Services; Police Capt. James Golden, who is Williams' executive secretary; Professor Larry Gross of the Annenberg School for Communication; lawyer Lawrence S. Krasner; Deputy Police Commissioner Thomas McGeehan, who has since retired from the department; Mamie Nichols, executive director of the Point Breeze civic association, and Brenda Ridley, assistant dean of the University of Pennsylvania.

Gross, who is co-chairman of the Philadelphia Lesbian and Gay Task

Force, said he was pleased by the report's unanimous call for a permanent citizens' advisory group, something long opposed by the Police Department, and by Williams' pledge to investigate officers' conduct on Sept. 12. Thus far, no police officers have been disciplined as a result of the incident.

The report said the panel would reconvene in 90 days, receive complete files of the Internal Affairs in-

vestigation, check on whether the department was following up on the panel's recommendations, and then issue a final report.

The confrontation has already cost the city \$76,500 in the settlement of a lawsuit filed by demonstrators.

Fourteen demonstrators claimed injuries, the report said. Four officers were slightly injured, including the sergeant who was struck by the protesters' coffin.

Dramatic rise in violent crime cited

Surge in rapes spurred increase, survey states

By James Rowley
ASSOCIATED PRESS

WASHINGTON — An estimated 59 percent surge in rapes and attempted rapes and a substantial increase in assaults spurred a dramatic rise in violent crime last year, according to a Justice Department survey of crime victims released yesterday.

Preliminary figures showed there were 2.6 million completed violent crimes last year, up 7.9 percent from an estimated 2.4 million the previous year. Including attempted violent crimes, the total was 6.4 million last year, up 7 percent from 6 million in 1990.

Criminologists consider the survey of victims a more reliable barometer of crime than the FBI's Uniform Crime Report because it includes incidents not reported to police.

The Justice Department noted that its estimate of the total number of crimes and attempted crimes last year — 35 million — was well below the 41.4 million of 1981. The estimates by the Bureau of Justice Statistics have shown a gradual decline in crime since its National Crime Survey was begun in 1973.

Still, the 6.4 million total completed and attempted violent crimes was the third highest since 1973.

The bureau's annual National Crime Survey estimated there were 31.3 attempted or completed violent

crimes per 1,000 people last year. That's up from 29.6 per 1,000 in 1990, but it's well below the record rate of 35.3 per 1,000 in 1981. These offenses include rape, robbery and assault, but not murder.

As for rapes and attempted rapes, there were 207,610 in 1991, up 59 percent from 130,260 the previous year. The rate of such assaults was 1 per 1,000, compared with 0.6 per 1,000 the previous year. Rapes and attempted rapes had taken place at or near the rate of 1 per 1,000 people during 12 of the last 18 years.

The increase in the estimated number of rapes and attempted rapes was considered statistically significant. The methodology used gives department statisticians 95 percent confidence that the actual numbers would be the same if every household could

be questioned. The 59 percent increase in rape crimes "looks dramatic" because "you are dealing with a small number to start with," said Justice Department statistician Patsy Klaus.

"We don't know if it's a trend," she said. "If we are to continue to get these numbers over the years, it would be of concern."

She said the exact breakdown for completed and attempted rapes was not provided because the "crime is so small that you can't divide it out that way. We've published the numbers we feel it's responsible to publish."

The number of completed and attempted assaults rose 7.5 percent to 5.1 million last year.

The biggest jump in the assault category concerned completed simple assaults involving injury, which

increased 14 percent, for a total of 1.1 million crimes. At the same time, completed aggravated assaults with injury declined 1.7 percent to 616,430, the survey said.

Attempted and completed household crimes, which include burglary and car thefts, numbered 15.6 million last year, up 1.4 percent from 15.4 million the previous year.

The estimates are based on a survey of 95,000 people ages 12 and older in 48,000 representative households. They were asked if they were victims of crimes in the previous six months.

The FBI statistics, expected to be released in preliminary form next week, are based on reports of crime to local police. The Justice Department estimates that 37 percent of all crimes and 49 percent of violent offenses are not reported to police.

SUNDAY
September 1, 1991

The Philadelphia Inquirer

Conflict comes to the country

Gay-rights issue sparks battle in Lancaster

By Ginny Wiegand
Inquirer Staff Writer

LANCASTER — When Nancy Helm's phone rang in the middle of the night of Aug. 15, her heart fluttered in panic.

In an instant, she knew what was up. Another bomb in her bookstore.

This one took chunks out of the door and obliterated everything in a display counter. The first explosion — on June 24, also in the middle of the night — blew out the mail slot and two huge windows.

"This isn't an Amish buggy town anymore," said Helm, whose four-month-old bookstore — called The Closet — is the first in Lancaster to cater to gays and lesbians.

The bombings did not surprise Helm, for she and the rest of Lancaster's gay community have been at the center of a months-long public fight that threatens to rewrite the reputation of this quaint little corner of Pennsylvania.

It started in April, when the Lancaster City Council first talked about banning discrimination based on sexual orientation or marital status. That is, bias



R. H. Brenneman, the chairman of the County Commissioners, who opposed the ordinance protecting gays.

against homosexuals or single people.

Outrage and righteousness on both sides of this volatile issue poured forth from the hills and homes of Lancaster City and County.

Those in favor of adding the new categories of protection to the existing ones — age, race,

sex, color, creed, national origin, ancestry and handicap — were lambasted as immoral.

Those against were called "Bible bigots."

In May, after much public upset, the seven-member Democratic City Council passed the ordinance, prompting disapproval of County Commissioners —

two Republicans and a Democrat — to dissolve the joint city-county Human Relations Commission, which would have enforced it.

The partnership had existed for 27 years.

The furor culminated last weekend, when the Ku Klux Klan quickstepped through the downtown business and residential district shouting, "Hey, hey, ho, ho, the faggots got to go." Anti-Klan demonstrators jeered from the sidelines.

And it is not over.

Emboldened by the tempest, gay-rights advocates have formed the Pink Triangle Coalition to make sure the issue stays in the forefront. Members plan to conduct a voter-registration drive and a campaign to educate the public about homosexuality, hate crimes and gay bashing.

"They forced us to do this," said Tom Kieffer, 28, a coalition member who grew up in the Frankford section of Philadelphia.

"They forced this issue, not us," added Helm, 29, a Lancaster native.

In large measure, when Kieffer (See LANCASTER on 5-B)

continuation not provided

To the Penn State Community,

On March 28, 1989, Penn State student James Whitehead sent the following message over an international computer bulletin board:

Why should one kill homosexuals?

These are my opinions and not only mine. How are these views faulted? I don't believe these views are wrong in any way. Of course homosexuals will be offended but that is hardly any of my concern. They are an embarrassment to society to start. Why is it that humans are the only species to have such a relatively large percentage of these mentally disturbed members? If they couldn't help it, then this disgusting phenomena would occur in other species as well, but it doesn't. So from that observation, one could say that it isn't contained in any of their genes. Also if it was in their genes, then homosexuality would be able to be traced through family lineage. And of course, this atrocity is unnatural and inefficient in that it does not contribute in anyway to the replication and continuance of the human race. This abominable lifestyle would never be selected by nature. Also, in the definition of life is the ability to reproduce, and an argument could be made that homosexuals aren't even alive since if they continue this gross lifestyle they won't ever reproduce. One could then make a similar comparison between killing a homosexual and kicking a stone. Getting back to the origin of this problem, if this unnatural preference doesn't originate in the genes of these individuals, then it must be in the mind. Since it isn't natural, you could argue that these individuals are mentally disturbed or are infected by a mental illness. I wonder if anyone would be likely to determine if homosexuals come from families that have a history of mental illnesses. Anyone who'd believe that persons with mental illnesses also have restricted rights. From all this, if one could convince the courts of these points, and one was on trial for the murder of a homosexual, then you could either say that no death occurred or have a reduced sentence because of the status of the victim. Of course these aren't the only reasons why these vile slabs of the earth should be exterminated. The acts these questionable beings do are disgusting to the rest of various viruses and bacteria and AIDS. Their bodies weren't designed to interact. This interaction is conducive to the illness of humans are secluded from the heterosexual population through extermination or put on a secluded reservation (like Biko in Atoll is nice this time of year), or other planet (Make the site from orbit. It's the only way to be sure), who we will have to deal with them. These repulsive disease carriers, who could be considered an animated object, must be eliminated.

My Disclaimer: I do not discriminate against others on the basis of race, or color. I do discriminate against others on the basis of personality and sexual preference because I believe the person has made a choice to live that way.

And when my girls shakes her head, she sure gets funky! -B

James Whitehead
WGN@PSUVM

James Whitehead's actions are not about the mis-use of University computing facilities. They are about hatred.

As President of our University, Bryce Jordan has an ethical responsibility to protect students, staff and faculty, — gay and non-gay, — against bigotry and harassment. However, a four-sentence statement about computer mis-use fails to denounce the homophobia and violence of Whitehead's message.

As a recent University poster declares, "homophobia has no place at Penn State." The Lesbian and Gay Student Alliance and Lesbians at Work call upon President Jordan to stand behind that poster and publicly condemn homophobia. We urge him to investigate homophobia; acts and to fight homophobia through community education. We also urge Penn State to affirm the presence and contributions of lesbians and gays by including sexual orientation in its non-discrimination policy (already included by 21 Pennsylvania colleges and universities).

To join us in creating a diverse and humane university environment, send the attached coupon to President Jordan at 201 Old Main, University Park.

**Lesbian and Gay Student Alliance
Lesbians at Work**

PENNSTATE



Department of
Public Information

Telephone: 814-865-7517

312 Old Main
The Pennsylvania State University
University Park, Pennsylvania 16802

On April 5, President Bryce Jordan responded:

4-5-89

STATEMENT FROM THE PRESIDENT

We are aware that one of our students has misused University computer facilities to transmit a repugnant and threatening message towards gays and lesbians to a national computer network.

We have, as a result, taken away the student's computer privileges.

The case has been referred to the Office of Conduct Standards with a request that that office investigate the matter and pursue it to the fullest possible extent.

This and any misuse of University computers for such purposes is inappropriate.

Bryce Jordan
President

Clip here

President Jordan: As a member of the Penn State community, I express my outrage at James Whitehead's sentiments and urge you to investigate and fight homophobia and to affirm the presence of lesbians and gays at Penn State.

Name and Signature

College/school and department

Paid for by friends of LeSA. To support LeSA send your contributions to LeSA, c/o A.S.A., 202 Old Main, University Park, PA 16802

The Philadelphia Inquirer

Monday, June 27, 1988

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Venom and violence

Let there be no misunderstanding: When elected officials spew hate against groups of people, violence results. It happened in the South a generation ago and in Germany in the 1930s. And it is happening in Philadelphia right now.

Two days after City Councilman Francis W. Rafferty started his mean-spirited, ill-informed blitherings against homosexuals, a gay man was attacked in Center City by bigots invoking Mr. Rafferty's name. And Mr. Rafferty's response has been to escalate his invective: "Gays have gone too far. ... Now we're fighting back," he said in City Council Thursday. *Fighting back?* Against what?

There is no denying that many people sincerely believe that homosexuality is wrong — just as a nation of Germans sincerely believed Jews to be subhuman and the founders of this country enshrined slavery in the Constitution, often invoking the New Testament ("Slaves, obey your earthly masters" — Ephesians 6:5).

But just as this nation has advanced so that it is overwhelmingly unacceptable for Southern demagogues to stir

up bigots, so is it unacceptable for members of Philadelphia's legislature to turn opposition to Mayor Goode's proclamation of Lesbian and Gay Pride Month into a slanderous, erroneous diatribe, a diatribe whose effects are hard to deny in a period of increasing violence against gay men and lesbians.

The impetus for the current confrontation — designation of a month to recognize gay pride — may be labeled inflammatory ("Pride?" "A month?" some have demanded), but it still boils down to those who support an open, pluralistic society of individual rights on one side and those who would deny some if not all of those rights on the other.

In 1982, when faced with a reluctant mayor and institutional opposition, City Council demonstrated its resolve by amending the city's fair practices ordinance to bring gay men and lesbians under its antidiscrimination clauses. Last week, with the rhetoric turning vile, the majority in Council, rather than countering anti-gay bigotry, skulked away in deference to meanness, leaving only Angel Ortiz and four allies to say no to hate.

'Mountain man' gets life in rifle attack on 2 hikers

Associated Press

GETTYSBURG, Pa. — A man who

lived in a cave near the Appalachian

Trail was formally sentenced yester-

day to life in prison for fatally shoot-

ing a Virginia woman and gravely

injuring her companion.

Before sentencing Stephen Roy

Carr, 22, who was dubbed a "moun-

tain man" while he was being sought

after the shootings, Adams County

Judge Oscar F. Spicer allowed the

woman who survived to read a state-

ment to the court.

Claudia Brenner of Ithaca, N.Y.,

was shot in the face and arms with a

22-caliber rifle last May 13 along the

Appalachian Trail in Michaux State

Forest in Franklin Township, Adams

County. Despite her severe injuries,

she walked three miles for help.

Her companion, Rebecca Wight, 29,

of Blacksburg, Va., died from gun-

shot wounds to the head.

Carr was captured several days

later and was convicted of first-de-

gree murder Oct. 27 after a nonjury

trial. During the brief trial, his attor-

ney said that Carr had felt rejected

by women his entire life and that he

became enraged when he saw the

women making love, believing they

were trying to taunt him.

Brenner, 32, read a two-page state-

ment in court in a loud and emo-

tional voice.

"I wish that the inconceivable pain

and horror I experienced were fears

with no basis in reality, that the

sound of shots — that shattering

reality in my mind — was a bad

dream from which I could awaken,"

said Brenner.

"Every time I feel my cheek, my

teeth, my neck, my heart, I know I

have been permanently harmed. . . .

I'm thankful that the court system

substantiates the truth of the com-

pletely unprovoked and pointless

murder," she said.



Stephen Roy Carr

Killed one woman, wounded another

FRIDAY

JULY 28, 1989

METRO

Gay man found stabbed to death in his home

By Robert J. Terry
and Loretta Tofani
Inquirer Staff Writers

A 61-year-old man who police said was gay was found stabbed to death yesterday in his Center City apartment, a kitchen knife protruding from his stomach and his throat slashed.

The man, Richard B. Ferguson, was discovered at 10:36 a.m. by a maintenance man who was changing air-conditioner filters in the building at 2215 Arch St. Finding Ferguson's door ajar, he pushed it open and saw Ferguson face up on the floor. The kitchen knife in his stomach had a six-inch blade, police said. He also had numerous stab wounds in his chest.

Police Lt. James Hansen said the slaying was not related to three other slayings of gay men in Center City that occurred during the last seven weeks. All three men, who lived alone, were stabbed repeatedly in their apartments during separate incidents. A Grays Ferry man, Arnold V. Mulholland, 22, is in jail awaiting trial in two of the killings and remains a suspect in the third. Mulholland is an unemployed warehouseman whom police have described as a gay prostitute.

Shortly after police left Ferguson's fourth-floor apartment yesterday afternoon, they began investigating the slaying of another man who had been stabbed to death. The unidentified man, clad only in underwear, was found at the edge of the Schuylkill near the Art Museum in an area known among gays as "Gay Acres" because it is a popular spot to pick up a sex partner. The body was decom-

posing, police said.

Ricardo Jackson, who lives in the same building as Ferguson, said in an interview yesterday that Ferguson also visited Gay Acres. "He'd go to the area by the river," Jackson said, "and I'd see him with rough-looking guys. He'd pick up young hustlers and bring them home."

Police have not established a connection between the two killings, Hansen said, but they are investigating.

Ferguson, who was sometimes known as "Fergie," was last seen entering his apartment Wednesday night with another man, police said. There was no sign of a forced entry and no evidence of a robbery, though there were signs of a struggle. He lived alone.

Ferguson told acquaintances that he had a heart attack last year, according to Jackson and others who knew him. He was retired, but acquaintances said yesterday that they did not know his former occupation. He told one man that he earned money from stocks.

Ferguson was a familiar figure at the Wawa food market in the six-story tan stucco building where he lived, the Westminster Arch. He was about 5-foot-9, market workers said, and wore gold wire-rimmed glasses. With his cane, he strode into the market more than once a day.

Other workers at the store knew Ferguson mostly by his tastes in food — cream of broccoli soup, chicken salad purchased in containers, and caramel praline-pecan ice cream.

The assistant manager of the Wawa, Eric Corbin, 20, said that Ferguson asked him to make cream of broccoli soup more often. Ferguson purchased the soup, Corbin said, for himself and for a friend in the building. The friend, another acquaintance said yesterday, was a 93-year-old man who lived on the third floor. The man did not answer his door yesterday.

DAILY MAGAZINE

PEOPLE • HOME • MOVIES • THE ARTS • TV • STYLE

SECTION

Report: Harassment of gays was 'widespread' last year

By Michael M. Phillips

Staff News Service

WASHINGTON — Violent attacks

and harassment directed against gay

men and lesbians were "alarmingly

widespread" last year, according to a

survey released yesterday that said

relatively few cases of anti-gay vic-

timization were ever reported.

The report, released by the Na-

tional Gay and Lesbian Task Force,

identified 7,248 instances of anti-gay

attacks or harassment that occurred

in 38 states and the District of Co-

lumbia

"Each act of anti-gay harassment

aimed at depriving all lesbian and

gay people of our rights to speak,

assemble, associate and, above all, to

love," said Kevin Berrill, director of

the task force's anti-violence project.

The numbers include only attacks

that were clearly motivated by anti-

gay sentiment. This is the fourth

year the survey has been conducted.

But Berrill said the figures, which

were gathered from questionnaires

sent last January to 120 campus,

church and gay community groups,

gave just a hint of the number of

attacks on homosexuals. "Without

question, the vast majority of anti-

gay episodes in 1988 were never re-

ported," he noted.

Of the total, 1,259 incidents — 17

percent — were classified by local

reporting groups as "AIDS-related,"

Berrill said, "indicating that ha-

tried and blame associated with the

epidemic continue unabated." Such

incidents involved a verbal reference

to acquired immune deficiency syn-

drome by attackers or were directed

against people with the disease.

The total number of episodes rep-

resents an increase of 240 over the

previous year, but the study asserts

that even that figure probably falls

short of painting the true picture of

violence against homosexuals.

Heidi Jones, former president of

the New Jersey Lesbian and Gay Co-

alition, agreed that the state figures

(See REPORT on 8-D)

were "just the tip of the iceberg.

"I would say usually cases are 75 to

80 percent under-reported," said

Jones, whose statewide organization

Anti-Gay Violence that left her severe-

ly wounded and her companion

dead. Brenner and a female compar-

ison were shot repeatedly while camp-

ing near Gettysburg, Pa., last year.

Their assailant was a man who said

he had observed the two women en-

gaging in a sexual act. Brenner, who

was shot four times, managed to walk

four miles to summon help. Her com-

panion, Rebecca Wight, 29, of Blacks-

burg, Va., died at the scene. Stephen

Cart, whom law officers described as

a hermit who lived in caves around

report also included homicides.

Appearing at yesterday's news con-

ference was Claudia Brenner, 31, of

Ithaca, N.Y., who was the victim of

anti-gay violence that left her severe-

ly wounded and her companion

dead. Brenner and a female compar-

ison were shot repeatedly while camp-

ing near Gettysburg, Pa., last year.

Their assailant was a man who said

he had observed the two women en-

gaging in a sexual act. Brenner, who

was shot four times, managed to walk

four miles to summon help. Her com-

panion, Rebecca Wight, 29, of Blacks-

burg, Va., died at the scene. Stephen

Cart, whom law officers described as

a hermit who lived in caves around

the Michaux State Forest, was found

guilty of first-degree murder.

"Brutal attempted murder hap-

pened to me and killed Rebecca,"

Brenner said. "It happened because

we were identified as lesbians — by a

stranger with whom we had no con-

nection. The fact that crimes are

targeted against particular groups,

in this case lesbians, requires a soci-

etal response."

Brenner and Berrill called for

quick passage of the federal Hate

Crime Statistics Act, a bill sponsored

by Sen. Paul Simon (D., Ill.) and Rep.

John Conyers Jr. (D., Mich.). The

measure would require the Justice

Department to collect data on the

number and type of attacks moti-

ated by bigotry based on religion,

sexual orientation, race or ethnicity.

The measure is pending in the

House Judiciary Committee.

The task force data identified

North Carolina as having the most

reports of anti-gay attacks and ha-

rassment with 982 documented in-

stances, followed by Ohio, Illinois,

Berrill warned that state compar-

isons have little meaning since the

figures vary greatly depending on

how many groups in each state re-

port incidents.

The Los Angeles Times contributed

to this report.

New York Times
March 7, 1991

H 7, 1991

B3

Anti-Gay Violence Rises In 6 Cities, a Study Finds

By NADINE BROZAN

Violence aimed at homosexuals rose sharply in six American cities last year, including a 65 percent increase in attacks reported in New York City, according to a study released yesterday by a gay-rights advocacy group.

The violence also appeared to be increasing in severity, the study found, with a greater proportion of the attacks leading to physical injuries.

The study, issued by the National Gay and Lesbian Task Force Policy Institute, reported that the incidents of violence against gay men and lesbians last year rose by an average of 42 percent in New York, Boston, Chicago, Minneapolis/St. Paul, San Francisco and Los Angeles.

The figures were compiled by agencies in each of those cities that monitor

anti-gay violence. Police figures showed significantly fewer incidents, but also reflected a rise in violence.

For instance, in New York, the Gay and Lesbian Anti-Violence Project reported 507 incidents — the highest total from any city — compared with 308 in 1989. Inspector Paul M. Sanderson, commander of the Police Department's bias investigation unit, said that the police recorded 102 incidents last year, a 117 percent increase over the 47 in 1989.

'A More Identifiable Target'

The report noted that anti-gay incidents accounted for a greater share of hate crimes documented by the police, increasing from 8.7 percent in 1989 to 19.2 percent in 1990.

Although better reporting accounted for some of the increases, officials of the gay organizations and Inspector Sanderson agreed that it was not the only factor.

"Greater gay visibility and activism have opened doors to understanding and acceptance," said Kevin Berrill, director of the National Gay and Lesbian Task Force's anti-violence project. "However, our increasingly open and unapologetic existence has triggered hostility and made us a more identifiable target for potential assailants."

The New York State Attorney General, Robert Abrams, who appeared at a Manhattan news conference held yesterday to announce the findings, said "Hate crimes directed against gay and lesbian men and women appear to be the fastest growing form of bias-related crime in this nation."

All told, 1,588 anti-gay incidents were documented by the agencies in the National Gay and Lesbian Task Force study, ranging from intimidation or harassment to physical assault, vandalism, robbery, extortion, bomb threats and arson. There were two homicides — both in New York — and 137 accusations of police abuse.

The number of physical assaults reported rose markedly in all the cities surveyed, including New York, where 120 were recorded in 1989 and 257 last year, a 114 percent rise. In addition, in New York, the number of people injured in the assaults went from 111 to 209, an increase of 88 percent.

Also at the news conference were Robert T. Zappalorti Jr., nephew of James Zappalorti, who was stabbed and beaten to death on Staten Island last January; Robert Mignott, who was threatened at gunpoint on the street; and Lisa Fricione, who was punched to the ground and whose nose was broken — all victims of anti-gay attacks, they said.

"My lover and I were sitting talking in a diner 10 months ago when a young man began harassing and ridiculing us," Ms. Fricione said.

The Philadelphia Inquirer

Wednesday, Jan. 27, 1988 The Philadelphia Inquirer 7-B

Prosecutors: Gay man singled out for killing

By Theresa Conroy
Special to The Inquirer

The two men sitting drinking in the near-empty Bristol Township bar attached as the 26-year-old commercial artist walked in and ordered a sandwich and a beer. It was then that they singled him out as a homosexual.

Once they began harassing him, Bucks County prosecutors said, they did not stop until Anthony Milano, who was gay, was dead.

It was a violent, deliberate, intentional killing by design, District Attorney Alan M. Rubenstein said yesterday during a 3½-hour preliminary hearing for Richard Lalrd, 24, of the 7200 block of Marlton Avenue, Bristol Township, and Frank Chester, 20, of the 200 block of Cedar Street, Bristol Borough.

At the hearing, Bristol Township District Justice Chris Ritter ordered

the two held for trial on charges of first-degree murder in the Dec. 15 slaying of Milano, who lived in the first block of Oak Tree Drive, Bristol Township.

Prosecutors said Lalrd and Chester beat up Milano, slit his throat and left him to die by a township road, way because they hated homosexuals.

Milano, whose mother, Rose, had reported him missing Dec. 15, met Lalrd and Chester for the first time in the privacy of her apartment the night of Dec. 14, police said.

Moments after Milano joined Lalrd and Chester at the bar that night, Lalrd began calling Milano names, pressuring him to buy shots of vodka and whiskey, and eventually forcing Milano to drive the two "home," said James J. Phillips Jr., a bartender on duty that night who testified at the hearing.

Before Chester and Lalrd left with Milano about 2 a.m., Phillips said, Lalrd forced Chester to "slow dance" with him to a ballad playing on the jukebox.

Rubenstein said that Lalrd, smacking and hitting Milano, forced the artist to drive around for 45 minutes after leaving the bar. Eventually, they pulled over in a weedy area in the 1400 block of Ashby Avenue. According to testimony from Chester's friends, Chester said that he kicked Milano and knocked him down and that Lalrd then knelt on his shoulders and slit his throat.

Police found Milano's beaten and stabbed body on Ashby Avenue later that night, about 50 feet from his car, which had been set afire.

The day after the slaying was filled with panic, arguments, threats, beer drinking and a group discussion

about how to hide Milano's body, said Richard Griscavage, a friend of Chester's and a prosecution witness. Griscavage, who was charged with hindering Chester's arrest but who was promised a light sentence in return for his testimony, said that Chester told him, "We got into a fight at a bar and the dude is dead." He said that Lalrd told Chester to keep quiet about the incident, and that the two argued frequently.

Griscavage also said that on that day, several of Chester and Lalrd's friends met at Chester's apartment with a case of beer and discussed possible burial spots for Milano's body. Griscavage — the only friend charged in connection with the case — said he had suggested burying Milano on a mountain in the Poconos.

Chester and Lalrd are charged with first-degree murder, kidnap-

ping, aggravated assault, unlawful restraint, false imprisonment and possessing an instrument of crime. Lalrd was arrested Dec. 22, but Chester eluded authorities until Dec. 30. They are being held in Bucks County Prison without bail. An arraignment has been scheduled for March 11.

Two men in a Bristol Township bar started harassing a 26-year-old commercial artist who they believed was a homosexual and did not stop until the gay man was dead, Bucks County prosecutors said. 7-B.

Fear, AIDS contributing to violence against gays

By Jamie Cohen Roberts
Courier Times Staff Writer

Anthony Milano was murdered, police say, by two men who believed he was a homosexual. It was an extreme case of a rapidly increasing phenomenon: gay bashing.

Violence against homosexuals in Lower Bucks is rare, because lesbians and gays in this socially conservative community fear losing jobs, families and friends by revealing their sexual orientation, said Rita Addessa, executive director of the Philadelphia Lesbian and Gay Task Force.

But the Milano slaying was not the county's first incident of anti-gay crime. In July 1986, two gay transvestites, Faustino "Tina" Arroyo and Jonathan "Tanya" Streater, were tortured, murdered, dismembered and set afire in a patch of Middletown underbrush.

And violence against gays and lesbians is ever-increasing in the wake of a population panicked by AIDS and intimidated by a rise in political power among homosexuals. That violence, Addessa said, can happen here.

And, in fact, on Dec. 16, it did.

Milano was beaten and stabbed that day. His throat was slashed. Police charged Edgely resident Richard Roland Laird with first-degree murder for the killing, and are still pursuing suspect Frank Chester, of Bristol.

Bucks County District Attorney Alan M. Rubenstein said, "The only motive we can see is that Chester and Laird conspired to beat and stab Milano merely because they believed Milano was a homosexual."

He said Chester told police that Laird had been physically and verbally abusive to Milano and that he had called him a "faggot."

A "faggot" is a pile of sticks used to kindle a fire. Homosexuals in England were once burned alive and were therefore called faggots. Gay-bashing is not a recent phenomenon.

But AIDS and the emergence of homosexuals as an outspoken minority have been catalysts, causing a rise in the number of violent crimes committed against gays and lesbians, said Kathryn Furano, coordinator for the task force's hot line. The intent of the hot line is to assist victims of sexually oriented discrimination and violence.



Alan M. Rubenstein
... "the only motive"

"Hot lines across the country have reported a 100 percent increase each year," said criminologist Steven K. Aurand, who compiled a report on violence and discrimination against homosexuals living in and around Philadelphia. The increase in reported incidents is partially because of a growing awareness of the problem, but there is little doubt that gay-bashing incidents have truly increased, he added.

"There are reports from across the country — but they're anecdotal reports, not solid facts — to show that AIDS and AIDS phobia has had an effect (on violence against homosexuals), that AIDS is being used as a legitimizing for gay-bashing," said Addessa, who worked with Aurand on the report.

Their studies showed that gays are the victims of criminal violence at least four times more often than heterosexuals, she said.

"We assume that the statistics are highly underrated," Addessa said. Those surveyed were largely white, educated upper-middle-class homosexuals and bisexuals, she explained. "People who are poor, people who are black, people who are unemployed experience the most discrimination."

Calls to the task force's hot line have increased more than 30 percent between its first and second years of operation, Furano said. Callers report being beaten, stabbed, robbed and maimed by anti-homosexual attackers.

Since the hot line was established, she added, two murders

have been reported: A 64-year-old man was stabbed repeatedly by a 20-year-old who claimed the man had propositioned him, and a robbery victim was thrown from a window. The murderers in each case received stiff jail sentences.

Why are gays and lesbians the victims of such violence?

"It doesn't occur in a vacuum," Addessa said. "Lesbians and gays are still characterized as amoral, deviant, pathological ... and certainly deserving of being punished."

"The Catholic Church unconsciously issued the Vatican II statement which held that homosexuality is intrinsically evil," she said. "That incredible failure of love or compassion is intrinsically evil."

Educators and the media have contributed to the problem by pretending homosexuals don't exist or by portraying them as caricatures, she added.

When the church adopts a more loving attitude and when educators, entertainers and journalists portray gays and lesbians as legitimate members of the community, gay- and lesbian-bashing will begin to diminish, she said.

"The bottom line is each of us has to affirm and acknowledge each others' differences," she said. "We want to live in peace."

Lesbians and gays will have to begin to risk revealing themselves in order for that to happen, Addessa added. They must empower themselves "to be who they are, proudly, and to make that clear and public," although to do that, especially in Lower Bucks, might bring on ridicule and even a loss of employment.

More than half the victims who report to the hot line are afraid they might lose their jobs, their families or their friends if they report assaults to the police and it is learned the crime was gay- or lesbian-related, Furano said.

No Lower Bucks residents have called the hot line this year. But that doesn't mean no violent crimes, other than the Milano murder, have been committed against homosexuals, she said. Many homosexuals are afraid to report acts of violence, or simply don't know about the hot line.

And the degree of violence is increasing, she said. "I'm hearing more about people who are physically assaulted, who are having to get treated at local hospitals."

Officials and gay activists confer

By Donna St. George
Inquirer Staff Writer

Buoyed after an unprecedented

meeting last night with local, state

and federal officials, gay and lesbian

leaders said they were encouraged

efforts would be made to stem the

wave of discrimination and violence

against their community.

"There was a camaraderie, there

was a support," said Rita Addressa, ex-

ecutive director of the Philadelphia

Lesbian and Gay Task Force, smiling

and hopeful after the two-hour,

closed-door meeting at the Friends

Center, 15th and Cherry Streets.

"We had a sense that people who

were here tonight would go back and

actually give moral leadership on

issues of gay and lesbian rights," she

said. "It's exciting."

Joining Addressa and other gay and

lesbian leaders were several dozen

government officials, including

Mayor Goode.

The meeting was the first in Phila-

delphia to include officials from all

levels of government in addressing

the problems of gays and lesbians.

Addressa said.

In an interview after the meeting,

Goode said those present agreed that

violence against gays and lesbians

was on the rise "primarily because of

people who relate the disease of AIDS

to gay and lesbian persons."

The mayor maintained that the same

struggle waged on behalf of black

Americans for civil rights must also be

waged for lesbians and gays "until we

remove all of those barriers."

"It's not going to be easy," said

Goode, who called on other leaders

to emphasize that "when you call

someone gay a faggot, it's like calling

a black person a nigger."

Last night's meeting was precipi-

tated by what Addressa called the

summer's "staggering violence."

Five gay men were slain in Philadel-

phia during June and July and one

was found dead in the Schuylkill.

"It's absolutely unheard of. Never

have we had this level of anti-gay

murder in such a short period of

time," Addressa said.

During the roundtable discussion,

representatives from the offices of

U.S. Sens. John Heinz (R., Pa.) and

Arten Specter (R., Pa.) said they

would consider supporting a hearing

on a pending civil rights bill for gays

and lesbians, according to Addressa.

State legislators said they would

support an amendment to the pro-

posed ethnic intimidation act that

would increase penalties for crimes

motivated by sexual bias, and Goode

agreed to provide in-service sensitiv-

ity training for police officers.

Addressa said.

"Everyone has some homework to

do," said state Rep. Babette Josephs

(D., Phila.).

"What we're talking about is a

greater awareness of the problems of

the gay and lesbian communities."

Common Pleas Court Judge John

Braxton said after the meeting.

Addressa said she hoped the discus-

sion would trigger others that would

be attended by even more govern-

ment leaders, including Gov. Casey

and the state secretary of education.

Preate meets with members of homosexual community

By **Wendi Taylor**

TIMES HARRISBURG BUREAU

Attorney General Ernie Preate Jr. Friday became the highest elected state government official to meet with members of the lesbian and gay community about their concerns over being eight times more likely to be victims of violence.

In the first few weeks after taking office, Preate said he would be willing to sit down with anyone, including lesbians and gays. Friday, he made good on that promise by meeting with a segment of the community most politicians shy away from.

In a news conference after the meeting, Rita Addressa, executive director of the Philadelphia Lesbian and Gay Task Force, characterized

the meeting as "very friendly, encouraging and engaging."

She and other representatives presented its year-old study "Survey of Violence and Discrimination," which showed that gays and lesbians are eight times more likely to be victims of violence.

From the beginning of his term, Preate said civil rights protections would be one of the priorities of his administration and established a Civil Rights Enforcement Division, headed by Paul Waters, who also attended the meeting.

Waters is known in Harrisburg as one of the blacks that led the civil rights movement in the state's capital.

Addressa said that Preate offered some creative thinking about how to solve the problems of violence against lesbians and gays. Before leaving the 90-minute meeting, Preate agreed to one of the many recommendations made by the committee, which proposed the Office of

Attorney General adopt a non-discrimination policy to include sexual orientation and enact an affirmative action policy to recruit lesbians and gays for openings in the office.

Gov. Robert P. Casey issued an executive order a year ago which added sexual orientation to the classes protected by the state's non-discrimination policy. However, Casey's policy doesn't include affirmative action goals for them. Casey spokesman John Taylor said affirmative action only extends to "visible minorities" and excludes sexual orientation and religious creeds and ancestry.

Because the attorney general is an independent office, Casey's order did not apply.

Preate has promised to work with the task force to undertake a comprehensive study to determine how serious and widespread are discrimination and violence against lesbian and gay community in the commonwealth.

Prosecuting Bigotry

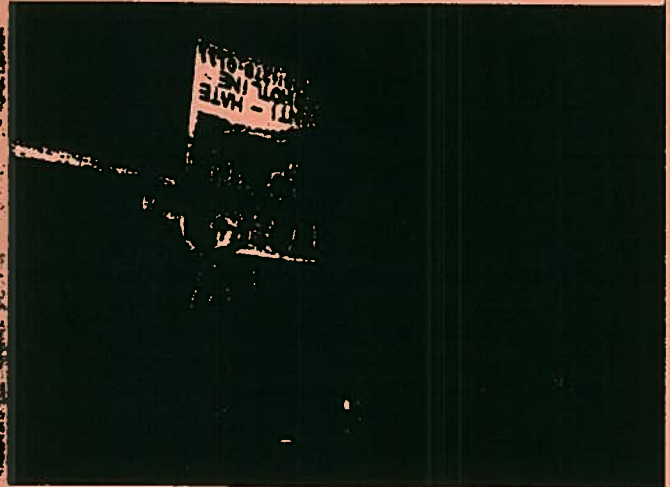
As reports of hate crimes increase, two counties have created special prosecution units to deal with them

NIGGER," "SPIC," "kike," "fag," "chink," "gook," "wetback," "camel jockey," "muck"—take your pick. As disturbing as it is to see these road signs of hate in print, when such epithets are accompanied by violence, the effect can be terrifying and often traumatic.

Civil rights activists and some politicians roundly denounce this kind of verbal venom and the violence against people or property that often accompanies it. Until recently, however, the criminal

ated," says Anastasia Steinberg, who supervises Santa Clara County's newly formed district attorney's hate crimes unit.

Hate crimes—offenses committed because of a victim's race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age or disability—are apparently on the rise. The recent Persian Gulf War, Steinberg says, triggered the latest round of such crimes. Harassment, fire bombing and vandalism were directed against both Arab



Santa Clara County deputy DA Anastasia Steinberg: Hate crimes will not be tolerated.

justice system often regarded hate-motivated violence as petty vandalism or worse yet, understandable behavior against a disliked group. But the cavalier treatment given these crimes may be coming to an end. Following San Francisco's lead last year, the Santa Clara County district attorney's office has created a unit specifically targeting crimes of bigotry. And in the state Legislature, Senator Bill Lockyer (D-Hayward) has introduced a bill to increase criminal and civil penalties for hate crimes.

"We want to send a strong message that these types of crimes will not be tolerated and will be vigorously prose-

Steinberg, whose background is in domestic violence, hopes the recent attention given to crimes of bigotry will make it easier to prosecute them. "Hate crime is analogous to child abuse or rape in that we're not so much seeing a sudden increase in the reporting of crimes as being reeducated and recognizing them for what they are," she says. "People in general need to be sensitized, and that

crimes. required police agencies to report hate and Pennsylvania—had statutes that re-

A few states—Connecticut, Maryland and National Gay and Lesbian Task Force. amation League of B'nai B'rith and the

stances came primarily from the Anti-Defamation League of B'nai B'rith and the

101-275. In the past, state- passed last year. Pub L

Crime Statistics Act crime data under the Hate

begin collecting hate- however, the FBI will

compiled accurate statistics difficult. This year,

family has been the subject of harassment for over five years," Moon says.

"Tires slashed 18 times, oil and paint thrown at their house, hate notes left in their mailbox, a shotgun brandished at

them." The police have arrested a suspect a couple of times, and Moon hopes to use the Civil Code as an extra deterrent.

Moon is also following the progress of Lockyer's bill, SB 98. It passed, it would double the maximum sentence for misdemeanor hate crimes to a year, add up to four years for felonies and increase civil penalties to \$25,000.

Moon and Steinberg hope that other district attorney's offices will recognize the prevalence of hate crimes and establish special units to deal with them. "Everybody's under attack, so it seems, perhaps because we have such a disparate population," says Moon. "[These days] it's almost an equal-opportunity victim situation."

—BILL HAFFERTY

includes officers on the beat who are often the first to encounter these situations.

Steinberg and her four-attorney team have begun establishing liaisons with community and civil rights organizations. "If these groups have a particular DA they can call, it will encourage them to report these incidents," she says.

The reeducation must extend to the judiciary, says David Moon, of the San Francisco district attorney's hate crimes unit—"not necessarily here in San Francisco, but generally speaking. On the surface, perhaps, these cases don't look as serious as some assault cases or other kinds of crimes that come before the judges on a daily basis. Judges may tend not to treat hate crimes as seriously [as other crimes], yet experience shows these victims are traumatized more than you would imagine."

Until a few months ago when his office hired a half-time attorney to assist him, Moon had to do everything himself, from investigating cases to lobbying for more funds. When he gets to court, he often uses the so-called "hate crime statutes," which provide for up to \$10,000 in fines and a year in prison. Pen C

\$422.6 et seq. Lately Moon has been trying to move against less violent but more insidious harassment cases by seeking civil remedies that permit injunctive relief and penalties up to \$10,000 against those found interfering with a victim's civil rights. CC §§51.7, 52 and 52.1.

"We've got one case in which a Latino family has been the subject of harassment for over five years," Moon says. "Tires slashed 18 times, oil and paint

thrown at their house, hate notes left in their mailbox, a shotgun brandished at them." The police have arrested a suspect a couple of times, and Moon hopes to use the Civil Code as an extra deterrent.

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—BILL HAFFERTY

SB91/LA/HE/REB/KCH

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Bias Crime and the Criminal Justice Response
A Summary Report Prepared for the
National Criminal Justice Association

by
Peter Finn
Taylor McNeil

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U.S. Department of Justice
Contract No. OJP-86-002

Bias Crime and the Criminal Justice Response

Peter Finn
Taylor McNeil

INTRODUCTION

Bias crimes are words or actions designed to intimidate an individual because of his or her race, religion, national origin, or sexual preference. Bias crimes range in seriousness from threatening phone calls to murder. These types of offenses pose greater challenges for the criminal justice system than do comparable crimes that do not involve prejudice because they are intended to intimidate other people who belong to the same group. The fear they generate can therefore victimize a whole class of people.

Nature of the Report

This report summarizes an exploratory review (Research Application Review) of bias crime and the criminal justice system conducted in September 1987 by Abt Associates Inc. for the National Institute of Justice and previous NIJ-sponsored research on law enforcement responses to racial and religious violence conducted by the National Organization of Black Law Enforcement Executives (NOBLE). It has been prepared for the Annual Meeting of the National Criminal Justice Association.

The research conducted by NOBLE in 1984-85 included a review of the literature on hate violence, a survey of 41 law enforcement agencies and 20 community organizations in jurisdictions where hate violence incidents had occurred within the past five years, analysis of state and Federal legislation specific to hate violence, and on-site study in six jurisdictions. Following a national symposium, a report and handbook on standards and protocols for law enforcement response and investigation of hate violence incidents was developed and disseminated.

The Abt Associates Research Application Review focused on emerging issues in the area of bias crime and on current efforts that selected law enforcement agencies and prosecutors' offices have taken to address such crimes and the problems they have encountered. Because such reviews are preliminary investigations of a topic area and are often completed in four to six weeks, they do not involve comprehensive surveys or detailed assessments of field practice. To complete the review, the authors of this report interviewed forty respondents listed in Appendix A. Twenty-one were

representatives of the criminal justice system, including eleven associated with law enforcement, five with prosecutor offices, and five with the National Criminal Justice Association. Fifteen respondents represented constituency organizations, including groups representing minorities that are often victims of hate violence (e.g., the National Association for the Advancement of Colored People, the National Gay and Lesbian Task Force, and the Anti-Defamation League), and generic organizations devoted to preventing hate violence (e.g., the National Institute Against Prejudice and Violence, Klanwatch). Four respondents were researchers who have conducted studies related to hate violence. In general, respondents were selected who administer law enforcement or prosecutor programs that currently target bias crime, or who were the most knowledgeable official about bias crime within each constituency organization we contacted. The average interview lasted slightly over an hour.

Available written materials were also collected from each respondent. These documents were supplemented by a library search of pertinent articles and reports. The results of the literature review may be found in Appendix C.

Although no formal statutory review was conducted, relevant legislation was obtained from several respondents and benefitted from statutory reviews conducted by the National Institute Against Prejudice and Violence, the Washington Lawyers' Committee for Civil Rights Under Law, and the Anti-Defamation League.

Statement of the Problem

For a variety of reasons (see Section 3.1 below), there are no accurate data regarding the number of bias crimes committed each year. However, both the NOBLE and Abt Associates respondents believed that the problem is widespread. A limited review of recent data also indicates that it may be increasing. For example, in New York City, the total number of reported bias crimes for the first six months of 1987 was double that for all of 1986. There is also some evidence that bias crimes may be turning more violent. NOBLE found that whereas vandalism was still the most common offense reported by their respondents nationwide, 44% reported assaults, 25% reported arson incidents, and nearly 15% reported at least one homicide.

Most respondents to both Abt Associates and NOBLE also believe that fewer incidents are being committed by members of organized hate groups, like the Ku Klux Klan, but many more are being perpetrated by individuals or small groups of people acting on their own.

Respondents also concurred that at least half the people arrested for bias crimes are older teenagers and young adults between the ages of 16 and 25. For example, New York City police records document that 70% of arrests for bias crimes in the past seven years were of youths under 20 years of age.

Most law enforcement agencies contacted by Abt Associates researchers reported that the most frequently victimized groups are Blacks and Jews. Records from the New York City Police Department's Bias Crime Unit show that from January through June, 1987, close to two-thirds of the bias crimes reported to the unit were targeted at these groups (21% against Jews and 43% against Blacks). In 1988, the Division of Church and Society of the National Council of the Churches of Christ in the USA published a study on hate violence addressing this issue.

The study, conducted by the Atlanta-based Center for Democratic Renewal, compiled a state by state report of hate violence incidents from newspaper clippings, field reports, court documents, reports by other human rights organizations, and government bodies. Based on these sources and personal communication from victims who call or write the center, the organization found that:

- The traditional targets of hate violence, Blacks and other people of color, as well as Jews, remain the single largest target of organized hate violence.
- In recent years, some law enforcement personnel have also been targeted by a number of neo-Nazi organizations.
- The Ku Klux Klan and other neo-Nazi groups have increasingly targeted gay and lesbian people for attack and intimidation.
- Since 1980, unorganized violence directed at Blacks seems to surface at points of social and economic conflict such as in "transitional" neighborhoods.
- A largely spontaneous wave of homophobic violence seems to be sweeping the nation.

Finally, respondents to the NOBLE survey reported that racial and religious minorities are considered very likely to report an act of violence or vandalism, but are far less likely to report verbal harassment or intimidation. By contrast, in the Abt Associates review, the former commander of the New York Bias Crime unit observed that even in New York City, with its large, politically active gay community, gays are the group least likely to report any crime against them to the police, largely for fear of exposure.

NOBLE and Abt Associates respondents differed on their assessments of law enforcement/criminal justice responses to hate violence. Both law enforcement and community group respondents in the NOBLE study felt that law enforcement agencies understood the serious nature of bias crimes. Almost two-thirds of law enforcement respondents rated incidents that had occurred in their jurisdictions in the "very serious" category, and 55% of community groups rated the law enforcement response in their community as good to exceptional. Abt Associates respondents, on the other hand, believed that for the most part, for various reasons, the criminal justice system has not recognized the seriousness of hate violence, or that many criminal justice personnel do not want to believe that hate violence exists in their community.

**Violence and Victimization of
Lesbians and Gay Men:
Mental Health Consequences**

LINDA GARNETS
GREGORY M. HEREK
BARRIE LEVY

In G. Herek, & K. Berrill (Eds.) (1992), Hate Crimes:
Confronting Violence Against Lesbians and
Gay Men (pp. 207-226). Newbury Park, CA: Sage
Publications.

Like other survivors of the violence that pervades American society, lesbian and gay male crime victims must confront the difficulties created by victimization. And, as members of a stigmatized group, lesbians and gay men face numerous psychological challenges as a consequence of society's hostility toward them. When individual victimization and societal prejudice converge in anti-gay hate crimes, lesbian and gay male survivors face additional, unique challenges. Those challenges are the principal focus of this chapter.

Because of the widespread prevalence of anti-gay prejudice in the United States (see Chapter 5) and the large number of lesbian and gay male victims of hate crimes in this country (see Chapter 18; Herek, 1989), American gay people as a group might be expected to manifest significantly higher levels of psychological distress and impairment than heterosexuals. Yet this is not the case; the lesbian and gay male community does not differ

significantly in mental health from the heterosexual population (Consiorek, 1982, 1991). Obviously, anti-gay victimization does not inevitably lead to psychological dysfunction.

This chapter treats anti-gay victimization as creating a crisis for the survivor, with opportunities for subsequent growth as well as risks for impairment (e.g., Caplan, 1964). This conceptualization does not deny or minimize the negative consequences of victimization—both physical and psychological, immediate and long term. But neither does it relegate lesbian and gay male targets of hate crimes to passivity. Instead, it should encourage researchers and mental health practitioners to view the survivors of anti-gay victimization as active, problem-solving individuals who are potentially capable of coping with the aftermath of the attack and using the experience as an opportunity for growth.

THE PSYCHOLOGICAL AFTERMATH OF VICTIMIZATION

In addition to dealing with the physical consequences of injury and the practical aftermath of having one's possessions stolen or damaged, crime victims often experience a variety of psychological symptoms. Common behavioral and somatic reactions to victimization include sleep disturbances and nightmares, headaches, diarrhea, uncontrollable crying, agitation and restlessness, increased use of drugs, and deterioration in personal relationships (e.g., Frieze, Hymer, & Greenberg, 1984; Janoff-Bulman & Frieze, 1983a). Victimization creates psychological distress for several reasons. First, it dramatically interferes with everyday processes of denial through which people are able to feel secure and invulnerable, that "it can't happen to me" (Janoff-Bulman & Frieze, 1983b). The world suddenly seems less predictable; people seem more malevolent. Because their victimization did not result from accidental or natural forces but was intentionally perpetrated against them, survivors are likely to feel a reduction in their previous level of basic trust (Bard & Sangrey, 1979).

Second, the experience of victimization interferes with perceptions of the world as an orderly and meaningful place. Survivors often try to restore some sense of meaning and predictability by asking "Why me?" and many respond to the question with self-

Mental Health Consequences

blame. This is not necessarily maladaptive. Blaming specific behaviors related to the victimization (*behavioral self-blame*) may constitute an effective coping strategy because it helps survivors feel a sense of control over their own lives and provides strategies for avoiding revictimization (Janoff-Bulman, 1979, 1982). In contrast, blaming one's victimization on perceived character flaws (*characterological self-blame*) is associated with low self-esteem, depression, and feelings of helplessness (Janoff-Bulman, 1979). Although behavioral self-blame may sometimes be adaptive, observers may react more negatively to victims who blame themselves than to victims who attribute their circumstances to chance factors (Coates, Wortman, & Abbey, 1979), thereby exacerbating survivors' psychological distress.

A third reason that victimization creates psychological distress is that it often leads people to question their own worth. Survivors may devalue themselves because they perceive that they have been violated and because they experience a loss of autonomy, first at the hands of the perpetrator and subsequently as they must rely on others to help them recover from the victimization (Bard & Sangrey, 1979). Survivors also may internalize the social stigma associated with being a victim. Others often react negatively to survivors, seeing them as weak or inferior, as having failed in the basic task of protecting themselves, as somehow deserving their fate (Coates et al., 1979). Such social reactions may lead survivors to feel ashamed or embarrassed at their perceived "failure."

Severe psychological responses to victimization may be of short or prolonged duration and may be immediate in their onset or delayed by years after the victimization. Severe reactions are diagnosed as Posttraumatic Stress Disorder, or PTSD (American Psychiatric Association, 1987; Frederick, 1987), indicated by the persistence of three types of symptoms for at least one month consequent to victimization: (a) persistent reexperiencing of the victimization (e.g., via memories, intrusive thoughts, dreams, or intense distress from activities or events triggering recollection of the event); (b) persistent avoidance of trauma-associated stimuli or a numbing of general responsiveness (e.g., diminished interest in significant activities, feelings of detachment from others, restricted affect, sense of foreshortened future); and (c) persistent symptoms of increased arousal (e.g., sleep disturbances, exaggerated startle response, difficulty concentrating).

The crisis following victimization is likely to create different challenges as time passes (e.g., Tsegaye-Spates, 1985). Bard and Sangrey (1979), for example, highlighted three important stages: (a) an *impact* phase, when victims typically feel vulnerable, confused, helpless, and dependent on others for even the simplest decisions; (b) a *recoil* phase, characterized by mood swings and a "waxing and waning" of fear, rage, revenge fantasies, and displacement of anger (often onto loved ones); and (c) a *reorganization* phase, when survivors assimilate their painful experience, put it into perspective, and get on with their lives. Most victims successfully negotiate these stages of recovery, although not necessarily in a linear sequence and often only after a period of several years (Sales, Baum, & Shore, 1984). The victimization is not likely ever to be entirely forgotten, however; the self can no longer be regarded as invulnerable. Survivors must nevertheless reestablish a perception of the world as not entirely threatening, as a meaningful place in which most events make sense. Additionally, they must regain self-perceptions of being worthy, strong, and autonomous (Janoff-Bulman & Frieze, 1983b).

PSYCHOLOGICAL CONSEQUENCES OF HETEROSEXIST STIGMA

In addition to the victimization for which all Americans are at risk, lesbians and gay men are targeted for attack specifically because of their sexual orientation (see Chapter 1). The psychological consequences of anti-gay hate crimes must be examined against the background of cultural heterosexism, which is an ideological system that denies, denigrates, and stigmatizes any nonheterosexual form of behavior, identity, relationship, or community (see Chapter 5). American culture is pervaded by a heterosexist ideology that simultaneously makes lesbians and gay men invisible and legitimizes hostility, discrimination, and even violence against them. Heterosexist stigma also creates two interrelated challenges that lesbians and gay men must confront in the course of their psychosocial development: overcoming internalized homophobia and coming out.

Because most children internalize society's ideology of sex and gender at an early age, gay women and men usually experience

some degree of negative feeling toward themselves when they first recognize their own homosexuality in adolescence or adulthood. This sense of *internalized homophobia* often creates a "basic mistrust for one's sexual and interpersonal identity" (Stein & Cohen, 1984, p. 61) and interferes with the process of identity formation (Malyon, 1982). Coming out¹ becomes a process of reclaiming disowned or devalued parts of the self and developing an identity into which one's sexuality is well integrated (Malyon, 1982; Stein & Cohen, 1984).

In the course of coming out, most lesbians and gay men successfully overcome the threats to psychological well-being posed by heterosexism. Psychological adjustment appears to be highest among men and women who are committed to their gay identity and do not attempt to hide their homosexuality from others (Bell & Weinberg, 1978; Hammersmith & Weinberg, 1973). As with other stigmatized minorities, gay men and lesbians probably maintain self-esteem most effectively when they identify with and are integrated into the larger gay community (Crocker & Major, 1989). Conversely, people with a homosexual orientation who have not yet come out, who feel compelled to suppress their homoerotic urges, who wish that they could become heterosexual, or who are isolated from the gay community may experience significant psychological distress, including impairment of self-esteem (Bell & Weinberg, 1978; Hammersmith & Weinberg, 1973; Malyon, 1982; Weinberg & Williams, 1974; see also Hodges & Hutter, 1979). Chronically hiding one's sexual orientation can create a painful discrepancy between public and private identities (Humphreys, 1972; see also Goffman, 1963), feelings of inauthenticity, and social isolation (Goffman, 1963; Jones et al., 1984).²

VICTIMIZATION OF LESBIANS AND GAY MEN

Consequences for the Victim

When people are attacked because they are perceived to be gay, the consequences of victimization converge with those of societal heterosexism to create a unique set of challenges for the survivor. Perhaps most important is that the victim's homosexuality becomes

directly linked to the heightened sense of vulnerability that normally follows victimization. One's homosexual orientation consequently may be experienced as a source of pain and punishment rather than of intimacy, love, and community. Internalized homophobia may reappear or be intensified. Attempts to make sense of the attack, coupled with the common need to perceive the world as a just place, may lead to feelings that one has been justifiably punished for being gay (Bard & Sangrey, 1979; Lerner, 1970). Such characterological self-blame can lead to feelings of depression and helplessness (Janoff-Bulman, 1979), even in individuals who are comfortable with their sexual orientation.

The aftermath of victimization probably is affected by the survivor's stage in the coming-out process (Cass, 1979; Troiden, 1988). Those who have come out have already faced a major threat to their self-esteem and have emerged intact and possibly stronger for the experience. Additionally, lesbians and gay men in the course of coming out may develop coping skills (i.e., a "crisis competence"; Kimmel, 1978) that they subsequently can use when new life crises occur. Coming out does not "prepare" gay men and women for subsequent victimization, but it does provide them with tools that they can use in coping: supportive social networks, community resources, and nonheterosexist interpretations of the victimization experience. Lesbian and gay male survivors who are in the later stages of coming out prior to their assault have the benefit of being able to balance their victimization experience against many other positive experiences associated with being gay.

Women and men who are still in the early stages of coming out, in contrast, are unlikely to have the requisite social support and strongly developed gay identity that can increase their psychological resilience and coping skills (Miranda & Storms, 1989). Like closeted gay men with AIDS, closeted survivors of victimization face the prospect of a double disclosure—that they are gay and that they were victimized or have AIDS—with increased risks for stigmatization (Herek & Glunt, 1986). If the survivor's homosexuality becomes known, heterosexual family members or friends may blame the victimization on it. Lacking a more positive interpretation and feeling especially vulnerable to others' influence, the survivor may well accept this characterological attribution (Bard & Sangrey, 1979) and the attendant feelings of helplessness,

Mental Health Consequences

depression, and low self-esteem. If closeted survivors can avoid public disclosure of their sexual orientation in such a potentially hostile setting as a police station, they are likely not to report the victimization. They may even minimize or deny its impact to themselves, a tactic that can intensify and delay the resolution of psychological and physical problems (Anderson, 1982; Koss & Burkhart, 1989; Myers, 1989).

Sexual Assault

Anti-gay sexual assault may give rise to unique problems in addition to the reactions described above. Lesbians may be directly targeted for sexual assault by anti-gay attackers or raped "opportunistically" (i.e., when the perpetrator of another crime inadvertently discovers that his victim is a lesbian).³ Rapists often verbalize the view that lesbians are "open targets" and deserve punishment because they are not under the protection of a man. Because many lesbians are not accustomed to feeling dependent on or vulnerable around men, a sexual attack motivated by male rage at their life-style constitutes a major assault upon their general sense of safety, independence, and well-being. Any physiological response by the victim during the assault or the decision not to resist can raise doubts later regarding her complicity or her sexuality. Such doubts may be exacerbated by reactions from significant others when she describes details of or feelings about the victimization experience.

In addition to the humiliation and degradation that are common components of all sexual victimization, anti-lesbian rape may also include attempts by the perpetrator to degrade lesbian sexuality. For example, a lesbian couple sought counseling from one of the authors (Levy) after they were forced at gunpoint to engage in sexual behaviors together, then raped. When behaviors that formerly were expressions of love become associated with humiliation, violence, and victimization, lesbian partners can experience serious difficulty redefining their sexuality positively.

Male-male sexual assault is largely an invisible problem in contemporary American society, often assumed to occur only in prisons and similar settings. The few reports that have been published, however, indicate that it is a serious problem outside of institutions (Anderson, 1982; Kaufman, Divasto, Jackson,

Voorhees, & Christy, 1980; Myers, 1989). As with rape of females by males, male-male rape is a crime of violence—often anti-gay violence—rather than a crime of sexuality (Anderson, 1982; Groth & Burgess, 1980; Kaufman et al., 1980). Contrary to popular stereotypes, the perpetrators of male rape often identify themselves as heterosexual (Groth & Burgess, 1980). Whereas the feminist movement has made important gains in sensitizing law enforcement personnel, caregivers, and society at large to the problems faced by female rape survivors, male rape survivors remain hidden and isolated. Although victims of male-male rape can be either heterosexual or gay, we focus here on the special mental health consequences for gay men.

Male gender role socialization creates distinct problems for gay male rape survivors. Because most men have internalized the societal belief that sexual assault of men is beyond the realm of possibility, the male victim's sudden confrontation with "his own vulnerability, helplessness, and dependence on the mercy of others" can be devastating (Anderson, 1982, p. 150). Men may have trouble accepting their rape experience as real, not only because it happened to them but because it happened at all. This may interfere with their subsequent recovery. If internalized homophobia re-surfaces or is intensified, gay male survivors may interpret the rape as punishment for their sexual orientation, with all of the attendant problems detailed above. If a man did not resist, he may later blame himself and wonder whether he somehow was complicitous in the rape. Self-doubts are especially likely to follow when the assailant successfully forces the victim to ejaculate in the course of the assault (Groth & Burgess, 1980). The victim may retrospectively confuse ejaculation with orgasm and may interpret his own physiological response as a sign of personal consent to the rape. Paralleling the experience of some lesbian rape victims, gay men may experience their sexual assault as an attempt to degrade gay male sexuality, which may later give rise to fearful or aversive feelings associated with their normal sexual behavior.

Words Can Never Hurt Me? Consequences of Verbal Victimization

Most discussions of anti-gay hate crimes focus on physical and sexual assaults. Yet verbal harassment and intimidation are

the most common forms of victimization of lesbians and gay men; most survey respondents report that they have been the target of anti-gay verbal abuse (see Chapter 1). Although researchers, practitioners, and policymakers alike may be tempted to recall the children's chant, "Sticks and stones may break my bones," the potentially damaging effects of "mere" words should not be minimized.

Most people in American society find epithets such as *nigger* and *kike* to be offensive precisely because they convey raw hatred and prejudice. Such words have been used historically by oppressors to remind the oppressed of their subordinate status (Unger, 1979). Similar levels of hatred are conveyed by words such as *faggot*, *dyke*, and *queer* and the threats of violence (implicit and explicit) that accompany them. Such anti-gay verbal abuse constitutes a symbolic form of violence and a routine reminder of the ever-present threat of physical assault. Its "cost" to the perpetrator in time, energy, and risk is minimal, yet it reinforces the target's sense of being an outsider in American society, a member of a disliked and devalued minority, and a socially acceptable target for violence.

Like hate-motivated physical violence, anti-gay verbal assault challenges the victim's routine sense of security and invulnerability, making the world seem more malevolent and less predictable. The psychological effects of verbal abuse may be as severe as those following physical assaults and possibly more insidious because victims of verbal abuse may find its "psychic scars" more difficult to identify than physical wounds. It affects how one feels about oneself without a physical injury to which to attribute the feelings. Two of us (Garnets and Levy) have observed clinically that victims often minimize the impact of a hate-motivated verbal attack and subsequently do not understand the reason for their feelings of fear or self-hatred.

Because verbal abuse may be experienced as a near encounter with violence, it can seriously restrict day-to-day behaviors of lesbians and gay men. Most gay respondents to victimization surveys indicate that their public behavior is affected by their fear of physical attack (see Chapter 1). Verbal harassment and intimidation reinforce this climate of fear. Not knowing whether a specific instance of verbal harassment is likely to culminate in physical violence, many gay women and men probably follow

the adaptive strategy of avoiding possible occasions of verbal abuse just as they avoid potential assault situations. Consequently, their day-to-day behaviors are restricted, and they lose considerable control over their lives. Victims who are more closeted may experience heterosexual verbal abuse as an involuntary public disclosure of their sexual orientation. They may respond by withdrawing even further into the closet.

Consequences of Victimization for Others

In the aftermath of anti-gay violence, victims turn to significant others for social support. A lover, family, and friends can greatly enhance a survivor's coping resources (Bard & Sangrey, 1979). Yet these others also must deal with the victimization experience. In cases of murder, they must cope with physical loss of the victim. With other crimes, they must deal with the survivor's immediate reactions (including her or his displaced feelings of anger). They must make sense of the event for themselves and deal with their own self-blame. Same-sex partners are at special risk for secondary victimization (see Chapter 18) as they assist the survivor in seeking services. They may be denied access to hospital visitation, for example, because they are not considered "immediate family." They are likely not to be eligible for or recognized by social workers or victim assistance agencies. Indeed, much of the postattack experience may serve to remind a gay couple that the larger society is hostile to them as gay people.

In addition to the victim's significant others, the entire gay community is victimized by anti-gay assaults. Hate crimes create a climate of fear that pressures lesbians and gay men to hide their sexual orientation. To reduce their own feelings of vulnerability, some members of the community are likely to blame the victims of violence, often focusing on "obvious" behavior, gestures, or clothing. Such victim-blaming reinforces key aspects of the cultural ideology of heterosexism, such as the prescription that men and women should conform to highly restrictive norms of gender-appropriate behavior⁴ and the belief that being gay is wrong and deserves punishment (see Chapter 5). Victim-blaming also may discourage observers from taking precautions for reducing their risk of victimization—both personal precautions, such as

taking a self-defense class, and community precautions, such as organizing neighborhood street patrols.

SUGGESTIONS FOR MENTAL HEALTH PRACTITIONERS

As a crisis, anti-gay victimization creates opportunities for growth, both at the individual and the community levels. Survivors who cope successfully may infuse their lives with greater meaning or purpose than before and enjoy a strengthened sense of self-worth. They may take control of parts of their lives that they previously had not been able to manage while at the same time accepting that some events are beyond their control (Burt & Katz, 1987). They may redefine previous setbacks they experienced as the result of prejudice rather than personal failings, thereby increasing their self-esteem (e.g., Crocker & Major, 1989). Previously compliant survivors may become outraged by the injustice of their victimization and may become politically militant (e.g., Birt & Dion, 1987), with a subsequent increase in feelings of self-efficacy and empowerment. Violence may shock community members into taking collective action that channels their feelings of helplessness and anger (for an example, see Chapter 14). Perhaps the most famous example of a positive community response to victimization was the 1969 "Stonewall Rebellion," which followed a police raid on a Greenwich Village gay bar and marked the beginning of the modern movement for gay rights (e.g., D'Emilio, 1983).

Mental health practitioners can help gay male and lesbian victims of hate-crimes maximize the positive aspects of their response. Before working with lesbian or gay male victims, however, professional caregivers must be aware of their own heterosexual biases and assumptions and should be familiar with current and accurate information about gay male and lesbian identity, community, and mental health concerns. Among the basic assumptions to be avoided are that a homosexual identity or life-style is negative and unhealthy, that all clients are heterosexual unless they identify themselves as gay, and that biological family members necessarily constitute a client's significant others. In reality, homosexuality is not correlated with psychopathology;

many crime victims are gay but do not choose to come out; and gay clients may define their family in terms of a same-sex lover and gay friends (Cohen & Stein, 1986; Gonsiorek, 1991; Morin & Charles, 1983). Professionals should carefully respect confidentiality concerning clients' sexual orientation. In many jurisdictions, gay people whose sexual orientation becomes known to others can lose their jobs or apartments, lose custody of their children, and even be liable to criminal prosecution (see Chapters 5, 18). Professionals who fail to understand these potentially negative consequences can themselves become secondary victimizers (e.g., by inadvertently revealing a client's sexual orientation to law enforcement personnel).

Practitioners should be aware of the different needs and experiences of gay men and lesbians from different sectors of the gay community. Although space limitations do not permit its consideration here, the mental health consequences of anti-gay victimization are likely to vary according to the survivor's race, age, and social class, among other variables.

For heuristic purposes, mental health interventions with gay male and lesbian survivors can be conceptualized according to the *impact, recoil, and recovery* phases described by Bard and Sangrey (1979). Crisis interventions are necessary in the *impact* phase, when the first concern is whether the victim is safe from further attacks and whether she or he requires immediate medical care. The focus of the crisis intervention is assessing the meaning that the victim is deriving from her or his experience, feelings about the self, and the degree to which the victimization is equated with being gay or lesbian. Additionally, the mental health professional should assess internal and external coping resources: (a) learned coping skills; (b) support networks, such as a lover, family, or friends who can assist the victim in meeting immediate needs; and (c) existing or potential involvement in gay and lesbian community networks. Previously effective coping skills usually are not adequate to deal with the shock and fear of this stage of the reaction to physical or sexual violence. Assessment will suggest to victim and practitioner alike ways to build upon previous coping resources or the need to develop new ones.

In the *recoil* phase, mental health professionals can help greatly by allowing survivors to ventilate the horror and terror that the victimization evokes. By listening empathically, the

professional can give the survivor who is feeling alienated and isolated a sense of connection to another person. The therapeutic goal at this stage is to support victims as they regain their self-confidence and sense of competence and wholeness while their feelings of guilt, shame, helplessness, and embarrassment diminish.

Reducing Negative Affect

Survivors should be encouraged to feel and express anger toward the assailant(s), especially survivors who are blaming themselves or are depressed (Bard & Sangrey, 1979; Bohn, 1984). Anger can be constructively directed, for example, by encouraging involvement in activist groups organized against anti-gay violence or in self-defense classes. Intervention to prevent self-blaming and guilt feelings involves helping the survivor to review decisions made before, during, and after the assault. To combat the distorted retrospective perceptions that lead to self-blame, survivors need to remember that their decisions were based on their perceptions and knowledge at the time of the attack, in a life-threatening situation. The aim is for survivors to see that they responded in the best way they could under the circumstances (Levy & Brown, 1984).

Victims who manifest the symptoms of Posttraumatic Stress Disorder may benefit from recently developed strategies that aim to reexpose the survivor to the memory of the traumatic event. These strategies include systematic desensitization, flooding or implosive therapy, and stress inoculation. Reexposure is accompanied by techniques of cognitive restructuring of false assumptions about oneself and the world (e.g., self-blame and the view of the world as malevolent; Fairbank, Gross, & Keane, 1983; Frank et al., 1988; Steketee & Foa, 1987). The cognition that "bad things happen because I am gay" can be reformulated to "bad things happen."

Gay male and lesbian survivors of hate violence often have to cope with negative feelings specifically about their sexual identity. If victimization has forced premature disclosure of the survivor's gay identity, it may have amplified the feelings of vulnerability, alienation, and exposure that often are part of the coming-out process. These feelings must be explored with the aim of separating the victimization experience from the coming-out

experience. In addition, the survivor must be helped to feel the positive effects of disclosing her or his identity that also are part of coming out. When survivors who are in the later stages of coming out question their homosexuality as a result of the assault, the practitioner should review the bases for the client's coming-out decisions of the past, with the aim of reestablishing her or his positive identity as a lesbian or gay man.

Facilitating Positive Affect

Self-confidence can be mended through consciousness-raising, which can help survivors to locate their victimization in a social context. Understanding that the crime was based on global hatred that has its roots in a heterosexual society can relieve the survivor's feelings of being personally targeted and blameful. As Bohn (1984) noted, group work may be especially valuable for gay survivors because it permits identification with other lesbian and gay male victims and helps them to realize that they are not alone. Gay survivors in groups can share their reactions to victimization, express their anger, and develop analyses of their victimization that bond them to the larger gay community and its support systems.

Survivors inevitably are faced with the question of whether to report their victimization. At some point in the recovery process, this decision must be explored. In addition to its importance for the criminal justice system, reporting the incident has several potential benefits for the survivor. It can offer a constructive channel for anger, increase feelings of efficacy, and provide the satisfaction of helping to protect other members of the community from the sort of victimization one has experienced. At the same time, survivors should not be led to believe that reporting the crime necessarily will lead to arrest and prosecution of the attackers; indeed, such a result is unlikely in many cases (e.g., Bard & Sangrey, 1979). The practitioner assists the survivor in weighing the benefits and risks in reporting and ensures that the survivor makes her or his own decision. Because reporting also may lead to secondary victimization by insensitive or prejudiced criminal justice personnel (see Chapter 18), an increase in the survivor's sense of powerlessness can be prevented if the practitioner helps the survivor to become adequately prepared and to develop a good support system.

Working through these many issues and feelings eventually permits the survivor to integrate the experience of victimization into her or his larger worldview and to get on with life. This reorganization process may require considerable time to complete, especially if a victim denies or represses awareness of the victimization for months or even years after it occurs (Koss & Burkhardt, 1989; Myers, 1989). Greater involvement with the gay community is likely to be particularly helpful in achieving reorganization.

Interventions After Sexual Assault

Survivors of anti-gay sexual assault need to separate the victimization from their experience of sexuality and intimacy and develop positive feelings about sexual expression that are not intruded upon by images of the assault. Gay male survivors are at special risk for phobic or aversive feelings toward male sexuality because their normal sexual behavior will superficially resemble the sexual assault (if for no other reason than that both involve another male). Lesbian survivors also may experience fear reactions and flashbacks to the assault triggered by normal sexual contact. Practitioners must support survivors (and their partners) to allow healing time for the fear to diminish. Survivors should be encouraged to initiate sexual contact in stages and to determine their own readiness for gradually increasing sexual involvement. The aim is to regain a sense of being in charge of one's own body, in contrast to the powerlessness and fear experienced during the assault.

Practitioners should be aware of the heterosexual bias that sexual assault survivors may experience if they come in contact with the criminal justice or medical systems. For example, police may not believe that male-male rape occurs; they may be hostile; or they may assume that, because the is-gay--the victim deserved or brought on the attack (Anderson, 1982). Physicians and emergency room staff may assume that a lesbian rape victim is heterosexual and consequently display insensitivity in asking questions about previous sexual experience, contraception, and significant others (Orzek, 1988). Practitioners play an important role by advocating for survivors, helping them to advocate more effectively for themselves, and educating other professionals about sensitive responses to gay male and lesbian clients.

Interventions with Significant Others

Lovers, family, and friends also must deal with the losses and hardships imposed by the victimization, make sense of it, and regain a perception of the world as a stable and predictable place. Sometimes a lover or best friend will also have been victimized in the attack. In such cases where the victims cannot provide each other with primary support as they ordinarily would, both survivors may need assistance in expanding their support networks.

Mental health professionals must respond to the needs of significant others while at the same time helping them to respond, in turn, to the victim's needs. Professionals may need to educate significant others about the dynamics of violence, defuse their fears, and encourage their support for the primary victim. Significant others might benefit from exposure to educational materials (printed, audio, video) about homosexuality, victimization, and hate crimes. When internalized homophobia among significant others (gay and lesbian as well as heterosexual) makes it difficult for them to be supportive, professionals should assist the survivor in handling others' negative or non-supportive reactions (e.g., through role-playing).

CONCLUSION

The trauma associated with anti-gay victimization may become linked to survivors' homosexuality. Although this often results in intensification of psychosocial problems associated with being gay or lesbian, it also may lead to further consolidation of the survivor's gay or lesbian identity and involvement with her or his community. Mental health practitioners can play an important role by assisting lesbian and gay male survivors, their significant others, and their communities in successfully reconstructing survivors' lives and mobilizing confrontation of hate crimes as a community problem. Researchers have an important role to play in filling gaps in information about the mental health consequences of anti-gay hate crimes and the effectiveness of individual and community-based intervention strategies. Most important, mental health practitioners and researchers

should work with the lesbian and gay community to develop public awareness and comprehensive programs to prevent hate motivated violence.

NOTES

1. *Coming out* (a shortened form of *coming out of the closet*) refers to the sequence of events through which individuals recognize their own homosexual orientation and disclose it to others. Conversely, being *in the closet* or *closeted* refers to passing as heterosexual (e.g., Dynes, 1985). Coming out is a continuous process: After coming out to oneself, one is continually meeting new people to whom one's sexual orientation must be disclosed. Consequently, different gay people are out to varying degrees.
2. Attempting to pass as heterosexual may increase some individuals' risk for victimization. Men who are hiding their homosexuality may be more prone to victimization when they seek sexual partners outside the relative safety of the gay community (e.g., Harry, 1982; Miller & Humphreys, 1980; for an autobiographical account, see Bauman, 1986). Additionally, because of the stigma attached to homosexuality and because discrimination against lesbians and gay men remains legal in many jurisdictions (see Chapter 5), closeted lesbians and gay men alike can be blackmailed with threatened involuntary revelation of their sexual orientation to family, employers, or others (Bell & Weinberg, 1978; Harry 1982; Rofes, 1983).
3. Currently, operational definitions of hate crimes exclude male-female sexual assault unless the perpetrator can be shown to have attacked some aspect of the victim's identity other than her gender (e.g., her race, religion, or sexual orientation). Because space limitations prevent us from considering this definition issue in detail, we focus here on the mental health consequences of male-female sexual assaults in which the victim is a lesbian and is targeted because of her sexual orientation (for more general discussions of the aftermath of sexual assault, see, e.g., Brownmiller, 1975; Burgess, 1985; Ledray, 1986).
4. Heterosexuals too are victimized by anti-gay hate crimes (see Chapter 1). The threat of victimization probably also causes many heterosexuals to conform to gender roles and to restrict their expressions of (nonsexual) physical affection for members of their own sex (e.g., Herek, 1986, 1991).

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Treatment and Service Interventions for Lesbian and Gay Male Crime Victims

DAVID M. WERTHEIMER

Although the concepts of *crime victim*, *victim assistance*, and *victim compensation* can be traced back to an early period in the Judaic roots of Western civilization (e.g., the Laws of Moses, Exodus 21:18, 22-25), the modern crime victims' movement has emerged in an identifiable form only in the second half of the current century. This contemporary manifestation of concern for crime victims springs from several significant and varied sources: Grass-roots organizing efforts during the late 1960s and 1970s mostly within women's organizations concerned about violence against women, gave rise to community-based programs offering a modest range of services to survivors of domestic violence and sexual assault (Boston Women's Health Collective, 1984). Several state governments also initiated the earliest crime victim compensation programs during this time period and, after 1975 municipalities around the country began to fund programs providing crisis intervention services to a variety of crime victims (Stark & Goldstein, 1985). These "comprehensive" programs were often affiliated with municipal or county agencies such as local police departments and district attorneys. The federal government added its own voice to the growing expression of

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A Lawyer's Guide to Social Science Research

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Myths About Sexual Orientation: A Lawyer's Guide to Social Science Research

Gregory M. Herek*

This article provides an overview of social science theory and empirical research concerning sexual orientation. The paper begins with a brief discussion of terminology, basic concepts of internal validity and generalizability, the application of data to individuals and groups, and the burden of proof in scientific research on homosexuality. The bulk of the article is devoted to a discussion of current data relevant to eight common, inaccurate characterizations of lesbians, gay men, and homosexuality. These myths concern: (1) the relationship of homosexuality to mental illness; (2) the psychological effects of stigma on lesbians and gay men; (3) the origins of sexual orientation and possibilities for changing it; (4) homosexuality and role child molestation; (5) the effects of lesbian and gay parents and role models on children; (6) lesbian and gay male intimate relationships; (7) lesbian and gay people as a minority group; and (8) the effects of lesbian and gay people on organizational efficiency and morale. The social science research reviewed here consistently indicates that lesbians and gay men, as a group, do not differ in significant ways from heterosexuals except in terms of their sexual orientation.

I. INTRODUCTION

Lawyers and policy makers considering issues related to sexuality and civil rights are routinely confronted with questions about lesbians and gay men: whether they are mentally ill, can be good parents, are capable of sustained relationships, are members of a minority group. Many of these

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questions arise from longstanding cultural myths and stereotypes that depict lesbians and gay men as immoral, criminal, sick, and drastically different from what most members of society would consider "normal."

A considerable body of social science data now is available to answer such questions and to separate myth from reality. The present article provides members of the legal profession with an overview of social science theory and empirical research concerning sexual orientation. Eight common, inaccurate characterizations of lesbians, gay men, and homosexuality are described briefly and relevant data concerning them are summarized.

II. PRELIMINARY CONSIDERATIONS

Although highly technical prose is generally avoided in this article, a few methodological and theoretical concepts should be explained at the outset to provide readers with background information for understanding the empirical studies to be reviewed.

A. *Problems of Definition*

A necessary first step is to clarify some terminology used in this area. *Sexual orientation* can be defined as an enduring erotic, affectional, or romantic attraction to individuals of a particular gender. It usually is characterized as *homosexual*, a primary or exclusive attraction to individuals of one's own gender; *heterosexual*, a primary or exclusive attraction to individuals of the other gender; or *bisexual*, significant attractions to members of both genders.¹

Many different aspects of human sexuality are discussed under the rubric of sexual orientation. These include: (1) engaging in specific *sexual behaviors* with partners of a particular gender; (2) having a *personal preference* for or ongoing attraction to partners of a particular gender; (3) developing a *private personal identity* as gay, lesbian, heterosexual, or bisexual; (4) establishing a *public identity* based on sexual orientation; and (5) *identifying with a community* of sexual orientation. Although we often observe consistency among these different dimensions, this is not always the case. Some people engage in heterosexual or homosexual behaviors without considering themselves to be "straight" or "gay."² For exam-

1. See Gregory M. Herek, *Sexual Orientation*, 1 *WOMEN'S STUD. ENCYCLOPEDIA* 344, 344 (Helen Tierney ed. 1989).

2. No uniform terminology exists for describing people in terms of their sexual orientation. In the present article, "homosexual" is used adjectivally to refer to sexual behavior between men or between women. "Heterosexual" is used adjectivally to refer to sexual behavior between women and men; it also is used as a noun to describe people whose personal identity is based upon a heterosexual orientation or heterosexual relationships. "Gay" is used to describe a person whose personal identity is based upon a homosexual orientation. Because "gay" is sometimes assumed to refer only to men, the term "lesbian" is used when appropriate to clarify that both women and men are being described. The use of "homosexual" as a noun has been avoided because of its clinical connotations and its historic association with pathology. See Committee on Lesbian and Gay Concerns, *Avoiding Heterosexual Bias in*

ple, individuals in prisons and other sex-segregated institutions may have sex with others of their own gender but may still prefer heterosexual contacts and identify personally and publicly as heterosexual.⁶ Alternatively, some radical feminists publicly identify themselves as lesbian and consider themselves part of the larger lesbian community without having engaged in homosexual activity.⁷ Lesbian and gay male intimate relationships, like their heterosexual counterparts, do not always include an overtly sexual component.⁸ Many lesbians and gay men have "come out of the closet" privately (i.e., they have affirmed their homosexual orientation to themselves) but are publicly "closed" (i.e., have not disclosed their sexual orientation to others).⁹

B. Methodological Concerns
 1. Internal Validity

Empirical studies are evaluated on the basis of their internal validity and the generalizability of their findings. As used here, internal validity refers to the adequacy of a study's methodology for accurately observing phenomena and ruling out alternative explanations for what is observed. When the term is applied to a particular procedure or test, *validity* refers to how well a method actually assesses what it is purported to assess. In order for data to be valid, observational procedures must be reliable. *Reliability* refers generally to consistency or stability: the extent to which a method yields similar results when applied to the same phenomenon at different times or when used by different trained observers. To illustrate the concepts of validity and reliability, consider a method for assessing intelligence by counting the number of letters in a person's name; the more letters, the higher the person's intelligence score. This procedure would be highly reliable (because the same score would be obtained repeatedly regardless of who made the observations) but it would not be valid (obviously, the length of one's name is unrelated to intelligence). To the extent that an empirical study measures its variables through proce-

Language, 46 AM. PSYCHOLOGIST (forthcoming 1991); WAYNE DYNES, HOMOLEXIS: A HISTORICAL AND CULTURAL LEXICON OF HOMOSEXUALITY (1985).

3. See, e.g., WAYNE S. WOODEN & JAY PARKER, MEN BEHIND BARS: SEXUAL EXPLOITATION IN PRISON (1982); ROSE GIALLOMBARDO, Social Roles in a Prison for Women, 13 SOC. PROBLEMS 268 (1966).

4. See Lillian Faderman, The "New Gay" Lesbians, 10 J. HOMOSEXUALITY 85 No. 3/4 (1984). See also Adrienne Rich, Compulsory Heterosexuality and Lesbian Existence, 5 SIGNS: J. WOMEN CULTURE & SOC. 631 (1980).

5. See Leticia Anne Pepiau & Susan D. Cochran, A Relationship Perspective on Homosexuality, in HOMOSEXUALITY/HETEROSEXUALITY: CONCEPTS OF SEXUAL ORIENTATION 321 (David P. McWhirter, Stephanie A. Sanders, & June M. Reimisch eds. 1990).

6. E.g., ALAN P. BELL & MARTIN S. WEINBERG, HOMOSEXUALITIES: A STUDY OF DIVERSITY AMONG MEN AND WOMEN 62-68 (1978); see W. DYNES, supra note 2, regarding terminology.

dures with high levels of reliability and validity, greater confidence can be placed in its results.⁷

2. *Sampling and Generalizability of Findings*

In most empirical research, observations realistically cannot be made of every member of the population of interest. Instead, inferences are made about the larger population using data collected from a subset, or *sample*, of that population. Two general approaches to sampling are used in social science research. With *probability sampling*, all elements (*e.g.*, persons, households) in the population have some opportunity of being included in the sample, and the mathematical probability that any one of them will be selected can be calculated. With *nonprobability sampling*, in contrast, each population element's chance of being selected is unknown. Consequently, mathematical theory cannot be used to estimate the extent to which the sample differs from the population.

For example, consider a study with the goal of estimating the proportion of city voters who support either of two mayoral candidates. Obtaining a probability sample would involve defining the population (in this case, all eligible voters in the city) and using one of many available procedures for selecting a relatively small number (probably less than 1,000) of those people for interviewing. A nonprobability sample also could be obtained through any of several procedures, but none of them would include the entire population as potential respondents. For example, the researchers might ascertain the voting preferences of their own friends and acquaintances; or they might interview shoppers at a local mall; or they might publish two telephone numbers in the local newspaper and ask readers to call either number in order to "vote" for one of the candidates. The important feature of these samples is that they would systematically exclude some members of the population (in the examples here, eligible voters who, respectively, do not know the researchers, do not go to the shopping mall, and do not read the newspaper would be excluded). Consequently, their findings could not be generalized to the population of city voters.⁸

7. General discussions of reliability and validity can be found in most introductory psychology and methodology textbooks. For more detailed discussions, see AMERICAN PSYCHOLOGICAL ASSOCIATION, STANDARDS FOR EDUCATIONAL AND PSYCHOLOGICAL TESTS (1974); ANNE ANASTASI, PSYCHOLOGICAL TESTING (6th ed. 1988); George W. Bohrnstedt, *Measurement*, in HANDBOOK OF SURVEY RESEARCH 69 (Peter H. Rossi, James D. Wright, & Andy B. Anderson eds. 1983); and CHARLES F. TURNER & ELIZABETH MARTIN, 1 SURVEYING SUBJECTIVE PHENOMENA (1984), among others.

8. Samples are evaluated primarily according to the procedures by which they were selected rather than by their final composition or size. Even if the demographic characteristics of the hypothetical sample of the researchers' friends closely resembled those of the city electorate (*e.g.*, the same ratios of women to men and Blacks to Whites), the sample's representativeness would be unknowable. And even if several thousand people called one of the published telephone numbers, the sample would be seriously biased. For further explanation of sampling theory and procedures, see NORMAN M. BRADBURN & SEYMOUR SUDMAN, POLLS AND SURVEYS: UNDERSTANDING WHAT THEY TELL US

Most published social science studies use nonprobability samples of students, paid volunteers, patients, prisoners, or members of friendship networks or organizations. Studies with such samples are useful primarily for documenting that a particular characteristic occurs within a given group or, alternatively, demonstrating that not all members of that group manifest a particular trait. Sometimes matched nonprobability samples are used to compare two groups (e.g., gay people and heterosexuals) on the variable of interest (e.g., psychological test scores). With this procedure, each individual in the first sample has a counterpart in the second sample of the same gender, race, educational background, age, or whatever other characteristics are judged to be relevant. The purpose of matching is to eliminate known sources of bias; however, the problem of potential bias from hidden sources still remains.

With a hard-to-reach population (e.g., gay people or persons who engage in homosexual behavior), a series of studies with nonprobability samples can suggest rough estimates of the proportion of the population manifesting various characteristics. When similar results are obtained repeatedly with many different nonprobability samples, the likelihood that those results apply to the population is greater than when only a single nonprobability sample is used. Nevertheless, inferences based on such data must be cautious because of the possibility of hidden systematic bias. Strictly speaking, inferences cannot be drawn from a nonprobability sample about the proportion of the population manifesting (or not manifesting) a particular characteristic. Realistically, however, finding limitations and the methodological difficulties of sampling a relatively small and partially hidden population usually prohibit the use of probability samples in research on sexual orientation.

C. *Groups vs. Individuals*

Social science data usually are of a probabilistic nature, describing groups rather than individuals. Simply because members of a group generally tend to manifest a characteristic does not guarantee that any particular group member will manifest that characteristic. For example, knowing that 70 percent of Americans agree with a policy does not permit prediction of whether any randomly selected individual agrees with that policy. However, if we were asked to guess the views of each of 100 individuals (lacking any other information about them) and we always guessed that the individual favored the policy, we could anticipate being correct approximately 70 times. The more often we repeated the procedure,

sure with new groups of 100, the more confident we would be that our average number of correct guesses would be 70.

D. *Burden of Proof*

Finally, readers of social science research should always be aware of how research questions have been framed. Based on the empirical studies documented in this article, most comparisons of heterosexuals with lesbians and gay men should start from the assumption that no differences exist between the two groups. In other words, researchers should assume the burden of proof for showing that lesbian and gay people differ from heterosexuals on social and psychological variables.⁹

III. EIGHT MYTHS ABOUT SEXUAL ORIENTATION

A. *Myth #1: Homosexuality is a form of mental illness.*

Several different perspectives have competed for supremacy in discussions of human sexuality during the last century. Longstanding religious and legal proscriptions on sexual behavior have been challenged by medical perspectives and, more recently, by the perspectives of psychology and the behavioral and social sciences.¹⁰ Even within the sciences, discourse on homosexuality has shifted more than once during the last 100 years. Early in the twentieth century, Havelock Ellis argued for an accepting stance toward homosexuality. He maintained that homosexuality was inborn and therefore not immoral, that it was not a disease, and that many homosexuals made outstanding contributions to society.¹¹ Sigmund Freud's basic theory of human sexuality was different from that of Ellis. He felt that all human beings were innately bisexual, and that they become heterosexual or homosexual as a result of their experiences with parents and others.¹² Nevertheless, Freud agreed with Ellis that a homosexual orientation should not be viewed as a form of pathology. In a now-famous letter to an American mother in 1935, Freud wrote:

Homosexuality is assuredly no advantage, but it is nothing to be ashamed of, no vice, no degradation, it cannot be classified as an

9. For a general discussion of bias in research on sexual orientation, see Gregory M. Herek, Douglas Kimmel, Hortensia Amaro, & Gary Melton, *Avoiding Heterosexist Bias in Psychological Research*, 46 AM. PSYCHOLOGIST 957 (1991).

10. See, e.g., ALAN BÉRUBÉ, *COMING OUT UNDER FIRE: THE HISTORY OF GAY MEN AND WOMEN IN WORLD WAR TWO* (1990); JOHN D'EMILIO & ESTELLE B. FREEDMAN, *INTIMATE MATTERS: A HISTORY OF SEXUALITY IN AMERICA* (1988); MARTIN B. DUBERMAN, *MARTHA VICINUS*, & GEORGE CHAUNCEY, JR., *HIDDEN FROM HISTORY: RECLAIMING THE GAY AND LESBIAN PAST* (1989) [hereinafter M. DUBERMAN]; and George Chauncey, Jr., *From Sexual Inversion to Homosexuality: Medicine and the Changing Conceptualization of Female Deviance*, 58-59 SALMAGUNDI 114 (1982-1983).

11. See PAUL ROBINSON, *THE MODERNIZATION OF SEX* 4-7 (1976).

12. See Sigmund Freud, *Three Essays on the Theory of Sexuality*, in 7 *THE STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD* 125 (James Strachey ed. 1905).

illness; we consider it to be a variation of the sexual function produced by a certain arrest of sexual development. Many highly respectable individuals of ancient and modern times have been homosexuals, several of the greatest men among them. (Plato, Michelangelo, Leonardo da Vinci, etc.) It is a great injustice to persecute homosexuality as a crime and cruelty too.

... If [your son] is unhappy, neurotic, torn by conflicts, inhibited in his social life, analysis may bring him harmony, peace of mind, full efficiency, whether he remains a homosexual or gets changed.¹³

Later psychoanalysis did not follow this view, however. Sandor Rado rejected Freud's assumption of inherent bisexuality, arguing instead that heterosexuality is inborn and that homosexuality is a phobic response to members of the other sex.¹⁴ Other analysts later argued that homosexuality resulted from pathological family relationships during the oedipal period (around four to five years of age) and claimed that they observed these patterns in their homosexual patients.¹⁵ Socarides proposed that the etiology of homosexuality was pre-oedipal and, therefore, even more pathological than had been supposed by earlier analysts.¹⁶

Although psychoanalytic theories of homosexuality have had considerable influence in psychiatry and in the larger culture, they have not been subjected to rigorous empirical testing. Instead, they have been based on analysts' clinical observations of patients known by them to be homosexual. Two major problems result from this procedure. First, the analyst's theoretical orientations and personal attitudes are likely to bias her or his observations.¹⁷ Second, samples of patients or incarcerated individuals cannot be used to make valid inferences about the general noninstitutionalized population.

A more tolerant stance toward homosexuality was adopted by researchers from other disciplines. Zoologist and taxonomist Alfred C. Kinsey, in his groundbreaking empirical studies of sexual behavior among Ameri-

13. *Historical Notes: A Letter from Freud*, 107 Am. J. Psychiatry 786 (1951).
14. See Sandor Rado, *A Critical Examination of the Concept of Bisexuality*, 2 *Psychosomatic Med.* 459 (1940); Sandor Rado, *An Adaptational View of Sexual Behavior in Psychosexual Development in Health and Disease: The Proceedings of the 38th Annual Meeting of the American Psychopathological Association* 159 (Paul Hoch & Joseph Zubin eds. 1949).
15. See, e.g., Irving Bieber, Harvey Dain, Paul R. Dince, Marvina G. Drelllich, Henry G. Grand, Ralph H. Gundlach, Malvina W. Kremer, Alfred H. Rifkin, Cornelia B. Wilbur, & Toby B. Bieber, *Homosexuality: A Psychoanalytic Study* (1962).
16. See Charles Socarides, *The Overt Homosexual* (1968). For a detailed history, see Kenneth Lewes, *The Psychoanalytic Theory of Male Homosexuality* (1988); for briefer summaries, see Ronald Bayer, *Homosexuality and American Psychiatry: The Politics of Diagnosis* (2d ed. 1987); Charles Silverstein, *Psychological and Medical Treatments of Homosexuality*, in *Homosexuality: Research Implications for Public Policy* 101 (John C. Gonsiorek & James D. Weinrich eds. 1991) [hereinafter *Homosexuality*].
17. See Robert Rosenthal, *Experimenter Effects in Behavioral Research* (1976), for a discussion of how a researcher's expectations can influence results.

can¹⁸ adults, revealed that a significant number of his research participants reported having engaged in homosexual behavior to the point of orgasm after age 16.¹⁹ Further, Kinsey and his colleagues reported that 10 percent of the males in their sample had been more or less exclusively homosexual in their behavior for at least three years between the ages of 16 and 55.²⁰ Six percent or fewer of the females (depending on marital status) had been more or less exclusively homosexual in each of the years between 20 and 35 years of age.²¹ Despite frequent extrapolations by modern commentators from Kinsey's data to the United States adult population, the representativeness of his nonprobability sample cannot be assessed.²² Nevertheless, his work revealed that many more American adults than previously suspected had engaged in homosexual behavior or had experienced same-sex fantasies. This finding cast doubt on the widespread assumption that homosexuality was practiced only by a small number of social misfits.²³

Other social science researchers also argued against the prevailing negative view of homosexuality. In a review of published scientific studies and archival data, Ford and Beach found that homosexual behavior was widespread among various nonhuman species and in a large number of human

18. Following popular usage, the term "American" is used here to refer to residents of the United States.

19. See ALFRED C. KINSEY, WARDELL B. POMEROY, & CLYDE E. MARTIN, *SEXUAL BEHAVIOR IN THE HUMAN MALE* 610-66 (1948) [hereinafter A. KINSEY, *HUMAN MALE*]; ALFRED C. KINSEY, WARDELL B. POMEROY, CLYDE E. MARTIN, & P.H. GEBHARD, *SEXUAL BEHAVIOR IN THE HUMAN FEMALE* 446-501 (1953) [hereinafter A. KINSEY, *HUMAN FEMALE*].

20. See A. KINSEY, *HUMAN MALE*, *supra* note 19, at 651.

21. See A. KINSEY, *HUMAN FEMALE*, *supra* note 19, at 473-74.

22. For methodological and statistical critiques, see Lewis M. Terman, *Kinsey's "Sexual Behavior in the Human Male": Some Comments and Criticisms*, 45 *PSYCHOLOGICAL BULL.* 443 (1948); WILLIAM G. COCHRAN, FREDERICK MOSTELLER, & JOHN W. TUKEY, *STATISTICAL PROBLEMS OF THE KINSEY REPORT ON SEXUAL BEHAVIOR IN THE HUMAN MALE* (1954); W. Allen Wallis, *Statistics of the Kinsey Report*, 44 *J. AM. STATISTICAL A.* 463 (1949).

23. A common assumption today is that 10% of the United States population is gay. Although this figure is usually attributed to the Kinsey studies, Kinsey did not categorize his research participants according to sexual orientation. Instead, he chose to emphasize sexual behavior and fantasy. Additionally, because Kinsey did not collect his data from a probability sample, valid inferences cannot be made from them to the larger population. A recently published analysis of data collected in a 1970 survey with a national probability sample estimated that between 19.9% and 21.1% (depending on which statistical assumptions were made) of American males had engaged in homosexual behavior; between 3.0% and 6.2% had engaged in such behavior occasionally or fairly often after age 20. See Robert E. Fay, Charles F. Turner, Albert D. Klassen, & John H. Gagnon, *Prevalence and Patterns of Same-Gender Sexual Contact Among Men*, 243 *SCI.* 338, 346 (1989). In a 1989 national poll commissioned by the San Francisco Examiner, and conducted by Teichner Associates, 6.2% of the national respondents and 10% of the Bay Area respondents identified themselves as lesbian, gay, or bisexual to the interviewer: approximately 27,000 calls were made to obtain 800 responses. See Larry Hatfield, *Method of Polling*, San Francisco Examiner, Jun. 5, 1989, at A-20, col. 1. For both the Kinsey and Teichner surveys, the investigators believed that their data underestimated the actual prevalence of homosexuality because of the widespread reluctance among respondents to acknowledge their own homosexuality, even in anonymous surveys. For further discussion, see *infra* note 57; Gregory M. Herek, *The Tyranny of Ten Percent*, *THE ADVOCATE*, Aug. 1, 1989, at 46; AIDS: SEXUAL BEHAVIOR AND INTRAVENOUS DRUG USE (Charles F. Turner, Heather G. Miller, & Lincoln E. Moses eds. 1989).

societies.²⁴ They reported that homosexual behavior of some sort was considered normal and socially acceptable for at least some individuals in 49 of the 76 societies (64 percent) in their sample; in the other 28 societies, adult homosexual activity was reported to be totally absent, rare, or carried on only in secrecy.²⁵ As with Kinsey, whether this proportion applies to all human societies cannot be known because a nonprobability sample was used. However, the findings of Ford and Beach demonstrate that homosexual behavior occurs in many societies and is not always condemned.²⁶

Although dispassionate scientific research on whether homosexuality should be viewed as an illness was largely absent from the fields of psychiatry, psychology, and medicine during the first half of the twentieth century, some researchers remained unconvinced that all homosexual individuals were mentally ill or socially misfit. Berube²⁷ has reported the results of previously unpublished studies conducted by military physicians and researchers during World War II. These studies challenged the equation of homosexuality with psychopathology, as well as the stereotype that homosexual recruits could not be good soldiers.

A common conclusion in their wartime studies was that, in the words of Maj. Carl H. Jonas, who studied fifty-three white and seven black gay men at Camp Haan, California, "overt homosexuality occurs in a heterogeneous group of individuals." Dr. Clements Fry, director of the Yale University student clinic, and Edna Roslow, a social worker, who together studied the service records of 183 servicemen, discovered that there was no evidence to support the common belief that "homosexuality is uniformly correlated with specific personality traits" and concluded that generalizations about the homosexual personality "are not yet reliable."²⁸

Sometimes to their amazement, [researchers] described what they called the "well-adjusted homosexuals" who, in [William] Menninger's words, "concealed their homosexuality effectively and, at the same time, made creditable records for themselves in the service." Some researchers spoke in glowing terms of these men. "The homosexuals observed in the service," noted Navy doctors Greenspan and Campbell, "have been key men in their respective departments." They were "conscientious, reliable, well-integrated and abounding in emotional feeling and sincerity." In general, "the homosexual leads a useful productive life, conforming with all dictates of the community, except its sexual requirements" and was "neither a burden nor a

24. See CLELLAN FORD & FRANK BEACH, PATTERNS OF SEXUAL BEHAVIOR (1951).

25. See *id.* at 125-33.

26. For more recent cross-cultural data, see RITUALIZED HOMOSEXUALITY IN MELANESIA (Gilbert H. Herdt ed. 1984); W.L. WILLIAMS, THE SPIRIT AND THE FLESH: SEXUAL DIVERSITY IN AMERICAN INDIAN CULTURE (1986).

27. A. BERUBE, *supra* note 10.

detriment to society." Fry and Rostow reported that, based on evidence in service records, homosexuals were no better or worse than other soldiers and that many "performed well in various military jobs" including combat.²⁸

Today, a large body of published empirical research clearly refutes the notion that homosexuality *per se* is indicative of or correlated with psychopathology. The classic study in this area was conducted by Hooker, who administered three projective tests (the Rorschach, Thematic Apperception Test, and Make-A-Picture-Story Test) to thirty homosexual males and thirty heterosexual males recruited through community organizations.²⁹ The two groups were matched for age, IQ, and education; none of the men were in therapy at the time of the study.³⁰ Unaware of each subject's sexual orientation, independent experts evaluated the men's overall adjustment using a five-point scale.³¹ They classified two-thirds of the heterosexuals and two-thirds of the homosexuals in the three highest categories of adjustment.³² When asked to identify which protocols were obtained from homosexuals, the experts could not distinguish respondents' sexual orientation at a level better than chance.³³ Hooker concluded from her data that "homosexuality as a clinical entity does not exist" and that homosexuality is not inherently associated with psychopathology.³⁴

Dozens of empirical studies have since supported Hooker's conclusion that no correlation exists between sexual orientation and psychopathology. Freedman, for example, replicated Hooker's basic design using samples of lesbian and heterosexual women and objectively scored personality measures; he reached similar conclusions.³⁵ In a review of published studies comparing homosexual and heterosexual samples on psychological tests, Gonsiorek found that, although some differences have been observed in test results between homosexuals and heterosexuals, both groups consistently score within the normal range.³⁶ Gonsiorek concluded that "homosexuality in and of itself is unrelated to psychological disturbance or maladjustment. Homosexuals as a group are not more psychologically disturbed on account of their homosexuality."³⁷

28. *Id.* at 170-71 (footnotes omitted).

29. See Evelyn Hooker, *The Adjustment of the Male Overt Homosexual*, 21 J. PROJECTIVE TECH. 18, 19-20 (1957).

30. *Id.* at 19-20.

31. *Id.* at 21.

32. *Id.* at 22.

33. *Id.* at 23.

34. *Id.* at 30-31.

35. See MARK FREEDMAN, *HOMOSEXUALITY AND PSYCHOLOGICAL FUNCTIONING* 67-85 (1971).

36. See John C. Gonsiorek, *Results of Psychological Testing on Homosexual Populations*, 25 AM. BEHAV. SCI. 385, 394 (1982).

37. *Id.* at 389; see also reviews by Gonsiorek, *The Empirical Basis for the Demise of the Illness Model of Homosexuality*, in *HOMOSEXUALITY*, *supra* note 16, at 115; Maureen Hart, Howard Roback, Bennett Tittler, Larry Weitz, Barbara Walston, & Embry McKee, *Psychological Adjustment of Nonpatient Homosexuals: Critical Review of the Research Literature*, 39 J. CLINICAL PSY-

Confronted with overwhelming empirical evidence and changing cultural views of homosexuality, psychiatrists and psychologists have radically altered their views during the last two decades. In 1973, the American Psychiatric Association removed "homosexuality" as a diagnosis from the Diagnostic and Statistical Manual (DSM-III), replacing it with the more restrictive "ego-dystonic homosexuality." In 1986, even the "ego-dystonic homosexuality" diagnosis was eliminated; consequently, the revised DSM-III contains no diagnostic category for homosexuality.³⁸ The American Psychological Association (APA) promptly endorsed the psychiatrists' actions and has since worked intensively to eradicate the stigma historically associated with a homosexual orientation.³⁹ Although some psychologists and psychiatrists may privately continue to regard homosexuality negatively, empirically, evidence and professional norms do not support any linkage of sexual orientation with psychopathology.

B. Myth #2: Because of social stigma, lesbians and gay men are more likely than heterosexuals to manifest low self esteem, to be depressed, or to be suicidal.

Whereas the myth that homosexuality *per se* is linked to maladjustment attributes the cause of psychological dysfunction to sexual orientation, another erroneous belief blames social stigma for creating allegedly widespread problems among lesbian and gay people. An example of the latter argument was contained in *High Tech Gays v. Defense Indus. Sec. Clearance Office*, in which the government suggested that "a homosexual may face emotional tension, instability, or other difficulties since society has not recognized his sexual practice as mainstream."⁴⁰ As long ago as 1950, intelligence officers testified to the Senate Subcommittee on Employment of Homosexuals and Other Sex Perverts in Government that homosexual personnel were high-strung and neurotic as a result of leading double lives.⁴¹ Arguments of this sort are not only made by those hostile to lesbi-

CHIATRY 604 (1978) [hereinafter Hart]; and Bernard F. Reiss, *Psychological Tests in Homosexuality*, in *HOMOSEXUAL BEHAVIOR: A MODERN REAPPRAISAL* 296 (Judd Marmor ed. 1980).

38. See AMERICAN PSYCHIATRIC ASSOCIATION, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* (3d ed. revised 1987). See R. BAYER, *supra* note 16, for an account of the events leading up to the 1973 and 1986 decisions.

39. See John J. Conger, *Proceedings of the APA, Inc., for the Year 1974: Minutes of the Annual Meeting of the Council of Representatives*, 30 AM. PSYCHOLOGIST 620, 633 (1975); AMERICAN PSYCHOLOGICAL ASSOCIATION, *POLICY STATEMENTS ON LESBIAN AND GAY ISSUES* (undated publication) (available from the Committee on Lesbian and Gay Concerns, American Psychological Association, 1200 Seventeenth Street, Washington, D.C. 20036). The APA voted in 1987 to "urge its members not to use the '302.0 Homosexuality' diagnosis in the current ICD-9-CM or the '302.00 men.'"^{Id.} They took this action because, although the American Psychiatric Association dropped "homosexuality" from the DSM-III-R, the revised manual was not expected to be published immediately. Further, another widely used listing of mental disorders—the INTERNATIONAL CLASSIFICATION OF DISEASES, (9th ed) (ICD-9)—still included "homosexuality" as a diagnosis.

40. 668 F. Supp. 1361, 1374 (N.D. Cal. 1987) (emphasis added).

41. See A. BERNHE, *supra* note 10, at 265-67.

ans and gay men. In a paper that condemned societal prejudice, for example, Saunders and Valente asserted that lesbian and gay people as a group experience greater alienation from society and therefore "have significantly high rates of risk factors that increase suicide risk such as suicide attempts, alcohol abuse, drug abuse and interrupted social ties."⁴²

It is true that lesbians and gay men encounter numerous psychological stressors as a result of society's hostility toward them. Although many cope successfully with the stress created by prejudice, some are negatively affected by it. It is also true that similar stressors are encountered by members of other stigmatized groups: members of racial, religious, and ethnic minorities; people who are physically disfigured or unattractive; and disabled people.⁴³ More than thirty-five years ago, Allport described several ego defensive strategies, adaptive as well as maladaptive, that many American Blacks, Jews, and other minority group members were likely to employ as a response to prejudice.⁴⁴ He wrote, for example, that some minority group members might display passivity and withdrawal in the face of prejudice, or might adopt the "clown" role; they might manifest self-hatred, identification with their oppressors, aggression against members of their own group, and prejudice against other out-groups. Others, in contrast, might display increased militancy or enhanced striving to overcome the handicaps imposed by stigma; they might develop strong feelings of solidarity with other group members, might develop "sly" and "cunning" strategies for dealing with the limitations imposed upon them by the majority group, and might display increased sympathy for other out-groups.⁴⁵

Some of Allport's characterizations may well apply to lesbians and gay men today. However, assertions that lesbians and gay men manifest a disproportionate level of psychological problems either are based on unfounded stereotypes, as in *High Tech Gays*⁴⁶ and the 1950 Senate hearings, or on unwarranted generalizations from limited data, as in the article by Saunders and Valente. The empirical studies cited in the latter paper used nonprobability samples, which restricts the inferences that can be drawn from them to the larger population. Further, Saunders and Valente acknowledged that comparisons among the various studies cited in

42. Judith M. Saunders & S.M. Valente, *Suicide Risk Among Gay Men and Lesbians: A Review*, 11 DEATH STUD. 1, 1 (in Abstract) (1987).

43. See generally ERVING GOFFMAN, *STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY* (1963); EDWARD E. JONES, AMERIGO FARINA, ALBERT H. HASTORF, HAZEL MARKUS, DALE T. MILLER, & ROBERT A. SCOTT, *SOCIAL STIGMA: THE PSYCHOLOGY OF MARKED RELATIONSHIPS* (1984) [hereinafter E.E. JONES]; Jennifer Crocker & Brenda Major, *Social Stigma and Self-Esteem: The Self-Protective Properties of Stigma*, 96 PSYCHOLOGICAL REV. 608 (1989).

44. See GORDON ALLPORT, *THE NATURE OF PREJUDICE* (1954).

45. *Id.* at 138-58.

46. 668 F. Supp. 1361 (N.D. Cal. 1987).

their review were problematic because of the lack of uniform definitions of suicide, attempted suicide, and sexual orientation.⁴⁷

This is not to deny that many lesbians and gay men face difficult situations in their day-to-day lives as a result of the stigma attached to their sexual orientation. Nor is it to deny that some lesbians and gay men experience these situations as stressful and develop psychological problems as a consequence. In particular, the pressure to hide one's sexual orientation and the threat of physical assaults and other hate crimes can have many negative effects, including psychological and physical pain. However, empirical data do not indicate that lesbians and gay men, as a group, show a greater propensity to psychological dysfunction than do heterosexuals.⁴⁸ Recognizing this fact, we can briefly consider some of the principal sources of stress created by societal stigma.

Because most children internalize society's ideology of sex and gender at an early age, lesbians and gay men usually experience some degree of negative feeling toward themselves when they first recognize their own homosexuality in adolescence or adulthood. This sense of *internalized homophobia* often creates a "basic mistrust or hatred for one's sexual and interpersonal identity,"⁴⁹ and interferes with the process of identity formation.⁵⁰ "Coming out"⁵¹ is a process of reclaiming disowned or devalued parts of the self, and developing an identity into which one's sexuality is well integrated.⁵²

In the course of coming out, most lesbians and gay men successfully overcome the threats to psychological well-being posed by societal stigma. Psychological adjustment appears to be highest among those who are committed to their lesbian or gay identity and who do not attempt to hide their homosexuality from others.⁵³ As with other stigmatized minorities,⁵⁴ lesbians and gay men probably maintain self esteem most effectively when

47. See Saunders & Valencic, *supra* note 42, at 15-18. It is clear from their paper that Saunders and Valencic did not intend to portray all lesbians and gay men as psychologically disturbed, but insisted to inform clinicians and counselors about the reasons why some lesbians and gay men may be at risk for suicide.

48. See M. FREEDMAN, *supra* note 35; Gonsiorek, *supra* note 36; Gonsiorek, *supra* note 37; Hart, *supra* note 37; Hooker, *supra* note 29; Reiss, *supra* note 37.

49. Terry S. Stein & Carol J. Cohen, *Psychotherapy With Gay Men and Lesbians: An Examination of Homophobia, Coming Out, and Identity*, in *INNOVATIONS IN PSYCHOTHERAPY WITH HOMOSEXUALS* 59, 61 (Emery S. Herick & Terry S. Stein eds. 1984) (hereinafter *INNOVATIONS*).

50. See Allen K. Malyon, *Psychotherapeutic Implications of Internalized Homophobia in Gay Men*, 7 J. HOMOSEXUALITY 59 (1981-1982) (Nos. 3/4).

51. Wayne Dynes defines "coming out" as the process through which individuals recognize their own homosexual orientation and disclose it to others. See W. DYNES, *supra* note 2, at 33-34.

52. See Malyon, *supra* note 50; Stein & Cohen, *supra* note 49.

53. See A. BELL & M. WEINBERG, *supra* note 6, at 139-216; Sue Kiefer Hammerness & Marjorie S. Weinberg, *Homosexual Identity: Commitment, Adjustment, and Significant Others*, 36 SOCIOMETRY 56, 77-78 (1973).

54. See Crocker & Major, *supra* note 43.

they identify with and are integrated into the larger lesbian and gay community.⁵⁵

However, as a result of societal prejudice, many lesbians and gay men feel compelled to hide their homosexuality or "pass" as heterosexual.⁵⁶ Respondents to the Teichner national telephone survey of 113 lesbians and 287 gay men, for example, waited an average of 4.6 years after knowing they were gay until they came out.⁵⁷ Depending on the area of the country, between 23 percent and 40 percent had *not* told their family that they were gay; between 37 percent and 59 percent had *not* disclosed their sexual orientation to coworkers.⁵⁸

Some gay people who have not yet come out, who feel compelled to suppress their homoerotic urges, who wish that they could become heterosexual, or who are isolated from the lesbian and gay community may experience significant psychological distress, including impairment of self esteem.⁵⁹ Retrospective reports suggest that the time period between recognizing one's own homosexual attractions and establishing a positive gay identity may carry special risks for psychological distress and, for some, even suicide attempts.⁶⁰

As with members of other stigmatized groups who "pass," closeted lesbians and gay men may experience a painful discrepancy between their public and private identities.⁶¹ Passing also can create considerable strain for lesbian and gay male couples. Even openly gay people do not have institutional support for their long-term relationships in the form of tax and inheritance benefits, employee benefits programs, and immigration

55. See Linda Garnets, Gregory M. Herek, & Barrie Levy, *Violence and Victimization of Lesbians and Gay Men: Mental Health Consequences*, 5 J. INTERPERSONAL VIOLENCE 366 (1990).

56. See, e.g., LAUD HUMPHREYS, *OUT OF THE CLOSETS: THE SOCIOLOGY OF HOMOSEXUAL LIBERATION* (1972).

57. See *Results of Poll*, San Francisco Examiner, Jun. 6, 1989, at A-19, col. 1. In March and April of 1989, the *San Francisco Examiner* commissioned Teichner Associates to conduct telephone interviews with a lesbian and gay national sample (n=400) and a sample of gay residents of the San Francisco Bay Area (n=400). The national sample was 82% White, 6% Black, 6% Hispanic, and 5% Asian; the mean age of respondents was 33.5 years; 27% of the men and 44% of the women had been or currently were married; the sample was 46% white-collar, 12% blue-collar, 18% self-employed, and 12% professional; the median income was \$29,129 for men and \$26,331 for women. Although the sample is biased in that it excludes respondents unwilling to identify themselves as gay to a telephone interviewer, the poll represents the first published study of its kind in the United States. See also Hatfield, *supra* note 23, for additional survey results.

58. See *Results of Poll*, *supra* note 57. The Teichner survey report did not define "coming out," but presumably this term referred to disclosing one's homosexual orientation to at least one family member or co-worker.

59. See A. BELL & M. WEINBERG, *supra* note 6; Hammersmith & Weinberg, *supra* note 53; Malvon, *supra* note 50; MARTIN S. WEINBERG & COLIN J. WILLIAMS, *MALE HOMOSEXUALS: THEIR PROBLEMS AND ADAPTATIONS* (1974).

60. See Stephen G. Schneider, Norman L. Farberow, & Gabriel N. Kruks, *Suicidal Behavior in Adolescent and Young Adult Gay Men*, 19 SUICIDE & LIFE-THREATENING BEHAV. 381 (1989).

61. See L. HUMPHREYS, *supra* note 56. See generally, E. GOFFMAN, *supra* note 43; E.E. JONES, *supra* note 43. For a discussion of "passing" and AIDS (Acquired Immune Deficiency Syndrome), see Gregory M. Herek, *Illness, Stigma and AIDS*, in *PSYCHOLOGICAL ASPECTS OF SERIOUS ILLNESS: CHRONIC CONDITIONS, FATAL DISEASES, AND CLINICAL CARE* 103 (Paul T. Costa & Gary R. VandenBos eds. 1990).

and naturalization policies.⁶² Added to this, those who pass also must actively hide or deny their relationship to family and friends. This denial can create strains in the relationship and, when it prevents the partners from receiving adequate social support, may have a deleterious effect on psychological adjustment.⁶³

Coming out can eliminate these problems but also can create new ones. Once they come out, lesbians and gay men risk personal rejection by others,⁶⁴ discrimination,⁶⁵ and even violence,⁶⁶ all experiences that can have enduring psychological consequences. Being the target of discrimination, for example, often leads to feelings of sadness and anxiety;⁶⁷ it also can increase one's sense that life is difficult and unfair, and can lead to dissatisfaction with one's larger community.⁶⁸ Suffering antigay assault or other overt victimization can create considerable distress, including feelings of personal loss, rejection, humiliation, and depression; agitation, restlessness, and sleep disturbances; somatic symptoms such as headaches and diarrhea; and deterioration in personal relationships.⁶⁹ Additionally, attempts to make sense of the attack, coupled with the common need to perceive the world as a just place, may lead to feelings that one is being punished for being gay. This type of self-blame can lead to feelings of depression and helplessness, even in individuals who are comfortable with their sexual orientation. Those who are still coming to terms with their lesbian or gay identity may experience added psychological distress, both because they lack a strongly developed gay identity that would increase

62. See Gregory M. Herek, *The Context of Anti-Gay Violence: Notes on Cultural and Psychological Heterosexism*, 5 J. INTERPERSONAL VIOLENCE 316 (1990).

63. See Lawrence Kurdek, *Perceived Social Support in Gays and Lesbians in Cohabiting Relationships*, 54 J. PERSONALITY & SOC. PSYCHOLOGY 504 (1988); Bianca C. Murphy, *Lesbian Couples and Their Parents: The Effects of Perceived Parental Attitudes on the Couple*, 68 J. COUNSELING & DEV. 46 (1989).

64. See Gregory M. Herek, *Stigma, Prejudice, and Violence Against Lesbians and Gay Men*, in *HOSEXUALITY*, supra note 16, at 60.

65. See Martin P. Levine, *Employment Discrimination Against Gay Men*, 9 INT'L REV. MOD. SOC. 151 (1979); Martin P. Levine & Robin Leonard, *Discrimination Against Lesbians in the Work Force*, 9 SIGNS: J. WOMEN CULTURE & SOC. 700 (1984).

66. See Gregory M. Herek, *Hate Crimes Against Lesbians and Gay Men: Issues for Research and Policy* 44 AM. PSYCHOLOGIST 948 (1989); *Special Issue: Violence Against Lesbians and Gay Men: Issues for Research, Practice, and Policy*, 5 J. INTERPERSONAL VIOLENCE 267-543 (1990).

67. See Kenneth L. Dion, *Responses to Perceived Discrimination and Relative Deprivation*, 4 PIER HERMAN, & MARK P. ZANNA eds. 1986).

68. See Catherine M. Biri & Kenneth L. Dion, *Relative Deprivation Theory and Responses to Discrimination in a Gay Male and Lesbian Sample*, 26 BRIT. J. SOC. PSYCHOLOGY 139 (1987).

69. See, e.g., MORTON BARD AND DAWN SANGREY, *THE CRIME VICTIM'S BOOK* (1979); Irene H. Frieze, Sharon Hymer, & Martin S. Greenberg, *Describing the Victims of Crime in Victims of Crime and Violence: Final Report of the APA Task Force on the Victims of Crime and Violence* 19 (Arnold S. Kahn ed. 1984); *Special Issue: Reactions to Victimization*, 39 J. SOC. ISSUES 1-222 (1983) (No. 2).

their psychological resilience and coping skills, and because they lack adequate social support from others who can affirm their gay identity.⁷⁰

Nevertheless, the fact that they often are exposed to serious stressors does not cause lesbians and gay men as a group to display abnormally low self esteem, depression, or other forms of psychological distress. Like other minority group members, most gay people function effectively in American society despite their experiences with stigma.⁷¹ Indeed, as members of a stigmatized group, lesbians and gay men probably develop a variety of adaptive strategies for coping with their status and minimizing its negative psychological consequences.⁷² Such strategies can protect one's self-esteem, "not only from explicit prejudice or discrimination, but also in some cases, from daily setbacks, failures, and rejections."⁷³ Just as some Blacks experience problems in dealing with racism and some heterosexuals experience emotional problems adjusting to their adult sexuality, some lesbians and gay men undoubtedly experience emotional problems adjusting to their sexual orientation. Although the seriousness of these cases should not be minimized, they do not provide a basis for assuming that gay people as a group manifest low self esteem, depression, suicidal behavior, or other psychological symptoms to a greater degree than do heterosexuals.

C. Myth #3: Being homosexual is a choice that can be changed.

The questions of whether sexual orientations are inborn or acquired and, if the latter, whether they are immutable or changeable, have aroused considerable controversy. Some arguments for societal acceptance of lesbians and gay men have been based on the notion that homosexuality is an innate condition over which an individual has no choice. Writing as parents of gay children, for example, Griffin, Wirth, and Wirth described their own initial concerns that they might have caused their children's homosexuality.⁷⁴ They argued for a biological explanation of homosexuality partly because

our society will accept gayness only if the vast majority of its citizens see it as a naturally occurring event. If most people understand that a certain percentage of society will be gay no matter what their family background is, or what their sexual experiences were, then gay people have a better chance of living their lives free from fears of retaliation.⁷⁵

70. See Craig L. Anderson, *Males as Assault Victims: Multiple Levels of Trauma*, 7 J. HOMOSEXUALITY 145 (1982) (Nos. 2/3); Garnets, *supra* note 55.

71. See M. FREEDMAN, *supra* note 35; Gonsiorek, *supra* note 36; Gonsiorek, *supra* note 37; Hart, *supra* note 37; Hooker, *supra* note 29; Reiss, *supra* note 37.

72. See, e.g., M. FREEDMAN, *supra* note 35. See generally Crocker & Major, *supra* note 43.

73. Crocker & Major, *supra* note 43, at 612.

74. See CAROLYN W. GRIFFIN, MARIAN J. WIRTH, & ARTHUR G. WIRTH, BEYOND ACCEPTANCE: PARENTS OF LESBIANS AND GAYS TALK ABOUT THEIR EXPERIENCES 20-21 (1986).

75. *Id.* at 29.

Perhaps agreeing with Griffin and others' equation of "natural" and "innate," Americans who believe that homosexuality "is something that people are born with" are more likely to have accepting attitudes of gay people than are those who believe it is an acquired characteristic or a personal preference.⁷⁶

Based upon similar reasoning, conservative religious groups have argued that being gay is a choice. For example, in its S.H.A.P.E. ("Stop Homosexual Advocacy in Public Education") newsletter, the California Coalition for Traditional Values stated that "the homosexual community is trying to sugarcoat their lascivious lifestyle by making people think they were born homosexual thus they cannot help it and should be accepted as if they were a minority."⁷⁷ The ensuing article asserted that "people are not born homosexual"⁷⁸ and "people can be healed from homosexuality."⁷⁹ These statements are considered critically below.

1. The Origins of Sexual Orientation

Sexual orientation must be distinguished conceptually from at least three other related processes: (1) *biological sex*, which is determined by genetic and prenatal hormonal influences and usually is unambiguous at birth; (2) *gender identity*, a child's sense of self in terms of maleness or femaleness; usually, boys develop a sense of self as male and girls a sense of self as female early in life; (3) *gender role orientation*, patterns of behavior that are identified by the culture as typical of males (and are referred to as "masculine"), typical of females ("feminine"), or gender-neutral.⁸⁰

76. See William Schneider & I.A. Lewis, *The Straight Story on Homosexuality and Gay Rights*, PUB. OPINION 16, 20 (1984). In the 1983 *Los Angeles Times* national survey on which Schneider and Lewis based their observations, 16% of respondents believed that homosexuality is "something a person is born with." *Id.* at 19. In a 1985 poll by the *Los Angeles Times*, the percentage rose to 20%, with another 22% believing it is "something that develops because of the way people are brought up." Connecticut at Storrs [hereinafter Roper Center]. In a 1989 Gallup poll, 19% of the respondents felt that homosexuality is "something a person is born with," and another 12% felt that it results in a combination of inborn factors and factors of upbringing and environment. Diane Colasanto, *Gay Rights Support Has Grown Since 1982, Gallup Poll Finds*, San Francisco Chron., Oct. 25, 1989, at A-21, col. 1. In a 1982 Gallup poll, the comparable figures were 17% (inborn) and 13% (both); in 1977, the figures were 12% and 14%, respectively. *Id.*
- The national survey data described in this article were obtained from published reports and through the computer database of the Roper Center at the University of Connecticut at Storrs. I am grateful to Professor Bliss Sisman of Baruch College, City University of New York, for her assistance in securing the Roper Center data.
77. *Homosexual Propaganda Exposed*, Stop Homosexual Advocacy in Public Education, Feb. 1989, at 3 (copy on file at the Law & Sexuality office).
78. *Id.*
79. *Id.* at 6.
80. See JOHN MONEY & ANKE A. EHRHARDT, *MAN & WOMAN, BOY & GIRL: DIFFERENTIATION AND DIMORPHISM OF GENDER IDENTITY FROM CONCEPTION TO MATURITY* 1-23 (1972). See also JOHN MONEY, *Sin, Sickness, or Stupidity? Homosexual Gender Identity and Psychoneuroendocrinology*, 42 AM. PSYCHOLOGIST 384 (1987).

The reasons why a particular sexual orientation develops in any individual are complex and not well understood. Various theories have proposed widely differing sources for adult sexual orientation, including genetic and prenatal hormonal factors,⁸¹ unconscious mental processes related to early childhood events or family relationships,⁸² learned associations between physiological arousal and external stimuli,⁸³ reinforcement of sexual experiences with partners of a particular gender and subsequent applications of social labels to one's experiences,⁸⁴ and bonding experiences with same-sex or other-sex peer groups at the onset of sex drive in adolescence.⁸⁵

No single theory has enjoyed unequivocal empirical support. Using retrospective reports from 1023 men (337 heterosexual and 686 homosexual) and 433 women (140 heterosexual and 293 homosexual), Bell, Weinberg, and Hammersmith found that none of the many social, psychological, and experiential variables that they assessed were able to differentiate reliably between heterosexual and homosexual persons of either sex.⁸⁶ The most consistently observed difference was that the lesbians and gay men in their sample were more likely than the heterosexuals to report childhood gender nonconformity. The authors emphasized, however, that even this difference was far from universal:

About half the homosexual men appear to have been typically "masculine," both in personal identity and in interests and activities (and nearly a quarter of the heterosexual men were *not* conforming in these respects). Likewise, only about a fifth of the lesbians and about a third of the heterosexual women were highly "feminine" while they were growing up.⁸⁷

From a review of empirical research on the biological antecedents of homosexuality, Money argued that attempting to dichotomize the sources

81. See, e.g., Lee Ellis & M. Ashlev Ames, *Neurohormonal Functioning and Sexual Orientation: A Theory of Homosexuality-Heterosexuality*, 101 *PSYCHOLOGICAL BULL.* 233 (1987); EDWARD O. WILSON, *ON HUMAN NATURE* (1978).

82. See, e.g., OTTO FENICHEL, *THE PSYCHOANALYTIC THEORY OF NEUROSIS* (1945); Freud, *supra* note 12.

83. See, e.g., A. KINSEY, *HUMAN MALE*, *supra* note 19; WILLIAM MASTERS & VIRGINIA JOHNSON, *HOMOSEXUALITY IN PERSPECTIVE* (1979).

84. See, e.g., JOHN H. GAGNON & WILLIAM SIMON, *SEXUAL CONDUCT: THE SOCIAL SOURCES OF HUMAN SEXUALITY* (1973).

85. See, e.g., Michael D. Storms, *Attitudes Toward Homosexuality and Femininity in Men*, 3 *J. HOMOSEXUALITY* 257 (1978) (No. 3). One school of thought in the scientific study of sexuality, *social constructionism*, argues that the very concept of sexual orientation is culture bound. Rather than being a universal aspect of human experience, social constructionists would argue that sexual orientation has evolved within western industrialized societies as a means of regulating sexual behavior. Consequently, they would consider any nonsocial explanation of sexual orientation to be erroneous. See M. DUBERMAN, *supra* note 10; Herek, *supra* note 1.

86. See ALAN P. BELL, MARTIN S. WEINBERG, & S.K. HAMMERSMITH, *SEXUAL PREFERENCE: ITS DEVELOPMENT IN MEN AND WOMEN* (1981).

87. *Id.* at 188 (emphasis in original).

of sexual orientation as either innate or the product of social experience (the so-called nature-nurture debate) is not useful.⁸⁸ He concluded that "there is no human evidence that prenatal hormonalization alone, independently of postnatal history, inexorably preordains either [a homosexual or bisexual] orientation. Rather, neonatal antecedents may facilitate a homosexual or bisexual orientation, provided the postnatal determinants in the social and communicational history are also facilitative."⁸⁹ Money suggested, in other words, that nature and nurture appear to interact to produce sexual orientation in humans. Given the current lack of knowledge about why some individuals develop a heterosexual orientation while others become homosexual, most social and behavioral scientists share Money's view that sexuality is shaped through a complex interaction of biological, psychological, and social forces. The relative importance of each, however, remains a topic of dispute.

2. Changing Sexual Orientation

In a 1989 Gallup poll, 31 percent of the respondents felt that, given the choice, most homosexuals would rather not be homosexual (compared to 38 percent who felt that they would rather be homosexual and 31 percent who did not know).⁹⁰ Despite societal stigma, however, the vast majority of lesbian and gay male respondents in Bell & Weinberg's study reported that they would not change their sexual orientation even if they could (a comparable question apparently was not asked of heterosexuals in the study sample).⁹¹ Even for the relatively small number of gay people who wish to become heterosexual, the many failures of so-called "conversion" therapies indicate that, once established, sexual orientation is highly resistant to change.⁹²

Although some therapists have reported change of sexual orientation (from homosexual to heterosexual) in their clients, critics have detailed numerous ambiguities and problems with their methods and results.⁹³ For example, in many reports of "successful" conversion therapies, the participants' initial sexual orientations have not been adequately assessed; many bisexuals have been mislabeled as homosexuals with the consequence that the "successes" reported for the conversions actually have occurred among bisexuals who were highly motivated to adopt a heterosexual behavior pattern. An additional problem is that "success" usually has been defined as suppression of homosexual response or mere display of physiological

88. See Money, *supra* note 80.

89. *Id.* at 398.

90. See Colasanto, *supra* note 76.

91. See A. Bell & M. Weinberg, *supra* note 6, at 339.

92. See Douglas C. Haldeman, *Sexual Orientation Conversion Therapy for Gay Men and Lesbians: A Scientific Examination*, in *HOMOSEXUALITY*, *supra* note 16, at 149.

93. For a review, see Haldeman, *supra* note 92.

ability to engage in heterosexual intercourse; neither of these should be equated with adopting the complex set of attractions and desires that constitute sexual orientation. Many interventions aimed at changing sexual orientation have succeeded only in reducing or eliminating homosexual behavior rather than in creating or increasing heterosexual attractions; they have, in effect, deprived individuals of their capacity for sexual response to partners of either gender. Another problem is that even these inadequate operational definitions of change often have been assessed only through therapists' impressions or participants' self reports rather than through objectively verifiable indicators.⁹⁴ As recently as January of 1990, Dr. Bryant Welch, Executive Director for Professional Practice of the American Psychological Association, stated that "no scientific evidence exists to support the effectiveness of any of the conversion therapies that try to change one's sexual orientation" and that "research findings suggest that efforts to 'repair' homosexuals are nothing more than social prejudice garbed in psychological accouterments."⁹⁵

In summary, the assertion that homosexuality is a choice that can be changed is erroneous for the vast majority of lesbians and gay men. Although the origins of sexual orientation are not well understood, neither heterosexuality nor homosexuality appear to represent a conscious choice for most people. Attempts to change sexual orientation that have been documented sufficiently to permit critical evaluation appear to have been largely unsuccessful.

D. Myth #4: Homosexuals are more likely than heterosexuals to molest children sexually.

Gay people often have been accused of preying on children. This is a manifestation of a general cultural tendency to portray disliked minority groups (e.g., Jews, Blacks) as threats to the dominant society's most vul-

94. See Eli Coleman, *Changing Approaches to the Treatment of Homosexuality: A Review*, in *HOMOSEXUALITY: SOCIAL, PSYCHOLOGICAL, AND BIOLOGICAL ISSUES* 81 (William Paul, James D. Weinrich, John C. Gonsiorek, & Marv E. Holvsted eds. 1982) [hereinafter *HOMOSEXUALITY ISSUES*]; Haldeman, *supra* note 92; A. Damien Martin, *The Emperor's New Clothes: Modern Attempts to Change Sexual Orientation*, in *INNOVATIONS*, *supra* note 49, at 23. The highly controversial claims by religious organizations to have changed homosexuals to heterosexuals generally have not been documented in such a way as to permit their critical evaluation. Consequently, they are not considered here. See Haldeman, *supra* note 92.

95. Statement of Bryant L. Welch, J.D., Ph.D., at the American Psychological Association meeting (Jan. 26, 1990) (available from the American Psychological Association, 1200 Seventeenth Street N.W., Washington, DC 20036) [hereinafter *APA*]; see James Buie, "*Heterosexual Ethic*" *Mentality is Decried*, *APA MONITOR*, Mar. 1990, at 20 (available from the APA); Elizabeth Fernandez, *This Ministry Works to Put Gays Straight*, *San Francisco Examiner*, Feb. 4, 1990, at A-1, col. 1.

Even if conversion therapies can change sexual orientation in a small number of cases, the question remains of whether it is ethical to do so. Gerald Davison, a former president of the Association for the Advancement of Behavior Therapy, argued that change of orientation programs are ethically improper and should be eliminated, and that their availability only confirms professional and societal biases against homosexuality. See Gerald C. Davison, *Constructionism and Morality in Therapy for Homosexuality*, in *HOMOSEXUALITY*, *supra* note 16, at 137.

nable members.⁹⁶ When Anita Bryant campaigned successfully in 1977 to repeal a Dade County, Florida, ordinance prohibiting antigay discrimination, she named her organization "Save Our Children," and warned that "a particularly deviant-minded [gay] teacher could sexually molest children."⁹⁷ The number of Americans who believe the accusation that lesbians and gay men are child molesters appears to be decreasing. Gallup poll data in 1989 showed that 42 percent of Americans would allow gay people to be elementary school teachers, compared to 27 percent in 1977.⁹⁸ Nevertheless, many of the remaining 58 percent probably continue to accept the stereotype.

When evaluating empirical research on child molestation, sampling issues and problems of terminology must be considered. Social condemnation of and criminal penalties for child molestation further intensify the difficulties inherent in attempting to draw representative samples of sexual minorities. Most empirical studies have been conducted with convicted perpetrators, thereby excluding those who were not prosecuted or convicted. Consequently, while relying on available data, we must recognize that, because of sampling biases, the results do not necessarily reflect societal patterns.

A second problem in evaluating empirical research on child molestation concerns terminology. Sexual abuse of male children by adult men is often referred to as "homosexual molestation," which implies that the perpetrator is himself gay or has a homosexual orientation.⁹⁹ Usually, however, the adjectives "homosexual" and "heterosexual" refer to the victim's gender in relation to that of the perpetrator, not to the latter's sexual orientation. For example, Fisher assessed the psychological needs of 50 "homosexual pedophiliacs" (who were categorized as such because they had been convicted of a sexual offense against male children and no offenses against female children) and 100 "heterosexual pedophiliacs" (who had been convicted of a sexual offense against female children).¹⁰⁰ However, no information was provided about the offenders' adult sexual orientations or behavior. Similarly, Marshall referred to the males in his sample who

96. See Barry D. Adam, *THE SURVIVAL OF DOMINATION: INFERNORIZATION AND EVERYDAY LIFE* (1978); Herek, *supra* note 64.
 97. ANITA BRYANT, *THE ANITA BRYANT STORY: THE SURVIVAL OF OUR NATION'S FAMILIES AND THE THREAT OF MILITANT HOMOSEXUALITY* 114 (1977).
 98. See Colasanto, *supra* note 76.
 99. Sexual abuse by women appears to be relatively rare. When it occurs, it typically involves a female accomplice who assists a perpetrator in procuring victims or, occasionally, a woman who seduces a young male. See W.D. Erickson, N.H. Waldek, & R.K. Seeley, *Behavior Patterns of Child Molesters*, 17 *ARCHIVES SEXUAL BEHAV.* 77, 80 (1988) [hereinafter Erickson]. Consequently, the child molester stereotype is applied more often to gay men than to lesbians.
 100. See Gary Fisher, *Psychological Needs of Heterosexual Pedophiliacs*, 30 *DISEASES NERVOUS SYS.* 419 (1969); Gary Fisher & Leisia M. Howell, *Psychological Needs of Homosexual Pedophiliacs*, 31 *DISEASES NERVOUS SYS.* 623 (1970).

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molested boys as "homosexual molesters."¹⁰¹ In a personal communication to this author, Marshall reported that only three of the seven men in his sample who had molested boys could be considered gay or homosexual; the other four had been heterosexually married. All of the fourteen men who molested young girls were considered by Marshall to have a heterosexual orientation.¹⁰²

The distinction between gender of the victim and sexual orientation of the perpetrator is important because many child molesters have never developed the capacity for mature sexual relationships with other adults, either men or women. Recognizing this, Finkelhor and Araji proposed that discussions of the sexual attractions of perpetrators should be conceptualized along a continuum ranging in degrees from exclusive interest in children to exclusive interest in adult partners.¹⁰³ Similarly, Groth and Birnbaum categorized child molesters as either fixated or regressed.¹⁰⁴ Fixation was defined as "a temporary or permanent arrestment of psychological maturation resulting from unresolved formative issues which persist and underlie the organization of subsequent phases of development"; fixated offenders never developed an adult sexual orientation.¹⁰⁵ Regression was defined as "a temporary or permanent appearance of primitive behavior after more mature forms of expression had been attained, regardless of whether the immature behavior was actually manifested earlier in the individual's development."¹⁰⁶ Regressed molesters can be adult homosexuals, heterosexuals, or bisexuals; what is important is that they report sexual relationships with other adults, whether men or women. In a sample of 175 adult males who were convicted in Massachusetts of sexual assault against a child, Groth and Birnbaum found that none had an exclusively homosexual adult sexual orientation. A plurality of the men (83 or 47 percent) were classified as "fixated"; 70 others (40 percent) were classified as regressed adult heterosexuals; the remaining 22 (13 percent) were classified as regressed adult bisexuals.¹⁰⁷ Of the last group, Groth and Birnbaum observed that "in their adult relationships they engaged in sex on occasion with men as well as with women. However, in no case did this attraction to men *exceed* their preference for women. . . .

101. See W.L. Marshall, *The Use of Sexually Explicit Stimuli by Rapists, Child Molesters, and Nonoffenders*, 25 J. SEX RES. 267, 273 (1988).

102. See Letter from W.L. Marshall to Gregory M. Herek (Oct. 31, 1990).

103. See David Finkelhor & Sharon Araji, *Explanations of Pedophilia: A Four Factor Model*, 22 J. SEX RES. 145 (1986).

104. See A. Nicholas Groth & H. Jean Birnbaum, *Adult Sexual Orientation and Attraction to Underage Persons*, 7 ARCHIVES SEXUAL BEHAV. 175, 176-77 (1978). See also A. Nicholas Groth, William F. Hobson, & Thomas S. Gary, *The Child Molester: Clinical Observations*, 1 J. SOC. WORK & HUMAN SEXUALITY 129 (1982).

105. Groth & Birnbaum, *supra* note 104, at 176.

106. *Id.* at 177.

107. See *id.* at 178.

There were no men who were primarily sexually attracted to other adult males¹⁰⁸

Failing to distinguish between an offender's sexual orientation and the gender of his victim can lead to overestimation of the proportion of gay men among the population of child molesters. For example, Cameron purported to review published data to answer the question, "Do those who commit homosexual acts disproportionately incorporate children into their sexual practices?"¹⁰⁹ He concluded that "at least one-third of the sexual attacks upon youth are homosexual"¹¹⁰ and that "those who are bisexual are heterosexual."¹¹¹ Cameron, however, assumed that all male-male molestations were committed by homosexuals.¹¹² A subsequent paper by Cameron and others described data collected in a door-to-door survey in seven United States cities and towns,¹¹³ and generally repeated the conclu-

108. *Id.* at 180 (emphasis in original).

109. Paul Cameron, *Homosexual Molestation of Children: Sexual Interaction of Teacher and Pupil*, 57 *PSYCHOLOGICAL REP.* 1227, 1227 (1985).

110. *Id.* at 1228.

111. *Id.* at 1231.

112. *Id.* at 1230. This assumption is puzzling in that it suggests inattention by the author to the literature he himself claimed to have reviewed. For example, he cited the Groth & Birnbaum, *supra* note 104, study as evidencing a 3:2 ratio of "heterosexual" (i.e., female victim) to "homosexual" (i.e., male victim) molestations, and notes that "54% of all the molestations in this study were performed by bisexual or homosexual practitioners." Cameron, *supra* note 109, at 1231. As already noted, however, Groth & Birnbaum, *supra* note 104, reported that none of the men in their sample had an exclusively homosexual adult sexual orientation, and that none of the 22 bisexual men were more attracted to adult males than to adult females. Cameron's 54% statistic does not appear anywhere in the Groth & Birnbaum article, nor does Cameron explain its derivation. It also is noteworthy that, although Cameron assumed that all male-male molestations were committed by homosexuals, he assumed that not all male-female molestations were committed by heterosexuals. He incorporated a "bisexual correction" into his data manipulations to increase further his estimate of the risk posed to children by homosexual/bisexual men. Cameron, *supra* note 109, at 1231.

In the latter half of his paper, Cameron considered whether "homosexual teachers have more frequent sexual interaction with their pupils." Cameron, *supra* note 109, at 1231. Based on 30 instances of sexual contact between a teacher and pupil reported in eleven different sources published between 1920 and 1982, Cameron concluded that "a pupil would appear about 90 times more likely to be sexually assaulted by a homosexual practitioner"; the ratio rose to 100 times when Cameron added his bisexual correction. Cameron, *supra* note 109, at 1232. This ratio is meaningless because no data were obtained concerning the actual sexual orientation of the teachers involved; as before, Cameron assumed that male-male contacts were perpetrated by homosexuals. Further, Cameron's rationale for selecting particular sources appears to have been entirely idiosyncratic. He described no systematic method for reviewing the literature, and appears not to have reviewed the voluminous literature on the sexual development of children and adolescents. His final choice of sources appears to have slanted his findings toward what Cameron described as "the relative absence in the scientific literature of heterosexual teacher-pupil sexual events coupled with persistent, albeit infrequent, homosexual teacher-pupil sexual interactions." Cameron, *supra* note 109, at 1232.

113. See Paul Cameron, Kay Proctor, William Coburn, Nels Forde, Helen Larson, & Kirk Cameron, *Child Molestation and Homosexuality*, 58 *PSYCHOLOGICAL REP.* 327 (1986) [hereinafter Cameron]. Cameron's study also suffers from severe methodological problems. The sampling methods were not adequately described; the representativeness of the sample is highly doubtful; the locations for data collection (Omaha, Neb.; Los Angeles, Cal.; Denver, Colo.; Washington, D.C.; Louisville, Ky.; Ben-

nett, Neb.; and Rochester, N.Y.) appear to have been selected solely on the basis of convenience. Cameron, *supra* note 113, at 328. For a detailed critique, see Robert D. Brown & James K. Cole, *Letter to the Editor*, 70 *NEB. MED. J.* 410 (1985). Additionally, the response rate appears to have

sions reached in Cameron's 1985 article.¹¹⁴ As before, male-male sexual assaults were referred to as "homosexual"¹¹⁵ and the perpetrators' sexual orientations apparently were not assessed.¹¹⁶ Such confusions can affect subsequent research. Cameron's equation of same-sex molestation with an adult homosexual orientation appears to have led Freund and others to study why "the proportion of sex offenders against male children among homosexual men is substantially larger than the proportion of sex offenders against female children among heterosexual men."¹¹⁷ However, Freund and his colleagues failed to find greater sexual arousal among gay men (in their terminology, "androphiles") who were shown visual images of young males than among heterosexual men ("gynephiles") who were shown visual images of young females.¹¹⁸

Recognizing the many problems created by the lack of representative samples and ambiguous terminology, we can critically evaluate the empirical research relating to adult sexual orientation and molestation of children. In this process, we must search for consistent trends in the results of empirical studies that have adequately assessed and reported the sexual orientation of perpetrators. It appears from these studies that gay men are no more likely than heterosexual men to molest children.¹¹⁹

been unacceptably low, so that their sample does not permit generalizations from the data to any larger population. See Herek, *supra* note 64, at 80 n.10.

114. See Cameron, *supra* note 109.

115. Cameron, *supra* note 113, at 327 (in Abstract).

116. During the mid-1980s, Paul Cameron was labeled in the gay press as "the most dangerous antigay voice in the United States today." David Walter, *Paul Cameron*, THE ADVOCATE, Oct. 29, 1985, at 28; see also Ann Fettner, *The Evil That Men Do*, NEW YORK NATIVE, Sep. 23, 1985, at 23. In 1984, all members of the American Psychological Association received official written notice that "Paul Cameron (Nebraska) was dropped from membership for a violation of the Preamble to the Ethical Principles of Psychologists" on Dec. 2, 1983, by the APA Board of Directors. Letter from APA to all members (1984) (discussing persons dropped from membership in the American Psychological Association) (copy on file at the *Law & Sexuality* office). At its membership meeting on Oct. 19, 1984, the Nebraska Psychological Association adopted a resolution stating that it "formally dissociates itself from the representations and interpretations of scientific literature offered by Dr. Paul Cameron in his writings and public statements on sexuality." Lynda S. Madison, *Minutes of the Fall Meeting*, 25 NEB. PSYCHOLOGICAL A. F. 2, 3 (Winter 1984) (available from the Nebraska Psychological Association, 1515 North Fifty-first Street, Omaha, Nebraska 68104). In 1985, the American Sociological Association adopted a resolution that included the assertion that "Dr. Paul Cameron has consistently misinterpreted and misrepresented sociological research on sexuality, homosexuality, and lesbianism." *Sociology Group Criticizes Work of Paul Cameron*, Journal Star, Sept. 10, 1985, at 1, col. 1 (Lincoln, Neb.). Cameron's credibility has also been questioned outside of academia. In his written opinion in *Baker v. Wade*, 106 F.R.D. 526 (N.D. Tx. 1985), Judge Buchmeyer of the United States District Court of Dallas referred to Cameron's sworn statement that "homosexuals abuse children at a proportionately greater incident than do heterosexuals," and concluded that "Dr. Paul Cameron . . . has himself made misrepresentations to this Court" and that "there has been no fraud or misrepresentations except by Dr. Cameron." *Baker*, 106 F.R.D. at 536.

117. See Kurt Freund, Robin Watson, & Douglas Rienzo, *Heterosexuality, Homosexuality, and Erotic Age Preference*, 26 J. SEX RES. 107, 115 (1989).

118. See *id.*

119. For an earlier review, see David Newton, *Homosexual Behavior and Child Molestation: A Review of the Evidence*, 13 ADOLESCENCE 29 (1978).

This is not to suggest that molestations of children by adult homosexual men never occur. For example, Erickson, Walbek, & Seely reported that 86% of the men in their sample who had molested males under age 14 described themselves as homosexual or bisexual. Erickson, *supra* note 99, at 83.

E. Myth #5: Being exposed to a homosexual parent or role model is likely to have negative effects on a child.

In addition to fears of sexual molestation, another often cited reason for restricting contact between children and adult lesbians and gay men is that such interactions might change a previously heterosexual child into a homosexual or, at least, might create personal sexual conflicts and confusions for the child. For example, in the S.H.A.P.E. newsletter described previously, a Los Angeles public schools program for counseling lesbian and gay male teenagers was criticized under the heading "Recruiting Through Role Models": "The homosexual advocacy groups want to have a parade of homosexuals in the various classrooms as positive role models such as lawyers, doctors, etc., who tell the students they are gay."¹²⁰ This would "advocate a lifestyle that is against the religious teaching of a large proportion of the families and is against the law in many states."¹²¹

The bulk of empirical research in this area has focused on the most powerful role models available to most children: parents. Several papers have been published in recent years reviewing data on the influences of a lesbian mother or gay father on the social, psychological, and sexual development of children.¹²² They have concluded that no evidence exists that having a gay parent or role model is harmful to the child.¹²³ Nor do the children of gay parents differ significantly from children raised in heterosexual households in their development of gender identity or sexual orientation.

Green and his colleagues compared children raised by 50 lesbian mothers (30 daughters, 26 sons) with children raised by 40 single heterosexual mothers (28 daughters, 20 sons).¹²⁴ They found no differences between the two groups of children on measures of intelligence, gender identity, wishes to be the other sex, popularity with peers, or social

Unfortunately, Erickson and others did not report the actual number associated with this percentage (based on their data, the number appears to be approximately 54 out of 229 child molesters studied, or 24%). Nor did they differentiate homosexual from bisexual men, or report how many of the so-called homosexual men were heterosexually married (although some apparently were, based on the authors' other comments). Of critical importance is the fact that the authors did not determine if the self-reported homosexual and bisexual men were involved in homosexual relationships with adults of the same sex, or whether the self-applied labels were used to describe the gender of their under-age victims (in Groth & Birnbaum's terminology, *supra* note 104, whether they were fixated).

120. Project 10—Recruiting Students into Homosexuality, Stop Homosexual Advocacy in Public Education, Feb. 1989, at 2 (copy on file at the Law & Sexuality office).
121. *Id.*
122. See, e.g., Patricia J. Falk, *Lesbian Mothers: Psychosocial Assumptions in Family Law*, 44 *AM. PSYCHOLOGIST* 941 (1989); Comment, *Assessing Children's Best Interests When a Parent is Gay or Lesbian: Toward a Rational Custody Standard*, 32 *UCLA L. REV.* 852 (1985) (authored by Steve Susoff).
123. See Falk, *supra* note 122, at 946.

124. See Richard Green, Jane B. Mandel, Marv E. Hoivold, James C. Gray, & Laurel Smith, *Lesbian Mothers and Their Children: A Comparison With Solo Parent Heterosexual Mothers and Their Children*, 15 *ARCHIVES SEXUAL BEHAV.* 167 (1986).

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adjustment.¹²⁵ Daughters of lesbian mothers differed from the daughters of heterosexual mothers in several respects. They were more likely to dress in boys' clothes; to aspire to traditionally masculine occupations such as doctor, lawyer, engineer, and astronaut; to engage in rough-and-tumble play; to show considerable interest in play-acting and role-taking; to play with trucks and guns; and to demonstrate interest in boy-type activities.¹²⁶ None of these differences were judged to indicate any disorder in gender identity.¹²⁷ The two groups of sons did not differ on any of these variables.¹²⁸ Green and others concluded that "boys and girls raised from early childhood by a homosexual mother without an adult male in the household for about four years do not appear appreciably different on parameters of psychosexual and psychosocial development from children raised by heterosexual mothers, also without an adult male present."¹²⁹

In an earlier paper, Green reported on 37 children being raised in households with a lesbian or transsexual parent.¹³⁰ All but one of the children manifested childhood toy, game, clothing, and peer group preferences typical for their sex.¹³¹ Similarly, Hoeffler found no significant differences between children of lesbian and heterosexual mothers in their preference for toys; children in both groups generally preferred toys traditionally associated with their own sex or sex-neutral toys.¹³² Golombok, Spencer, and Rutter also found no differences in sex role behaviors between children of lesbian and heterosexual mothers, nor did they observe group differences in warmth shown toward the children.¹³³ Kirkpatrick, Smith, & Roy failed to find differences in psychological adjustment or gender development between 20 children of lesbian mothers and 20 children of heterosexual single mothers.¹³⁴

Findings from several studies suggest that lesbian mothers and gay fathers may be less encouraging than heterosexual parents of sex-typing in their children's toys and activities (*i.e.*, they tend not to restrict their children to toys and activities that are traditionally associated with the child's gender). Golombok and others reported that only three of the 27 lesbian mothers in their sample strongly sex-typed their children's activities to-

125. *See id.* at 174-79.

126. *See id.* at 176-79.

127. *See id.* at 179-80.

128. *See id.* at 179.

129. *Id.* at 182.

130. *See* Richard Green, *Sexual Identity of 37 Children Raised by Homosexual or Transsexual Parents*, 135 AM. J. PSYCHIATRY 692 (1978).

131. *See id.* at 696.

132. *See* Beverly Hoeffler, *Children's Acquisition of Sex-Role Behavior in Lesbian-Mother Families*, 51 AM. J. ORTHOPSYCHIATRY 536, 542-43 (1981).

133. *See* Susan Golombok, Amy Spencer, & Michael Rutter, *Children in Lesbian and Single-Parent Households: Psychosexual and Psychiatric Appraisal*, 24 J. CHILD PSYCHOLOGY & PSYCHIATRY 551, 571 (1983) [hereinafter Golombok].

134. *See* Martha Kirkpatrick, Catherine Smith, & Ron Roy, *Lesbian Mothers and Their Children: A Comparative Study*, 51 AM. J. ORTHOPSYCHIATRY 545, 550-51 (1981).

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ward traditional gender roles; most mothers allowed their children to engage in a wide variety of activities and to play with both sex-typed and non-sex-typed toys.¹³⁸ Hoeffler observed that the 20 lesbian mothers in her sample were more likely than the 20 heterosexual mothers to encourage play with a mix of toys traditionally associated with each gender; both groups of mothers, however, displayed a preference for gender-neutral toys over sex-typed toys.¹³⁸

Researchers similarly have not observed differences between children from gay and heterosexual households in development of sexual orientation. All 13 of the children examined by Green who were old enough to report erotic fantasies or sexual behaviors were heterosexually oriented.¹³⁷ Huggins interviewed 36 adolescent children, one-half living with a divorced lesbian mother and one-half living with a divorced heterosexual mother.¹³⁸ Only one of the children was a self-designated homosexual; that child was from the heterosexual mothers' sample.¹³⁸ The same researcher also found no significant differences in self-esteem between male and female adolescent children of divorced lesbian and heterosexual mothers.¹⁴⁰ She noted that a child's self-esteem tended to be higher when the mother was coupled (i.e., living with a female lover or heterosexually remarried).¹⁴¹

Golombok and others reported no significant differences between heterosexual and lesbian mothers in the sexual orientation of their children.¹⁴² Of the nine pubertal or post-pubertal children of lesbian mothers in their sample, six reported definite heterosexual interests, two had no definite interests, and one girl reported a crush on a female teacher.¹⁴³ Of the 11 children with heterosexual single mothers, four reported definite heterosexual interests and seven reported no definite sexual or romantic interests.¹⁴⁴ Of the prepubertal children in the same study, the friendship groups of all but one consisted primarily of same-sex peers or mixed-sex groups; the one boy whose friendships were mainly with girls was in the heterosexual mothers' sample.¹⁴⁵ Gorman compared 35 adult daughters of lesbians with 70 adult daughters of heterosexual divorced mothers; one-half of those in the heterosexual mothers' group reported that their

135. See Golombok, *supra* note 133, at 561.
 136. See Hoeffler, *supra* note 132, at 40.
 137. See Green, *supra* note 130, at 693. See also Richard Green, *The Best Interest of the Child With a Lesbian Mother*, 10 BUL. AM. ACAD. OF PSYCHIATRY & L. 7 (1982).
 138. See Sharon L. Huggins, *A Comparative Study of Self-Esteem of Adolescent Children of Divorced Lesbian Mothers and Divorced Heterosexual Mothers*, 18 J. HOMOSEXUALITY 123, 123 (in Abstract) (1989) (Nos. 1/2).
 139. *Id.* at 134.
 140. See *id.* at 131.
 141. See *id.* at 132.
 142. See Golombok, *supra* note 133, at 571.
 143. *Id.* at 564.
 144. *Id.*
 145. *Id.*

mother had remarried or lived with a man.¹⁴⁶ She reported no differences among the groups in their adult sexual orientation, although her method of assessing sexual orientation was not clearly described.¹⁴⁷

Concerns sometimes are raised that children of lesbian or gay male parents may experience considerable stigma, as might children of parents from other minority groups.¹⁴⁸ Empirical research on this topic is sparse, but it suggests two tentative conclusions: (1) children of lesbian and gay parents often recognize the existence of societal stigma and understand the importance of exercising discretion in revealing their parents' sexual orientations to others,¹⁴⁹ and (2) although children sometimes experience harassment, the incidents appear to be usually infrequent and relatively minor, such as name-calling.¹⁵⁰ In a study by Wyers, 58.8 percent of the children of 34 lesbian mothers, and 21.1 percent of the children of 32 gay fathers were reported to have experienced "relationship problems with other people because of their knowledge of their parents' homosexuality, although most of the problems are not considered to be serious."¹⁵¹ Unfortunately, the number of children upon which those percentages were based was not reported by Wyers. Green documented only infrequent instances of minor verbal teasing directed at children of lesbian mothers.¹⁵²

Bozett observed that most of the 18 gay fathers whom he interviewed took precautions to protect their children from others' hostility.¹⁵³ Such precautions included avoiding affection with a male partner when a child's friends were present, limiting activities that would publicly identify them as gay (e.g., marching in a gay pride parade), arranging for their children to have multiple friendship networks (so that ostracism from one group would not leave the child friendless), and preparing their children to respond to bigotry when they eventually encounter it.¹⁵⁴ An impressionistic article by Lewis, based on interviews with 21 children of lesbian parents, suggested that an important consequence of antigay social stigma may be that it often leaves children of lesbian and gay parents without

146. Julie S. Goutman, *Children of Gay and Lesbian Parents*, 14 MARRIAGE & FAM. REV. 177, 188 (1989).

147. *Id.* at 190.

148. See Falk, *supra* note 122, at 943, 946.

149. See, e.g., Karen Gail Lewis, *Children of Lesbians: Their Point of View*, 25 SOC. WORK 198, 199 (1980).

150. See Frederick W. Bozett, *Gay Fathers: A Review of the Literature*, 18 J. HOMOSEXUALITY 137, 143 (1989) (Nos. 1/2); Brian Miller, *Gay Fathers and Their Children*, 28 FAM. COORDINATOR 544 (1979); Brian Miller, *Unpromised Paternity: The Life-Styles of Gay Fathers*, in GAY MEN, THE SOCIOLOGY OF MALE HOMOSEXUALITY 239 (Martin P. Levine ed. 1979).

151. Bozett, *supra* note 150, at 144, 148 (citing N.L. Wyers, *Lesbian and Gay Spouses and Parents: Homosexuality in the Family*, School of Social Work, Portland State University, Portland, Or. (Bozett does not indicate whether Wyers work is published or unpublished)).

152. See Green, *supra* note 130.

153. See Frederick W. Bozett, *Gay Fathers: How and Why They Disclose Their Homosexuality to Their Children*, 29 FAM. RELATIONS 173, 177-78 (1980).

154. See *id.*

larger social support systems in which they can talk about their own feelings and concerns related to their parents' homosexuality.¹⁵⁵

This discussion so far has focused on how having a gay parent or role model might possibly harm a child. However, interacting with an openly gay adult also might be beneficial, especially to children who are themselves forming a gay or lesbian identity. In such cases, an openly gay adult might serve as a positive role model, a source of information, and a trusted confidante; these generally unavailable resources are even more important for lesbian and gay male youths who have been rejected by their own parents and peers.¹⁵⁶ Even heterosexual youth might benefit from exposure to gay adults in that such exposure might increase their understanding and comfort for gay people in particular and for diverse groups of people in general (see the discussion below about the effects of interpersonal contact on prejudice).

In summary, having a gay male or lesbian role model does not appear to be deleterious to children, nor does it influence the sexual orientation eventually adopted by a child. However, such role models might have beneficial effects for gay and heterosexual young people.

F. Myth #6: Lesbians and gay men are not capable of sustained relationships; homosexual relationships are inferior to heterosexual relationships.

The available data comparing heterosexual and homosexual relationships indicate that the two types of pairings are equally diverse in the forms they take and in the levels of psychological health associated with them.¹⁵⁷ A large proportion of gay people are in steady relationships. In the Teichner poll, which used a national probability sample, 60 percent of the gay or bisexual men and 64 percent of the lesbian or bisexual women reported that they were currently in a relationship.¹⁵⁸ In various studies with nonprobability samples, the proportions of lesbians reporting that they are currently in a same-gender relationship often have been higher than in the Teichner sample.¹⁵⁹ Comparable studies with gay men (all of

155. See Lewis, *supra* note 149, at 202.

156. See Eli Coleman & Gary Remafedi, *Gay, Lesbian, and Bisexual Adolescents: A Critical Challenge to Counselors*, 68 J. COUNSELING & DEV. 36 (1989); A. Damien Marini, *Learning to Hide: The Socialization of the Gay Adolescent*, in 10 ADOLESCENT PSYCHIATRY: DEVELOPMENTAL & CLINICAL STUDIES 52 (Sherman C. Feinstein, John G. Looney, Allan Z. Schwartzberg, & Arthur D. Sorosky eds. 1982); Barbara R. Slater, *Essential Issues in Working With Lesbian and Gay Male Youths*, 19 PROF. PSYCHOLOGY: RES. AND PRAC. 226 (1988).

157. See generally, Letitia Anne Peplau, *Lesbian and Gay Relationships*, in *HOMOSEXUALITY*, *supra* note 16, at 177; Peplau & Cochran, *supra* note 5.

158. See *Results of Poll*, *supra* note 57.

159. See, e.g., A. Bell & M. Weinberg, *supra* note 6, at 318 (70-72%); Wayne L. Cotton, *Social and Sexual Relationships of Lesbians*, 11 J. SEX RES. 139, 142 (1975) (83%); KARLA JAY AND ALLEN YOUNG, *THE GAY REPORT 302* (1977) (80%); Andrea K. Oberstone & Harriet S. Sukoneck, *Psychological Adjustment and Life Style of Single Lesbians and Single Heterosexual Women*, 1 PSYCHOLOGY WOMEN Q. 172, 180 (1976) (80%); Letitia Anne Peplau, Susan D. Cochran,

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them conducted before the AIDS (Acquired Immune Deficiency Syndrome) epidemic) have reported slightly smaller proportions than in the 1989 Teichner sample.¹⁶⁰ When asked, most gay people have indicated that they want to have a steady love relationship; only a minority indicate that a permanent relationship is not at all important to them.¹⁶¹

Wide variability is apparent in the duration of gay relationships. The median length of the current relationship reported by respondents to the Teichner poll was 2.5 years for the men and 1.8 years for the women. In that survey, 63 percent of the men and 62 percent of the women reported having three or fewer relationships during the previous 10 years; the mean number of relationships during that time period was 2.5 for both men and women.¹⁶² Anecdotal reports from older lesbians and gay men indicate that relationships of 20 years duration and longer are not uncommon.¹⁶³

No consistent differences have been observed in the psychological satisfaction associated with same-gender and heterosexual relationships. Lesbians, gay men, and heterosexuals involved in steady relationships all tend to score high on scales that assess degree of liking and love for their partner.¹⁶⁴ When asked to describe the best and worst things about their relationships, homosexual and heterosexual individuals give similar answers.¹⁶⁵ When relationship adjustment and satisfaction are assessed with standardized scales, lesbian and gay male couples tend to be as well-adjusted and satisfied as matched heterosexual couples.¹⁶⁶

Karen Rook, & Christine Padesky, *Loving Women: Attachment and Autonomy in Lesbian Relationships*, 34 J. SOC. ISSUES 7, 12 (1978) (No. 3) (61%).

160. See, e.g., A. BELL & M. WEINBERG, *supra* note 6, at 318 (51-58%); K. JAY AND A. YOUNG, *supra* note 159, at 339 (46%); Letitia Anne Peplau & Susan D. Cochran, *Value Orientations in the Intimate Relationships of Gay Men*, 6 J. HOMOSEXUALITY 1, 4 (1981) (No. 3) (41%).

161. See A. BELL & M. WEINBERG, *supra* note 6, at 322; Peplau, *supra* note 157, at 179.

162. See *Results of Poll*, *supra* note 57.

163. See LONG TIME PASSING: LIVES OF OLDER LESBIANS (Marcy Adelman ed. 1986); EDWARD M. BRECHER, LOVE, SEX, AND AGING: A CONSUMERS UNION REPORT (1984); D. MERILEE CLUNIS & G. DORSEY GREEN, LESBIAN COUPLES (1988); DAVID P. MCWHIRTER & ANDREW M. MATTISON, THE MALE COUPLE: HOW RELATIONSHIPS DEVELOP (1984); MARY MENDOLA, THE MENDOLA REPORT: A NEW LOOK AT GAY COUPLES (1980); CHARLES SILVERSTEIN, MAN TO MAN: GAY COUPLES IN AMERICA (1981); KEITH VACHA, QUIET FIRE: MEMOIRS OF OLDER GAY MEN (Cassie Damewood ed. 1985).

164. See Peplau, *supra* note 157, at 181 (citing Letitia Anne Peplau & Susan D. Cochran, *Sex Differences in Values Concerning Love Relationships*, paper presented at the annual meeting of the American Psychological Association in Montreal, Canada (Sep. 1980)); Letitia Anne Peplau, Christine Padesky, & Mykol Hamilton, *Satisfaction in Lesbian Relationships*, 8 J. HOMOSEXUALITY 23, 27-28 (1982) (No. 2); see also Nancy L. Adler, Susan S. Hendrick, & Clyde Hendrick, *Male Sexual Preference and Attitudes Toward Love and Sexuality*, 12 J. SEX EDUC. & THERAPY 27 (1986).

165. See Peplau, *supra* note 157, at 181-82 (citing Susan Cochran, *Romantic Relationships: For Better or For Worse*, paper presented at the meeting of the Western Psychological Association in San Francisco, Cal. (Apr. 1978)).

166. See Mona Cardell, Stephen Finn, & Jeanne Maracek, *Sex-Role Identity, Sex-Role Behavior, and Satisfaction in Heterosexual, Lesbian and Gay Male Couples*, 5 PSYCHOLOGY WOMEN Q. 488 (1981); Lawrence Kurdek & J. Patrick Schmitt, *Relationship Quality of Partners in Heterosexual Married, Heterosexual Cohabiting, Gay, and Lesbian Relationships*, 51 J. PERSONALITY & SOC. PSYCHOLOGY 711 (1986); see generally Peplau, *supra* note 157.

Same-sex relationships may be less likely than heterosexual relationships to involve gender-typed roles. Available data indicate that most lesbians and gay men do *not* play rigid "husband/wife" roles in such areas as decision-making, sexual behavior, and the division of household tasks; although task specialization often occurs, it typically is based on individual skills and preferences, with neither partner assuming exclusively "masculine" or "feminine" tasks.¹⁶⁷

Whereas sexual monogamy is an issue for heterosexual, lesbian, and gay male couples alike,¹⁶⁸ same-gender couples may be more likely than male-female couples to discuss and negotiate the issue directly.¹⁶⁹ Many gay male partners, distinguishing between sexual exclusivity and emotional fidelity, allow each other the option of having sexual liaisons with other males. This usually occurs with the proviso that certain rules are followed (e.g., that no high-risk activities occur, that the liaison not be allowed to threaten the couple's emotional intimacy, that the liaison be discussed with the partner, or that the liaison *not* be discussed with the partner).¹⁷⁰ Lesbian couples appear to be more likely than gay male couples to be sexually exclusive.¹⁷¹ Although social norms prescribe sexual exclusivity in marriage, heterosexual couples generally fall somewhere between lesbian and gay male couples, less sexually exclusive than the former and more sexually exclusive than the latter. Within heterosexual couples, men are more likely than women to have outside sexual relation-

167. See A. Bell & M. Weinberg, *supra* note 6, at 325; Philip Blumstein & Pepper Schwartz, *American Couples: Money, Work, Sex* (1983); Joseph Harry, *Gay Couples* (1984); K. Jay & A. Young, *supra* note 159; D. McWhirter & A. Mattison, *supra* note 163; Oberstone & Sukoneck, *supra* note 159, at 181; Letitia Anne Peplau & Hortensia Amaro, *Understanding Lesbian Relationships*, in *Homosexuality Issues*, *supra* note 94, at 233; Marcel T. Sachir & Eli Robins, *Male and Female Homosexuality: A Comprehensive Investigation* (1973); Margaret S. Schneider, *The Relationships of Cohabiting Lesbian and Heterosexual Couples: A Comparison*, 10 *Psychology Women Q.* 234, 237 (1986).

168. See Peplau, *supra* note 157.

169. See David Blasland & Letitia Anne Peplau, *Sexual Exclusivity Versus Openness in Gay Male Couples*, 14 *Archives Sexual Behav.* 395 (1985); P. Blumstein & P. Schwartz, *supra* note 167, at 267-302; see also Peplau & Cochran, *supra* note 160.

170. See A. Bell & M. Weinberg, *supra* note 6; Blasland & Peplau, *supra* note 169; Joseph Harry, *The "Marital" Liaisons of Gay Men*, 28 *Fam. Coordinator* 622 (1979); J. Harry, *supra* note 167; Joseph Harry & Robert Lovely, *Gay Marriages and Communities of Sexual Orientation: 2 Alternative Lifestyles* 177 (1979); Lawrence Kurdek & J. Patrick Schmitt, *Relationship Quality of Gay Men in Closed or Open Relationships*, 12 *J. Homosexuality* 85 (1985) (No. 2); D. McWhirter & A. Mattison, *supra* note 163.

Most currently published studies of gay male couples were conducted before the beginning of the AIDS epidemic in the early 1980s. Recent empirical research indicates that some gay men have developed sexually exclusive relationships as a response to AIDS, whereas others have restricted their sexual activities outside the relationship to behaviors unlikely to transmit Human Immunodeficiency Virus (HIV). For a review, see Marshall H. Becker & Jill G. Joseph, *AIDS and Behavioral Change to Reduce Risk: A Review*, 78 *Am. J. Pub. Health* 394 (1988).

171. See P. Blumstein & P. Schwartz, *supra* note 167; Lawrence Kurdek, *Relationship Quality of Gay and Lesbian Cohabiting Couples: A 1-Year Follow-Up Study*, 6 *J. Soc. & Personal Relationships* 39 (1989).

ships, suggesting that gender may have a greater effect on sexual exclusivity than does sexual orientation.¹⁷²

In summary, lesbian and gay male couples manifest the same range of diversity as heterosexual couples. Many gay people are currently in ongoing relationships, some of which have lasted for many years. Heterosexuals and gay people appear to be similar in their satisfaction with their relationships and their feelings of liking and loving for their partner. Same-sex partners may differ from heterosexual couples in that they are less likely to play rigid, gender-based roles and are more likely to openly discuss issues of sexual exclusivity.

G. Myth #7: Gay people are not a minority group.

The notion that gay people constitute a minority group comparable to racial, ethnic, and religious minorities was articulated at least forty years ago.¹⁷³ Social scientists have proposed many different definitions and criteria for minority groups, recognizing that not all groups fit all criteria. The most important feature is that a minority group's members must manifest one or more characteristics that society uses as a basis for discrimination, despite the irrelevance of those characteristics to the setting in which discrimination occurs.¹⁷⁴ Other features that have been used to define the characteristics of a minority group include: a self-conscious sense of community through which group members feel bound to each other by common ties; transmission of minority group membership to succeeding generations by a rule of descent; and a tendency to marry within the minority group.¹⁷⁵

Lesbians and gay men clearly do not manifest the last two characteristics. Although sexual orientation may have a biological component (see discussion in subpart III(C)(1) above), it is not transmitted to succeeding generations in the same manner as race or ethnicity. Nor, for obvious reasons, do gay people tend to marry within their own group. In these respects, they are different from many racial and ethnic groups. Another difference is that, unlike race and ethnicity, sexual orientation transcends

172. See P. BLUMSTEIN & P. SCHWARTZ, *supra* note 167; K. JAY & A. YOUNG, *supra* note 159; Peplau, *supra* note 157; Letitia Anne Peplau & Gordon, *The Intimate Relationships of Lesbians and Gay Men*, in *THE CHANGING BOUNDARIES: GENDER ROLES AND SEXUAL BEHAVIOR* 226 (Elizabeth R. Allgeier & Naomi B. McCormick eds. 1982); Lawrence Kurdek, *Relationship Quality of Gay and Lesbian Cohabiting Couples*, 15 *J. HOMOSEXUALITY* 93 (1988) (Nos. 3/4); Kurdek, *supra* note 171.

173. See DONALD W. CORY, *THE HOMOSEXUAL IN AMERICA: A SUBJECTIVE APPROACH* (1951); see also Helen Hacker, *Homosexuals: Deviant or Minority Group?*, in *THE OTHER MINORITIES* 65 (Edward Sagarin ed. 1971) [hereinafter *OTHER MINORITIES*]; Franklin Kameny, *Homosexuals as a Minority Group*, in *OTHER MINORITIES* at 50.

174. See Melvin Seeman, *Intergroup Relations*, in *SOCIAL PSYCHOLOGY: SOCIOLOGICAL PERSPECTIVES* 378 (Morris Rosenberg & Ralph Turner eds. 1981); HENRI TAJFEL, *HUMAN GROUPS AND SOCIAL CATEGORIES: STUDIES IN SOCIAL PSYCHOLOGY* (1981).

175. See GEORGE E. SIMPSON & J.M. YINGER, *RACIAL AND CULTURAL MINORITIES: AN ANALYSIS OF PREJUDICE AND DISCRIMINATION* 10 (1965) (citation omitted).

social class and economic status. Lesbians, gay men, bisexuals, and heterosexuals appear to be distributed throughout society's strata, although antigay discrimination can have economic consequences for its targets.¹⁷⁸ Despite these differences from racial and ethnic minorities, lesbians and gay men can reasonably be viewed as a minority group in the contemporary United States because they manifest a characteristic that is held in low esteem by the dominant segments of society and is used as the basis for discrimination; further, they form a self-conscious community based on their sexual orientation.¹⁷⁷ Each of these characteristics will be considered in turn.

1. *Lesbians and gay men manifest a characteristic that is held in low esteem by the dominant segments of society.*

Roughly two-thirds of Americans condemn homosexuality or homosexual behavior as morally wrong or a sin;¹⁷⁸ this pattern appears not to have changed significantly from the late 1970s.¹⁷⁹ According to Gallup polls, only a plurality of Americans feel that homosexual relations between consenting adults should be legal (47 percent versus 36 percent who say they should not be legal).¹⁸⁰ Many heterosexual Americans also reject gay people at the personal level.¹⁸¹ In a 1985 *Los Angeles Times* poll, 35 percent of the respondents reported that they felt discomfort around either gay men (6 percent) or lesbians (11 percent) or both (18 percent); 50 percent reported that they did not feel uncomfortable around gay people.¹⁸² For some members of the public, negative attitudes toward lesbians and gay men may have been intensified in the early years of the AIDS epidemic;¹⁸³ for those who already were prejudiced, the epidemic may have provided an opportunity for expressing hostility.¹⁸⁴

176. See William Paul, *Minority Status for Gay People: Majority Reactions and Social Context* in HOMOSEXUALITY ISSUES, *supra* note 94, at 351.
 177. See, e.g., Secman, *supra* note 174; H. TAJFEL, *supra* note 174.
 178. Polls by the American Broadcasting Company (Mar. 1986 & Aug. 1987); L.A. Times, (Aug. 1987); Roper, (Sep. 1985) (these polls are available from the Roper Center, *supra* note 76).
 179. Polls by Yankelevich (Mar. 1978); Gallup (Nov. 1978) (these polls are available from the Roper Center, *supra* note 76).
 180. See Colasanto, *supra* note 76.
 181. See Gregory M. Herek, *The Social Psychology of Homophobia: Toward a Practical Theory, New Perspective on the Functional Approach to Attitudes*, 50 SOC. PSYCHOLOGY Q. 285 (1987); Gregory M. Herek, *Heterosexuals' Attitudes Toward Lesbians and Gay Men: Correlates and Gender Differences*, 25 J. SEX RES. 451 (1988); Herek, *supra* note 64.
 182. See John Balzar, *The Times Poll: American Views of Gays: Disapproval, Sympathy*, N.Y. Times, Dec. 20, 1985, § 1, at 1, col. 5.
 183. See Colasanto, *supra* note 76.
 184. See Herek, *supra* note 61; Gregory M. Herek & Eric K. Giunt, *An Epidemic of Stigma: Public Reactions to AIDS*, 43 AM. PSYCHOLOGIST 886 (1988); Gregory M. Herek & Eric Giunt, *AIDS-Related Attitudes in the United States: A Preliminary Conceptualization*, 28 J. SEX RES. 99 (1991).

2. *Lesbians and gay men are self-consciously bound together as a community by virtue of their sexual orientation and the social status it carries.*

D'Emilio described the emergence and growth of lesbian and gay male communities in major American cities after World War II.¹⁸⁵ Levine used a definition of "ghetto" derived from sociological research¹⁸⁶ to document the existence of at least three fully developed gay male ghettos in American cities (Los Angeles, New York, and San Francisco) in the late 1970s.¹⁸⁷ He also described 12 other ghettos that were partially developed at that time (in the same three cities as well as in Boston and Chicago). Wolf described the San Francisco lesbian community in considerable detail.¹⁸⁸ Murray compared the Toronto gay male community with ethnic communities on a variety of defining characteristics and concluded that "the Toronto gay community fits the criteria for community as an entity at least as well as Toronto ethnic communities."¹⁸⁹ Other shared characteristics of lesbians and gay men also have been described, such as language;¹⁹⁰ culture;¹⁹¹ and myth, religion, and spirituality.¹⁹²

3. *Societal prejudice and inaccurate stereotypes surrounding sexual orientation cause gay people to receive differential treatment.*

In the Teichner national telephone survey, 5 percent of the 287 men and 10 percent of the 113 women reported having been physically abused or assaulted in the previous year because they were gay.¹⁹³ Nearly half (47 percent) reported experiencing discrimination in at least one category at some time in their life based on their sexual orientation: 16 percent on the job, 15 percent in housing, 13 percent in health care, and 39 percent in social situations (with some reporting discrimination in multiple categories).¹⁹⁴ Other research similarly has found that significant numbers of

185. See J. D'EMILIO & E. FREEDMAN, *supra* note 10.

186. See LOUIS WIRTH, *THE GHETTO* (1928).

187. See Martin Levine, *Gay Ghetto*, in *GAY MEN: THE SOCIOLOGY OF MALE HOMOSEXUALITY* 182 (Martin Levine ed. 1979).

188. See DEBORAH G. WOLF, *THE LESBIAN COMMUNITY* (1979).

189. Stephen Murray, *Institutional Elaboration of a Quasi-Ethnic Community*, 9 *INT'L REV. MOD. SOC.* 165, 175 (1979).

190. See *GAYSPEAK: GAY MALE AND LESBIAN COMMUNICATION* (James W. Chesebro ed. 1981); W. DYNES, *supra* note 2; BRUCE RODGERS, *THE QUEEN'S VERNACULAR: A GAY LEXICON* (1972).

191. See DENNIS ALTMAN, *THE HOMOSEXUALIZATION OF AMERICA, THE AMERICANIZATION OF THE HOMOSEXUAL* (1982); MICHAEL BRONSKI, *CULTURE CLASH: THE MAKING OF GAY SENSIBILITY* (1984).

192. See ARTHUR EVANS, *WITCHCRAFT AND THE GAY COUNTERCULTURE* (1978); JUDY GRAHN, *ANOTHER MOTHER TONGUE: GAY WORDS, GAY WORLDS* (1984); TROY PERRY, *THE LORD IS MY SHEPHERD AND HE KNOWS I'M GAY* (1972); *GAY SPIRIT: MYTH AND MEANING* (Mark Thompson ed. 1987).

193. See *Results of Poll*, *supra* note 57.

194. *Id.*

lesbians and gay men have been the targets of discrimination,¹⁹⁸ verbal abuse, or physical assault¹⁹⁹ because of their sexual orientation.

Although lesbians and gay men meet the central criteria for a minority group, they have begun to be recognized as such only recently. To date, no published national survey of public opinion has asked respondents whether they consider lesbians and gay men to constitute a minority group. However, many institutions have recognized gay people as a minority or have begun to treat them as such. For example, the American Psychological Association's previously mentioned resolution of 1975 included a statement of the organization's support for "the enactment of civil rights legislation at the local, state, and federal level that would offer citizens who engage in acts of homosexuality the same protections now guaranteed to others on the basis of race, color, etc."¹⁹⁷ The APA voted at the same time to amend its own employment policy to prohibit discrimination on the basis of sexual orientation.¹⁹⁸ Similar resolutions were passed by the American Psychiatric Association in 1973; the American Public Health Association in 1975; the National Education Association in 1974; and the American Library Association in 1971.¹⁹⁹ Many United States corporations and universities now list "sexual orientation" as a protected category in their nondiscrimination policies.²⁰⁰ Many municipalities now accord the same civil rights protection to lesbians and gay men as to other minorities.²⁰¹

In addition to being a sexual minority group, lesbians and gay men also might be considered members of a religious minority because antigay discrimination and hostility are frequently justified on religious or moral grounds. Indeed, Supreme Court Justices White and Burger both cited Judeo-Christian teachings in their written opinions upholding the constitutionality of state sodomy statutes.²⁰² Because homosexuality is con-

195. See Larry Gross, Steven K. Aurand, & Rita Adessa, *Violence and Discrimination Against Lesbian and Gay People in Philadelphia and the Commonwealth of Pennsylvania*, Philadelphia Lesbian and Gay Task Force (1988) (available from the Lesbian and Gay Task Force, 1501 Cherry Street, Philadelphia, PA 19102); Levine, *supra* note 65; Levine & Leonard, *supra* note 65.
196. See Kevin Bertill, *Anti-Gay Violence and Victimization in the United States: An Overview*, J. INTERPERSONAL VIOLENCE 274 (1990); Herek, *supra* note 23; *Violence Against Lesbians and Gay Men*, *supra* note 66; Paul, *supra* note 176.
197. Conger, *supra* note 39, at 633.
198. See *id.*
199. See HUMAN RIGHTS FOUNDATION, *DEMISTIFYING HOMOSEXUALITY: A TEACHING GUIDE ABOUT LESBIANS AND GAY MEN* 153-54 (1984); National Gay and Lesbian Task Force, *Who's Behind the Gay Rights Movement: Statements and Policies in Support of Gay and Lesbian Civil Rights* (1988) (available from the National Gay and Lesbian Task Force, 1734 Fourteenth Street, N.W., Washington, D.C. 20009).
200. See HUMAN RIGHTS FOUNDATION, *supra* note 199 at 153-54; National Gay Task Force, *The National Gay Task Force Corporate Survey* (undated publication) (available from The National Gay and Lesbian Task Force, *supra* note 199).
201. See National Gay and Lesbian Task Force, *Gay and Lesbian Rights Protections in the U.S.* (undated publication) (available from the National Gay and Lesbian Task Force, *supra* note 199).
202. See *Bowers v. Hardwick*, 478 U.S. 186, 196 (1986).

demned by several major religions, it is sometimes argued that laws prohibiting discrimination would require heterosexual individuals to violate their personal moral standards. Such arguments are no longer widely accepted to excuse racial or religious intolerance, but they still carry sufficient weight when applied to homosexuality that religious institutions often are exempted from antidiscrimination statutes (as in the case of the 1989 Massachusetts state antidiscrimination law).²⁰³ Many Roman Catholics, fundamentalist Christians, and orthodox Jews have used religious teachings to justify their active opposition to enactment of statutes or policies designed to protect gay people from discrimination.²⁰⁴ The correlation between religiosity and antigay prejudice is well documented.²⁰⁵ Thus, although they do not manifest a unified religious ideology, gay people often are persecuted on the basis of the dominant majority's religious beliefs.²⁰⁶

Lesbians and gay men also can be viewed as members of a political minority. The relatively recent flourishing of visible gay communities is largely a result of political and legal struggles against prejudice and discrimination that have spanned four decades.²⁰⁷ These communities now constitute a political force for gay concerns, especially in cities like San Francisco.²⁰⁸ Acknowledging one's membership in the community through coming out to others can itself be defined as a political act²⁰⁹ and can be motivated by the desire to challenge antigay policies or attitudes.²¹⁰ This was recognized by the California Supreme Court in 1979.²¹¹ Noting that

203. See *No Gay Rights Vote in Massachusetts*, N.Y. Times, Jul. 8, 1990, § 1, at 11, col. 1.

204. For statements of the argument, see A. BRYANT, *supra* note 97; Congregation for the Doctrine of the Faith, Letter to the Bishops of the Catholic Church (1986) (on the pastoral care of homosexual persons); TIM LAHAYE, *WHAT EVERYONE SHOULD KNOW ABOUT HOMOSEXUALITY* (1978); for descriptions of antigay activism by Church officials, see ENRIQUE RUEDA, *THE HOMOSEXUAL NETWORK: PRIVATE LIVES AND PUBLIC POLICY* 269-383 (1982).

205. See, e.g., Margaret M. Bierly, *Prejudice Toward Contemporary Outgroups as a Generalized Attitude*, 15 J. APPLIED SOC. PSYCHOLOGY 189 (1985); Cynthia S. Geniry, *Social Distance Regarding Male and Female Homosexuals*, 127 J. SOC. PSYCHOLOGY 199 (1987); Gregory M. Herek, *Beyond "Homophobia": A Social Psychological Perspective on Attitudes Toward Lesbians and Gay Men*, 10 J. HOMOSEXUALITY 1 (1984) (Nos. 1/2); Gregory M. Herek, *Religious Orientation and Prejudice: A Comparison of Racial and Sexual Attitudes*, 13 PERSONALITY & SOC. PSYCHOLOGY BULL. 34 (1987); ALBERT D. KLASSEN, COLLIN J. WILLIAMS, & EUGENE E. LEVITT, *SEX AND MORALITY IN THE U.S.: AN EMPIRICAL ENQUIRY UNDER THE AUSPICES OF THE KINSEY INSTITUTE* (1989); Stephen M. Maret, *Attitudes of Fundamentalists Toward Homosexuality*, 55 PSYCHOLOGICAL REP. 205 (1984); Schneider & Lewis, *supra* note 76.

206. See Herek, *supra* note 61; Paul, *supra* note 176.

207. See BARRY ADAM, *THE RISE OF A GAY AND LESBIAN MOVEMENT* (1987); A. BÉRUBÉ, *supra* note 10; JOHN D'EMILIO, *SEXUAL POLITICS, SEXUAL COMMUNITIES: THE MAKING OF A HOMOSEXUAL MINORITY IN THE UNITED STATES* (1983).

208. See D. ALTMAN, *supra* note 191; RANDY SHILTS, *THE MAYOR OF CASTRO STREET: THE LIFE AND TIMES OF HARVEY MILK* (1982).

209. See generally CELIA KITZINGER, *THE SOCIAL CONSTRUCTION OF LESBIANISM* (1987).

210. See generally HOWARD BROWN, *FAMILIAR FACES, HIDDEN LIVES: THE STORY OF HOMOSEXUAL MEN IN AMERICA TODAY* (1976); MIKE HIPPLER, *MATLOVICH: THE GOOD SOLDIER* (1989).

211. See *Gay Law Students Ass'n v. Pacific Tel. and Tel. Co.*, 24 Cal. 3d 458, 595 P.2d 592, 156 Cal. Rptr. 14 (Cal. 1979).

the civil rights struggle of the gay community "must be recognized as political activity"²¹² and that publicly acknowledging one's own homosexual orientation is an important aspect of this struggle, the Court ruled that discrimination against openly gay individuals constitutes illegal discrimination on the basis of political activity.²¹³

H. Myth #8: Gay people are detrimental to the morale, discipline, or efficiency of an organization or institution.

The argument that lesbians and gay men impair the effectiveness and morale of an organization has been advanced most forcefully in recent years by the United States government to justify its policies of excluding gay people from military service²¹⁴ and of frequently denying them civilian security clearances.²¹⁵ The government has insisted on discharging lesbian and gay male military personnel, even in the face of information indicating that many such individuals are highly motivated and skilled.²¹⁶ Although the government's claims concerning morale and efficiency have not been directly addressed in empirical research, evidence from several sources casts doubt on their validity. Lesbians and gay men function with varying degrees of openness in many civilian work settings with no

212. *Gay Law Students Ass'n*, 24 Cal. 3d at 488, 595 P.2d at 611, 156 Cal. Rptr. at 33.

213. *See id.*

214. According to Department of Defense (DOD) Directive 1332.14 (Jan. 28, 1982), pt. 1, § H: Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the Military Services to maintain discipline, good order, and morale; to foster mutual trust and confidence among servicemembers; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of servicemembers who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the Military Services; to maintain the public acceptability of military service; and to prevent breaches of security.

Several of these reasons have little or no factual basis. For example, no evidence exists to show that lesbians and gay men are more likely than heterosexuals to breach security. Gregory M. Herck, *Gay People and Government Security Clearances: A Social Science Perspective*, 45 *Am. Psychologist* 1035 (1990). Nor does it seem likely that accepting openly gay recruits would lower the public acceptability of military service since, according to a 1989 Gallup poll, the public favors allowing gay people into the military by a margin of 60% to 29%. See Colasanto, *supra* note 76. Additionally, concerns about sexual harassment that are implied in the government's references to rank and to privacy are equally applicable to heterosexual personnel, and could be dealt with in the same way that heterosexual harassment is handled.

215. See Herck, *supra* note 214; Gary B. Melton, *Public Policy and Private Prejudice: Psychology and Law on Gay Rights*, 44 *Am. Psychologist* 933 (1989); William Snyder & Kenneth Nyberg, *Gays and the Military: An Emerging Policy Issue*, 8 *J. Pol. & Mil. Soc.* 71 (1980).

216. See Jane Gross, *Navy is Urged to Root Out Lesbians*, N.Y. Times, Sep. 2, 1990, at A-9, col. 6; Michael McDaniel, *Preservice Adjustment of Homosexual and Heterosexual Military Accessions: Implications for Security Clearance Suitability*, Defense Personnel Security Research and Education Center (1989), reprinted in *GAYS IN UNIFORM: THE PENTAGON'S SECRET REPORTS (Kaie Dyer ed. 1990)*; Theodore R. Sarbin & Kenneth E. Karols, *Nonconforming Sexual Orientations and Military Suitability*, Defense Personnel Security Research and Education Center (PERSEREC), PERS-TR-89-002 (Dec. 1988), reprinted in *GAYS IN UNIFORM: THE PENTAGON'S SECRET REPORTS (Kaie Dyer ed. 1990)*; Elaine Sciolino, *Report Urging End of Homosexual Ban Rejected by Military*, N.Y. Times, Oct. 22, 1989, at § 1, col. 6.

apparent disruption to the organization. As already noted, between 41 percent and 63 percent of the respondents to the Teichner survey (depending on geographic region) reported that they had come out to one or more coworkers.²¹⁷ Recognizing the irrelevance of sexual orientation to individual job performance and the functioning of the workplace, many large organizations (including governments, universities, and major corporations) have implemented nondiscrimination policies in this area.²¹⁸

Although no published studies exist of the influences on morale of having lesbian and gay male members in the armed forces, many gay people have served in the United States military, often with distinction.²¹⁹ Bérubé has provided extensive documentation of lesbian and gay male soldiers and sailors during World War II, many of whom were known by their comrades to be gay.²²⁰ Although these data are anecdotal, they belie the government's claim that gay people inevitably impair the functioning of a military unit. This claim is also weakened by the fact that lesbians and gay men have been allowed to join the armed forces of other countries (Denmark, the Netherlands, and Sweden) without ill effects.²²¹

Anti-gay prejudice probably exists among members of the military, just as it exists in civilian work settings. In 1987, a *Roper* poll found that 25 percent of the respondents to a national survey (of civilians) would strongly object to working around people who are homosexual, and another 27 percent would prefer not to do so; only 45 percent "wouldn't mind."²²² It is reasonable to assume that resistance to working with gay people is as prevalent among members of the armed forces as among the general population. However, the military has dealt successfully with prejudice in its ranks in the past. For example, anti-Black attitudes were widespread in the military when President Truman ordered an end to racial discrimination in the armed forces in 1948.²²³ The suggestion that

217. See *Results of Poll*, *supra* note 57.

218. See HUMAN RIGHTS FOUNDATION, *supra* note 199, at 149-57; National Lesbian and Gay Task Force, *supra* note 200.

219. See A. BÉRUBÉ, *supra* note 10; EDWARD L. GIBSON, *GET OFF MY SHIP: ENSIGN BERG VS. THE U.S. NAVY* (1978); Joseph Harry, *Homosexual Men and Women Who Served Their Country*, 10 J. HOMOSEXUALITY 117 (1984); M. HIPPLER, *supra* note 210; MARY HUMPHREY, *MY COUNTRY, MY RIGHT TO SERVE: EXPERIENCES OF GAY MEN AND WOMEN IN THE MILITARY, WORLD WAR II TO THE PRESENT* (1990); LAWRENCE L. MURPHY, *PERVERTS BY OFFICIAL ORDER: THE CAMPAIGN AGAINST HOMOSEXUALS BY THE UNITED STATES NAVY* (1988); C.J. WILLIAMS & M.S. WEINBERG, *HOMOSEXUALS AND THE MILITARY: A STUDY OF LESS THAN HONORABLE DISCHARGE* (1971).

220. See generally A. BÉRUBÉ, *supra* note 10.

221. See Rob Tielman & Taco deJonge, *Country by Country Survey: A Worldwide Inventory of Discrimination and Liberation of Lesbians and Gay Men*, in *SECOND ILGA PINK BOOK* 185 (Pink Book Editing Team ed. 1988).

222. See *Roper Center*, *supra* note 76.

223. See Stephen Ambrose, *Blacks in the Military in Two World Wars*, in *THE MILITARY AND AMERICAN SOCIETY: ESSAYS AND READINGS* 177 (Stephen E. Ambrose & James A. Barber eds. 1982).

For example, a 1937 report from senior officers at the United States Army War College included the following conclusions:

the military utilize its past experiences with racism in dealing with anti-gay prejudice was contained in a report first commissioned and then re-jected²²⁴ by the military:

The order to integrate blacks was first met with stout resistance by traditionalists in the military establishment. Dire consequences were predicted for maintaining discipline, building group morale, and achieving military organizational goals. None of these predictions of doom has come true. . . . It would be wise to consider applying the experience of the past 40 years to the integration of homosexuals.²²⁵

The government's policy itself is likely to perpetuate anti-gay attitudes in the military for at least two reasons. First, it creates a general norm that supports intolerance of lesbians and gay men. Second, it reduces the likelihood that heterosexuals will have personal contact with gay people. Empirical research with other minority groups has shown that inter-group contact often reduces prejudice in the majority group when the contact meets several conditions: When it is encouraged by the institution in which it occurs, makes shared goals salient, and fosters inter-group cooperation; when members of the two groups are of equal status and superficial; and when members of the two groups are of equal status and share important values.²²⁶ The applicability of this contact hypothesis to anti-gay prejudice is supported by data showing that heterosexuals with openly gay friends or acquaintances are more likely than others to hold accepting attitudes toward gay people in general.²²⁷ Thus, institutionally-fostered contact between heterosexual and gay members of the military would be likely to reduce prejudice and thereby increase overall morale. In summary, the claim that lesbians and gay men impair the functioning of a large organization such as the military is contradicted by the

As an individual the negro is docile, tractable, lighthearted, care free [sic] and good natured [sic]. If unjustly treated he is likely to become surly and stubborn, though this is usually a temporary phase. He is careless, shiftless, irresponsible and secretive. He resents censure and is best handled with praise and by ridicule. He is unmoral [sic], untruthful, and his sense of right doing [sic] is relatively inferior.

- 224. See Sciolino, *supra* note 216.
- 225. Sabin & Karols, *supra* note 216, at 25.
- 226. See G. ALLPORT, *supra* note 44; Yehuda Amir, *Contact Hypothesis in Ethnic Relations*, 71 *PSYCHOLOGICAL BULL.* 319 (1969).
- 227. See, e.g., Gentry, *supra* note 205; Herek, *supra* note 205; Herek, *supra* note 181; Schneider & Lewis, *supra* note 76.

This pattern may result partly from a preference among gay people for disclosing their sexual orientation to others perceived as likely to respond in a positive or supportive way. See Beth E. Schneider, *Coming Out at Work: Bridging the Private/Public Gap*, 13 *WORK & OCCUPATIONS* 463 (1986); THOMAS S. WEINBERG, *GAY MEN, GAY SELVES: THE SOCIAL CONSTRUCTION OF HOMOSEXUAL IDENTITIES* (1983); Joel W. Wells & William B. Kline, *Self-Disclosure of Homosexual Orientation*, 127 *J. SOC. PSYCHOLOGY* 191 (1987). However, knowing an openly gay person is predictive of supportive attitudes even in demographic groups where hostility is the norm, e.g., among the highly religious and those with lower educational levels. See Schneider & Lewis, *supra* note 76.

experiences of private corporations and other entities that have adopted policies of nondiscrimination based on sexual orientation. The accuracy of these claims also seems doubtful in light of evidence showing that lesbians and gay men have served successfully in the United States military, including in combat. Although the military is likely to encounter some resistance within its ranks to allowing openly gay people to serve, it has overcome similar problems of prejudice in the past.

IV. CONCLUSION

Attorneys involved with litigation concerning gay rights often must refute myths and erroneous stereotypes about lesbians and gay men. A growing body of social science literature provides a wealth of information useful for this task. Some of this research already has been presented to the courts by expert witnesses or in *amicus* briefs.²²⁸

As with all social science data, each empirical study must be evaluated critically to assess its internal validity and the generalizability of its conclusions. Additionally, the results of each study must be considered in relation to other relevant research addressing the same question. Following these guidelines, the present article has attempted to demonstrate that the overwhelming conclusion to be drawn from empirical data is that lesbians and gay men, as a group, do not differ significantly from heterosexuals in their psychological and social functioning.

228. See *amicus* briefs submitted by the American Psychological Association in *Bowers v. Hardwick*, 478 U.S. 186 (1986); *Watkins v. United States Army*, 837 F.2d 1428 (9th Cir. 1988), and *BenShalom v. Marsh*, 703 F. Supp 1372 (E.D. Wis. 1988); see also Melton, *supra* note 215.



Commonwealth of Pennsylvania
GOVERNOR'S OFFICE
EXECUTIVE ORDER

Subject		Number
Affirmative Action and Contract Compliance		1988-1
Date	Distribution	By Direction Of
January 20, 1988	B	<i>Robert P. Casey</i> Robert P. Casey, Governor

WHEREAS, this Administration believes that the employment practices of the Commonwealth of Pennsylvania and all entities receiving funds from the Commonwealth should be non-discriminatory in intent and effect to promote public confidence in the fairness and integrity of government; and

WHEREAS, since 1975, each Governor of the Commonwealth has recognized a constitutional and legislative mandate to take affirmative action to remedy employment discrimination and has issued an Executive Order promoting equal employment opportunity in the distribution and use of Commonwealth funds; and

WHEREAS, this Administration is firmly committed to strengthening and revitalizing the affirmative action and contract compliance programs now operated by the Commonwealth;

NOW, THEREFORE, I, Robert P. Casey, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws, do hereby order and direct as follows:

1. Prohibition of discrimination and affirmative action.

a. No agency under the jurisdiction of the Governor shall discriminate against any employe or applicant for employment because of race, color, religious creed, ancestry, union membership, age, sex, sexual orientation, national origin, or non-job related handicap or disability.

b. No contractor or grantee receiving funds from any agency under the jurisdiction of the Governor shall deny or abridge equality of employment opportunity.

c. Affirmative action programs shall be developed for each agency under the jurisdiction of the Governor to insure fair employment at every level of government of Blacks, Hispanics, Asians, American Indians, Alaskans, Pacific Islanders, handicapped and disabled persons, persons over 40 years of age, and women.

2. Responsibility for implementing affirmative action.

a. The Secretary of Administration shall supervise the development, implementation, and enforcement of the Commonwealth's affirmative action programs through the Bureau of Affirmative Action, which shall:

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1353 Session of
1991

INTRODUCED BY JOSEPHS, MURPHY, STURLA, HARPER, DALEY,
RICHARDSON, ROBINSON, ITKIN, DeWEESE, HECKLER, PISTELLA,
ROEBUCK, COHEN, BISHOP, VEON, EVANS, NAHILL, JAMES, KUKOVICH,
ACOSTA, CARN, PRESTON, RITTER, MICHLOVIC, WAMBACH AND TRICH,
MAY 8, 1991

REFERRED TO COMMITTEE ON JUDICIARY, MAY 8, 1991

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further defining the offense of ethnic
3 intimidation to include sexual orientation; and changing the
4 designation of the offense.
5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:
7 Section 1. Section 2710 of Title 18 of the Pennsylvania
8 Consolidated Statutes is amended to read:
9 § 2710. Ethnic intimidation and other bias-related offenses.
10 (a) Offense defined.--A person commits [the offense of
11 ethnic intimidation] an offense under this section if, with
12 malicious intention toward the actual or perceived race, color,
13 religion [or], national origin or sexual orientation of another
14 individual or group of individuals, he commits an offense under
15 any other provision of this article or under Chapter 33
16 (relating to arson, criminal mischief and other property
17 destruction) exclusive of section 3307 (relating to

Needs District Attorney's Public Endorsement and Support

1 institutional vandalism) or under section 3503 (relating to
 2 criminal trespass) or under section 5504 (relating to harassment
 3 by communication or address) with respect to such individual or
 4 his or her property or with respect to one or more members of
 5 such group or to their property.

6 (b) Grading.--An offense under this section shall be
 7 classified as a misdemeanor of the third degree if the other
 8 offense is classified as a summary offense. Otherwise, an
 9 offense under this section shall be classified one degree higher
 10 in the classification specified in section 106 (relating to
 11 classes of offenses) than the classification of the other
 12 offense.

13 (c) Definition.--As used in this section, ["malicious
 14 intention" means the] the following words and phrases shall have
 15 the meanings given to them in this subsection:

16 "Malicious intention." The intention to commit any act, the
 17 commission of which is a necessary element of any offense
 18 referred to in subsection (a) motivated by hatred toward the
 19 race, color, religion [or] national origin or sexual
 20 orientation of another individual or group of individuals.
 21 "Sexual orientation." Heterosexuality, homosexuality or
 22 bisexuality.

23 Section 2. This act shall take effect in 60 days.

LAWS

ADMINISTERED

BY THE PENNSYLVANIA

HUMAN RELATIONS

COMMISSION

This bill must be amended to
include "sexual orientation" (4/92)

FEBRUARY 1992

**THE
PENNSYLVANIA
HUMAN RELATIONS ACT
and
THE
PENNSYLVANIA FAIR EDUCATIONAL
OPPORTUNITIES ACT**

FEBRUARY 1992

**COMMONWEALTH OF PENNSYLVANIA
Robert P. Casey, Governor**

*** * ***

**PENNSYLVANIA HUMAN RELATIONS COMMISSION
Robert Johnson Smith, Chairperson**

IMPORTANT NOTICE

The Pennsylvania Human Relations Commission publishes this compilation of the laws it administers for informational purposes only. The Commission is not responsible for any errors or omissions herein, and this compilation is not to be cited, for any purpose whatever.

**PENNSYLVANIA
HUMAN RELATIONS
COMMISSION**

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Gregory J. Celia, Jr.
Carl E. Denson
Alvin E. Echols, Jr.
Aubra S. Gaston
Russell S. Howell
Lauren K. Lukert
Elizabeth Coles Umstadd
Raquel Otero de Yiengst
Linda M. Weaver
Daniel D. Yun

Homer C. Floyd, Executive Director

**“PENNSYLVANIA HUMAN RELATIONS ACT”
Act of 1955, PL. 744, No. 222
AS AMENDED DECEMBER 20, 1991
BY ACT 51 OF 1991**

AN ACT

Prohibiting certain practices of discrimination because of race, color, religious creed, ancestry, age or national origin by employers, employment agencies, labor organizations and others as herein defined; creating the Pennsylvania Human Relations Commission in the Governor's Office; defining its functions, powers and duties; providing for procedure and enforcement; providing for formulation of an educational program to prevent prejudice; providing for judicial review and enforcement and imposing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

SECTION 1. Short Title

This act may be cited as the “Pennsylvania Human Relations Act.”

SECTION 2. Findings and Declaration of Policy

(a) The practice or policy of discrimination against individuals or groups by reason of their race, color, familial status, religious creed, ancestry, age, sex, national origin, handicap or disability, use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, is a matter of concern of the Commonwealth. Such discrimination foments domestic strife and unrest, threatens the rights and privileges of the inhabitants of the Commonwealth, and undermines the foundations of a free democratic state. The denial of equal employment, housing and public accommodation opportunities because of such discrimination, and the consequent failure to utilize the productive capacities of individuals to their fullest extent, deprives large segments of the population of the Commonwealth of earnings necessary to maintain decent standards of living, necessitates their resort to public relief and intensifies group conflicts, thereby resulting in grave injury to the public health and welfare, compels many individuals to live in dwellings which are substandard, unhealthful and overcrowded, resulting in racial segregation in public schools and other community facilities, juvenile delinquency and other evils, thereby threatening the peace, health, safety and general welfare of the Commonwealth and its inhabitants.

(b) It is hereby declared to be the public policy of this Commonwealth to foster the employment of all individuals in accordance with their fullest capacities regardless of their race, color, religious creed, ancestry, age, sex, national origin, handicap or disability, use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, and to safeguard their rights to obtain and

hold employment without such discrimination, to assure equal opportunities to all individuals and to safeguard their rights to public accommodation and to secure housing accommodation and commercial property regardless of race, color, familial status, religious creed, ancestry, age, sex, national origin, handicap or disability, use of guide or support animals because of blindness or deafness of the user or because the user is a handler or trainer of guide or support animals.

(c) This act shall be deemed an exercise of the police power of the Commonwealth for the protection of the public welfare, prosperity, health and peace of the people of the Commonwealth of Pennsylvania.

SECTION 3. Right to Freedom from Discrimination In Employment, Housing and Public Accommodation

The opportunity for an individual to obtain employment for which he is qualified, and to obtain all the accommodations, advantages, facilities and privileges of any public accommodation and of any housing accommodation and commercial property without discrimination because of race, color, familial status, religious creed, ancestry, handicap or disability, age, sex, national origin, the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals is hereby recognized as and declared to be a civil right which shall be enforceable as set forth in this act.

SECTION 4. Definitions

As used in this act unless a different meaning clearly appears from the context:

(a) The term "person" includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees in bankruptcy or receivers. It also includes, but is not limited to, any owner, lessor, assignor, builder, manager, broker, salesman, agent, employee, independent contractor, lending institution and the Commonwealth of Pennsylvania, and all political subdivisions, authorities, boards and commissions thereof.

(b) The term "employer" includes the Commonwealth or any political subdivision or board, department, commission or school district thereof and any person employing four or more persons within the Commonwealth, but except as hereinafter provided, does not include religious, fraternal, charitable or sectarian corporations or associations, except such corporations or associations supported, in whole or in part, by governmental appropriations. The term "employer" with respect to discriminatory practices based on race, color, age, sex, national origin or non-job related handicap or disability, includes religious, fraternal, charitable and sectarian corporations and associations employing four or more persons within the Commonwealth.

(c) The term "employee" does not include (1) any individual employed in agriculture or in the domestic service of any person, (2) any individuals who, as a

part of their employment, reside in the personal residence of the employer, (3) any individual employed by said individual's parents, spouse or child.

(d) The term "labor organizations" includes any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in relation to employment.

(e) The term "employment agency" includes any person regularly undertaking, with or without compensation, to procure opportunities to work or to procure, recruit, refer or place employes.

(f) The term "Commission" means the Pennsylvania Human Relations Commission created by this act.

(g) The term "discriminate" includes segregate.

(h) The term "age" includes any person forty years of age or older and shall also include any other person so protected by further amendment to the Federal Age Discrimination in Employment Act.

(i) The term "housing accommodations" includes (1) any building, structure, mobile home site or facility, or portion thereof, which is used or occupied or is intended, arranged or designed to be used or occupied as the home residence or sleeping place of one or more individuals, groups or families whether or not living independently of each other; and (2) any vacant land offered for sale, lease or held for the purpose of constructing or locating thereon any such building, structure, mobile home site or facility. The term "housing accommodation" shall not include any personal residence offered for rent by the owner or lessee thereof or by his or her broker, salesperson, agent or employe.

(j) The term "commercial property" means (1) any building, structure or facility, or portion thereof, which is used, occupied or is intended, arranged or designed to be used or occupied for the purpose of operating a business, an office, a manufactory or any public accommodation; and (2) any vacant land offered for sale, lease or held for the purpose of constructing or locating thereon any such building, structure, facility, business concern or public accommodation.

(k) The term "personal residence" means a building or structure containing living quarters occupied or intended to be occupied by no more than two individuals, two groups or two families living independently of each other and used by the owner or lessee thereof as a bona fide residence for himself and any members of his family forming his household.

(l) The term "public accommodation, resort or amusement" means any accommodation, resort or amusement which is open to, accepts or solicits the patronage of the general public, including but not limited to inns, taverns, roadhouses, hotels, motels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest, or restaurants or eating houses, or any place where food is sold for consumption on the premises, buffets, saloons, barrooms or any store, park or enclosure where spirituous or malt liquors are sold, ice cream parlors, confectioneries, soda

fountains and au. stores where ice cream, ice and fruit preparations or their derivatives, or where beverages of any kind are retailed for consumption on the premises, drug stores, dispensaries, clinics, hospitals, bathhouses, swimming pools, barber shops, beauty parlors, retail stores and establishments, theatres, motion picture houses, airdromes, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks, fairs, bowling alleys, gymnasiums, shooting galleries, billiard and pool parlors, public libraries, kindergartens, primary and secondary schools, high schools, academies, colleges and universities, extension courses and all educational institutions under the supervision of this Commonwealth, nonsectarian cemeteries, garages and all public conveyances operated on land or water or in the air as well as the stations, terminals and airports thereof, financial institutions and all Commonwealth facilities and services, including such facilities and services of all political subdivisions thereof, but shall not include any accommodations which are in their nature distinctly private.

(m) The term "political subdivision" means any county, city, borough, incorporated town or township of this Commonwealth.

(n) The term "legislative body" means the body or board authorized by law to enact ordinances or adopt resolutions for the political subdivision.

(o) The term "local commission" means a Human Relations Commission created by the legislative body of a political subdivision.

(p) The term "non-job related handicap or disability" means any handicap or disability which does not substantially interfere with the ability to perform the essential functions of the employment which a handicapped person applies for, is engaged in or has been engaged in. Uninsurability or increased cost of insurance under a group or employe insurance plan does not render a handicap or disability job related.

(p.1) The term "handicap or disability", with respect to a person, means:

- (1) a physical or mental impairment which substantially limits one or more of such person's major life activities;
- (2) a record of having such an impairment; or
- (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance, as defined in section 102 of the Controlled Substances Act (Public Law 91-513, 21 U.S.C. §802).

(q) The term "permanent hearing examiner" shall mean a full-time employe who is an attorney.

(r) The term "designated agent of the complainant" shall mean an individual who is a para-legal under the supervision of a practicing attorney.

(s) The term "commercial profit" means any form of compensation in money, or which can be measured in terms of money.

(t) The term "familial status" means one or more individuals who have not attained the age of 18 years being domiciled with:

- (1) a parent or other person having legal custody of such individual or individuals; or
- (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(u) The term "Fair Housing Act" means Public Law 90-284, 42 U.S.C. §3601 et seq.;

(v) The term "accessible" means being in compliance with the applicable standards set forth in the following:

(1) The Fair Housing Act (Public Law 90-284, 42 U.S.C. §3601 et seq.),

(2) "Americans with Disabilities Act of 1990" (Public Law 101-336, 42 U.S.C. §12101, et seq.), and

(3) The act of September 1, 1965 (P.L. 459, No. 235), entitled as amended, "An act requiring that certain buildings and facilities adhere to certain principles, standards and specifications to make the same accessible to and usable by persons with physical handicaps and providing for enforcement".

(w) (1) The term "housing for older persons" means housing:

(i) Provided under any State or Federal program that the Pennsylvania Human Relations Commission determines is specifically designed and operated to assist elderly persons as defined in the Federal or State program;

(ii) Is intended for, and solely occupied by persons sixty-two years of age or older; or,

(iii) Is intended and operated for occupancy by at least one person fifty-five years of age or older per unit.

(2) In determining whether housing qualifies as housing for older persons under this clause (w), the Pennsylvania Human Commission's requirements shall include, but not be limited to, the following:

(i) The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons,

(ii) That at least eighty percent of the units are occupied by at least one (1) person fifty-five years of age or older per unit; and

(iii) The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five (55) years of age or older.

(3) Housing shall not fail to meet the requirements for housing for older persons by reason of unoccupied units provided, that such units are reserved for occupancy by persons who meet the age requirements of this clause (w).

(x) The term "independent contractor" includes any person who is subject to the provisions governing any of the professions and occupations regulated by State licensing laws enforced by the Bureau of Professional and Occupational Affairs in the Department of State, or is included in the Fair Housing Act (Public Law 90-284, 42 U.S.C. §3601, et seq.).

(y) The term "real estate-related transaction" means any of the following:

- (1) The making or purchasing of loans or providing other financial assistance for purchasing, constructing, improving, repairing or maintaining a housing accommodation or commercial property.
- (2) The purchasing, constructing, improving, repairing or maintaining a housing accommodation or commercial property.
- (3) The selling, brokering or appraising of real property.

SECTION 5. Unlawful Discriminatory Practices

It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or in the case of a fraternal corporation or association, unless based upon membership in such association or corporation, or except where based upon applicable security regulations established by the United States or the Commonwealth of Pennsylvania:

(a) For any employer because of the race, color, religious creed, ancestry, age, sex, national origin, non-job related handicap or disability, or the use of a guide or support animal because of the blindness, deafness or physical handicap of any individual or independent contractor, to refuse to hire or employ or contract with, or to bar or to discharge from employment such individual or independent contractor, or to otherwise discriminate against such individual or independent contractor with respect to compensation, hire, tenure, terms, conditions or privileges of employment or contract, if the individual or independent contractor is the best able and most competent to perform the services required. The provision of this paragraph shall not apply, to (1) operation of the terms or conditions of any bona fide retirement or pension plan which have the effect of a minimum service requirement, (2) operation of the terms or conditions of any bona fide group or employee insurance plan, (3) age limitations placed upon entry into bona fide apprenticeship programs of two years or more approved by the State Apprenticeship and Training Council of the Department of Labor and Industry, established by the act of July 14, 1961 (P.L. 604, No. 304), known as "The Apprenticeship and Training Act."

Notwithstanding any provision of this clause, it shall not be an unlawful employment practice for a religious corporation or association to hire or employ on the basis of sex in those certain instances where sex is a bona fide occupational

qualification because of the religious beliefs, practices, or observances of the corporation, or association.

(b) For any employer, employment agency, or labor organization, prior to the employment, contracting with an independent contractor or admission to membership, to:

(1) Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, color, religious creed, ancestry, age, sex, national origin, past handicap or disability, or the use of a guide or support animal because of the blindness, deafness or physical handicap of any applicant for employment or membership. Prior to an offer of employment, an employer may not inquire as to whether an individual has a handicap or disability or as to the severity of such handicap or disability. An employer may inquire as to the individual's ability to perform the essential functions of the employment.

(2) Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race, color, religious creed, ancestry, age, sex, national origin, non-job related handicap or disability or the use of a guide or support animal because of the blindness, deafness or physical handicap of the user.

(3) Deny or limit, through a quota system, employment or membership because of race, color, religious creed, ancestry, age, sex, national origin, non-job related handicap or disability, the use of a guide or support animal because of the blindness, deafness or physical handicap of the user, or place of birth.

(4) Substantially confine or limit recruitment or hiring of individuals, with intent to circumvent the spirit and purpose of this act, to any employment agency, employment service, labor organization, training school or training center or any other employe-referring source which services individuals who are predominantly of the same race, color, religious creed, ancestry, age, sex, national origin or non-job related handicap or disability.

~~(5) Deny employment because of a prior handicap or disability.~~
Nothing in clause (b) of this section shall bar any institution or organization for handicapped or disabled persons from limiting or giving preference in employment or membership to handicapped or disabled persons.

(c) For any labor organization because of the race, color, religious creed, ancestry, age, sex, national origin, non-job related handicap or disability, or the use of a guide or support animal because of the blindness, deafness or physical handicap of any individual to deny full and equal membership rights to any individual or otherwise to discriminate against such individuals with respect to

hire, tenure, terms, conditions or privileges of employment or any other matter, directly or indirectly, related to employment.

(d) For any person, employer, employment agency, or labor organization to discriminate in any manner against any individual because such individual has opposed any practice forbidden by this act, or because such individual has made a charge, testified or assisted, in any manner, in any investigation, proceeding or hearing under this act.

(e) For any person, employer, employment agency, labor organization or employee, to aid, abet, incite, compel or coerce the doing of any act declared by this section to be an unlawful discriminatory practice, or to obstruct or prevent any person from complying with the provisions of this act or any order issued thereunder, or to attempt, directly or indirectly, to commit any act declared by this section to be an unlawful discriminatory practice.

(f) For any employment agency to fail or refuse to classify properly, refer for employment or otherwise to discriminate against any individual because of his race, color, religious creed, ancestry, age, sex, national origin, non-job related handicap or disability or the use of a guide or support animal because of the blindness, deafness or physical handicap of the user.

(g) For any individual seeking employment to publish or cause to be published any advertisement which in any manner expresses a limitation or preference as to the race, color, religious creed, ancestry, age, sex, national origin, non-job related handicap or disability or the use of a guide or support animal because of the blindness, deafness or physical handicap of any prospective employer.

(h) For any person to:

(1) Refuse to sell, lease, finance or otherwise to deny or withhold any housing accommodation or commercial property from any person because of the race, color, familial status, age, religious creed, ancestry, sex, national origin or handicap or disability of any person, prospective owner, occupant or user of such housing accommodation or commercial property, or to refuse to lease any housing accommodation or commercial property to any person due to use of a guide animal because of the blindness or deafness of the user, use of a support animal because of a physical handicap of the user or because the user is a handler or trainer of support or guide animals or because of the handicap or disability of an individual with whom the person is known to have a relationship or association.

(1.1) Evict or attempt to evict an occupant of any housing accommodation before the end of the term of a lease because of pregnancy or the birth of a child.

(2) Refuse to lend money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation or commercial property or otherwise withhold financing of any housing accommodation or commercial property from any person because of the race, color, familial status,

age, religious creed, ancestry, sex, national origin, handicap or disability of any person, the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals or because of the handicap or disability of an individual with whom the person is known to have a relationship or association.

(3) Discriminate against any person in the terms or conditions of selling or leasing any housing accommodation or commercial property or in furnishing facilities, services or privileges in connection with the ownership, occupancy or use of any housing accommodation or commercial property because of the race, color, familial status, age, religious creed, ancestry, sex, national origin, handicap or disability of any person, the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals or because of the handicap or disability of an individual with whom the person is known to have a relationship or association.

(3.1) Refuse to permit, at the expense of a person with a handicap, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental the landlord may, where it is reasonable to do so, grant permission for a modification if the renter agrees to restore the interior of the premises to the condition that existed before the modification, with reasonable wear and tear excepted.

(3.2) Refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a housing accommodation.

(4) Discriminate against any person in the terms or conditions of any loan of money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of housing accommodation or commercial property because of the race, color, familial status, age, religious creed, ancestry, sex, national origin or handicap or disability of any person, the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of guide or support animals or because of the handicap or disability of an individual with whom the person is known to have a relationship or association.

(5) Print, publish or circulate any statement or advertisement: (i) relating to the sale, lease or acquisition of any housing accommodation or commercial property or the loan of money, whether or not secured by mortgage, or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation or

commercial property which indicates any preference, limitation, specification, or discrimination based upon race, color, familial status, age, religious creed, ancestry, sex, national origin, handicap or disability or because of the handicap or disability of an individual with whom the person is known to have a relationship or association, or (ii) relating to the sale, lease or acquisition of any housing accommodation or commercial property which indicates any preference, limitation, specification, or discrimination based upon use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals.

(6) Make any inquiry, elicit any information, make or keep any record or use any form of application, containing questions or entries concerning race, color, familial status, age, religious creed, ancestry, sex, national origin, handicap or disability or because of the handicap or disability of an individual with whom the person is known to have a relationship or association in connection with the sale or lease of any housing accommodation or commercial property or loan of any money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation or commercial property, or to make any inquiry, elicit any information, make or keep any record or use any form of application, containing questions or entries concerning the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, in connection with the lease of any housing accommodation or commercial property.

(7) Construct, operate, offer for sale, lease or rent or otherwise make available housing or commercial property which is not accessible.

(8) Discriminate in real estate-related transactions, as described by and subject to the following:

(i) It shall be unlawful for any person or other entity whose business includes engaging in real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religious creed, ancestry, national origin, sex, age, handicap or disability, use of a guide or support animal because of a physical handicap or because the user is a handler or trainer of guide or support animals, or familial status.

(ii) Nothing in this act prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religious creed, ancestry, national origin, sex, age, handicap or disability, use of a guide or support animal because of a physical handicap or because the user is a handler or trainer of guide or support animals, or familial status.

(9) Nothing in this clause (h) of this section, regarding age or familial status, shall apply with respect to housing for older persons.

(10) Nothing in this clause (h) of this section shall bar any religious or denominational institution or organization or any charitable or educational organization, which is operated, supervised or controlled by or in connection with a religious organization or any bona fide private or fraternal organization from giving preference to persons of the same religion or denomination or to members of such private or fraternal organization or from making such selection as is calculated by such organization to promote the religious principles or the aims, purposes of fraternal principles for which it is established or maintained. Nor shall it apply to the rental of rooms in a landlord occupied rooming house with a common entrance, nor with respect to discrimination based on sex, the rental or leasing of housing accommodations in a single-sex dormitory.

(i) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employe of any public accommodation, resort or amusement to:

(11) Refuse, withhold from, or deny to any person because of his race, color, sex, religious creed, ancestry, national origin or handicap or disability, or to any person due to use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, either directly or indirectly, any of the accommodations, advantages, facilities or privileges of such place of public accommodation, resort or amusement.

(2) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of race, color, religious creed, sex, ancestry, national origin or handicap or disability, or to any person due to use of a guide or support animal because of the blindness, deafness or physical handicap of the user, or because the user is a handler or trainer of support or guide animals, or that the patronage or custom thereof of any person, belonging to or purporting to be of any particular race, color, religious creed, sex, ancestry, national origin or handicap or disability, or to any person due to use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, is unwelcome, objectionable or not acceptable, desired or solicited.

(3) Exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations or other opportunities to a person

because of the handicap or disability of an individual with whom the person is known to have a relationship or association.

(4) Construct, operate or otherwise make available such place of public accommodation, resort or amusement which is not accessible.

(j) For any person subject to the act to fail to post and exhibit prominently in his place of business any fair practices notice prepared and distributed by the Pennsylvania Human Relations Commission.

(k) For any employer to discriminate against an employe or a prospective employe because the employe only has a diploma based on passing a general education development test as compared to a high school diploma. However, should vocational technical training or other special training be required with regard to a specific position, then such training or special training may be considered by the employer.

(l) To exclude or otherwise deny equal jobs or benefits to a person because of the handicap or disability of an individual with whom the person is known to have a relationship or association.

This section of the act shall not be construed to prohibit the refusal to hire or the dismissal of a person who is not able to function properly in the job applied for or engaged in.

SECTION 5.1. Religious Observance; Public Employes

(a) It shall be an unlawful discriminatory practice for any officer, agency or department of the State or any of its political subdivisions, to prohibit, prevent or disqualify any person from, or otherwise to discriminate against any person in, obtaining or holding employment by the State or by any such subdivision, because of such person's observance of any particular day or days or any portion thereof as a sabbath or other holy day in accordance with the requirements of the person's religion.

(b) Except as may be required in an emergency or where personal presence is indispensable to the orderly transaction of public business, no person employed by the State or any of its political subdivisions shall be required to remain at the place of employment during any day or days or portion thereof that, as a religious requirement, the person observes as the sabbath or other holy day, including a reasonable time prior and subsequent thereto for travel between the place of employment and home, provided however, that any such absence from work shall, wherever practicable in the judgment of the employer, be made up by an equivalent amount of time and work at some other mutually convenient time, or shall be charged against any leave with pay ordinarily granted, other than sick leave, provided further, however, that any such absence not so made up or charged, may be treated by the employer of such person as leave taken without pay.

(c) This section shall not be construed to apply to any position dealing with the public health or safety where the person holding such position must be available for duty whenever needed, or to any position or class of positions the nature and

quality of the duties of which are such that the personal presence of the holder of such position is regularly essential on any particular day or days or portion thereof for the normal performance of such duties with respect to any applicant therefore or holder thereof who, as a religious requirement, observes such day or days or portion thereof as the sabbath or other holy day.

SECTION 5.2. Abortion and Sterilization; Immunity From Requirement to Perform; Unlawful Discriminatory Practices

(a) No hospital or other health care facility shall be required to, or held liable for refusal to, perform or permit the performance of abortion or sterilization contrary to its stated ethical policy. No physician, nurse, staff member or employe of a hospital or other health care facility, who shall state in writing to such hospital or health care facility an objection to performing, participating in, or cooperating in, abortion or sterilization on moral, religious or professional grounds, shall be required to, or held liable for refusal to, perform, participate in, or cooperate in such abortion or sterilization.

(b) It shall be an unlawful discriminatory practice:

(1) For any person to impose penalties or take disciplinary action against, or to deny or limit public funds, licenses, certifications, degrees, or other approvals or documents of qualification to, any hospital or other health care facility, due to the refusal of such hospital or health care facility to perform or permit to be performed, participate in, or cooperate in, abortion or sterilization by reason of objection thereto on moral, religious or professional grounds, or because of any statement or other manifestation of attitude by such hospital or health care facility with respect to abortion or sterilization.

(2) For any person to impose penalties or take disciplinary action against, or to deny or limit public funds, licenses, certifications, degrees, or other approvals or documents of qualification to any physician, nurse or staff member or employe of any hospital or health care facility, due to the willingness or refusal of such physician, nurse or staff member or employe to perform or participate in abortion or sterilization by reason of objection thereto on moral, religious or professional grounds, or because of any statement or other manifestation of attitude by such physician, nurse or staff member or employe with respect to abortion or sterilization.

(3) For any public or private agency, institution or person, including a medical, nursing or other school, to deny admission to, impose any burdens in terms of conditions of employment upon, or otherwise discriminate against any applicant for admission thereto or any physician, nurse, staff member, student or employe thereof, on account of the willingness or refusal of such applicant, physician, nurse, staff member, student or employe to perform or participate in, abortion or sterilization by reason of objection thereto on moral, religious or

professional grounds, or because of any statement or other manifestation of attitude by such person with respect to abortion or sterilization: Provided, however, That this subsection shall not apply to any health care facility operated exclusively for the performance of abortion or sterilization or directly related procedures or to a separate clinic of a health care facility for the performance of abortion or sterilization or directly related procedures.

SECTION 5.3. Prohibition of Certain Real Estate Practices

It shall be an unlawful discriminatory practice for any person to:

(a) Induce, solicit or attempt to induce or solicit for commercial profit any listing, sale or transaction involving any housing accommodation or commercial property by representing that such housing accommodation or commercial property is within any neighborhood, community or area adjacent to any other area in which there reside, or do not reside, persons of a particular race, color, familial status, age, religious creed, ancestry, sex, national origin, handicap or disability, or who are guide or support animal dependent.

(b) Discourage, or attempt to discourage, for commercial profit, the purchase or lease of any housing accommodation or commercial property by representing that such housing accommodation or commercial property is within any neighborhood, community or area adjacent to any other area in which there reside, or may in the future reside in increased or decreased numbers, persons of a particular race, color, familial status, age, religious creed, ancestry, sex, national origin, handicap or disability, or who are guide or support animal dependent.

(c) Misrepresent, create or distort a circumstance, condition or incident for the purpose of fostering the impression or belief, on the part of any owner, occupant or prospective owner or occupant of any housing accommodation or commercial property, that such housing accommodation or commercial property is within any neighborhood, community or area adjacent to any other area which would be adversely impacted by the residence, or future increased or decreased residence, of persons of a particular race, color, familial status, age, religious creed, ancestry, sex, national origin, handicap or disability, or who are guide or support animal dependent within such neighborhood, community or area.

(d) In any way misrepresent or otherwise misadvertise within a neighborhood or community, whether or not in writing, that any housing accommodation or commercial property within such neighborhood or community is available for inspection, sale, lease, sublease or other transfer, in any context where such misrepresentation or misadvertising would have the effect of fostering an impression or belief that there has been or will be an increase in real estate activity within such neighborhood or community due to the residence, or anticipated increased or decreased residence, of persons of a particular race, color, familial status, age, religious creed, ancestry, sex, national origin, handicap or disability, or the use of a guide or support animal because of the blindness, deafness or physical handicap of the user.

SECTION 6. Pennsylvania Human Relations Commission

(a) There shall be, and there is hereby established in the Governor's Office a non-partisan, departmental administrative commission for the administration of this act, which shall be known as the "Pennsylvania Human Relations Commission," and which is hereinafter referred to as the "Commission."

(b) Said Commission shall consist of eleven members, to be known as Commissioners, who shall be appointed by the Governor by and with the advice and consent of a majority of the members of the Senate, not more than six of such Commissioners to be from the same political party, and each of whom shall hold office for a term of five years or until his successor shall have been duly appointed and qualified. Vacancies occurring in an office of a member of the Commission by expiration of term, death, resignation, removal or for any other reason shall be filled in the manner aforesaid for the balance of that term. Commission members failing to attend meetings for three consecutive months shall forfeit their seats unless the chairperson of the commission receives written notification from the member involved that the absence was due to personal illness or the death or illness of an immediate family member.

(c) Subject to the provisions of this act, the Commission shall have all the powers and shall perform the duties generally vested in an imposed upon departmental administrative boards and commissions by the act, approved the ninth day of April, one thousand nine hundred twenty-nine (Pamphlet Laws 177), known as "The Administrative Code of one thousand nine hundred twenty-nine," and its amendments, and shall be subject to all the provisions of such code which apply generally to departmental administrative boards and commissions.

(d) The Governor shall designate one of the members of the Commission to be its chairperson who shall preside at all meetings of the Commission and perform all the duties and functions of the chairperson thereof. The Commission may designate one of its members to act as chairperson during the absence or incapacity of the chairperson and, when so acting, the member so designated shall have and perform all the powers and duties of the chairperson of the Commission.

(e) Six members of the Commission or a majority of those duly appointed and qualified shall constitute a quorum for transacting business, and a majority vote of those present at any meeting shall be sufficient for any official action taken by the Commission.

(f) Each member of the Commission shall receive per diem compensation at the rate of sixty dollars (\$60) per day for the time actually devoted to the business of the Commission. Members shall also receive the amount of reasonable traveling, hotel and other necessary expenses incurred in the performance of their duties in accordance with Commonwealth regulations.

(g) The Commission shall adopt an official seal by which its acts and proceedings shall be authenticated, and of which the courts shall take judicial notice. The certificate of the chairperson of the Commission, under the seal of the Commission and attested by the secretary, shall be accepted in evidence in any

judicial proceeding in any court of this Commonwealth as adequate and sufficient proof of the acts and proceedings of the Commission therein certified to.

SECTION 7. Powers and Duties of the Commission

The Commission shall have the following powers and duties:

- (a) To establish and maintain a central office in the City of Harrisburg.
- (b) To meet and function at any place within the Commonwealth.
- (c) To appoint such attorneys and permanent hearing examiners and other employees and agents as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties. Permanent hearing examiners shall perform no duties inconsistent with their duties and responsibilities as permanent hearing examiners.
- (c.1) To conduct mandatory training seminars on the Pennsylvania Human Relations Act and other applicable Federal and State law, procedures and rules for all investigative personnel.
- (c.2) To afford complainants and respondents the opportunity for comments after the final disposition of a complaint. These comments shall be provided to the Commission members.
- (c.3) To appoint attorneys to perform the following functions: (1) render legal advice to Commission members on matters appearing before it; or (2) give legal assistance to complainants appearing before the Commission or hearing examiners. These responsibilities shall require a separate staff of attorneys to perform each function.
- (d) To adopt, promulgate, amend and rescind rules and regulations to effectuate the policies and provisions of this act.
- (e) To formulate policies to effectuate the purposes of this act, and make recommendations to agencies and officers of the Commonwealth or political subdivisions of government or board, department, commission or school district thereof, to effectuate such policies.
- (f) To initiate, receive, investigate and pass upon complaints charging unlawful discriminatory practices.
- (f.1) To investigate where no complaint has been filed, but with the consent of at least eight of the members of the Commission, any problem of racial discrimination with the intent of avoiding and preventing the development of racial tension.
- (f.2) On request of the Governor, to investigate claims of excessive use of force by police in civil rights protest activities.
- (g) (1) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, take testimony of any person under oath or affirmation, and, in connection therewith, to require the production for examination of any books and papers relating to any matter under investigation where a complaint has been properly filed before

the Commission. The Commission may make rules as to the issuance of subpoenas by individual Commissioners. In case of contumacy or refusal to obey a subpoena issued to any person, [*] any court of jurisdiction, upon application by the Commission, may issue to such person an order requiring such person to appear before the Commission, there to produce documentary evidence, if so ordered, or there to give evidence touching the matter in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

- (2) No person shall be excused from attending and testifying, or from producing records, correspondence, documents or other evidence in obedience to the subpoena of the Commission or of any individual Commissioner, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The immunity herein provided shall extend only to natural persons so compelled to testify.
- (h) To inspect upon request such records of the Commonwealth or any political subdivision, board, department, commission or school district thereof as it may deem necessary or advisable to carry into effect the provisions of this act.
- (i) To create such advisory agencies and conciliation councils, local or statewide, as will aid in effectuating the purposes of this act. The Commission may itself or it may empower these agencies and councils to (1) study the problems of discrimination in all or specific fields of human relationships when based on race, color, familial status, religious creed, ancestry, age, sex, national origin or handicap or disability, and (2) foster, through community effort or otherwise, good will among the groups and elements of the population of the State. Such agencies and councils may make recommendations to the Commission for the development of policies and procedure in general. Advisory agencies and conciliation councils created by the Commission shall be composed of representative citizens, serving without pay, but the Commission may make provision for technical and clerical assistance to such agencies and councils, and for the payment of the expenses of such assistance.
- (j) To issue such publications and such results of investigations and research as, in its judgment, will tend to promote good will and minimize or eliminate discrimination because of race, color, familial status, religious creed, ancestry, age, sex, national origin or handicap or disability.

*As affected by the Judiciary Act Repealer Act, Act No. 53 of 1978, P.L. 202.

(k) To submit an annual report for each fiscal year by the following March 31 to the General Assembly, the Labor and Industry Committee of the Senate and the State Government Committee of the House of Representatives and the Governor describing in detail the types of complaints received, the investigations, status of cases, Commission action which has been taken, how many were found to have probable cause, how many were resolved by public hearing and the length of time from the initial complaint to final Commission resolution. It shall also contain recommendations for such further legislation concerning abuses and discrimination because of race, color, familial status, religious creed, ancestry, national origin, age, sex, handicap or disability, or the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, as may be desirable.

(l) To prepare and distribute fair practices notices.

(m) Repealed

(n) To notify local human relations commissions of complaints received by the Pennsylvania Human Relations Commission involving persons within a commission's jurisdiction. The Pennsylvania Human Relations Commission may enter into worksharing agreements with those local commissions having comparable jurisdiction and enforcement authority.

(o) To prepare and publish all findings of fact, conclusions of the law, final decisions and orders made after a public hearing by the hearing examiners, Commission panel or full Commission.

(p) To give public access to the Commission's compliance manual.

(q) To preserve opinions rendered by the Commission for five years from the date of publication.

SECTION 8. Educational Program

The Commission, in cooperation with the Department of Education, is authorized to prepare a comprehensive educational program, designed for the students of the schools in this Commonwealth and for all other residents thereof, in order to eliminate prejudice against and to further good will among all persons, without regard to race, color, familial status, religious creed, ancestry, age, sex, national origin or handicap or disability.

SECTION 8.1. Investigatory Hearings Related to Racial Problems

Whenever any problem of racial discrimination or racial tension arises, the Commission may immediately hold an investigatory hearing. The place of any such hearings shall be in the county where the problem exists. The hearing may be public or private and the Commission shall have the same powers as provided in clause (g) for hearings on complaint filed.

The purpose of the hearing shall be to resolve the problem promptly by the gathering of all the facts from all the interested parties and making such recommendations as may be necessary.

The Commission shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken at the hearing shall be under oath and be transcribed.

Should the recommendations of the Commission not be accepted within a reasonable time the Commission may, with the consent of eight members, on its own behalf initiate a complaint and the hearing findings and Commission order shall proceed the same as where a complaint has been filed.

SECTION 9. Procedure

(a) Any person claiming to be aggrieved by an alleged unlawful discriminatory practice may make, sign and file with the Commission a verified complaint, in writing, which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful discriminatory practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the Commission. Commission representatives shall not modify the substance of the complaint. The Commission upon its own initiative or the Attorney General may, in like manner, make, sign and file such complaint. Any employer whose employees, or some of them, hinder or threaten to hinder compliance with the provisions of this act may file with the Commission a verified complaint, asking for assistance by conciliation or other remedial action and, during such period of conciliation or other remedial action, no hearings, orders or other actions shall be taken by the Commission against such employer.

(b) (1) After the filing of any complaint, or whenever there is reason to believe that an unlawful discriminatory practice has been committed, the Commission shall make a prompt investigation in connection therewith.

(2) The Commission shall send a copy of the complaint to the named respondent within thirty days from the date of docketing the complaint, unless otherwise required by the Fair Housing Act.

(3) A respondent shall file a written verified answer to the complaint within thirty days of service of the complaint, unless otherwise required by the Fair Housing Act. The Commission, upon request of the respondent, may grant an extension of not more than thirty additional days, unless otherwise required by the Fair Housing Act.

(4) After service of the complaint, the Commission shall encourage voluntary and informed predetermination settlements between parties.

(c) If it shall be determined after such investigation that no probable cause exists for crediting the allegations of the complaint, the Commission shall, within ten days from such determination, cause to be issued and served upon the complainant written notice of such determination, and the said complainant or his attorney may,

within ten days after such service, file with the Commission a written request for a preliminary hearing before the Commission to determine probable cause for crediting the allegations of the complaint. If it shall be determined after such investigation that probable cause exists for crediting the allegations of the complaint, the Commission shall immediately endeavor to eliminate the unlawful discriminatory practice complained of by conference, conciliation and persuasion. The members of the Commission and its staff shall not disclose what has transpired in the course of such endeavors: Provided, That the Commission may publish the facts in the case of any complaint which has been dismissed, and the terms of conciliation when the complaint has been adjusted, without disclosing, except as required by the Fair Housing Act, the identity of the parties involved.

(d) In case of failure so to eliminate such practice or in advance thereof, if in the judgment of the Commission circumstances so warrant, the Commission shall cause to be issued and served a written notice, together with a copy of such complaint as the same may have been amended, requiring the person, employer, labor organization or employment agency named in such complaint, hereinafter referred to as respondent, to answer the charges of such complaint at a hearing before the Commission at a time and place to be specified in such notice. The place of any such hearing shall be in the county in which the alleged offense was committed.

(d.1) When notice of hearing is given as set forth in subsection (d) and an election procedure is required by the Fair Housing Act, either party may elect to have the claims asserted in the complaint decided in a civil action brought under the original jurisdiction of Commonwealth Court. The written notice of the Commission shall be sent to all parties and will inform them of their right to take civil action. An election must be made within twenty (20) days after receipt of the notice of hearing. A party making this election shall notify the Commission and all other parties. If an election for civil action is made by either party, the Commission shall, within thirty (30) days from the date of election, commence and maintain a civil action on behalf of the Complainant. Provided, however, That whenever the Attorney General signs and files the complaint pursuant to subsection (a), the Attorney General shall, within thirty (30) days from the date of election, commence and maintain a civil action on behalf of the Complainant. In those cases commenced by the Attorney General, the Commission shall have the right to intervene. In any action brought under this subsection:

- (1) All filing fees shall be waived for the Commission and all parties, including the action brought under Commonwealth Court's original jurisdiction and any appeal arising out of such action.
- (2) If, after a trial, Commonwealth Court finds that a respondent engaged in or is engaging in any unlawful discriminatory practice as defined in this act, the Court may award attorney fees and costs to the complainant on whose behalf the action was commenced.

(3) If, after a trial, Commonwealth Court finds that a respondent has not engaged in or is not engaging in any unlawful discriminatory practice as defined in this act, the court may award attorney fees and costs to the prevailing respondent if the respondent proves that the complaint upon which the civil action was based was brought in bad faith.

(e) The case in support of the complaint shall be presented before the Commission or before a permanent hearing examiner designated by the Commission for the purpose of hearing said complaint by one of its attorneys or agents, by the complainant's attorney or by a designated agent of the complainant. The respondent may appear at such hearing in person or otherwise, with or without counsel, and submit testimony. The complainant may likewise appear at such hearing in person or otherwise, with or without counsel, and submit testimony. The Commission or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have the power to amend his answer. The Commission shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken at the hearing shall be under oath and be transcribed.

(f) (1) If, upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this act, the Commission shall state its findings of fact, and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to, reimbursement of certifiable travel expenses in matters involving the complaint, compensation for loss of work in matters involving the complaint, hiring, reinstatement or upgrading of employees, with or without back pay, admission or restoration to membership in any respondent labor organization, the making of reasonable accommodations, or selling or leasing specified housing accommodations or commercial property upon such equal terms and conditions and with such equal facilities, services and privileges or lending money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of housing accommodations or commercial property, upon such equal terms and conditions to any person discriminated against or all persons, and any other verifiable, reasonable out-of-pocket expenses caused by such unlawful discriminatory practice, provided that in those cases alleging a violation of Section 5 (d), (e), or H or 5.3, where the underlying complaint is a violation of Section 5(h) or 5.3, the Commission may award actual damages including damages caused by humiliation and embarrassment as, in the judgment of the Commission, will effectuate the purposes of this act, and including a requirement for report of the manner of compliance.

- (2) Such order may also assess a civil penalty against the respondent in a complaint of discrimination filed under Section 5(h) or 5.3 of this Act:
 - (i) in an amount not exceeding ten thousand dollars (\$10,000) if the respondent has not been adjudged to have committed any prior discriminatory practice;

- (ii) in an amount not exceeding twenty-five thousand dollars (\$25,000) if the respondent as been adjudged to have committed one other discriminatory practice during the five-year period ending on the date of this order; or
- (iii) in an amount not exceeding fifty thousand dollars (\$50,000) if the respondent has been adjudged to have committed more than one other discriminatory practice during the seven-year period ending on the date of this order.

If however, the acts constituting the discriminatory practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory practice, then the civil penalties set forth in subparagraphs (ii) and (iii) may be imposed without regard to the period of time within which any subsequent discriminatory practice occurred.

- (3) When the respondent is a licensee of the Commonwealth, the Commission shall inform the appropriate State licensing authority of the order with the request that the licensing authority take such action as it deems appropriate against such licensee. An appeal from the Commission's order shall act as a supersede as and stay such action by the State licensing authority until a final decision on said appeal.
- (4) If, upon all the evidence, the Commission shall find that a respondent has not engaged in any such unlawful discriminatory practice, the Commission shall state its findings of fact, and shall issue and cause to be served on the complainant an order dismissing the said complainant as to such respondent.

(f.1) If upon all the evidence at the hearing, in those cases alleging a violation of Section 5(d)(e) or (h) or 5.3 where the underlying complaint is a violation of Section 5(h) or 5.3, the Commission finds that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this act, the Commission may award attorney fees and costs to prevailing complainants.

(f.2) If, upon all the evidence at the hearing, in those cases alleging a violation of Section 5(d)(e) or (h) or 5.3 where the underlying complaint is a violation of Section 5(h) or 5.3, the Commission finds that a respondent has not engaged in or is not engaging in any unlawful discriminatory practice as defined in this act, the Commission may award attorney fees and costs to a prevailing respondent if the respondent proves that the complaint was brought in bad faith.

(g) The Commission shall establish rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder. Three or more members of the Commission or a permanent hearing examiner designated by the Commission shall constitute the Commission for any hearing required to be held by the Commission under this act. The recommended findings, conclusions and order made by said members or permanent hearing examiner shall be reviewed and approved or reversed by the Commission before such order may be served upon the parties to the complaint. The recommended findings, conclusions and

order made by said members or permanent hearing examiner shall become a part of the permanent record of the proceeding and shall accompany any order served upon the parties to the complaint.

(h) Any complaint filed pursuant to this section must be so filed within one hundred eighty days after the alleged act of discrimination, unless otherwise required by the Fair Housing Act.

- (i) Any complaint may be withdrawn at any time by the party filing the complaint.

SECTION 9.1. Repealed

SECTION 9.2. Injunctions

If the Commission concludes, at any time following the filing of a complaint under this Act, that prompt judicial action is necessary to prevent immediate and irreparable harm, the Commission may commence an action in Commonwealth Court or the appropriate court of common pleas, and that court may grant an appropriate preliminary or special injunction pending final disposition of the complaint. Any such order or relief shall be granted in accordance with Rule 1531 of the Pennsylvania Rules of Civil Procedure.

SECTION 10. Enforcement and Judicial Review*

The complainant, the Attorney General or the Commission may secure enforcement of the order of the Commission or other appropriate relief. When the Commission has heard and decided any complaint brought before it, enforcement of its order shall be initiated by the filing of a petition in court, together with a transcript of the record of the hearing before the Commission, and issuance and service of a copy of said petition as in proceedings in equity.

The Commission's copy of the testimony shall be available at all reasonable times to all parties for examination without cost, and for the purpose of enforcement or judicial review of the order.

SECTION 11. Penalties

Any person who shall wilfully resist, prevent, impede or interfere with the Commission, its members, agents or agencies in the performance of duties pursuant to this act, or shall wilfully violate an order of the Commission, shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), or to undergo imprisonment not exceeding thirty (30) days, or both, in the discretion of the court, but procedure for the review of an order shall not be deemed to be such wilful conduct.

*As affected by the Judiciary Act Repealer Act, Act No. 53 of 1978, P.L. 202.

SECTION 12. Construction and Exclusiveness of Remedy

- (a) The provisions of this act shall be construed liberally for the accomplishment of the purposes thereof, and any law inconsistent with any provisions hereof shall not apply.
- (b) Except as provided in subsection (c), nothing contained in this act shall be deemed to repeal or supersede any of the provisions of any existing or hereafter adopted municipal ordinance, municipal charter or of any law of this Commonwealth relating to discrimination because of race, color, familial status, religious creed, ancestry, age, sex, national origin, handicap or disability, but as to acts declared unlawful by section five of this act the procedure herein provided shall, when invoked, be exclusive and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the complainant concerned. If the complainant institutes any action based on such grievance ~~without resorting to the procedure provided in this act, such complainant may not~~ subsequently resort to the procedure herein. In the event of a conflict between the interpretation of a provision of this act and the interpretation of a similar provision contained in any municipal ordinance, the interpretation of the provision in this act shall apply to such municipal ordinance.
- (c) (1) In cases involving a claim of discrimination, if a complainant invokes the procedures set forth in this act, that individual's right of action in the courts of the Commonwealth shall not be foreclosed. If within one (1) year after the filing of a complaint with the Commission, the Commission dismisses the complaint or has not entered into a conciliation agreement to which the complainant is a party, the Commission must so notify the complainant. On receipt of such a notice the complainant shall be able to bring an action in the courts of common pleas of the Commonwealth based on the right to freedom from discrimination granted by this act.
- (2) An action under this subsection shall be filed within two years after the date of notice from the Commission closing the complaint. Any complaint so filed shall be served on the Commission at the time the complaint is filed in court. The Commission shall notify the complainant of this requirement.
- (3) If the court finds that the respondent has engaged in or is engaging in an unlawful discriminatory practice charged in the complaint, the court shall enjoin the respondent from engaging in such unlawful discriminatory practice and order affirmative action which may include, but is not limited to, reinstatement or hiring of employees, granting of back pay, or any other legal or equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than three years prior to the filing of a complaint charging violations of this act.
- (4) The court shall serve upon the Commission any final order issued in any action brought under this subsection.

(c.1) Notwithstanding subsections (a) and (c) or any other provision of this act, nothing in this act shall be deemed to authorize imposition by the Commission of remedial quota relief in cases involving hiring or promoting of employees of the Commonwealth, its agencies or instrumentalities or employees of local governments and school districts in this Commonwealth. This subsection shall not, however, prohibit the voluntary adoption of an affirmative action plan designed to assure that all persons are accorded equality of opportunity in employment.

(c.2) If, after a trial held pursuant to subsection (c), the court of common pleas finds that a defendant engaged in or is engaging in any unlawful discriminatory practice as defined in this act, the court may award attorney fees and costs to the prevailing plaintiff.

(c.3) If, after a trial held pursuant to subsection (c), the court of common pleas finds that a defendant has not engaged in or is not engaging in any unlawful discriminatory practice as defined in this act, the court may award attorney fees and costs to the prevailing defendant if the defendant proves that the complaint was brought in bad faith.

(d) Nothing in this act shall be construed to require any employer to hire any person with a job-related handicap or disability.

(e) The time limits for filing any complaint or other pleading under this act shall be subject to waiver, estoppel and equitable tolling.

(f) Nothing in this section shall be construed as superseding any provision of the Act of October 15, 1980, (P.L. 950, No. 164) known as the Commonwealth Attorney's Act. All court actions commenced by or against the Commission shall be subject to the provisions of that act.

SECTION 12.1. Local Human Relations Commissions

(a) The legislative body of a political subdivision may, by ordinance or resolution, authorize the establishment or membership in and support of a Local Human Relations Commission. The number and qualifications of the members of any local commission and their terms and method of appointment or removal shall be such as may be determined and agreed upon by the legislative body, except that no such member shall hold office in any political party. Members of a local commission shall serve without salary but may be paid expenses incurred in the performance of their duties.

(b) The legislative body of any political subdivision shall have the authority to appropriate funds, in such amounts as may be deemed necessary, for the purpose of contributing to the operation of a local commission including the payment of its share of the salary of an investigator or staff member acting jointly for it and one or more other local commissions.

(c) The local commission shall have the power to appoint such employees and staff, as it may deem necessary, to fulfill its purpose including the power to appoint an investigator or staff member to act jointly for it and one or more other local commissions.

(d) The legislative bodies of political subdivisions shall have the authority to grant to local commissions powers and duties similar to those now exercised by the Pennsylvania Human Relations Commission under the provisions of this act.

(e) The local human relations commission shall notify the Pennsylvania Human Relations Commission of complaints received involving discriminatory acts within that commission's jurisdiction.

SECTION 12.2. Cooperation of State Agencies

The Bureau of Blindness and Visual Services, the Office of Vocational Rehabilitation, the Office for the Deaf and Hearing Impaired, and any other State agency which seeks to aid persons with handicaps or disability shall assist employers, the Commission and the courts of this Commonwealth in the implementation and enforcement of this act by providing expertise in the area of handicaps and disabilities.

SECTION 13. Separability

If any clause, sentence, paragraph or part of this act, or the application thereof, to any person or circumstance, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this act nor the application of such clause, sentence, paragraph or part to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph or part thereof and to the persons or circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that this act would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from their coverage.

PENNSYLVANIA FAIR EDUCATIONAL OPPORTUNITIES ACT

Act of July 17, 1961, P.L. 776, as amended

Declaring the policy of the Commonwealth with regard to discriminatory practices in educational institutions based upon race, religion, color, ancestry, national origin or sex; prohibiting such discriminatory practices; providing for procedure and enforcement; providing for judicial review; providing for administration by the Pennsylvania Human Relations Commission in the Department of Labor and Industry*, and defining its functions, powers and duties hereunder.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

SECTION 1. Short Title

This act may be cited as the "Pennsylvania Fair Educational Opportunities Act."

SECTION 2. Findings and Declaration of Policy

(a) It is hereby declared to be the policy of this Commonwealth that all persons shall have equal opportunities for education regardless of their race, religion, color, ancestry, national origin or sex.

(b) Equality of educational opportunities requires that students, otherwise qualified, be admitted to certain educational institutions without regard to race, religion, color, ancestry, national origin or sex.

(c) It is recognized that there is a fundamental American right for members of various religious faiths to establish and maintain educational institutions exclusively or primarily for students of their own religious faith. In such institutions students, otherwise qualified, should have equal opportunity to attend therein without discrimination because of race, color, ancestry, national origin or, except as provided in Section 9, sex.

(d) This act shall be deemed an exercise of the police power of the Commonwealth for the protection of the public welfare, prosperity, health and peace of the people of the Commonwealth of Pennsylvania.

SECTION 3. Definitions

As used in this act:

- (1) "Educational institution" means any institution of post-secondary grade and any secretarial, business, vocational or trade school of secondary or post-secondary grade, which is subject to the visitation, examination or inspection of, or is, or may be licensed by the Department of Education, including any post-secondary school, college or university incorporated or chartered under any general law

*Commission transferred to the Governor's Office June 27, 1968 by Reorganization Plan No. 1, Session of 1968.

college or university incorporated or chartered under any general law or special act of the General Assembly, except any religious or denominational educational institution as defined in this act.

(2) **“Religious or denominational educational institution”** means an educational institution which is operated, supervised, controlled or sustained primarily by a religious or denominational organization, or is one which is stated by the parent church body to be and is, in fact, officially related to that church by being represented on the board of the institution, and by providing substantial financial assistance and which has certified, in writing, to the commission that it is a religious or denominational educational institution.

(3) **“Discriminate”** includes **“segregate”**.

(4) **“Commission”** means the Pennsylvania Human Relations Commission in the Governor's Office.*

(5) **“Student”** means a person seeking admission to, or in attendance at, a school or educational institution, as the case may be.

(6) **“Person”** includes one or more individuals, partnerships, associations, organizations or corporations.

SECTION 4. Unfair Educational Practices

(a) Except as provided in Section 9, it shall be an unfair educational practice for an educational institution —

(1) To exclude or limit, or otherwise discriminate, because of race, religion, color, ancestry, national origin or sex, against any student or students seeking admission as students to such institutions: Provided, That it shall not be unfair educational practice for any educational institution to use criteria other than race, religion, color, ancestry, national origin or sex in the admission of students.

(2) To make any written or oral inquiry prior to admission concerning or designed to elicit information as to the race, religion, color, ancestry, national origin or sex of a student seeking admission to such institution.

(3) To expel, suspend, punish, deny facilities or otherwise discriminate against any student because of race, religion, color, ancestry, national origin or sex.

(4) To penalize or discriminate against any individual because he has initiated, testified, participated or assisted in any proceedings under this act.

(5) To fail to preserve for a period of three years any records, documents and data dealing with, or pertaining to, the admission, rejection, expulsion or suspension of students, or to refuse to make such records,

documents and data available at all times for the inspection of the Commission.

(aa) Except as provided in Section 9, it shall be an unfair educational practice for a religious educational institution —

(1) To exclude or limit, or otherwise discriminate, because of race, color, ancestry, national origin or sex, against any student or students seeking admission as students to such institutions: Provided, That it shall not be unfair educational practice for any religious educational institution to use criteria other than race, color, ancestry, national origin or sex in the admission of students.

(2) To make any written or oral inquiry prior to admission concerning or designed to elicit information as to the race, color, ancestry, national origin or sex of a student seeking admission to such institution.

(3) To expel, suspend, punish, deny facilities or otherwise discriminate against any student because of race, color, ancestry, national origin or sex.

(4) To penalize or discriminate against any individual because such person has initiated, testified, participated or assisted in any proceedings under this act.

(b) It shall be an unfair educational practice for any person to aid, abet, incite, compel or coerce the doing of any act declared by this section to be an unlawful educational practice, or to obstruct or prevent any person from complying with the provisions of this act or any order issued thereunder, or to attempt directly or indirectly to commit any act declared by this section to be an unlawful educational practice.

(c) Nothing in this section shall be deemed to affect in any way the right of religious or denominational educational institutions to select its students exclusively or primarily from members of such religion or denomination, or from giving preference in such selection to such members.

(d) Nothing in this section shall prohibit any educational institution from accepting and administering any inter-vivos or testamentary gift upon such terms and conditions as may be prescribed by the donor.

SECTION 5. Administration

The Pennsylvania Human Relations Commission, created by the act of October 27, 1955, P.L. 744, as amended by the act of February 28, 1961, P.L. 47, known as the “Pennsylvania Human Relations Act,” is hereby vested with authority to administer this act.

SECTION 6. Powers and Duties of the Commission

Without in anywise detracting from, or in derogation or diminution of the duties of the Commission as set forth in the Act of October 27, 1955, P.L. 744, known as

the "Pennsylvania Human Relations Act," said Commission is hereby vested with the following powers and duties—

- (1) To make visits when deemed advisable to each of the educational institutions, except religious or denominational institutions, within the Commonwealth for the purpose of examining and studying the procedures and practices used in the selection of students.
- (2) To make studies of the various forms and uses of transcript of record employed by educational institutions, except religious or denominational institutions, and of the standards, procedures, practices and criteria used by same with respect to recommending and approving students for further education in said educational institutions.
- (3) To make whatever studies may be necessary to aid it in carrying out its functions, including studies to determine factually the total number of students applying each year to educational institutions, except religious or denominational institutions, within the Commonwealth, the number of them finally accepted and the basic factors which determine whether an applicant will be accepted or rejected by such institutions.
- (4) To formulate, recommend and carry out a comprehensive program designed to eliminate and prevent prejudice and discrimination in educational institutions, based upon race, religion, color, ancestry, national origin or sex except religious discrimination in religious or denominational institutions and except, as to sex, as provided in Section 9.
- (5) To formulate policies to carry out the purposes of this act and to make recommendations to any or all of the educational institutions included under the provisions of this act to effectuate such policies.
- (6) To adopt, amend, modify or rescind such rules and regulations as may be necessary to carry out the functions of the Commission and to effectuate the purposes and provisions of this act.
- (7) To initiate, receive and investigate and seek to adjust all complaints of unfair educational practices forbidden by this act.
- (8) Whenever the Commission in its sole discretion determines that informal methods of conference, conciliation and persuasion have failed to induce the elimination of unfair educational practices to hold hearings, subpoena witnesses, administer oaths or affirmations, take the testimony of any person under oath or affirmation and require the production for examination of any books or papers relating to any matter under investigation or any question properly before the Commission.

- (9) To issue orders requiring any educational institution of the Commonwealth included under the provisions of this act to cease and desist from any unfair educational practice and to secure enforcement of the order of the Commission or other appropriate relief.*
- (10) From time to time, but not less than once a year, to render to the Governor and Legislature a written report of its activities and recommendation.

SECTION 7. Procedure

Any aggrieved person or anyone representing the aggrieved person may make, sign and file with the Commission a verified complaint within six months after an unfair educational practice is alleged to have been committed, which shall set forth the particulars thereof and contain such other information as may be required by the Commission. The Commission upon its own initiative or the Attorney General may in like manner make, sign and file such complaint.

The procedure for the processing of any complaint shall be in accordance with the provisions of the act of April 9, 1929, P.L. 177, known as "The Administrative Code of 1929," with the rules and regulations promulgated by the Commission.

Until the Commission shall determine that a cease and desist order shall be issued, it shall not disclose what takes place during informal efforts at persuasion, conciliation or mediation, nor shall it offer in evidence in any proceedings the facts adduced in such informal efforts, nor shall publicity be given to any proceedings before the Commission and the identity of the educational institution shall not be disclosed, except in cases of public hearings: Provided, That the Commission may publish the terms of conciliation when a complaint has been adjusted, and the results of surveys or studies conducted by the Commission which pertain to matters of race, religion, color, ancestry, national origin or sex.

SECTION 8. Judicial Review

Any order of the Commission may be reviewed and any order of court may be appealed under the provisions of the Act of June 4, 1945, P. L. 1388, known as the "Administrative Agency Law," and its amendments.

SECTION 9. Construction

The provisions of this act shall be construed liberally for the accomplishment of the purposes thereof and any law inconsistent with any provisions hereof shall not apply. Nothing contained in this act shall be deemed to repeal any of the provisions of any law of this Commonwealth relating to discrimination because of race, religion, color, ancestry, national origin or sex. This act shall not be construed to prohibit any educational institution which is neither State-owned nor State-related, nor State-aided, from drawing its enrollment entirely from members of one sex or

* As affected by the Judiciary Act Repealer Act, Act No. 53 of 1978, P. L. 202.

from the sexes in any proportion, nor shall anything herein contained prevent any educational institution which is State-owned, State-related or State-aided from requiring each applicant for admission to state in the application for admission such applicant's sex to supplement and implement the institution's facts for planning purposes but only for such planning purposes and not for any discriminatory purposes. For the purpose of this section the term "State-owned" institution means the Pennsylvania State System of Higher Education*; the term "State-related" institutions means the University of Pittsburgh, Temple University and the Pennsylvania State University; the term "State-aided" institution means the Delaware Valley College of Science and Agriculture, Dickinson Law School, Drexel Institute of Technology, Hahnemann Medical College, Thomas Jefferson University, College of Lincoln University, the Medical College of Pennsylvania, University of Pennsylvania, Pennsylvania College of Podiatric Medicine, Pennsylvania College of Optometry, Philadelphia College of Art, Philadelphia College of Osteopathic Medicine, Philadelphia College of Textiles and Science, and Philadelphia Musical Academy.

When considering any matter brought before it with respect to any alleged unfair educational practice based on sex, the Commission shall take into consideration the educational programs offered by the institution and the number of admissions necessary to maintain programs and departments at educationally and economically feasible levels.

This section shall not apply until July 1, 1978 in the case of a school of medicine which has begun the process of changing from being an institution which admits only female students to being an institution which admits students of both sexes but only if it is carrying out a plan for such a change which complies with applicable Federal law.

SECTION 10. Separability

If any clause, sentence, paragraph or part of this act, or the application thereof to any person or circumstance, shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgement shall not affect, impair or invalidate the remainder of this act nor the application of such clause, sentence, paragraph or part to other persons or circumstances but shall be confined in its operation to the clause, sentence, paragraph or part thereof and to the persons or circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that this act would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from their coverage.

NOTE: The Pennsylvania Human Relations Act has been amended numerous times since its adoption in 1955 as the Pennsylvania Fair Employment Practice Act. These changes have been incorporated into the text of the Pennsylvania Human Relations Act as set forth in this publication. For the assistance of persons referring to the Act, the subject matter of each amendment to the original law is summarized briefly below:

- Effect of retirement, pension and insurance plans. Act of March 28, 1956, P.L. 1354.
- Prohibition of discrimination in the selling, leasing or financing of housing, and places of public accommodation. Act of Feb. 28, 1961, P.L. 47.
- Increase size of Commission from 9 to 11 members. Act of Aug. 4, 1961, P.L. 922.
- Issuance and posting of fair practices notices. Act of Dec. 27, 1965, P.L. 1224.
- Three Commissioners may act for hearing purposes. Act of Dec. 27, 1965, P.L. 1225.
- Local human relations commissions. Act of Jan. 24, 1966, P.L. 1523.
- Injunctions in housing complaints. Act of Jan. 24, 1966, P.L. 1523.
- Provisions of the Act extended to employers of six or more persons. Act of Jan. 24, 1966, P.L. 1525.
- Enforcement of Commission orders. Act of Jan. 25, 1966, P.L. 1589.
- Prohibition of discrimination in the leasing of housing to persons using guide dogs because of the blindness of the user. Act of Aug. 11, 1967, P.L. 208.
- Strengthening of injunction process in housing complaints. Act of Oct. 11, 1967, P.L. 424.
- Notification of licensing authorities. Act of Oct. 11, 1967, P.L. 425.
- Investigatory hearings to prevent racial tensions. Act of Oct. 11, 1967, P.L. 426.
- Provisions of the Act extended to employers of four or more persons. Act of Nov. 27, 1967, P.L. 622.
- Broadening of prohibition against discrimination in housing. Act of Nov. 29, 1967, P.L. 632.
- Transfer of the Commission from the Department of Labor and Industry to the Governor's Office. Reorganization Plan No. 1, of 1968.
- Religious observance by public employe. Act of July 20, 1968, P.L. 454.
- Prohibition of discrimination because of sex. Act of July 9, 1969, P.L. 133.
- Joint staffing of local human relations commissions. Act of March 5, 1970, P.L. 133.
- References to the Court of Common Pleas of Dauphin County were changed to Commonwealth Court by the Appellate Court Jurisdiction Act of 1970. Act of July 31, 1970, P.L. 673.

*Name of system changed subsequent to adoption of Act.

Pennsylvania Human Relations Commission

- Non-sectarian cemeteries. Act of December 10, 1970, P.L. 882.
 - Prohibition of discrimination in places of public accommodation against any person using a guide dog because of the blindness of the user. Act of June 9, 1972, P.L. 368.
 - Protection of the right of hospitals and individuals not to engage in abortion or sterilization. Act of October 10, 1973, P.L. 278.
 - Prohibition of discrimination because of handicap or disability. Act of Dec. 19, 1974, P.L. 966.
 - Prohibition of discrimination because of sex in places of public accommodation. Act of Nov. 26, 1978, P.L. 1292.
 - Exemption of certain apprenticeship programs from the age provisions of the Act. Act No. 1 of 1980, P.L. 1.
 - Prohibition of certification against a person who has a general education development certificate as compared to a high school diploma. Act No. 198 of 1980, P.L. 1122.
 - Authorization to appoint hearing examiners to conduct public hearings. Act No. 247 of 1982, P.L. 1053.
 - Protection against age discrimination in employment broadened to cover persons 40 to 70, inclusive. Act No. 288 of 1982, P.L. 1267.
 - Reestablishment of Commission under the Sunset Act (Act of December 22, 1981); statute of limitations for filing complaints extended from 90 to 180 days; prohibition of certain real estate practices; miscellaneous amendments. Act No. 186 of 1986.
 - Reestablishment of Commission under the Sunset Act (Act of December 22, 1981); prohibition of discrimination because of familial status or age in housing and because of a known association with a handicapped or disabled person; strengthens handicap/disability accessibility requirements; prohibition of discrimination against independent contractors; provides out-of-pocket expenses in employment and public accommodations and damages, attorney fees and civil penalties in housing; changes and clarifications in court actions; strengthens injunction provisions; brings state law into conformance with the federal Americans with Disabilities Act and Fair Housing Act; technical amendments. Act No. 51 of 1991.
- NOTE:** The Pennsylvania Fair Educational Opportunities Act has been amended three times since its adoption in 1961. The changes have been incorporated into the text of the Act as set forth in this publication. For the assistance of persons referring to the Act, the subject and the date of the amendments are listed below:
- Unfair practices by a religious educational institution. Act of December 27, 1965, P.L. 1255.
 - Prohibition of discrimination because of sex. Act of December 29, 1972, P.L. 1682.
 - Deletion of institution from list of "state-aided" institutions. Act of August 5, 1977, P.L. 174.

Regional Offices:

11th Floor State Office Building
300 Liberty Avenue
Pittsburgh, Pa. 15222-1210
(412) 565-5395 (VOICE)
(412) 565-5711 (TDD)
George A. Simmons
Regional Director

Uptown Shopping Plaza
2971-E North Seventh Street
Harrisburg, PA 17110-2123
(717) 787-9784 (VOICE)
(717) 787-7279 (TDD)
Howard L. Tucker, Jr.
Regional Director

711 State Office Building
Broad and Spring Garden Streets
Philadelphia, PA 19130-4088
(215) 560-2496 (VOICE)
(215) 560-3599 (TDD)
Sandra H. Bacote
Regional Director

Headquarters Office:

Executive House
101 South Second Street - Suite 300
P.O. Box 3145
Harrisburg, Pennsylvania 17105-3145
(717) 787-4410

Homer C. Floyd
Executive Director



COMMONWEALTH OF PENNSYLVANIA
HUMAN RELATIONS COMMISSION

**PUBLIC ACCOMMODATION
PROVISIONS**

**PENNSYLVANIA HUMAN
RELATIONS ACT**

(Act of October 27, 1955, P.L. 744, as amended)

Under this Act, a public accommodation is any accommodation which is open to, accepts or solicits the patronage of the general public, including government services.

It is unlawful for any owner, lessee, proprietor, manager, superintendent, agent, or employee of any public accommodation to discriminate against any person in the full use and enjoyment of such public accommodation, on the basis of race, color, religion, sex, ancestry, national origin, handicap or disability, known association with a handicapped or disabled person, use of a guide or support animal due to blindness, deafness or physical handicap or because the user is a handler or trainer of such animals.

This notice, which has been prepared and distributed by the Pennsylvania Human Relations Commission, must be posted by any owner, lessee, proprietor or manager of a public accommodation. Notices must be posted conspicuously in easily accessible and well-lighted places at the public accommodation, where they may be readily seen by those seeking or granting any of the accommodations, advantages, facilities or privileges of such public accommodation.

Complaints must be filed within 180 days of the alleged act of discrimination.

WARNING: Removing, defacing, covering up or destroying this notice is a violation of the Pennsylvania Crimes Code and may subject you to fine or imprisonment.

For further information, write, phone or visit the Pennsylvania Human Relations Commission:
Headquarters Office: Executive House, 101 S. 2nd Street, Suite 300 • P.O. Box 3145 • Harrisburg, PA 17105-3145
(717) 787-4410 (VOICE) • (717) 783-9308 (TDD)

To file a complaint contact the Regional Office nearest you:

Pittsburgh
11th Floor State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222-1210
(412) 565-5395 (VOICE)
(412) 565-5711 (TDD)

Harrisburg
Uptown Shopping Plaza
2971-E N. 7th Street
Harrisburg, PA 17110-2123
(717) 787-9784 (VOICE)
(717) 787-7279 (TDD)

Philadelphia
711 State Office Building
Broad and Spring Garden Streets
Philadelphia, PA 19130-4088
(215) 560-2496 (VOICE)
(215) 560-3599 (TDD)



COMMONWEALTH OF PENNSYLVANIA HUMAN RELATIONS COMMISSION

FAIR HOUSING PRACTICES ARE GUARANTEED BY THE PENNSYLVANIA HUMAN RELATIONS ACT

According to this Act it is unlawful, because of any person's

RACE
RELIGION
ANCESTRY
HANDICAP
AGE
SEX
NATIONAL ORIGIN
DISABILITY
FAMILIAL STATUS
COLOR

TO:

- Refuse to sell, lease, finance or otherwise withhold housing or commercial property, or
- Discriminate in the terms or conditions of selling, leasing, financing, or in providing facilities, services or privileges in connection with the ownership, occupancy or use of any housing or commercial property, or
- Print or otherwise circulate any statement indicating a preference or limitation, or make any inquiry or record in connection with the sale, lease or financing of any housing or commercial property.

OR, BECAUSE OF:

- Any person's use of a guide or support animal due to blindness, deafness or physical handicap or because the user is a handler or trainer of such animals, or
- The handicap or disability of an individual with whom the person is known to have a relationship or association.

TO:

- Refuse to lease or finance, or
- Discriminate in the terms of selling or leasing, or in providing facilities, services or privileges in connection with the ownership, occupancy or use of any housing or commercial property, or
- Print or otherwise circulate any statement indicating a preference or limitation, or make any inquiry or record in connection with the lease of any housing or commercial property.
- Engage in practices which attempt to induce the listing, sale or other transaction, or discourage the purchase or lease of housing or commercial property by making direct or indirect references to the present or future composition of the neighborhood in which such a facility is located with respect to RACE, COLOR, RELIGION, SEX, ANCESTRY, NATIONAL ORIGIN, HANDICAP, DISABILITY, OR GUIDE OR SUPPORT ANIMAL DEPENDENCY, AGE OR FAMILIAL STATUS.

IT IS ALSO UNLAWFUL FOR:

- Any person to retaliate against an individual because the individual has filed a complaint with the Commission, or has otherwise participated in any Commission proceeding, or for any person to aid or abet any unlawful discriminatory practice under the Human Relations Act
- Complaints must be filed within 180 days of the alleged act of discrimination.
- Prominent posting of this notice in a well-lighted, easily accessible place in the office, model home, sample apartment or other place of business where negotiations or agreements are customarily made for the renting or purchasing of housing accommodations is required under the Pennsylvania Human Relations Act (Act of October 27, 1955, P.L. 744, as amended).

WARNING:

Removing, defacing, covering up or destroying this notice is a violation of the Pennsylvania Crimes Code and may subject you to fine or imprisonment.

For further information, write, phone or visit the Pennsylvania Human Relations Commission Headquarters Office: Executive House, 101 S. 2nd Street, Suite 300 • P.O. Box 3145 • Harrisburg, PA 17105-3145 (717) 787-4410 (VOICE) • (717) 783-9308 (TDD)

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300 Liberty Avenue
Pittsburgh, PA 15222-1210
(412) 565-5395 (VOICE)
(412) 565-5711 (TDD)

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**COMMONWEALTH OF PENNSYLVANIA
HUMAN RELATIONS COMMISSION**

**FAIR LENDING PRACTICES
ARE GUARANTEED BY THE
PENNSYLVANIA HUMAN RELATIONS ACT**

According to this Act it is unlawful, because of any person's

- RACE
- RELIGION
- ANCESTRY
- HANDICAP
- AGE
- COLOR
- SEX
- NATIONAL ORIGIN
- DISABILITY
- FAMILIAL STATUS

OR

- Use of a guide or support animal due to blindness, deafness or physical handicap, or because the user is a handler or trainer of such animals.

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2. Discriminate against any person in the terms or conditions of any lending for the purchase, construction, rehabilitation, repair or maintenance of any housing or commercial property, or
3. Directly or indirectly, deny or withhold any services, advantages, facilities or privileges including loans, depository accounts, fiduciary services, and any other services offered to the general public.

IT IS ALSO UNLAWFUL TO:

4. Print or otherwise circulate any statement indicating a preference or limitation, or make any written or oral inquiry or record in connection with the loan of any money regarding
 - RACE
 - RELIGION
 - ANCESTRY
 - HANDICAP
 - AGE
 - COLOR
 - SEX
 - NATIONAL ORIGIN
 - DISABILITY
 - FAMILIAL STATUS

Complaints must be filed within 180 days of the alleged act of discrimination.

Prominent posting of this notice in a well-lighted, easily accessible place in the office, model home, sample apartment or other places of business where negotiations or agreements are customarily made for the renting or purchasing of housing accommodations is required under the Pennsylvania Human Relations Act (Act of October 27, 1955, P.L. 744, as amended).

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Philadelphia
711 State Office Building
Broad and Spring Garden Streets
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HATE CRIMES

Confronting Violence Against Lesbians and Gay Men

Edited by

Gregory M. Herek

Kevin T. Berrill



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Foreword

In recent years, the number of reported attacks against Americans because of their race, religion, sexual orientation, or ethnic origin has increased dramatically. These hate crimes are carried out by organized groups as well as by individuals. They are intended to harm their victims and also to send a message of intimidation and fear to entire communities of people. The fact that such offenses still occur in the United States is an indication that we must be vigilant to protect the democratic values in which we take such great pride.

In 1865 the Ku Klux Klan formed and began attacking and intimidating African Americans. Its members used terrorism as a weapon to reestablish the old plantation social and economic order. The Klan's efforts were designed to prevent African Americans from exercising their constitutional rights to vote and hold office.

Today the targets of the Klan and other hate groups such as White Aryan Resistance and the Skinheads also include gay men and women, religious groups, and other minorities. Although some of their members use more sophisticated methods, they continue to rely on hate crimes as their principal weapon of

intimidation. They have declared war on the U.S. government and the principles of equality and democracy that it represents.

Hate crimes are extraordinary in nature and require a special governmental response. As a starting point, we need to understand the dimensions of the problem. For this reason, I introduced in 1988 the Hate Crimes Statistics Act, which requires the Department of Justice to collect and publish annual statistics on crimes that manifest prejudice based on race, religion, sexual orientation, and ethnic origin. The bill was passed by both houses in the 101st Congress and finally signed by President Bush on April 23, 1990, as Public Law 101-275.

The Hate Crimes Statistics Act generated controversy in part because it included "sexual orientation" as a category upon which hate crimes are often based. This was in recognition of the rising tide of anti-gay violence that has been documented by the National Gay & Lesbian Task Force and such local groups as San Francisco's Community United Against Violence and the New York City Gay and Lesbian Anti-Violence Project.

Before the Hate Crimes Statistics Act, no federal statute specifically addressed anti-gay violence. Nor do current federal laws protect the rights of gay men and lesbians from discrimination in employment, housing, or services. Consequently, federal law enforcement response to anti-gay violence was virtually nonexistent until 1990. At the local level, law enforcement has historically been deficient. Although some agencies are now sincerely trying to do a better job in responding to this violence, in most areas of the country, the issue is treated as insignificant at best. At worst, the victims are blamed as though they brought the violence on themselves.

It was against this backdrop that I, acting in my role as then-chairman of the House Judiciary Subcommittee on Criminal Justice, convened the first congressional hearings on anti-gay violence on October 9, 1986. The testimony provided at those hearings clearly documented the problem of anti-gay violence, the importance of research into its scope and sources, and the immediate need for action to respond to it and prevent it.

The editors of this volume, Dr. Herek and Mr. Berrill, both testified at those hearings. Since then, they have been active in efforts to increase our understanding of this serious problem and to help formulate effective responses to it. The papers they have

collected here represent an important milestone, the first anthology devoted exclusively to serious discussion of what is known about anti-gay prejudice and violence. It is a most thorough and thoughtful book, one that should be read by all Americans who wish to understand the specific dimensions of anti-gay violence and the general problem of hate crimes in our society. It will be especially useful to law enforcement personnel, legislators, and policymakers.

Whether based on sexual orientation, race, religion, or ethnicity, bigotry and the violence it inspires pose a grave threat to the peace and harmony of our communities. The need to alert Americans to this threat is great. We need especially to educate our youth about tolerance and about appreciating the benefits that we enjoy as a result of our culture's rich diversity of peoples, beliefs, and ways of living. This ground-breaking book sounds an alarm and provides tools for understanding the dimensions of hate violence. It deserves your careful study.

THE HONORABLE JOHN CONYERS, JR.
U.S. HOUSE OF REPRESENTATIVES

SURVIVOR'S STORY

Eight Bullets

Claudia Brenner

The first bullet: When the first bullet hit me, my arm exploded. My brain could not make the connections fast enough to realize I had been shot. I saw a lot of blood on the green tarp on which we lay and thought for a split second about earthquakes and volcanoes. But they don't make you bleed. Rebecca knew. She asked me where I had been shot. We had encountered a stranger earlier that day who had a gun. We both knew who was shooting us. Perhaps a second passed.

The second bullet: When the second bullet hit my neck I started to scream with all my strength. Somehow the second bullet was even more unbelievable than the first.

The third bullet: The third bullet came and I now know hit the other side of my neck. By then I had lost track of what was happening or where we were except that I was in great danger and it was not stopping.

The fourth bullet: I now know a fourth bullet hit me in the face. Rebecca told me to get down, close to the ground.

The fifth bullet: The fifth bullet hit the top of my head. I believe Rebecca saw that even lying flat I was vulnerable and told me to run behind a tree.

The sixth bullet: The sixth bullet hit Rebecca in the back of her head as she rose to run for the tree.

The seventh bullet: The seventh bullet hit Rebecca's back as she ran. It exploded her liver and caused her to die.

The eighth bullet missed.

It is not surprising that Stephen Roy Carr believed us both dead. He shot to kill. The neck. The head. The back. A single bolt action rifle that he loaded, shot, and unloaded eight times. Surely he believed us both dead or he would have used more of the 27 rounds of ammunition he left in his haste to get away.

He shot from where he was hidden in the woods 85 feet away, after he stalked us, hunted us, spied on us. Later his lawyer tried to assert that our sexuality provoked him.

He shot us because he identified us as lesbians. He was a stranger with whom we had no connection.

He shot us and left us for dead.

It was May 13, 1988, the second day of a three-day backpacking trip on the Appalachian Trail in south central Pennsylvania. Rebecca had driven up from Blacksburg, Virginia, where she was finishing her last semester of a master's program in business at Virginia Tech. She was becoming a great success in the academic world, having papers accepted at conferences in her field and receiving numerous offers for placements in Ph.D. programs. These achievements were a surprise to her, though not to those who loved her. She was not yet accustomed to academic recognition. Rebecca Wight was 28 years old, of Puerto Rican/Iranian/Anglo heritage. She had grown up in a variety of countries around the world; her father was a diplomat with the U.S. government.

A painful divorce and the subsequent death of her mother left Rebecca, the oldest of three sisters, with tremendous survival skills, ambition, and hope—though not always with the confidence and discipline she wished for. She was a self-taught feminist who had known lesbianism was an option for herself. Her relationship with me was her first acknowledged lesbian love, a reality that, I think, she celebrated with mixed emotions. In Virginia she was cautious about public expressions of affection, fearful of rejection from her conservative academic community.

At the time of our trip, I was 31 years old, a White, Jewish lesbian who had come out in college in the late 1970s. I was firmly embedded in a strong women's community in Ithaca, New York, and was seasoned to the political and emotional realities of lesbianism in "progressive" America. I was committed to liberation and willing to take some risks, though also aware of the need for discretion in a homophobic culture. In May 1988, I was temporarily based in Ithaca, where I was scrambling to earn

money to go back to Virginia Tech to finish graduate school in architecture.

My relationship with Rebecca had been interrupted by my acceptance of a fellowship abroad to do research for my thesis. I had returned from Israel in February and we were in the midst of figuring out long-distance love. We had seen each other two weeks earlier, when I was in Virginia. We were feeling close and wonderful. Our plan had been to hike for a few days and then drive to Washington, D.C., to celebrate the birthday of Rebecca's youngest sister. The weather was fine, with the delightful May sunshine and warmth. Compared with the rock climbing and hang gliding of Rebecca's past, the trip was simple and designed for a few pleasant days.

We had no premonition, no warning that the world as we knew it was about to be irreparably shattered. There was only life as we all are accustomed to expect. The days before had been filled with overheated car engines, school and money pressures, long-distance phone calls, and occasional stomachaches. Even our two brief exchanges with the stranger on the trail, though disturbing, had seemed of little consequence. Early in the morning he wanted cigarettes; later he asked if we were lost. We never saw him again. We thought he was a strange character, a "creep," but we had no clues that he was planning to murder us. No clue that, after we saw him continue south on the trail, as we headed east on a side trail, he would circle back around to ensure that our paths intersected once again, this time with him hidden. From that position, on a glorious sunny Friday afternoon, he lay with his rifle. After he watched us make love and have fun, he exploded our world with his hate and his bullets.

We could not have known that this tall, thin, unkempt, gangly man could so lack respect for human life as to shoot to kill. *Murder* had not yet become a word in my vocabulary. I had been sheltered from such horrendous realities, whether by economic privilege, by race, or by living in the United States. Anti-gay murder was just a concept without names or faces. Anti-gay violence was a problem of harassment, not a matter of life and death.

During the moments of the shooting, Rebecca's ability to think and function was astonishing. I know that in the next few minutes, the last of her life, she saved my life. Her thinking and

instructions got me out of his range and behind the tree. We both made it behind the tree, and the shooting stopped. Rebecca slumped against the tree trunk, needing its support. She was fading, losing her vision and her ability to communicate in this world. In my panic and disbelief, I asked her over and over again what to do. Already starting to lose consciousness, she looked at me and told me quite simply and calmly, "Claudia, stop the bleeding." At that moment, a transition happened. I began to stop my intense bleeding. My brain started to function again, very clearly. Rebecca very definitely let go and began to die.

I could not have articulated it, but deep inside I began to realize how badly wounded she was and that she would not be able to walk. I knew we desperately needed help. I knew that only three people knew of the shooting: He who had done it, who would surely tell no one that two women lay dying in the woods; Rebecca, who could no longer stand or speak; and me. I went for help.

Somehow, knowing that the situation was urgent, I forced myself to leave Rebecca's side. I never saw her again. If I had stayed, I surely would have died as well.

I walked in terror, shock, and ripping pain, never knowing if he would appear. I walked to get help for Rebecca, with a survival instinct that I don't understand. I followed a map. Although it was a very long way, sometimes uphill on an unkept trail, I didn't stop. I know now that it was nearly four miles, and it took several hours. Darkness came. Finally, I reached a road. Two young men stopped their car to my flashlight signal, and took me to Shippensburg, Pennsylvania, the closest town with any police and emergency help. The State Police responded immediately with the search that found Rebecca's body later that night. Simultaneously, I was taken by helicopter to Hershey Medical Center, where I had emergency surgery. Miraculously, I survived the five bullet wounds with no permanent debilitating conditions. The surgeons and many others on the medical staff told me repeatedly how close I had come to death: Four of the bullets hit within a fraction of an inch from fatality.

During the next two weeks, the State Police conducted an intensive investigation that led to the capture of Stephen Roy Carr. Later, the district attorney of Adams County successfully prosecuted the murderer, but not before his defense attorney

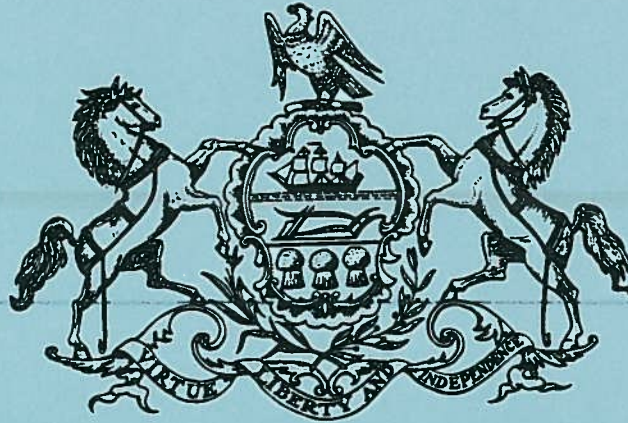
sought to inflame the case with his assertion of provocation. Carr was convicted of first-degree murder in October of 1988 and later sentenced to life in prison with no possibility of parole.

Perhaps the only antidote to the horror of the shooting has been the response. Whether legal, medical, emotional, personal, or distant, it has been filled with human compassion and generosity. From the moment I awoke from the surgery, I was helped 24 hours a day with the shock, pain, terror, and grief. My every need was cared for, an effort that required extraordinary love and commitment on the part of my chosen family, my closest friends, my parents, and my community. Help and support came from every direction and continue even now.

I remember distinctly, as I walked alone on the trail after the shooting, how intensely silent were the normal forest sounds after the explosions of the gunshots. I wondered if the birds were communicating about the horror they had witnessed that afternoon. Less than a week later, thunderstorms covered our campsite with water, washing away the blood, cleaning the area of the violence. Although the gunshots have for the most part quieted in my mind; though my wounds have healed; though I now speak widely of the homophobia that destroyed and stole the life of a lover, a sister, a daughter, a friend; I will always walk with an awareness of the tragedy I knew on that silent trail.

OFFICE OF ATTORNEY GENERAL

Commonwealth of Pennsylvania



HATE CRIMES REPORT 1988-1990

Ernest D. Preate, Jr.
Attorney General

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SUMMARY

Hate crimes—specifically enumerated crimes motivated by the perpetrator's hatred of the race, color, religion, or ethnic origin of the victim—pose a serious problem to American society. This report presents data on the number and nature of hate crimes reported by local law enforcement agencies to the Pennsylvania State Police. It also highlights data compiled by private sources on victimization of individuals based on their sexual preference. While the available data is limited, it nevertheless, reveals the need to address the problem of hate crimes in an effective way through both vigorous enforcement of existing laws and through education of Pennsylvania's citizens.

The following are highlights of the data presented in this report:

- There were 181 incidents of hate crimes reported by local police departments to the State Police in fiscal year 1988-89 and 229 in 1989-90. These figures do not include hate crime incidents that occurred in Philadelphia. If those figures are included, Pennsylvania hate crimes for 1988-89 total 285 and for 1989-90 total 363.
- In each of these two years the number of reported hate crimes rose by over 25%.
- Reports of hate crimes undoubtedly grossly underestimate the number of hate crimes actually committed.
- In both years, between 79% and 90% of all reported hate crimes occurred in just six counties. Those counties are the county of residence for only about 40% of the total state population but about 83% of the state's black population, 69% of the state's Asian/Pacific Islander population, and 56% of other minority populations.
- In both fiscal years 1988-89 and 1989-90, 53% of all reported hate crimes occurred in Philadelphia alone. While Philadelphia is the home county for only 13% of the total state population, it is the home county for 58% of the state's black population and 32% of the Asian/Pacific Islander population and 46% of other minority populations.
- Race was the motivation for 87% of the reported hate crimes committed in 1988-89 and 89% of those committed in 1989-90.
- In 1988-89 a significantly higher number of victims of reported hate crimes were black (48%) compared to 39% who were white. But for 1989-90 the proportion of black (45%) and white victims (44%) was about the same.
- In 1988-89 5% and in 1989-90 3% of the hate crimes reported by local police to the State Police were motivated by the victim's being Jewish.
- According to the Anti-Defamation League, from 1989 to 1990 there was a 18% increase in anti-Semitic incidents nationwide, but a 27% increase in Pennsylvania.

- According to a survey of gays and lesbians in the Commonwealth, a much higher percentage of gays and lesbians are victims of criminal violence than are individuals who are heterosexual.

After presenting the available data on hate crimes, this report makes recommendations for improving the hate crime data collection and reporting system.

I. INTRODUCTION

A "hate crime" is distinguished from other crimes by the motivation for the crime. Hate crimes are not motivated by the greed of the offender, not by any benefit that might accrue to the offender, and not even by the offender's impulse to commit random, senseless violence. They are motivated simply by hatred. In its broadest meaning, a "hate crime" is a criminal attack upon the person or property of an individual motivated by hatred of a characteristic of that person--a characteristic such as race or religion, for example. Because of the motivation behind hate crimes, they are particularly offensive to a free society that constitutionally guarantees equal protection for all.

A major challenge of the 1990's facing the Commonwealth of Pennsylvania will be to combat hate crimes effectively. It is difficult to visualize a future of domestic tranquility for our citizens unless this challenge is met.

The Office of Attorney General has prepared this report with the hope that it will aid the Commonwealth in meeting this challenge. This report not only highlights the problem of hate crimes, but also presents the available data on the scope of the problem. Unfortunately, for several reasons discussed in this report, the available data undoubtedly does not paint a very complete picture of the scope of the problem. As limited as the data is, however, it does demonstrate that hate crimes are not just a few isolated incidents that can be ignored but are a significant problem that must be addressed.

This is the first hate crime report of the Office of Attorney General. It presents "base line" data which can serve as background for examining future trends and distribution of hate crimes. Additionally, future reports can serve as a barometer for lawmakers and law enforcement officials to gauge the effectiveness of efforts to respond to and to prevent hate crimes.

The publication of this report of the Office of Attorney General is particularly timely and appropriate because of the passage of two Pennsylvania statutes that assign new responsibilities to the Office.

First, the College and University Security Information Act¹ requires all of the Commonwealth's colleges and universities, among other things, to report to the State Police crimes occurring on campus. The Attorney General is given the responsibility of ensuring that colleges and universities do report as required by the law. Thus, prospectively, the Civil Rights Section of the Attorney General's Office will be in a position of encouraging and assisting timely and accurate reporting of all crimes, including hate crimes, on college campuses.

Second, Act 1990-216 (see Appendix D), signed into law on December 19, 1990, for the first time provides authority to the Attorney General and

1. Pa. Stat. Ann. tit. 24, §§ 2502-1 to 2502-5 (Purdon Supp. 1990).

to local district attorneys to seek injunctions against individuals or groups who commit certain hate crimes. The expansion of the responsibility and authority of law enforcement officials, and particularly the Attorney General, to assist citizens in ridding themselves of the horror of ethnic, racial or religious intimidation, and to assure complete reporting of such crimes, makes it all the more appropriate for the Attorney General to provide this important indication of the level of hate crimes in the Commonwealth.

This report presents the available data on the scope of hate crimes in Pennsylvania for the period July 1, 1988 through June 30, 1990. In order that both the impact and limitations of this data can be clearly understood, this report first discusses the definition contained in various laws, including the law mandating data collection, and then explains the data collection system. Following the presentation and analysis of the data, this report discusses the limitations and deficiencies in the present scope and methodology of hate crime reporting and makes recommendations for improving and expanding the present reporting process.

Despite its limitations, the currently available hate crime data does provide an important picture of one of the most insidious and reprehensible kinds of crimes suffered by our citizens. The data deserves careful study by lawmakers, law enforcement officials, citizens--indeed all who are concerned about rooting out and eliminating these heinous crimes.

II. SCOPE OF THE HATE CRIMES INCLUDED IN THIS REPORT

The term "hate crime" has no uniformly accepted definition. As noted above, in its broadest sense it could encompass any crime motivated by hatred based on a characteristic of the victim. For purposes of data collection in Pennsylvania, however, two statutes are relevant. The first is the Crimes Code provision creating the crime of ethnic intimidation, which raises the grading of specified crimes if committed with "malicious intention towards" certain characteristics of the victim (see Appendix A). The second is the Ethnic Intimidation Statistics Collection Act, which mandates local law enforcement agencies to report to the State Police crimes related to certain characteristics of the victim (see Appendix E).

Both of these state statutes cover four characteristics - race, color, religion and national origin. They differ slightly, however, in the crimes covered. The ethnic intimidation crime specifies a wide range of crimes including all offenses involving danger to the person, criminal mischief, harassment by communication, arson, and some other property crimes—expressly excluding institutional vandalism. (See Appendix B for a complete listing of the crimes included in the definition of the ethnic intimidation crime). The Ethnic Intimidation Statistics Collection Act is broader in its terms; it includes all "crimes and incidents" related to the race, color, religion or national origin of the victim.

The bulk of the data reported herein is derived from reports submitted to the State Police by local law enforcement agencies pursuant to the Ethnic Intimidation Statistics Collection Act. The State Police implement that Act by collecting data on the crime of ethnic intimidation as part of its collection of Pennsylvania's uniform crime data. Consequently, the available data reflects the more limited definition contained in the Crimes Code. Therefore, for purpose of the data presented in this report, unless otherwise indicated, the term "hate crime" means: any crime (i) involving danger to a person, including homicides, assaults, kidnapping and sexual offenses; (ii) some property crimes, including arson, causing or risking a catastrophe, criminal mischief, and criminal trespass but excluding institutional vandalism; and, (iii) harassment by communication or address if any of these crimes is committed "with malicious intention towards the race, color, religion or national origin" of the victim.

Although crimes motivated by sexual orientation are not covered by any State statute and are not included in the State's data collection system, they are discussed in a separate section of this report. As discussed below, data for that section is derived from private sources. The Office of Attorney General believes it is appropriate to include available data on sexual orientation hate crimes because of recently enacted federal legislation--the Hate Crimes Statistics Act (see Appendix F). That law mandates that the U.S. Attorney General collect statistics on hate crimes--defined to include "crimes that manifest evidence of prejudice based on race, religion, sexual orientation or ethnicity." (Emphasis added.)

III. THE DATA COLLECTION SYSTEM

As noted above, the primary data from which this report is generated are reports of local law enforcement to the State Police mandated by the Ethnic Intimidation Statistics Collection Act, but collected only on the crime of ethnic intimidation.

The State Police have directed all local law enforcement departments to complete reports on ethnic intimidation crimes as part of the state's Uniform Crime Reporting (UCR) system. The ethnic intimidation crime data is submitted on a separate form—the "J" form. Submission of general UCR forms is mandatory but only 77% of the Commonwealth's approximately 1,300 police departments (serving 95% of the state's population) comply. And, no sanctions are imposed on departments that fail to comply.

Submission of the "J" form is also mandatory. Unlike other UCR data submissions, however, the State Police instructions specify that the "J" form should be submitted "only if there have been any investigations conducted for possible violations of Section 2710 of the Pennsylvania Crimes Code, Ethnic Intimidation."

According to the State Police, the data collection system reports "incidents." That is, each occurrence is counted only once even though multiple crimes such as assault, criminal trespass, and harassment by communication may have been involved in a single attack.

Whether a crime is designated as a hate crime depends on the individual determination of the investigating police officer. The officer must decide that the underlying crime (e.g. the assault, or arson) was committed with "malicious intention" toward the race, ethnicity, or religion of the victim. Ascertaining the intent of the perpetrator may be very difficult and depends on the subjective judgment of the officer.

Many officers have been given very little guidance on how to make that determination. The result is that variation in the type of incidents deemed appropriate for reporting is inevitable. Moreover, because of the need to determine "malicious intent," many crimes reported as hate crimes to the State Police have clear overt signs of the perpetrator's malicious intent such as "swastikas," "KKK" or "Kill Jews" being painted, for example, on a door of a car or house, or cross burnings. More subtle hate crimes are less likely to be recorded on the "J" form.

IV. STATISTICAL DATA AND ANALYSIS

A. General Data and Analysis

TABLE I

Ethnic Intimidation Crime Incidents Reported by County

<u>COUNTY</u>	<u>FY 1988-89</u>	<u>FY 1989-90</u>	<u>COUNTY</u>	<u>FY 1988-89</u>	<u>FY 1989-90</u>
Adams	0	0	Lawrence	0	1
Allegheny	77	91	Lebanon	0	0
Armstrong	0	0	Lehigh	1	3
Beaver	1	2	Luzerne	1	1
Bedford	0	0	Lycoming	2	1
Berks	0	2	McKean	0	0
Blair	1	5	Mercer	0	0
Bradford	0	0	Mifflin	0	0
Bucks	5	10	Monroe	0	1
Butler	1	6	Montgomery	10	4
Cambria	2	0	Montour	0	0
Cameron	0	0	Northampton	0	3
Carbon	0	0	Northumberland	0	1
Centre	9	10	Perry	0	0
Chester	3	5	Philadelphia ²	46	59
Clarion	0	2	Pike	0	0
Clearfield	0	0	Potter	0	0
Clinton	0	0	Schuykill	0	0
Columbia	0	0	Snyder	0	0
Crawford	0	0	Somerset	0	0
Cumberland	2	1	Sullivan	0	0
Dauphin	1	2	Susquehanna	0	0
Delaware	5	7	Tioga	0	0
Elk	0	0	Union	0	0
Erie	0	0	Venango	0	0
Fayette	0	0	Warren	0	0
Forest	0	0	Washington	1	0
Franklin	1	1	Wayne	0	0
Fulton	0	1	Westmoreland	1	2
Greene	0	0	Wyoming	0	0
Huntingdon	1	1	York	4	1
Indiana	4	4			
Jefferson	0	0			
Juniata	0	0	PENNSYLVANIA	181	229
Lackawanna	0	0			
Lancaster	2	2			

2. Data reported by Philadelphia includes only cases in which an arrest was made. Data for all other counties includes all reported incidents regardless of whether an arrest was made.

Table I shows the number of incidents recorded, by county, as hate crimes on the Pennsylvania State Police Uniform Crime Report "J" report for fiscal years 1988-89 and 1989-90. Because law enforcement departments are instructed not to file the form if no ethnic intimidation crimes have been investigated, it is impossible to know whether counties with no reports indicated actually had no ethnic intimidation crime investigation or whether departments in those counties simply failed to report the ethnic intimidation crimes they did investigate. This uncertainty applies to just over half of the counties. Thirty-seven counties did not submit "J" forms for either year.

Nineteen counties saw an increase in the number of reported ethnic intimidation crimes from 1988-89 to 1989-90. Six saw a decrease. And five recorded the same number of reported incidents in both years.

These statistics undoubtedly grossly underestimate the number of hate crimes inflicted on Pennsylvania's citizens. The following are some of the reasons why this data should be considered to be just "the tip of the iceberg."

First, both victims and investigating officers may often fail to identify the crime as a hate crime. Victims are likely to be unaware of the crime of ethnic intimidation. While a victim may report the assault, for example, the victim may not tell the investigating officer of the racial berating that accompanied the assault. Consequently, the crime would be investigated and reported as an assault but not an ethnic intimidation crime. When the officer considers whether the crime is ethnic intimidation, the officer must make a subjective determination, with limited guidance, of whether the perpetrator acted with the required malicious intent. Consequently, despite law enforcement's best efforts, it is highly likely that only the most overt and egregious ethnic intimidation crimes are reflected in the State Police data.

Second, the ethnic intimidation statistics reported do not encompass hate crimes as envisioned by the Pennsylvania Ethnic Intimidation Statistics Collection Act, which includes all crimes motivated by ethnic, racial or religious hatred. The limitation excludes such crimes as institutional vandalism, e.g. desecrating or vandalizing such buildings as churches, synagogues, schools, and community centers; burglary; robbery; disorderly conduct; disrupting meetings and processions; and desecration of venerated objects.

Third, the data reported to the State Police and reflected in this table for Philadelphia includes only incidents for which an arrest was made. An Office of Attorney General review of the files of the Philadelphia Police Conflict Prevention and Resolution Unit (hereinafter Philadelphia Police Conflict Unit), suggests that in fiscal year 1989-90 there were 193 ethnic intimidation crime incidents compared to the 59 arrests reflected in Table I. If this incident data is substituted for the Philadelphia arrest data, the total number of 1989-90 incidents would be 363 instead of the reported 229. If a similar ratio of arrests to incidents is applied to 1988-89 figures, Philadelphia incidents would be 150 and the total statewide incidents would be 285 instead of 181 for that year.

Fourth, the data reflects hate crimes reported by the victim to the police. For all crimes occurring in this country only 36% are reported to the police.³ If the same proportion is applied to the crime of ethnic intimidation, the actual occurrences of ethnic intimidation crimes is almost three times the rate reported.

TABLE II

Incidents in Six Counties with Highest Number of Reports

<u>County</u>	<u>FY 1988-89</u>		<u>FY 1989-90</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Allegheny	77	43	91	40
Bucks	5	3	10	4
Centre	9	5	10	4
Delaware	5	3	7	3
Montgomery	10	6	4	2
Philadelphia ⁴	46	25	59	26
Other Counties	<u>29</u>	<u>16</u>	<u>48</u>	<u>21</u>
TOTAL	181	101%⁵	229	100%

Table II shows that the relative geographical concentration of reported ethnic intimidation crimes has stayed about the same between 1988-89 and 1989-90.

The relative distribution as listed in Table II is skewed because Philadelphia data reflects only arrests while the data for the other counties reflects both incidents and arrests. If the incidents analysis based on the Philadelphia Police Conflict Unit files is used for 1989-90 and estimated for 1988-89 (see page 8), a different picture of the distribution emerges as seen in Table III.

3. U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, CRIMINAL VICTIMIZATION IN THE UNITED STATES 1988 10 (1990).

4. Data reported by Philadelphia includes only cases in which an arrest was made. Data for all other counties includes all reported incidents regardless of whether an arrest was made.

5. Total percentages in Table II through V may not total 100% due to rounding.

TABLE III

**Incidents in Six Counties with Highest Number of Reports
Adjusted to Include Philadelphia Incidents**

<u>County</u>	<u>FY 1988-89</u>		<u>FY 1989-90</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Allegheny	77	27	91	25
Bucks	5	2	10	3
Centre	9	3	10	3
Delaware	5	2	7	2
Montgomery	10	3.5	4	1
Philadelphia	150	53	193	53
Other Counties	<u>29</u>	<u>10</u>	<u>48</u>	<u>13</u>
TOTAL PA	285	100.5%	363	100%

It is not surprising that Philadelphia, Allegheny, Montgomery, Delaware and Bucks counties are among the six counties with the highest number of reported ethnic intimidation crimes. These counties are the five most populous counties in the state (see Appendix G). About 39% of the state's total population, 82% of its black population, 66% of its Asian/Pacific Islander population and 55% of its other minority populations reside in these five counties (see Appendix G). It is somewhat surprising that Centre County is among the six counties with the highest number of reports since it ranks only 25th among the counties in population and does not have disproportionately high numbers of minority residents. The most likely explanation for the relatively high number of incidents in Centre County is that the main campus of Penn State University is located in that county. In recent years, Penn State has experienced widely publicized racial tension.

TABLE IV

Race/Ethnicity/Religion of Victims

<u>Race/Ethnicity/Religion</u>	<u>FY 1988-89</u>		<u>FY 1989-90</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Black	91	48	102	45
White	75	39	101	44
Jewish	10	5	8	3
Hispanic	8	4	11	5
Asian	6	3	4	2
Other	0	0	3	1
TOTAL	190 ⁶	99	229	100

Table IV shows the reported ethnic intimidation crime data broken down by characteristic of the victim that motivated the crime. It shows that the vast majority of reported ethnic intimidation crimes are motivated by race—87% in 1988-89 and 89% in 1989-90. The distribution between the races during those years has changed, however. In 1988-89 a significantly higher percentage of victims were black (48%) while a somewhat lower percentage (39%) were white. In 1989-90 the percentage of black victims (45%) and white victims (44%) was nearly the same.

6. Some victims are counted twice because the same individual is a member of more than one minority group.

TABLE V

Offenses Underlying Reported Ethnic Intimidation Crimes

	FY 1988-89		FY 1989-90	
	No.	%	No.	%
Arson	1	.4	1	.4
Assault, Simple	44	20	53	23
Assault, aggravated	21	9	45	20
Criminal mischief	43	20	33	14
Failure to prevent catastrophe	0	0	3	1
Harassment	55	24	40	17
Harassment by communication/address	13	6	16	7
Murder	1	.4	0	0
Rape	1	.4	0	0
Recklessly endangering another	6	3	0	0
Terroristic threats	39	17	32	14
Trespass, criminal	<u>2</u>	<u>1</u>	<u>7</u>	<u>3</u>
TOTAL	226 ⁷	101.2	229	99.4

Table V shows some variation in the offenses underlying the reported hate crimes during the two year period. In 1988-89 there was one reported case each of murder and rape but no reports of these crimes in 1989-90. There was a notable drop in the number of reports of harassment, criminal mischief, and recklessly endangering another person. On the other hand simple assaults, criminal trespass, and harassment by communication or address went up somewhat. The most significant change was in aggravated assault, which more than doubled. Harassment, assaults (both simple and aggravated), terroristic threats and criminal mischief are by far the most common types of hate crimes reported in both years.

7. This figure exceeds the 181 report incidents for FY 1988-89 because a number of offenses were charged against the same persons for one incident.

TABLE VI

**Number of Reported Incidents of Ethnic Intimidation Crimes—
Three Year Comparison**

<u>Year</u>	<u>No.</u>	<u>% Increase</u>
1987-88	141	-
1988-89	181	+28%
1989-90	229	+26.5%

Table VI shows that reported hate crimes have risen by more than 25% for the second year in a row. While the geographic location (Tables II and III) of the occurrence of hate crimes and the nature (Tables IV and V) of the crimes appear to have remained relatively constant, there is, nonetheless, a clear trend reflecting continued increases in reports of these incidents.

It is important to keep in mind that this data reflects the initial reporting for these statistics. Undoubtedly some of the increase is due to success--success in bringing the problem of hate crimes to the consciousness of the public, victims, and responding police officers.

In recent years there have been efforts to educate law enforcement officers to improve skills in identifying hate crimes and complying with the mandate to report statistics on these crimes to the State Police. These efforts consist of workshops for law enforcement, community groups and other interested persons sponsored by the Office of Attorney General, the Pennsylvania State Police, and the Pennsylvania Human Relations Commission (PHRC). Over the last two years, more than 25 PHRC training sessions for municipal and campus police were held. Additionally, there have been conferences sponsored by various entities such as colleges aimed at addressing the problem of hate crimes in more general terms.

These educational efforts might be particularly responsible for the increase from 1988-89 to 1989-90 in the number of counties that reported at least one incident of hate crimes. There was a 20% increase--23 counties reported ethnic intimidation crimes in 1988-89 and 28 did so in 1989-90.

Available data does not reveal what portion of the increase in reports of ethnic intimidation is attributable to improved identification and reporting and what is attributable to actual increases in the number of hate crimes committed. Undoubtedly the reported increase is due to both and, therefore, the continued growth in the number of these abhorrent offenses is cause for concern.

B. Focus on Ethnic Intimidation Crimes in Philadelphia

A closer look at the ethnic intimidation crimes in Philadelphia provides a disturbing picture. In the past two years, there have been a number of ethnic and/or racially motivated attacks that escalated into full-fledged skirmishes. In one incident, a group of white males attacked a Hispanic boy in Philadelphia. In response, a group of Hispanic boys then randomly attacked a white male causing his death. The incident polarized both the white and Hispanic communities. In another well publicized incident, four white "vigilantes" randomly attacked two black males who were waiting at a bus stop. The attackers told police that they clubbed the victims to retaliate for the mugging of the girlfriend of one of them by another black and they were simply striking back.

It is clear that the large and diverse population of Pennsylvania's largest city, while perhaps not reflecting a true microcosm of the state, does present a very formidable challenge in race relations.

As noted above, the data reported on the "J" form by Philadelphia for the two year period summarized in this report included only arrests for ethnic intimidation crimes. While only arrests were reported to the State Police, the Philadelphia Police Conflict Unit did maintain records on both arrests and incidents. The results of an analysis of those records, performed by the Office of Attorney General, are contained in Tables VII and VIII.

8. An editorial in the Philadelphia Inquirer spoke out against hate crimes after a series of such incidents shocked the city. "That is the way of tribal war. But this city is not a jungle, though it is coming to resemble one in some sealed-off neighborhoods--communities waiting to be the next Bensonhurst, the next place where an innocent victim will die because he was the wrong color on the wrong block at the wrong time." Philadelphia Inquirer, editorial page September 22, 1989.

TABLE VII

Ethnic Intimidation Crimes in Philadelphia

<u>Time Period</u>	<u>Incident</u> ⁹	<u>Arrests</u>
7/1/89 to 12/31/89	77	19
1/1/90 to 6/30/90	<u>116</u>	<u>40</u>
Total Fiscal Year 1989-90	193	59

This data reflects a more accurate picture of ethnic intimidation crimes in Philadelphia than does the State Police "J" form data. As noted in Table III, this more accurate data reveals that fully 53% of the reported ethnic intimidation crimes for both fiscal years 1989-90 and 1988-89 occurred in Philadelphia.

The significance of this high concentration in Philadelphia of ethnic intimidation crimes should be viewed in light of population statistics for the county.¹⁰ While approximately 13% of the state's total population lives in Philadelphia, a much higher percentage of the state's black population (58%), and Asian/Pacific Islander (31.7%) other minorities (45.8%) reside there.

9. Generally, the arrests are included in the incidents. That is, of the incidents that occurred these were the indicated number of arrests. An exception to this would exist if the incident occurred before the reporting period but the subsequent arrest occurred within the reporting period.

10. See Appendix G for selected population data on various counties, including Philadelphia.

TABLE VIII

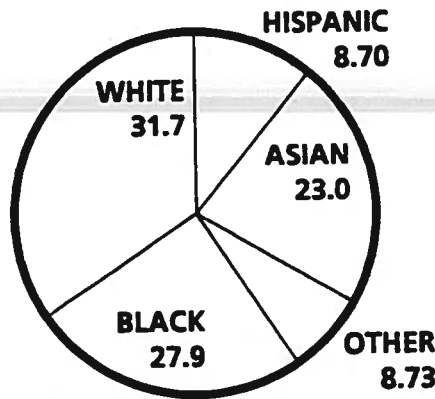
Race of Victims of Ethnic Intimidation Crimes in Philadelphia
 from 7/1/89 to 12/31/89
 As Reported by the Philadelphia Police Conflict Unit

Race of Victim	Victims ¹¹	
	Number	%
White	67	64
Black	25	24
Hispanic	11	10
Asian	<u>2</u>	<u>2</u>
TOTAL	105	100

According to Philadelphia Police Conflict Unit data, presented in Table VIII, in Philadelphia whites were victimized in far greater numbers than blacks; and there was very little victimization of Asians. Data reported by the Philadelphia Commission on Human Relations based on a study conducted by the Commission, for the period January to October 1989, indicate a somewhat different picture. The race of victims in that study is presented in Table IX.

TABLE IX

Philadelphia Hate Crimes Distributed by Race
 As Reported by the Philadelphia Commission on Human Relations



Commission data reveals more similar percentages of victimization of whites (31.7%) and blacks (27.9) than the Conflict Unit data and substantially more victimization of Asians (23% in the Commission study verses 2% based on Conflict Unit data). The differences in the two sets of data, likely is a result of the broader definition of "hate crimes" used by the Human Relations Commission which includes any incident which has incited or may create racial tension. This comparison points up the need to work towards a consistent definition of hate crime which will produce data on which law enforcement and policy makers can confidently rely.

11. The number of victims exceeds the number of incidents for the same period because more than one person was victimized in some incidents.

C. Focus on Anti-Semitic Incidents

As noted above in Table IV, in 1988-89 ten of the 190 (5%) victims and in 1989-90 eight of the 229 (3%) victims of ethnic intimidation were victimized because they were Jewish. This undoubtedly is a gross under estimation of the problem. The rate of underreporting of ethnic intimidation crimes is likely to be higher for Jewish victims than for victimization based on other characteristics such as race, for example. Often the racial distinctions between the victim and the perpetrator are obvious and are noted not only by the victim but by the investigating police officer. The same is not true for victimization based on the victim's being Jewish. It would be unusual for an investigating officer to fail to observe and/or ask the victim about his or her own race and the race of the perpetrator. Conversely it may be unusual for the officer to ask about the religion of the victim. In 175 of the 229 incidents of ethnic intimidation reported in 1989-90, for example, the religion of the victim was listed as "unknown."

Also, crimes based on hatred of Jewish people often take the form of vandalism of synagogues or desecration of other religious objects. As noted above, these crimes are not included in the crime of ethnic intimidation, and, consequently, are not contained in the reports to the State Police.

The likelihood of significant underreporting is highlighted by data on criminal victimization of Jewish people compiled by the Anti-Defamation League of B'nai B'rith, which publishes an annual audit of such incidents.¹² Much significant and disturbing information can be gleaned from the audits for the last two years (1989-1990). From 1989 to 1990 there was an 18% overall increase in the number of incidents reported nationwide to the Anti-Defamation League. The increase in Pennsylvania, however, was 27%, far exceeding the national average. The total incidents reported nationwide increased from 1,432 to 1,685. The reported acts of vandalism increased from 845 to 927 (10%), and the reported acts of harassment, threats, and assaults increased from 587 to 758 (29%). In Pennsylvania, however, the entire increase was due to an increase in vandalism. In 1989, 30 cases of vandalism in Pennsylvania were reported but 44 were reported for 1990--an increase of 47%. Pennsylvania ranked 7th highest among the states in the number of acts of vandalism for both years. The number of acts of harassment, threats, and assaults reported in Pennsylvania was 22 for both 1989 and 1990. Pennsylvania ranked 8th highest among the states in number of harassment, threats, and assaults in 1989. Due to significant increases of these types of incidents in other states, in 1990 Pennsylvania ranked 12th in this category.

In 1989 the Anti-Defamation League reported that anti-Semitic incidents perpetrated by neo-Nazi Skinheads more than doubled from the previous year. The 1990 report notes some progress in this area, stating that reports of such incidents "are down significantly." The decrease is

12. The crime of ethnic intimidation does not encompass the same type of acts reflected in the Anti-Defamation League data. The latter is broader. Nonetheless, the Anti-Defamation League data provides an interesting comparison with State Police data. The Anti-Defamation League data discussed in this report is contained in its publications entitled 1989 Audit of Anti-Semitic Incidents and 1990 Audit of Anti-Semitic Incidents.

attributed to both effective law enforcement action and a successful multi-million dollar civil judgment against two neo-Nazi Skinheads related to the murder of a black.

The 1989 audit also noted a dramatic increase in the number of anti-Semitic incidents occurring on American college campuses—a 30% increase over 1988 was reported. And, Pennsylvania colleges and universities reported more of these types of incidents (10) than those of any other state.¹³ This disturbing trend continued in 1990 with an increase of over 33%. On a positive note, however, the number of reported incidents occurring on Pennsylvania campuses decreased from ten to four.

A comparison of the Pennsylvania data compiled by the Anti-Defamation League and the State Police data clearly reveals that many incidents of anti-Semitic hate crimes are not included in the State Police data. The exclusion from the State Police data of institutional vandalism is one very significant reason for the lower numbers in the State Police data.

In addition to eliminating this exclusion, however, more needs to be done to heighten awareness in Pennsylvania of ethnic intimidation crimes committed against Jewish people so that more accurate data is collected. Similarly more needs to be done to respond effectively to the rise in incidents of criminal victimization against Jewish people.

13. This may, in part, be a result of the mandatory reporting required by state statute—the College and University Security Information Act. Pa. Stat. Ann. tit. 24 §§ 2502-1 to 2502-5 (Purdon Supp. 1990).

D. Focus on Ethnic Intimidation Against Asians

Table IV shows that 3% of the reported ethnic intimidation crimes in 1988-89 and 2% in 1989-90 were committed against Asians. While this figure appears to be fairly low, it must be considered in light of population data. Asians/Pacific Islanders represent only 1% of Pennsylvania's total population¹⁴ but 2-3% of the victims of ethnic intimidation.

The relative number Asian victims, as reflected in Table IV, may be artificially low because as noted above, Philadelphia reported only arrest data for these years and Philadelphia is home for almost one-third of all Asians, including Pacific Islanders, living in Pennsylvania.¹⁵

As noted above in the discussion on Philadelphia, there is divergent data regarding the proportion of victimization attributable to each racial category. While the Philadelphia Police Conflict Unit data shows only 2% of the victims were Asian, the Philadelphia Commission on Human Relations shows 23% were Asians. Given that over half of the state's ethnic intimidation crimes occur in Philadelphia, if the Commission's data is accurate, it is likely that the victimization of Asians is much higher than the 2-3% reflected in the State Police data.

More accurate data collection is needed to better verify the number of incidents against Asians and whether recent media reports of increased hostilities against Asian businesses are indicative of a new and growing problem.

14. Census data for 1990 supplied by the State Data Center shows a total state population of 11,881,643 of which 137,438 are Asians/Pacific Islanders (see Appendix G).

15. Census data for 1990 provided by the State Data Center shows that of the 137,438 Asians/Pacific Islanders living in Pennsylvania 43,522 (32%) live in Philadelphia (see Appendix G).

E. Focus on Hate Crimes Based on Sexual Orientation

As noted above, sexual orientation is not one of the characteristics presently included in any Pennsylvania statutory definition of ethnic intimidation including the crime of ethnic intimidation or the Ethnic Intimidation Statistics Collection Act (see Appendices A and E). Consequently, the State Police UCR "J" form data has not included hate crimes against gays and lesbians.

The State Police are in the process of revising their procedures to collect such data. The revision is a result of the enactment of the federal Hate Crime Statistics Act (see Appendix F). It mandates the U.S. Attorney General to collect data on hate crimes through the Uniform Crime Report. The Pennsylvania State Police indicate that they are preparing to comply with the federal reporting requirements. The federal statutory definition of hate crimes includes any crime that manifests evidence of prejudice based on race, religion, ethnicity or sexual orientation. What is currently known about hate crimes based on sexual preference, therefore, is based on non-governmental sources.

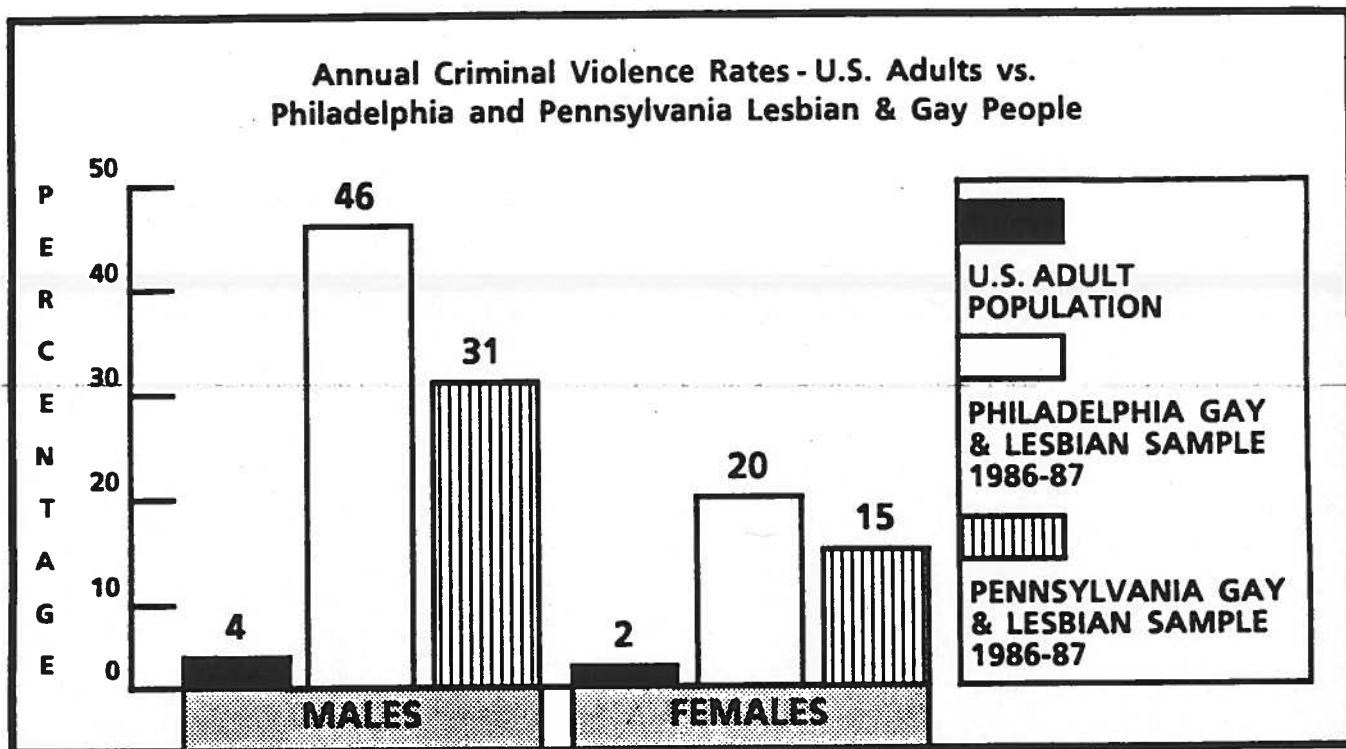
In the last year or so the news media has brought the problem of "gay-bashing" to the forefront. A study conducted by the Philadelphia Lesbian and Gay Task Force and reported in its publication Violence and Discrimination Against Lesbian and Gay People in Philadelphia and the Commonwealth of Pennsylvania (Study) gives some indication of just how widespread victimization of gays and lesbians is. The study consisted of a survey of a sample of individuals both in Philadelphia and in the Commonwealth outside of Philadelphia who reported that they were gay, lesbians, or bisexual. While the victimization studied does not parallel exactly the crimes covered under Pennsylvania's ethnic intimidation crime, the results of the survey are, nonetheless, informative. Among the findings of the survey are, the following.

Lifetime Criminal Violence Rates. More than two thirds of the gay men and well over one third of the lesbian women reported that they experienced criminal violence based on their sexual orientation at least once in their lives (73% of Philadelphia men; 42% of Philadelphia women; 61% of Commonwealth men; 39% of Commonwealth women).

Annual Verbal Abuse Rates. Nearly seven out of ten gay men and more than five out of ten lesbian women reported that they experienced verbal abuse based on their sexual orientation in the 12 months preceding June 1987 (75% of Philadelphia men; 57% of Philadelphia women; 64% of Commonwealth men; 47% of Commonwealth women).

Annual Criminal Violence Rates. The annual criminal violence rates for gays and lesbians in the survey are displayed in Table X.

TABLE X



(Reproduced from the Study with permission)

This graph shows that in the 1986-87 period surveyed, 46% of the Philadelphia gay men and 20% of the Philadelphia lesbian women were victims of criminal violence on the basis of their sexual orientation. In comparison, only 3.9% of U.S. adult males and 2.2% of U.S. adult females on an annual basis experienced some form of criminal violence. Thus, the annual criminal violence victimization rates are twelve times higher for Philadelphia gay men and nine times higher for Philadelphia lesbian women than the respective rates for men and women in the U.S. adult population. In the Commonwealth sample, 31% of the gay men and 15% of the lesbian women reported that they experienced criminal violence in the preceding year. These annual criminal violence victimization rates are eight times higher for Commonwealth men and seven times higher for Commonwealth women than the respective rates for men and women in the U.S. adult population.

In general, the study indicated that gay men are more likely than lesbian women to experience violent victimization. This parallels the situation in the general population, where most violent crimes involve males both as perpetrators and as victims. The study also indicates that members of the Philadelphia sample are somewhat more likely than members of the Commonwealth sample to experience criminal violence. This also reflects the situation in the general population, where violent crime rates tend to be higher in urban centers than in rural or suburban areas.

The Philadelphia Lesbian and Gay Task Force has also collected information about the type of victimization suffered by gays in Philadelphia. Calls to the Task Force hotline in calendar year 1989 indicating the type of victimization are summarized in Table XI.

TABLE XI

Type of Incidents Against Philadelphia Gays in Calendar Year 1989

<u>Type</u>	<u>Incidents</u>
Anti-gay language	17
Assault (no weapon)	12
Assault (thrown weapon)	7
Homicide	7
Vandalism, arson, burglary	7
Assault (wielded weapon)	6
Verbal threats	6
Intimidation (weapon)	4
Robbery	4
Forcible Rape	3
Chased	2
Other	<u>2</u>
TOTAL	77

This data, thus, provides disturbing evidence that gay men and women are at risk of physical violence, harm and threats to a much greater extent than the population at large. This tendency certainly should be carefully tracked as future statistics are compiled.

V. DEFICIENCIES IN PRESENT REPORTING PROCEDURES AND METHODS

The 1986 enactment of the Ethnic Intimidation Statistics Collection Act put Pennsylvania well ahead of many states as well as the federal government with respect to reporting and tracking crimes of hate. The Pennsylvania State Police, the agency charged with compiling these data, has generally done a good job in performing its responsibilities under the Act. A number of improvements in the present system should be considered, however, if this data is going to assist law enforcement officials and the public, to the fullest extent possible, in locating and rooting out hate crimes. These improvements should be put in place as soon as possible.

Timely reporting. The present system has no mechanism for enforcing deadlines for filing statistical reports for hate crimes. Data is required to be submitted monthly. Despite the statutory requirement, the January - June, 1990 data for one major city, for example, was not available until November, 1990. The longer it takes to compile and disseminate this information the longer it will be before trends can be spotted and responsive action can be taken.

Need for Affirmative Indication of No Reports. Another problem is that, under the present system, there is no means available to determine whether a municipality that does not submit the appropriate form (the Pa. UCR "J" form) in a particular month in fact had no investigations of hate crimes or simply neglected to submit the paperwork. It is important that some procedure be implemented to allow reviewers to be assured that the failure to report a hate crime was not simply due to inadvertence.

Need for Reporting by All Jurisdictions. Finally, it has been reported that only 77% of the Commonwealth's law enforcement agencies presently participate in the Uniform Crime Reporting System. The agencies that do not report represent about 5% of the state's population. There is no mechanism for enforcing the mandate on local law enforcement to report data to the State Police. While the lack of reporting from just 5% of the population may not have a major effect on the accuracy of crime statistics generally, it is possible that a particular non-reporting area could have an egregious hate crime incident or frequent hate crime occurrences. Such circumstances would not be reflected in the state-wide data. Consequently they might not garner the attention of the Pennsylvania Human Relations Commission, the State Police and/or the Office of Attorney General, which, if the circumstances were known, could take steps to assist the community in addressing the problem. Clearly, if Pennsylvania is to have an accurate picture of the incidence of hate crimes in the state then every effort needs to be made to secure 100% participation in the reporting process.

VI. THE FEDERAL HATE CRIMES STATISTICS ACT

As noted above, in 1990 Congress passed the Hate Crimes Statistics Act (see Appendix F) with an effective date of April 1990. That act requires the U.S. Attorney General to collect and annually report data on hate crimes as part of the well established national Uniform Crime Report. This new law will affect dramatically the collection of hate crime statistics both in Pennsylvania and nationwide. As a general matter, any crime that manifests evidence of prejudice based on race, religion, sexual orientation or ethnicity is covered. A major difference between the federal law and the state's Ethnic Intimidation Statistics Collection Act is the inclusion of crimes based on sexual orientation in the federal statute.

The U.S. Attorney General is authorized to prepare guidelines for the data collection setting out the evidence and criteria needed to show a hate crime, and the procedure for carrying out the purpose of the law. The Justice Department guidelines were completed in early 1991.

According to the Justice Department guidelines, reporting under the Act will be quarterly rather than monthly as required by the Pennsylvania law and a second review of the local officer's report by a superior officer will be required before it can be submitted as a hate crime for the federal report. This procedure is designed to bring more uniformity as well as accuracy to the reporting system.

For the first year, calendar year 1990, the federal report will gather data from the twelve states,¹⁶ including Pennsylvania, which presently have mandatory reporting statutes. This data will be published in the Fall of 1991. For each of the subsequent four years the present Uniform Crime Reporting system will be used by adding the motive for the crime as a new category of data that must be reported for certain crimes.

The implementation of the federal act will serve to strengthen and improve hate crime reporting in the Commonwealth. The State Police report that they are currently working to make the changes that are necessitated by federal law. Further improvements would result from implementing the recommendations made in this report.

16. A number of large cities which presently collect hate crime data will also be included.

VII. RECOMMENDATIONS

1. Recommendation:

Ethnic intimidation statistics collection procedures should be revised to encompass all "crimes and incidents" related to race, color, religion and ethnic origin as required by the Ethnic Intimidation Statistics Collection Act. The current data being collected on the crime of ethnic intimidation is more limited than that envisioned in the Statistics Collection Act.

2. Recommendation:

Present State implementation procedures should be compared to the Guidelines promulgated by the U.S. Attorney General to implement the federal Hate Crimes Statistics Act. Where possible, Pennsylvania should move to become consistent with the federal requirements as long as federal requirements do not permit less reporting. So that data is collected in as timely a fashion as possible, consistent with state law, the State Police should continue to require monthly data submission even though the federal requirements permit quarterly reporting.

3. Recommendation:

It is clear from the foregoing report that a number of improvements are needed in the present hate crime data collection and reporting system. Specifically, the State Police should consider taking steps to ensure that the deficiencies noted above are corrected by:

(1) instituting procedures to encourage compliance with monthly deadlines for submitting reports;

(2) mandating that a report be filed that would affirmatively indicate the absence of an ethnic intimidation crime investigation when there has been no such investigation in the reporting period;

(3) establishing a system for review of submitted data to ensure that reporting officers have not failed to identify hate crimes; and

(4) taking steps to encourage all law enforcement agencies to participate in the data submission process.

The present Ethnic Intimidation Statistics Collection Act does not give the State Police specific authority to compel enforcement of the Act's requirement that hate crimes and incidents "shall be reported by all local law enforcement agencies." If voluntary compliance with the reporting enhancements described above is not forthcoming, it may be necessary for the General Assembly to mandate these changes as well as to include provisions that will ensure compliance.

The value of the information which local law enforcement agencies are required to send to the State Police is reduced if its accuracy and uniformity are not maintained. The Pennsylvania Human Relations Commission has provided training to local law enforcement agencies, community leaders,

and college police departments to enhance their ability to identify hate crimes and to improve uniformity in reporting. Both the Pennsylvania State Police and the Office of Attorney General also participate in this effort. These efforts should be continued and expanded wherever possible.

4. Recommendation:

State agencies such as the State Police and the Pennsylvania Human Relations Commission should focus their primary efforts to combat hate crimes on the geographic areas of the state with the highest concentration of hate crime occurrences.

The present data (see Tables II and III) indicates that between 79 and 90% of the hate crime reports come from counties in which approximately 40% of the state's population resides. Although 28 counties had one or more hate crime incidents, it is clear that Allegheny County, Centre County, and Philadelphia and its surrounding counties are the ones which deserve special attention if the incidence of hate crime is to be substantially reduced.

5. Recommendation:

Any officer responding to a crime that might be the crime of ethnic intimidation or institutional vandalism should be required to advise the victim of the victim's civil as well as criminal remedies and to encourage the victim to utilize those remedies for redress of the grievances. The officers should be required to advise the victim that if a private cause of action is pursued, the victim may recover general and special damages, including damages for emotional distress; punitive damages, and attorneys fees and costs. Officers should also be required to advise victims that the District Attorney or Attorney General may seek injunctive relief.

APPENDIX A

STATE CRIME OF ETHNIC INTIMIDATION

18 Pa. C.S.A. § 2710. Ethnic Intimidation

(a) Offense defined. - A person commits the offense of ethnic intimidation if, with malicious intention toward the race, color, religion or national origin of another individual or group of individuals, he commits an offense under any other provision of this article or under Chapter 33 (relating to arson, criminal mischief and other property destruction) exclusive of Section 3307 (relating to institutional vandalism) or under Section 3503 (relating to criminal trespass) or under Section 5504 (relating to harassment by communication or address) with respect to such individual or his or her property or with respect to one or more members of such group or to their property.

(b) Grading. - An offense under this section shall be classified as a misdemeanor of the third degree if the other offense is classified as a summary offense. Otherwise, an offense under this section shall be classified one degree higher in the classification specified in Section 106 (relating to classes of offenses) than the classification of the other offense.

(c) Definition. - As used in this section "malicious intention" means the intention to commit any act, the commission of which is a necessary element of any offense referred to in subsection (a) motivated by hatred toward the race, color, religion or national origin of another individual or group of individuals.

APPENDIX B

UNDERLYING CRIMES ON WHICH ETHNIC INTIMIDATION CAN BE BASED

Title 18 of Pennsylvania Consolidated Statutes

ARTICLE B. OFFENSES INVOLVING DANGER TO THE PERSON

Chapter 25 Criminal Homicide

Section 2501	-	Criminal Homicide
Section 2502	-	Murder
Section 2503	-	Voluntary Manslaughter
Section 2504	-	Involuntary Manslaughter
Section 2505	-	Causing or Aiding Suicide

Chapter 27 Assault

Section 2701	-	Simple Assault
Section 2702	-	Aggravated Assault
Section 2703	-	Assault by prisoner
Section 2704	-	Assault by life prisoner
Section 2705	-	Recklessly endangering another person
Section 2706	-	Terroristic threats
Section 2707	-	Propulsion of missiles into an occupied vehicle or onto a roadway
Section 2708	-	Use of tear or noxious gas in labor disputes
Section 2709	-	Harassment

Chapter 29 Kidnapping

Section 2901	-	Kidnapping
Section 2902	-	Unlawful restraint
Section 2903	-	False imprisonment
Section 2904	-	Interference with custody of children
Section 2905	-	Interference with custody of committed persons
Section 2906	-	Criminal coercion
Section 2907	-	Disposition of ransom

Chapter 31 Sexual Offenses

Section 3121	-	Rape
Section 3122	-	Statutory Rape
Section 3123	-	Involuntary deviate sexual intercourse
Section 3125	-	Aggravated Indecent Assault
Section 3126	-	Indecent Assault
Section 3127	-	Indecent Exposure

Chapter 32 Abortion

Section 3212	-	Infanticide
Section 3216	-	Fetal experimentation

ARTICLE C. OFFENSES AGAINST PROPERTY

Chapter 33 Arson, Criminal Mischief and Other Property Destruction

- Section 3301 - Arson and related offenses
- Section 3302 - Causing or risking catastrophe
- Section 3303 - Failure to prevent catastrophe
- Section 3304 - Criminal mischief
- Section 3305 - Injuring or tampering with fire apparatus, hydrants, etc.
- Section 3306 - Unauthorized use or opening of fire hydrants
- (Section 3307 - Institutional Vandalism is specifically NOT an underlying offense of Ethnic Intimidation)

Chapter 35 Burglary and Other Criminal Intrusion

* * *

- Section 3503 - Criminal Trespass

ARTICLE F. OFFENSES AGAINST PUBLIC ORDER AND DECENCY

* * *

- Section 5504 - Harassment by Communication or Address

* * *

APPENDIX C

STATE CRIME OF INSTITUTIONAL VANDALISM

18 Pa. C.S.A. §3307 Institutional vandalism

(a) Offenses defined. A person commits the offense of institutional vandalism if he knowingly desecrates, as defined in section 5509 (relating to desecration of venerated objects), vandalizes, defaces or otherwise damages:

- (1) any church, synagogue or other facility or place used for religious worship or other religious purposes;
- (2) any cemetery, mortuary or other facility used for the purpose of burial or memorializing the dead;
- (3) any school, educational facility, community center, municipal building, courthouse facility, or juvenile detention center;
- (4) the grounds adjacent to and owned or occupied by any facility set forth in paragraph (1), (2) or (3); or
- (5) any personal property located in any facility set forth in [paragraph (1), (2) or (3)]. This subsection.

(b) Grading.—An offense under this section is a felony of the third degree if the act is one of desecration as defined in section 5509 (relating to desecration of venerated objects) or if the actor causes pecuniary loss in excess of \$5,000. Pecuniary loss includes the cost of repair or replacement of the property affected. Otherwise, institutional vandalism is a misdemeanor of the second degree. 1982, June 18, P.L. 537. No. 154, §1 ind. effective, as amended.

APPENDIX D

STATE CIVIL REDRESS STATUTE

Act 1990-216

42 Pa. C.S.A. §8308. Civil rights violations.

(a) Redress for personal injury.--A person who incurs injury to his person or damage or loss to his property as a result of conduct described in 18 Pa.C.S. §2710 (relating to ethnic intimidation) or 3307 (relating to institutional vandalism) shall have a right of action against the actor for injunction, damages or other appropriate civil or equitable relief. In the action, the issue of whether the defendant engaged in the conduct alleged shall be determined according to the burden of proof used in other civil actions for similar relief. The plaintiff may seek recovery for any of the following:

- (1) General and special damages including damages for emotional distress. Damages under this subsection shall be actual damages or \$500, whichever is greater.
- (2) Punitive damages.
- (3) Reasonable attorney fees and costs.
- (4) Injunctive and other equitable relief.
- (5) Such other relief which the court deems necessary and proper.

(b) Redress sought by public official on behalf of others.--When conduct which would constitute a violation of 18 Pa.C.S. §2710 or 3307 has occurred, the District Attorney of the county in which the violation took place or the Attorney General, after consulting with the District Attorney, may institute a civil action for injunctive or other equitable relief if needed to protect any person or property. The civil action shall be brought in the name of the Commonwealth of Pennsylvania in the county where the violation occurred.

(c) Filing of court orders.--The prothonotary of the court in which a civil action is brought under subsection (a) or (b) shall transmit two certified copies of any order issued in the action to each appropriate law enforcement agency having jurisdiction over locations where the defendant is alleged to have committed the act and where the defendant resides or has his principal place of business. The sheriff of the county in which the defendant resides shall serve a copy of the order on the defendant. Unless otherwise ordered by the court, service shall be by delivering a copy in hand to the defendant. Law enforcement agencies shall establish procedures adequate to ensure that all officers responsible for the enforcement of the order are informed of its existence and terms. When a law enforcement officer has probable cause to believe that a defendant has violated the provisions of an order, the officer may arrest him.

(d) Contempt notice required to be part of order.--In actions brought under this section, when a court issues a temporary restraining order or a preliminary or permanent injunction ordering a defendant to refrain from certain conduct or activities, the order issued shall contain the following statement: VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

(e) Penalties.—A violation of an order issued and served as set forth in this section shall be a misdemeanor of the second degree. If bodily injury results from the violation, the violation shall be a misdemeanor of the first degree.

(f) Vacated orders.—When the court vacates a temporary restraining order or a preliminary or permanent injunction issued under this section, the prothonotary shall promptly notify in writing each appropriate law enforcement agency which had been notified of the issuance of the order and shall direct each such agency to destroy all records of the order, and the agency shall comply with the directive upon receipt of the notification.

Section 2. This act shall take effect in 60 days.

APPENDIX E

STATE ETHNIC INTIMIDATION STATISTICS COLLECTION ACT

Pa. Stat. Ann. tit. 71 § 250 (Purdon Supp. 1990). Pennsylvania State Police.

The Pennsylvania State Police shall have the power and its duty shall be:

* * * *

(i) To collect information relating to crimes and incidents related to the race, color, religion or national origin of individuals or groups, which shall be reported monthly by all local law enforcement agencies and the State Fire Marshal. Any information, records and statistics collected in accordance with this subsection shall be available for use by any agency required to furnish information, to the extent that such information is reasonably necessary or useful to such agency in carrying out the duties imposed on it by law. The Commissioner of the Pennsylvania State Police may, by regulation, establish such conditions for the use or availability of such information as may be necessary to its preservation, the protection of confidential information, or the circumstances of a pending prosecution.

APPENDIX F

FEDERAL HATE CRIMES STATISTICS ACT

Public Law 101-275
101st Congress
April 28, 1990

An Act

To provide for the acquisition and publication of data about crimes that manifest prejudice based on certain group characteristics.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Hate Crime Statistics Act."

(b)(1) Under the authority of section 534 of title 28, United States Code, the Attorney General shall acquire data, for the calendar year 1990 and each of the succeeding 4 calendar years, about crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, including where appropriate the crimes of murder, non-negligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property.

(2) The Attorney General shall establish guidelines for the collection of such data including the necessary evidence and criteria that must be present for a finding of manifest prejudice and procedures for carrying out the purposes of this section.

(3) Nothing in this section creates a cause of action or a right to bring an action, including an action based on discrimination due to sexual orientation. As used in this section, the term "sexual orientation" means consensual homosexuality or heterosexuality. This subsection does not limit any existing cause of action or right to bring an action, including any action under the Administrative Procedure Act or the All Writs Act.

(4) Data acquired under this section shall be used only for research or statistical purposes and may not contain any information that may reveal the identity of an individual victim of a crime.

(5) The Attorney General shall publish an annual summary of the data acquired under this section.

(c) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section through fiscal year 1994.

APPENDIX G

SELECT STATE POPULATION STATISTICS¹⁷

TABLE XII

Racial Distribution of State's Population

	Number	% of Total State Population
White Population	10,520,201	89%
Black Population	1,089,795	9%
Asians/Pacific Islanders	137,438	1%
Other Minorities ¹⁸	<u>134,209</u>	<u>1.1%</u>
TOTAL	11,881,643	100.1% ¹⁹

TABLE XIII

Racial Distribution of Population in Six Counties with Highest Hate Crime Reports

	ALLEGHENY	BUCKS	CENTRE	DELAWARE	MONTGOMERY	PHILADELPHIA	SIX-COUNTY TOTAL
TOTAL POPULATION	1,336,449	541,174	123,786	547,651	678,111	1,585,577	4,812,748
% OF STATE'S TOTAL POPULATION	11.2%	4.6%	1.0%	4.6%	5.7%	13.3%	40.4%
WHITE POPULATION	1,169,452	514,240	116,552	473,741	620,087	848,586	3,742,658
% OF STATE'S TOTAL WHITE POPULATION	11.1%	4.9%	1.1%	4.5%	5.9%	8.1%	35.6%
BLACK POPULATION	149,550	15,313	2,801	61,394	39,124	631,936	900,118
% OF STATE'S TOTAL BLACK POPULATION	13.7%	1.4%	0.3%	5.6%	3.6%	58.0%	82.6%
ASIANS/PACIFIC ISLANDER	13,469	8,446	3,841	10,002	15,995	43,522	95,275
% OF STATE'S TOTAL ASIAN/PACIFIC ISLANDER POPULATION	9.8%	6.1%	2.8%	7.3%	11.6%	31.7%	69.3%
OTHER MINORITY POPULATIONS ¹⁸	3,978	3,175	592	2,514	2,905	61,533	74,697
% OF STATE'S TOTAL OTHER MINORITY POPULATIONS	3.0%	2.4%	0.4%	1.9%	2.2%	45.8%	55.7%
COUNTY RANK BASED ON POPULATION	2	5	25	4	3	1	

17. Data for this Appendix was supplied by the State Data Center based on 1990 Census Data.

18. Includes the census categories of "American Indian" and "other."

19. Exceeds 100% because of rounding.

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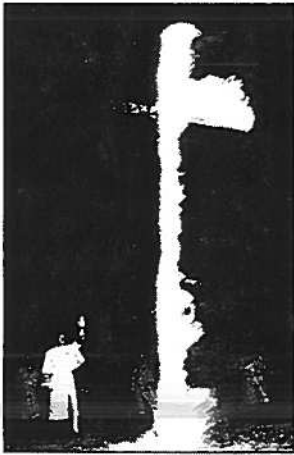
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* * * * *

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HATE



CRIMES

STATUTES:

A 1991 Status Report

The logo for ADL Law Report features the word "ADL" in a large, bold, serif font. A small globe icon is positioned between the "A" and "D". Below "ADL" is the word "LAW" in a smaller, bold, serif font. At the bottom is the word "REPORT" in a very large, bold, serif font.

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HATE CRIMES STATUTES:

A 1991 Status Report

INCLUDING ADL MODEL LEGISLATION

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of the William and Naomi Gorowitz Institute
on Terrorism and Extremism.*

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I. Introduction

This Report updates ADL's 1988 Report "Hate Crimes Statutes: A Response to Anti-Semitism, Vandalism and Violent Bigotry," and its 1990 supplement. It is intended to function as a reference guide on hate crimes legislation nationwide.

ADL has long been in the forefront of national and state efforts to deter and counteract hate-motivated crimes. Although prejudice and hatred cannot be legislated or prosecuted out of existence, there is a growing awareness that government can do more to deter and redress violence which is motivated by bigotry. Hate crimes statutes are widely recognized as essential in addressing the problem of hate crimes — a widespread problem which is increasing steadily.

ADL continues to monitor hate crimes motivated by anti-Semitism and other forms of prejudice. According to ADL's Annual Audit of Anti-Semitic Incidents, the number of anti-Semitic acts committed in this nation during 1990 — 1685 reported from 40 states and the District of Columbia — was the highest total ever reported in the 12-year history of the Audit. This marked the fourth consecutive year of an increase in anti-Semitic incidents.

States around the nation continue to pass hate crimes laws — creating entirely new legislation, or strengthening existing laws. Since the 1990 Supplement was published thirteen states have passed hate crimes statutes. Presently, almost every state in the nation has some form of hate crimes legislation. More than half of these states have enacted laws based on, or similar to, ADL's model hate crimes statute. The League's model contains provisions regarding institutional vandalism, bias-motivated intimidation, civil action for victims, and bias crime training and reporting. The ADL model statute is included in this Report along with an analysis of its provisions.

This Report summarizes the new state hate crimes laws — bias-motivated violence and intimidation statutes, institutional vandalism statutes, cross burning statutes, and other hate crimes statutes — which have been passed since the summer of 1990. The Report also discusses some pending hate crimes bills and gives examples of recent legislative efforts which have failed.

A significant development in the effort to combat hate crimes on the federal level is also reviewed. Congress has passed, and President Bush has signed into law, the Hate Crime Statistics Act of 1990. ADL was heavily involved in promoting passage of this important legislation, and is now actively participating in efforts to implement it.

The Report provides some examples of the enforcement of state hate crimes statutes by reviewing several recently completed prosecutions and pending prosecutions.

Furthermore, several hate crimes statutes are being challenged in the courts by defendants convicted under the statutes. The Report discusses a few of these challenges, which are generally based on claims that the hate crimes statutes are vague and overbroad and impermissibly infringe upon the First Amendment right of free expression. ADL has filed several *amicus curiae* briefs supporting various hate crimes laws against such challenges.

A map indicating which state hate crimes laws are based on or similar to ADL's model statute is found in Appendix A. An updated chart indicating which states have hate crimes statutes is included in Appendix B. A current list of citations for state and federal statutes is found in Appendix C. Copies of these statutes are available from ADL's national office. A copy of the federal Hate Crime Statistics Act is included in Appendix D. A list of ADL resources on hate crimes is found in Appendix E.

II. ADL Model Legislation: A Primer For Action

In 1981 ADL's Legal Affairs Department drafted a model hate crimes bill for introduction in state and local legislatures. ADL's original model bill contained two component parts. The first, the Institutional Vandalism Statute, prohibited an individual from vandalizing, defacing or damaging places of worship, cemeteries, schools, or community centers. The second section, the Intimidation Statute, provided for enhanced penalties for certain bias-motivated crimes.

In the past decade, more than half of the states which enacted hate crimes laws have based their statutes on ADL's model. This Report features a revised version of ADL's model statute and includes a section by section analysis of the model legislation. The revised model legislation includes sections for institutional vandalism, intimidation, civil action for institutional vandalism and intimidation, and bias crime reporting and training. The model statute is intended to assist state and local governments which would like to enact hate crimes laws.

Institutional Vandalism

The ADL model legislation Institutional Vandalism section increases the criminal penalties for vandalism aimed at houses of worship, cemeteries, schools, and community centers. The statute as drafted requires knowledge of the character of the property, but does not require proof of motive for the vandalism, making convictions easier to obtain.

This section of the model statute seeks to deter attacks against the most common targets of vandalism: churches, synagogues and religious schools. It also covers vandalism at all places of worship, schools, and community centers so as not to single out religious institutions for special (and perhaps unconstitutional) protection. The statute's language and its clear non-sectarian purpose of deterring vandalism against the most common targets of such vandalism should remove the possibility of First Amendment establishment clause objections to the measure.

Intimidation

The Intimidation section of the model statute provides for stepped-up criminal penalties

for acts of intimidation, harassment, and vandalism in situations where persons or groups are victimized on account of their actual or perceived race, color, religion, national origin or sexual orientation. This bill creates a penalty enhancement provision for the situation where the offender commits a crime (already part of the criminal code) and intentionally targets the victim or victim's property because of his or her race, color, religion, national origin or sexual orientation.

In drafting the model hate crimes legislation, ADL concluded that the increased penalties would make it more worthwhile for prosecutors to pursue convictions under these statutes. The model statute does not suggest what the specific penalties should be for the unlawful conduct—that determination is best left to the discretion of each state legislature as it amends the state's criminal code. It is critical, however, that the enhanced penalties be sufficiently severe for the new statute to have its desired deterrent impact. In addition, the statute is most effective when it increases the penalties for the broadest range of criminal conduct.

Penalty enhancement provisions are well recognized under the law. They provide for increased penalties when crimes are committed under certain specific circumstances. For example, penalty enhancement provisions are frequently authorized for crimes committed when an offender uses a dangerous weapon, and for crimes in which a victim is targeted because of a special status (i.e., crimes directed at underage or elderly victims) or vocation (i.e., law enforcement officials or teachers on school grounds).

This section of the statute requires not only criminal conduct, but also proof of the perpetrator's motive or intent in the commission of the harassment, intimidation, or vandalism. The statute does not suppress free expression, since it does not affect the right of anyone to hold or express any viewpoint, publicly or privately, unless that person also engages in criminal activity motivated by his or her viewpoint.

In drafting the model legislation, ADL studied several laws to determine the best approach to crimes of intimidation and vandalism.

ADL's statute is based on legislation previously enacted in Arizona, New York, and Oregon, and is in our opinion comprehensive, effective and constitutionally sound.

Civil Action for Institutional Vandalism and Intimidation

One provision of the model legislation creates a civil action for victims. While these activities might presently be actionable in a common law tort suit, this provision makes it explicit. Additionally and more significantly, this section provides for certain additional forms of relief, i.e., recovery of punitive damages and attorney's fees, and parental liability for minor children's actions, which are generally not permitted under most states' common law tort actions. These additional forms of relief can have a significant deterrent value, and should also encourage victims to consider bringing civil suits.

Bias Crime Reporting and Training

The very first recommendation of the U.S. Commission on Civil Rights in its 1983 report "Racial and Religious Bigotry in America" was that federal and state authorities "should develop workable reporting systems that will produce an accurate and comprehensive measurement of the extent of criminal activity that is clearly based on racial and/or religious motivation." It is certain that government officials, civic leaders and law enforcement officials will not be in a position to confront bias crimes effectively until the scope of the problem is known and documented: Hard, comprehensive, and comparative data concerning the number, location and types of bias crimes is essential to combat hate crimes.

The enactment of the federal Hate Crime Statistics Act in 1990 demonstrated widespread recognition of the necessity of gathering data on crimes motivated by prejudice and bigotry, in order to be able to combat hate crimes.

The text of ADL's model legislation follows.

ADL Model Legislation

1. Institutional Vandalism

A. A person commits the crime of institutional vandalism by knowingly vandalizing, defacing or otherwise damaging:

- i. Any church, synagogue or other building, structure or place used for religious worship or other religious purpose;
- ii. Any cemetery, mortuary or other facility used for the purpose of burial or memorializing the dead;
- iii. Any school, educational facility or community center;
- iv. The grounds adjacent to, and owned or rented by, any institution, facility, building, structure or place described in subsections (i), (ii) or (iii) above; or
- v. Any personal property contained in any institution, facility, building, structure or place described in subsections (i), (ii) or (iii) above.

B. Institutional vandalism is punishable as follows:

- i. Institutional vandalism is a _____ misdemeanor if the person does any act described in Subsection A which causes damage to, or loss of, the property of another.
- ii. Institutional vandalism is a _____ felony if the person does any act described in Subsection A which causes damage to, or loss of, the property of another in an amount in excess of five hundred dollars.
- iii. Institutional vandalism is a _____ felony if the person does any act described in Subsection A which causes damage to, or loss of, the property of another in an amount of one thousand five hundred dollars.

iv. Institutional vandalism is a _____ felony if the person does any act described in Subsection A which causes damage to, or loss of, the property of another in excess of five thousand dollars.

C. In determining the amount of damage to, or loss of property, damage includes the cost of repair or replacement of the property that was damaged or lost.

2. Intimidation

A. A person commits the crime of intimidation if, by reason of the actual or perceived race, color, religion, national origin or sexual orientation of another individual or group of individuals, he violates Section _____ of the Penal Code (insert code provision for criminal trespass, criminal mischief, harassment, menacing, assault and/or other appropriate statutorily proscribed criminal conduct).

B. Intimidation is a _____ misdemeanor/felony (the degree of the criminal liability should be at least one degree more serious than that imposed for commission of the offense).

3. Civil Action for Institutional Vandalism and Intimidation

A. Irrespective of any criminal prosecution or the result thereof, any person incurring injury to his person or damage or loss to his property as a result of conduct in violation of Sections 1 or 2 of this Act shall have a civil action to secure an injunction, damages or other appropriate relief in law or in equity against any and all persons who have violated Sections 1 or 2 of this Act.

B. In any such action, whether a violation of Section 1 or 2 of this Act has occurred shall be determined according to the burden of proof used in

other civil actions for similar relief.

- C. Upon prevailing in such civil action, the plaintiff may recover:
 - i. Both special and general damages, including damages for emotional distress;
 - ii. Punitive damages; and/or
 - iii. Reasonable attorney fees and costs.
- D. Notwithstanding any other provision of the law to the contrary, the parent(s) or legal guardian(s) of any unemancipated minor shall be liable for any judgment rendered against such minor under this Section.

4. Bias Crime Reporting and Training

- A. The state police or other appropriate state law enforcement agency shall establish and maintain a central repository for the collection and analysis of information regarding crimes which are motivated by bigotry or bias. Upon establishing such a repository, the state police shall develop a procedure to monitor, record, classify and analyze information relating to crimes apparently directed against individuals or groups, or their property, by reason of their actual or perceived race, color, religion, national origin or sexual orientation. The state police shall submit its procedure to the appropriate committee of the state legislature for approval.
- B. All local law enforcement agencies shall report monthly to the state police concerning such offenses in such form and in such manner as prescribed by rules and regulations adopted by the state police. The state police must summarize and analyze the information received and file an annual report with the governor and the appropriate committee of the

state legislature.

- C. Any information, records and statistics collected in accordance with this subsection shall be available for use by any local enforcement agency, unit of local government, or state agency, to the extent that such information is reasonably necessary or useful to such agency in carrying out the duties imposed upon it by law. Dissemination of such information shall be subject to all confidentiality requirements otherwise imposed by law.
- D. The state police shall provide training for police officers in identifying, responding to, and reporting all criminal offenses motivated by race, color, religion, national origin or sexual orientation.

III. State Legislative Developments in 1990-91

Significant legislative developments have taken place in thirteen states since the summer of 1990, when ADL's last report was published. Seven states have created entirely new hate crimes legislation and six states have strengthened existing hate crimes statutes.

Twelve states have enacted hate crimes legislation which is, at least in part, based on or similar to ADL's model hate crimes statute.¹

A. Bias-motivated Violence and Intimidation Statutes

Since August 1990, three states passed new bias-motivated violence and intimidation laws, while four states passed laws strengthening their existing hate crimes legislation.

New Laws:

This year *New Hampshire* enacted House Bill 1299-FN providing for enhanced penalties for an underlying crime if the crime is substantially motivated by the victim's religion, race, creed, sexual orientation, national origin or sex. ADL offered testimony at the Senate hearing on the bill. The bill's sponsor, Representative Rick Trombly, indicated that the quality of testimony supporting the bill was the highest that he had observed in his ten years in the legislature.

In 1990, *New Jersey* adopted new legislation enhancing penalties for bias-motivated crimes. Governor Jim Florio signed the act at Rutgers' Hillel building, the scene of an anti-Semitic attack the previous year. The Ethnic Intimidation Bill, which amends four other laws, was spearheaded by Senator Matthew Feldman (D-Bergen), Assemblyman George A. Spadaro (D-East Brunswick), and Assemblyman Robert Menendez (D-Union City). Under the law, simple assault and harassment are fourth degree crimes, if the crime is bias-motivated. Furthermore, a person convicted of a first, second or third degree crime may be sentenced to an extended prison term if the crime is bias-related.

Vermont also enacted its first hate crimes statutes in 1990. Vermont's laws provide for enhanced penalties for crimes "maliciously motivated by the victim's actual or perceived race, color, religion, national origin, sex, ancestry, age, service in the armed forces of the United States, handicap...or sexual orientation..." The statute also provides that apart from any criminal prosecution, a person may bring a civil lawsuit for injunctive relief, compensatory and punitive damages, costs and reasonable attorneys fees, as well as other appropriate relief. ADL worked closely with the drafters of the bill on an original version, with ADL's report on model legislation and follow-up supplement serving as useful guides. The laws also contain a provision on cross burning.

Laws Supplementing Existing Legislation:

In April 1991, *Colorado* supplemented its existing hate crimes laws with legislation, Senate Bill 91-54, allowing a victim of ethnic intimidation, or a member of the victim's immediate family, to sue for civil damages for "destruction or bodily injury." Actual damages, costs, and expenses incurred in connection with the action may be recovered from any person, organization, or association responsible for committing the offense of ethnic intimidation. A jury may also award punitive damages. A criminal conviction for ethnic intimidation is not a precedent condition for bringing a civil action.

Also in April 1991, the *Florida* legislature passed Senate Bill 1482, an amendment to its hate crimes legislation enacted two years ago. The act provides that "[i]t shall be an essential element of this section that the record reflect that the defendant perceived, knew or had reasonable grounds to know or perceive that the victim was within the class delineated herein." The act also amends existing laws

¹New York's amendment to its law on theft of a religious object was not based on ADL model legislation.

to include crimes evidencing prejudice based on the sexual orientation of the victim, and adds sexual orientation to the state's data collection statute. The act added a severability clause to the Hate Crimes Act and modified Florida's laws on cross burning.

Illinois strengthened its hate crimes laws in September 1990 by enacting Senate Bill 2267. Illinois stiffened its penalties for hate crimes so that a second or subsequent offense becomes a Class 3 felony, and expanded the underlying offenses which can support a hate crime prosecution by including battery, aggravated assault, and criminal trespass to vehicle, among others. Categories of bias recognized under the statute were also broadened so that race, color, creed, religion, ancestry, sexual orientation, physical or mental disability, and national origin are now specified. Lastly, Illinois modified existing laws to require judges to consider the bias motivation of an offender as an element in all criminal sentencing.

In 1990 **Iowa** amended the hate crimes statute it enacted in 1988. The act provides that individuals have "the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of their race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, or disability." The legislation classifies hate crimes as either class D felonies or aggravated misdemeanors. It provides that bias motivation should be considered as an aggravating factor in imposing sentence and fine for a felony or misdemeanor. The act also allows a victim of a hate crime, who has suffered physical, emotional or financial harm, to institute a civil lawsuit to obtain injunctive relief, general and special damages, reasonable attorney fees and costs. The legislation adds a new data collection provision as well.

Pending Bills:

Presently, bias-motivated violence and intimidation bills are pending in several states.

California is considering a comprehensive hate crimes bill introduced by Senator Bill Lockyer (D-Hayward), and sponsored by Lieutenant Governor Leo McCarthy, which would

strengthen state hate crimes laws. The bill increases existing criminal penalties for hate crimes by doubling the sentence for a misdemeanor hate crime, adding one to three years to the sentence for felony hate crimes, and adding two to four years for hate crimes committed in concert with others. The bill also expands the civil remedies available to the victims of hate crimes by increasing the civil penalty from \$10,000 to \$25,000, and removing the current cap on possible punitive damages. Lastly, the bill would require that a portion of the mandatory continuing legal education for attorneys be devoted to civil rights law and include the topic of remedies for hate crimes.

In **Delaware** a bill is pending in committee which would find an individual guilty of ethnic intimidation for acting, at least partially, "with ill will, hatred or bias toward, and with the purpose to intimidate another person or a groups of persons, by reason of the actual or perceived race, color, religion or national origin of that person or group of persons" in committing a list of specified crimes. The bill provides that ethnic intimidation will be classified at the same level of offenses as the underlying offense.

New hate crimes legislation in **Nebraska**, introduced by Senator Brad Ashford of Omaha, has received strong statewide support. The bill provides for enhanced penalties for assaults or property damage based on a victim's race, color, religion, national origin or sexual orientation. The bill also creates a new crime of institutional vandalism.

In **New York** legislation which would make bias-related violence or intimidation a criminal offense has been stalled for years. The Bias Related Violence or Intimidation Act criminalizes intentionally depriving an individual or group of individuals from exercising their civil rights because of race, creed, color, national origin, sex, disability, age or sexual orientation. A bias-motivated crime which causes property damage or physical injury would be a class D felony, while a hate crime resulting in the death of another individual would be a class C felony. Criminal liability would not be avoided because a person engages in such conduct under a

mistaken belief of fact as to the race, creed, color, national origin, sex, disability, age or sexual orientation of the group or individuals. New York's bill also requires that data on investigations into such crimes be collected.

Defeated Bills:

Hate crimes legislation has met with resistance in other states.

In **Arizona**, a hate crimes bill was defeated in the Arizona House Rules Committee by a 9-4 vote. The bill would have made it a low-level felony, rather than a misdemeanor, to threaten a person or commit criminal damage because of the "actual or perceived race, color, religion, national origin, sexual orientation, gender or disability of a person or group." It also provided for the Department of Public Safety to gather statistical information on hate crimes. Representative Dave Carson (R- Prescott), a member of the rules panel, said that panelists objected to the heavy penalties tied to the bill on the grounds that existing laws adequately protect those targeted by hate crimes. Representative Carson also indicated that it was feared that the bill would infringe on First Amendment rights of free speech and expression.

In **Connecticut**, a bill which called for civil remedies to be added to the state's present hate crimes laws died in committee. The bill provided that regardless of any criminal prosecution, an individual incurring physical injury or property damage as the result of a hate crime could bring a civil action to secure an injunction, damages or other relief. Plaintiffs could recover special and general damages, including damages for emotional distress, punitive damages and reasonable attorney fees and costs.

Georgia's comprehensive hate crimes bill failed for the second consecutive year. The Bias Crimes Information and Documentation Act was defeated on the floor of the Georgia House of Representatives by a vote of 109 to 63. ADL was one of the principal drafters of the bill which was substantially based on the League's model statute. The bill provided for enhanced penalties for crimes motivated by bias or hatred towards the victim's "race, religion, sex, sexual orientation, color, national

origin, HIV infection, or the perception thereof." It also called for law enforcement training in recognizing and responding to hate crimes, data collection, and the availability of civil liability suits separate from any criminal prosecution. Among the reasons for the bill's defeat were intense lobbying campaigns by right wing fundamentalists and anti-gay groups. The widespread misconception that the bill would create separate crimes, and enhance penalties solely because a victim is a member of a minority group, resulted from the campaigns of opposition groups.

In **Maryland**, a bill to amend the state's penalty enhancement hate crimes law to include crimes committed against individuals on the basis of sexual orientation, disability and gender, failed.

In **Texas** a comprehensive hate crimes bill providing for enhanced penalties for hate crimes and institutional vandalism, creating a civil action for hate crimes, and providing for hate crime reporting and training died in committee this spring.

B. Institutional Vandalism Statutes

Pending Bills

Nebraska is considering legislation regarding institutional vandalism. The bill, introduced by Senator Brad Ashford, creates a crime of institutional vandalism, regarding property damage to a church, cemetery, school, educational facility, or community center.

An institutional vandalism bill is pending in **Delaware**. The bill would delete the existing crime of desecration and replace it with the crime of institutional vandalism. This new crime would be defined clearly and would increase the criminal penalties for acts of vandalism directed towards houses of worship, cemeteries, schools, community centers, public monuments and the national and state flags.

C. Reporting Laws: Data Collection and Analysis

New or Supplementary Laws:

Arizona enacted a hate crimes reporting act in July 1991 which provides for the collection of data, by the criminal identification section of the department of public safety, on "criminal offenses that manifest evidence of prejudice based on race, color, religion, national origin, sexual orientation, gender or disability." It requires the chief officers of criminal justice agencies of the state or its political subdivisions to provide such information to the criminal identification section.

Florida amended its Hate Crimes Reporting Act to provide for the collection of data regarding incidents motivated by bias based on sexual orientation.

Iowa's amendment to its bias-motivated violence and intimidation law also contains a new data collection provision. It provides for the establishment of a program to collect, classify, and disseminate information on hate crimes.

Maryland enacted House Bill 857 which added a provision to its hate crimes reporting law. The statute now provides for collection of data regarding hate crimes motivated by sexual orientation. An attempt failed to also provide for the collection of data regarding crimes motivated by bias based on gender or disability.

Massachusetts added a data collection and analysis statute to its already strong hate crimes laws. Outgoing Governor Michael Dukakis signed the Hate Crimes Reporting Act as one of his last official acts. The law will mandate that state law enforcement agencies maintain detailed records of bias-related crimes. The law, which provides for training for police offices in "identifying, responding to and reporting all incidents of hate crime," requires police officers investigating hate crimes to complete a report describing the incident. The reports will then be sent to the Crime Reporting Unit of the Department of Public Safety, where

the information will be compiled and analyzed in an annual report regarding hate crimes.

In late August the **Texas** legislature passed, and Governor Ann Richards signed into law, a hate crimes reporting act. The act passed, during a special session of the legislature, as an amendment to a larger crime and prison bill. The act requires "the collection and analysis of information relating to crimes that are motivated by prejudice, hatred, or advocacy of violence..."

Pending Bills:

Two bills providing for data collection of hate crimes are pending in **Missouri**. The bills — sponsored by Representative William Clay (D-St. Louis), and Senator John Bass (D-St. Louis) — would require the Missouri State Highway Patrol to collect and analyze statistics regarding bias crimes. The Senate bill was altered when the Senate Criminal Jurisprudence Committee voted to remove "sexual orientation" from the list of possible motives for a bias crime.

New York's currently pending comprehensive bias-motivated violence and intimidation bill also requires law enforcement agencies to annually report the number of investigations into hate crimes to the commissioner of the state division of criminal justice services. This statistical information would be included in a quarterly report to the governor and legislature.

D. Cross Burning Statutes

New or Supplementary Laws

Since August 1990, two states have enacted laws concerning cross burning. **Florida's** Hate Crimes Act Amendment (discussed above) contains a provision modifying the state's law on cross burning, making it a first degree misdemeanor to place a burning cross on private property.

In 1990, **Vermont** enacted a new law prohibiting "the burning of a cross or a religious symbol, with the intention of

terrorizing or harassing a particular person or persons..."

Pending Bills

In *California*, Orange County Assemblyman Tom Umberg (D-Orange County), introduced a bill amending California's cross burning and terrorism law. The bill would prohibit a person from burning or desecrating a cross or other religious symbol, on public or private property, with or without authorization, in order to terrorize another person or in reckless disregard of terrorizing another person.

E. Other Hate-Crimes Statutes

New or Supplementary Laws:

In September, 1990, *California* passed Senate Bill 2483, which increases the penalties for disrupting a religious meeting. The law provides for a community service requirement to be imposed in addition to existing fines and jail time for disturbing a religious assembly. ADL was consulted by the bill's author, Senator Newton Russell, regarding the drafting of the bill.

Also in 1990, *New York* added to its penal law a section that makes theft of a "...scroll, religious vestment, vessel" or other property worth at least one hundred dollars a crime of grand larceny in the fourth degree. The property must be "...kept for or used in connection with religious worship in any building or structure used as a place of worship" by a religious organization.

Pending Bills:

In *New Jersey*, a bill is pending that would upgrade the offense of theft of objects "commonly used in a religious ceremony" from a place of worship to a second degree crime. New Jersey's current law provides that theft of an object from a place of worship is graded from a disorderly person's offense to a second degree crime depending on the value of the stolen object.

In *Pennsylvania* a bill which makes it an offense to wear masks, hoods, or

other devices which conceal a person's identity on public property or upon the private property of another without written permission, is presently pending. The bill provides that the wearer knows, or should know, that such conduct "provides a reasonable fear of intimidation or threats of violence." The bill provides exceptions for traditional holiday costumes, masks required by occupation, trade or profession or sporting activities, masks used in theatrical productions, and gas masks used in drills and emergencies. The prime sponsor of the legislation is Representative Charles Dent of Allentown.

IV. Federal Legislation: Hate Crime Statistics Act

The Hate Crime Statistics Act (HCSA), which was signed into law by President Bush in April 1990, is a significant step forward in the battle against hate crimes. The HCSA requires the U.S. Attorney General to acquire data on crimes which manifest prejudice based on race, religion, sexual orientation or ethnicity. It also requires the Attorney General to publish an annual summary of the findings. The passage of the HCSA reflects the widespread view that the number of hate crimes is growing and that government can and should do more to combat this trend of hate violence.

ADL took a leadership role in advocating passage of the HCSA in Congress. Under the leadership of Senators Paul Simon (D-IL) and Orrin Hatch (R-UT), and Representatives Barbara Kennelly (D-CT), John Conyers (D-MI) and Charles Schumer (D-NY), the legislation received bipartisan support in both chambers — as well as significant support from the law enforcement community. The text of the HCSA is included in this Supplement as Appendix E.

The focus now is upon the implementation of the HCSA by the Department of Justice as well as state and local law enforcement officials. The success of the HCSA depends upon the manner in which it is implemented — to obtain accurate and uniform data law enforcement officials must be trained how to identify, report and respond to hate crimes. ADL has assisted the FBI in developing guidelines and a training manual for the implementation of the HCSA, and was asked to represent a group of human relations and civil rights organizations at a news conference announcing implementation of the HCSA called by Attorney General Dick Thornburgh and FBI Director William Sessions. ADL continues to be prominently involved, with the FBI's Uniform Crime Reporting Section, in HCSA implementation outreach and training.

V. Hate Crimes Statutes: Enforcement and Court Challenges

Enforcement

Criminal Cases

The following is a sampling of criminal cases recently prosecuted under state hate crimes laws, or in the process of being prosecuted under these laws.

California

Paul M. Downing was convicted of waging a two-year campaign of hate crimes terrorism against the Ruiz family and sentenced to 10 years in prison. In addition to the felony counts of arson, shooting into an inhabited dwelling and terrorism, prosecution of the hate crimes under California's religious terrorism statutes was pursued. Initially, Downing vandalized the Ruiz home with anti-Semitic graffiti. He then sent them threatening letters, and burned small wooden crosses in the bushes of their yard. Downing's terrorism escalated when he attempted to burn down the Ruiz home and shot through their kitchen window. Ironically, Downing committed these crimes because he mistakenly believed the Ruizes to be Jewish; they are Catholic.

Florida

John Izzo, a 26-year-old male who was applying for police work in South Florida, assaulted a black policeman in Fort Lauderdale and shouted racial slurs at him when he was pulled over for running a stop sign. He also vowed to escape any criminal charge because his case would be handled by a white judge rather than a "dumb nigger police officer." Izzo was supposed to go to trial under Florida's hate crimes law, and could have faced up to 5½ years in prison. However, under a plea agreement, Izzo was sentenced to the five months that he had already served in jail, plus two years probation and 100 hours of community service. This is the stiffest sentence that Izzo could receive since he had no prior convictions and the policeman was not injured.

In Daytona Beach five members of a racist skinhead group called the American

Front were charged with attempted first degree murder, conspiracy to commit aggravated battery and aggravated battery for attacking a 17-year-old skinhead, in October 1990, after they discovered that he was Jewish. The victim, John Daly, was beaten, and his head was held under the surf near a pier. Two of the skinhead perpetrators, Robert Frederick Huttner, 19, and Richard Anthony Meyer, 18, received 10 year prison terms — the toughest sentences to date under the Florida hate crimes statute. Another perpetrator, Michael Dobbins, 19, whose penalty was enhanced under Florida's hate crimes law, will serve a year in jail plus a four-year probation term, and has also been ordered to take a college class on the Holocaust. A fourth defendant, Heather Arnold, 20, received two years probation, and a fifth defendant, Francis Mercuri, is awaiting trial. The victim and his parents intend to pursue civil litigation under the Florida Hate Crimes Act against the Skinhead perpetrators and their parents.

In Punta Gorda, a white police officer, Stephen Keyes, was called to a domestic disturbance at the home of Michael Hamm, who is black. Hamm became verbally aggressive and said "I'll shoot you, white cracker." Hamm has been charged with assault and violating Florida's Hate Crimes Act. If convicted, Hamm could face three years in prison instead of one for simple assault. A debate has developed is to whether the term "cracker" is a pejorative label which is a synonym for redneck or "poor white trash," or a label of pride for some natives of the southeastern United States. ADL maintains that this debate is irrelevant and that the correct inquiry is whether the use of the word "white" in this situation is sufficient evidence of the hate motivation required by the Florida Hate Crimes Act. The prosecutor has not yet decided whether to proceed on the hate crimes charge or merely the underlying assault charge.

Illinois

Timothy Cole and Aaron Klinefelter were charged with three counts of hate crimes and 14 counts of criminal damage to property under the state's hate crimes law. The youths had damaged fourteen automobiles and printed racial slurs on Hispanic and black homes telling their inhabitants to get out of the neighborhood. They were sentenced to prison time and community service.

Massachusetts

Bickford White, 20, and Craig Cooper, 19, were sentenced to perform 350 hours of community service because they defaced 23 cars, two houses and a downtown business by spray painting anti-Semitic and racial epithets in a rampage in Wellesley on the eve of Yom Kippur. The judge declined to sentence the men to jail. The men had been charged with willful and malicious destruction of property and civil rights violations. An injunction was also issued against the defendants, prohibiting them from repeating their acts of vandalism, or threatening the witnesses who signed affidavits against them. White's lawyer is challenging the injunction, claiming that it needs to be narrowed and clarified since it infringes on his client's First Amendment rights. The Project against Racial Violence of the Boston Bar Association has been joined by 20 other organizations in filing an *amicus curiae* brief supporting the injunction.

New York

In late August 1991 racial turmoil was unleashed in the Crown Heights section of Brooklyn. The trouble commenced when a Hasidic man lost control of his car, which jumped the sidewalk and accidentally killed a black child, Gavin Cato, and critically injured his cousin. Mob violence erupted due to rumors that the Hasidim involved in the accident received medical attention, from a Jewish ambulance unit, before the black children. A crowd attacked, stabbed and killed Yankel Rosenbaum, a

Jewish student from Australia. The Bias Unit of the New York Police Department has determined that the stabbing death of Rosenbaum was a bias-motivated crime. If New York's pending hate crimes bill had been in effect, this classification would have resulted in penalty enhancement. The incident is also being monitored by federal authorities who may choose to prosecute the perpetrators for violating the victim's civil rights.

In the aftermath of the deaths of Cato and Rosenbaum, numerous injuries have been suffered by neighborhood residents, police and reporters. Hasidic houses have reportedly been burned, and yeshiva vans as well as police cars have been torched. It is anticipated that other incidents now under investigation may also be found to be hate crimes.

Washington

In June of 1991, during the Persian Gulf War, Gregory Scott Nichols was convicted of second-degree assault and malicious harassment after his attack on Jason Urbanc for being "Iraqi-looking." The standard sentencing range for each of the crimes is six to twelve months in jail. Washington's hate crimes law prohibits harassment or intimidation associated with or directed towards an individual's race, color, religion, ancestry, national origin or mental, physical or sensory handicap.

Also in June of 1991 a judge ordered Matthew Ryan Tole, an 18-year-old student who had participated in a cross burning incident involving a black family, to read "The Diary of Anne Frank" and write a 5,000 word report on it. Tole had pled guilty to second-degree rendering of criminal assistance. The judge made a special finding that the incident was a hate crime, and imposed the thought-provoking assignment as well as 240 hours of community service. The judge believed that this innovative punishment would probably be more effective than serving time in jail in positively affecting Tole's life.

In July of 1991 Dale L. Quickle, 22, was sentenced to six months in jail for burning a cross in front of the home of Brian and Marina Williams, an interracial couple. Quickle pled guilty to charges of malicious harassment, a felony, and conspiracy to commit malicious harassment, a gross misdemeanor. Two other men arrested for the incident have yet to be charged.

Civil Cases

Two nationally publicized and significant civil lawsuits — *Engedaw Berhanu v. Tom Metzger, et al* and *Sherry Del Dotto and Larry Del Dotto v. Neil Olsen and Lucielle Olsen* — recently produced important victories for victims of hate crimes.

Engedaw Berhanu v. Tom Metzger, et al

On October 23, 1990 a jury in Portland, Oregon returned a \$12.5 million verdict against Tom Metzger, his son John Metzger, their racist organization White Aryan Resistance (WAR), and two of their skinhead followers in connection with the murder of an Ethiopian immigrant by skinheads in 1988. The three Oregon skinheads who carried out the racially-motivated attack against three Ethiopians, brutally beating Mulugeta Seraw to death, are serving lengthy prison terms in Oregon.

On the night of November 12, 1988, a group of racist Skinheads were driving around the streets of Portland when they encountered three Ethiopian immigrants. Screaming racial epithets, the Skinheads jumped from their car and assaulted the Ethiopians with a baseball bat and steel-toed boots. Seraw, who was viciously clubbed on the head, died a few hours later.

The Portland Skinheads belong to a group known as East Side White Pride. When the Metzgers learned of them they quickly attempted to indoctrinate the group in the ways of racial violence. John Metzger sent Skinhead organizers to Portland in the fall of 1988. They brought large amounts of WAR's hate literature and videotapes as well as baseball bats,

and actively encouraged the Portland Skinheads to pursue racial violence. On the evening of November 12, one of Metzger's henchmen gave a fiery speech, at an East Side White Pride meeting, urging Portland Skinheads to take to the streets and fight for white pride. A few hours later, Seraw was dead.

ADL and the Southern Poverty Law Center represented Engedaw Berhanu, the executor of the estate of Seraw, in bringing a civil lawsuit seeking compensatory and punitive damages under various statutes, including the Oregon racial intimidation statute which allows individual victims of hate crimes to bring a civil action for relief. Because of the extensive connection between the Metzgers and the Portland Skinheads, the lawsuit was brought against both the Metzgers and the Skinheads who committed the murders. The lawsuit alleged that the Metzgers and WAR were vicariously liable for Seraw's death because they actively encouraged the Portland Skinheads to commit acts of racial violence. The jury agreed, and awarded the exact amount of damages which had been requested: \$5 million in punitive damages against Tom Metzger, \$3 million in punitive damages against WAR, \$4 million in punitive damages against John Metzger, and \$500,000 in punitive damages against the skinheads who killed Seraw.

The Metzgers are clearly unable to pay these punitive damages sums. Tom Metzger's home represents the most readily available asset to satisfy the judgment and its sale is being compelled. In addition, all other collection remedies available under California law are being vigorously pursued. Although Seraw's family is unlikely ever to obtain the entire judgment, the jury verdict should significantly impair the racist activities of Tom Metzger and WAR. Furthermore, forcing extremist racist individuals and organizations to be personally liable for the consequences of the racial violence which they inculcate and advocate will hopefully deter others from pursuing such conduct.

Sherry Del Dotto and Larry Del Dotto v. Neil Olsen and Lucielle Olsen

On March 27, 1991 a jury returned a \$1.8 million dollar verdict against a Chicago woman and her adult son in a lawsuit arising from their anti-Semitic harassment of their next-door neighbor, a Jewish woman, and her family. This represents the largest known verdict to date in a lawsuit brought under Illinois' Hate Crime Statute.

The lawsuit against Lucielle and Neil Olsen alleged that they had conducted a continuing vicious campaign of anti-Semitic harassment, intimidation and threats against Sherry Del Dotto, her husband and daughter for over a year until the Del Dottos moved. In addition to making anti-Semitic statements and actually threatening physical violence, the Olsens blared loud music from speakers directed toward the Del Dotto home, posted white supremacist and anti-Semitic statements and slogans on signs and on an old car parked on the street in front of the Del Dotto home, pinned Mrs. Del Dotto's car between their vehicle for three weeks, and engaged in an unending barrage of verbal taunting and menacing conduct. The police were frequently called.

In 1985 when Del Dotto sought ADL's assistance, ADL requested that the firm of Sonnenschein, Nath & Rosenthal of Chicago represent the Del Dottos on a pro bono basis. When the suit was filed, the Del Dottos were granted injunctive relief enjoining the Olsens from continuing to engage in their harassing and intimidating conduct. The case came to trial in March on the issues of liability and damages, and included charges under Illinois' Ethnic Intimidation Statute, as well as charges alleging assault, nuisance, and intentional infliction of emotional distress. The jury returned verdicts totalling \$1.1 million against Neil Olsen and \$700,000 against Lucielle Olsen. Although a substantial part of this judgment will probably never be collected, it sends a clear message that illegal harass-

ment on the basis of religion cannot and will not be tolerated.

Court Challenges

Several state hate crimes statutes are being challenged in the courts by defendants convicted under the statutes. Generally, the grounds for these challenges are that a statute is: (1) unconstitutionally vague because it does not give a person of ordinary intelligence fair warning as to what conduct is prohibited and encourages arbitrary and discriminatory enforcement, and/or (2) overbroad because it infringes on constitutionally protected First Amendment activity. The United States Supreme Court will consider the constitutionality of hate crimes laws for the first time in the fall of 1991 in *R.A.V. v. St. Paul*, a case discussed in greater detail below.

The following are examples of completed and pending litigation in which state hate crimes statutes have been challenged:

California

In *Mearra S. v. The Superior Court of the State of California In and For the City and County of San Francisco*, petitioner challenged the constitutionality of California's hate crimes statutes which prohibit interference with the exercise of civil rights and enhance punishment for misdemeanors motivated by bigotry. In April of 1991 the Court of Appeal denied relief to the juvenile petitioner, who was also charged with four separate counts of assault and battery. The court ruled that the statutes are not unconstitutionally vague, and are not overbroad since they only criminalize speech which is not protected by the First Amendment.

Washington, D.C.

In *United States of America v. David Schmugge*, the defendant has challenged the District of Columbia's Bias-Related Crimes Act as unconstitutionally void for vagueness. A grand jury indicted two Virginia youths, David Schmugge, 16, and

John Bertrand, 17, for allegedly attempting to kill two gay men. The indictment invoked the hate crimes statute by stating that in committing these criminal acts against victims Mark Weinress and Tom Dunegan, the youths demonstrated their bias based on "actual or perceived sexual orientation." Under the hate crimes act the youths face the enhanced penalty of a longer prison sentence. Also, the act allows the victims of hate-motivated crimes to file civil suits.

Florida

In *State v. Bryan Richards*, defendant is challenging Florida's hate crime statute, in the Third District Court of Appeal in Miami, based in part on the constitutionality of the statute. Defendant was convicted of battery (a first degree misdemeanor) and aggravated battery (a second degree felony) against two black men. The penalties were enhanced under Florida's Hate Crimes Act, which punishes offenders who commit misdemeanors and/or felonies which are motivated by racial, religious or ethnic hatred as though the offenses were one degree greater. ADL is filing an *amicus curiae* brief in support of the Attorney General's position and the Florida Hate Crimes Act.

Another case of first impression under the Florida Hate Crimes Act is pending in Broward County. A lawsuit has been filed by a black individual, Vincent Allen, who is charging an Indian store-owner with assault, battery, false arrest, false imprisonment and violation of the Hate Crimes Act in each instance. The issue is whether the plaintiff can proceed with a civil action for treble damages (including attorneys fees and court costs) without either filing charges with the prosecutors office or obtaining a precedent criminal conviction. Section 2 of the Act provides that "[a] person or organization which establishes by clear and convincing evidence that it has been coerced, intimidated, or threatened in violation of this section shall have a civil cause of action for treble damages, an injunction, or any

other appropriate relief in law or in equity..." Mr. Allen is seeking damages to compensate for the "mental anguish, humiliation, embarrassment, grief [and] inconvenience" which he has suffered and continues to suffer.

Georgia

In *State v. Shade Miller, Jr.* the Georgia Supreme Court issued a 6-1 decision upholding the state's anti-mask law. The Ku Klux Klan challenged the statute claiming that it was too broad, too vague and impermissibly limited the Klan's First Amendment rights of free expression. The statute, enacted by the Georgia General Assembly in 1959, prohibits the wearing of masks only when used to conceal the identity of persons who threaten, intimidate or commit violence. Exemptions are explicitly provided for children's and holiday costumes, theatrical performances, and for occupational safety considerations. Nonetheless, a Gwinnett County Court ruled in favor of the Klan. ADL, the National Association for the Advancement of Colored People and the American Hellenic Educational Progressive Association filed an *amicus curiae* brief with the Georgia Supreme Court arguing that there was no freedom of speech involved in this case because the mask, when worn as part of the Klan regalia, conveys no separate message — the message of racism and hatred is already conveyed by the robe and the hood which are not prohibited. Rather, the brief contended that the purpose of the mask in this context is to threaten and conceal the identity of the wearer in order to avoid prosecution.

Minnesota

In the fall of 1991 the United States Supreme Court will consider the constitutionality of hate crimes statutes for the first time in *R.A.V. v. St. Paul*. Robert A. Viktora, a teen-age boy, burned a cross in the enclosed yard of the only black family in a neighborhood, in the middle of the night. He was charged with a misdemeanor

for violating a St. Paul ordinance which prohibits the display of symbols, objects or writings designed to arouse "anger, alarm or resentment in others on the basis of race, color, creed, religion, or gender." The ordinance is not based on ADL's model, and as drafted it was constitutionally problematic. Defendant was convicted and challenged the ordinance on several grounds. Ultimately, the Minnesota Supreme Court ruled that the ordinance did not violate the First Amendment, interpreting it to prohibit only "fighting words" or conduct which threatens to incite "imminent lawless action" — categories of speech which are not constitutionally protected.

ADL, which filed an *amicus curiae* brief before the Minnesota Supreme Court, has also filed a brief with the Supreme Court urging that the St. Paul ordinance as construed by the Minnesota Supreme Court be upheld. The brief states that the ordinance is an example of the growing number of hate crimes statutes which advance clear and compelling public policy. The brief contends that the context in which symbols are displayed is critical, and that when symbols are used in a threatening and assaultive manner, as a method of a bias-motivated personal attack, such "expression" should not be afforded First Amendment protection. The brief maintains that the St. Paul ordinance is not overbroad or vague as construed by the Minnesota Supreme Court, since it prohibits only conduct which is not constitutionally protected. The brief distinguishes flag burning, which is a public expression of offensive ideas, from this type of cross burning, which is hate-motivated expressive conduct targeted at a specific individual.

Ohio

In Ohio, two courts of appeals have arrived at different conclusions regarding the constitutionality of Ohio's ethnic intimidation law. The Ohio statute, which went into effect in 1987, heightens the offenses of menacing, aggravated menac-

ing, criminal damaging or endangering, and telephone harassment by one degree if they are committed "by reason of race, color, religion or national origin of another person or group of persons."

In December of 1990 in *State of Ohio v. David Wygant*, the court of appeals for Delaware County upheld the constitutionality of Ohio's ethnic intimidation law, and defendant's conviction, in a 2-1 ruling. The case concerned a 53-year-old man found guilty of threatening a black couple with racial slurs. The court found that defendant's attack on the constitutionality of Ohio's ethnic intimidation statute on grounds of vagueness, overbreadth and equal protection lacked merit. The decision is on appeal to the Ohio Supreme Court.

In *State of Ohio v. Clancy Van Gundy*, the court of appeals for Franklin County ruled in April of 1991 that the ethnic intimidation statute is unconstitutionally void for vagueness under the Due Process Clause of the Fourteenth Amendment, and violates the First Amendment right to "free speech and conduct" because it is overbroad, in a 3-0 ruling. The court stated that "[w]hat the ethnic intimidation statute is punishing by enhancement of the penalty for the listed criminal offenses is the spoken or written word or expression thereof by conduct." The court of appeals upheld the lower court ruling throwing out ethnic intimidation charges against seven white men, ages 18 to 20, who were accused of harassing seven black teenagers. The government is appealing the decision to the Ohio Supreme Court and ADL, which filed an *amicus curiae* brief with the court, will file another brief on the appeal.

Vermont

In a decision handed down in April of 1991, Vermont's Hate Crimes Act was upheld as constitutional. In *State of Vermont v. Dominic Ladue*, the law was upheld by a district court against a challenge by defendant based on freedom of expression and void-for-vagueness grounds.

Defendant was charged with assault and battery and malicious motivation based on the victim's actual or perceived sexual orientation. Vermont's hate crimes law enhances the penalties for crimes "whose conduct is maliciously motivated by the victim's actual or perceived race, color, religion, national origin, sex, ancestry, age, service in the armed forces of the United States, handicap...or sexual orientation..." The court ruled that the statute as applied only regulates criminal conduct motivated by hatred, not speech. The court concluded that even if the statute did interfere with First Amendment rights, the intrusion was minimal and justified by the state's interest in passing such legislation. The decision is being appealed to the Vermont Supreme Court.

Virginia

In April of 1991 the chief judge of Fairfax County Family Court ruled that Virginia's cross burning statute is unconstitutional because it is overbroad and abridges the First Amendment guarantee of free speech. The court dismissed the case against a 16-year-old who was charged with burning a cross at Fairfax High School. The defendant's attorney contended that cross burning, like flag burning, is protected expressive conduct, while county prosecutors defended the statute as limiting expressions of intimidation, not free speech. According to Virginia's statute, any person who goes onto the property of another person or on public property, and burns a cross with the intent to intimidate another person, is guilty of a felony. The hearing was closed to the public, affected only one case, and there will be no appeal.

In June of 1991 the Court of Appeals of Virginia upheld the constitutionality of the Virginia Anti-Mask Law. In *Buddy Mercier Hernandez v. Commonwealth of Virginia*, a member of the Ku Klux Klan was charged with wearing a mask covering his entire face except for his eyes (he was also wearing a robe and a hood), in violation of the Virginia statute which

prohibits any person over the age of sixteen from wearing a mask in public which covers a substantial part of the face "so as to conceal the identity of the wearer." The court rejected defendant's arguments that the statute is unconstitutionally overbroad, and impermissibly impedes constitutionally protected expression.

Washington

In July of 1991, Judge Patricia Aitken of the King County Superior Court upheld, with one exception, the constitutionality of Washington's Malicious Harassment Law. The law, passed in 1981, prohibits threats and intimidation due to race, religion, ethnic heritage or handicap. Defendants in *State of Washington v. David Talley and Brian Coles*, who were charged with cross burnings, claimed that the statute violated their First Amendment rights, was overbroad, vague, infringed upon their religious freedom, violated equal protection rights, and constituted cruel and unusual punishment.

The Seattle judge struck down one part of the hate crimes statute, ruling that an outright ban on racially motivated cross burning without regard to the surrounding circumstances violated First Amendment freedom of speech rights. She determined that prosecutors could only bring charges against a cross burner if the perpetrator's action was accompanied by bias-motivated threats or implied threats directed towards the victim which would cause the victim to be placed in fear of harm. On this basis, the judge dismissed six counts of malicious harassment charges against a man who allegedly harassed a racially mixed couple by burning a cross across the street from a home the couple intended to purchase. The state is appealing this decision. The judge let charges stand in an unrelated incident involving several teenagers who burned a cross in the yard of a black family, asserting that the state had shown an implied threat against a black family in that

instance.

Subsequently, in September 1991 King County Superior Court Judge Marsha Pechman ruled that Washington's Malicious Harassment Law is unconstitutionally broad and infringes upon free speech rights. The ruling was handed down in a juvenile court case involving white youths accused of burning an 8-foot-tall cross in the yard of a black family. According to news reports, prosecutors are expected to appeal Judge Pechman's decision.

Wisconsin

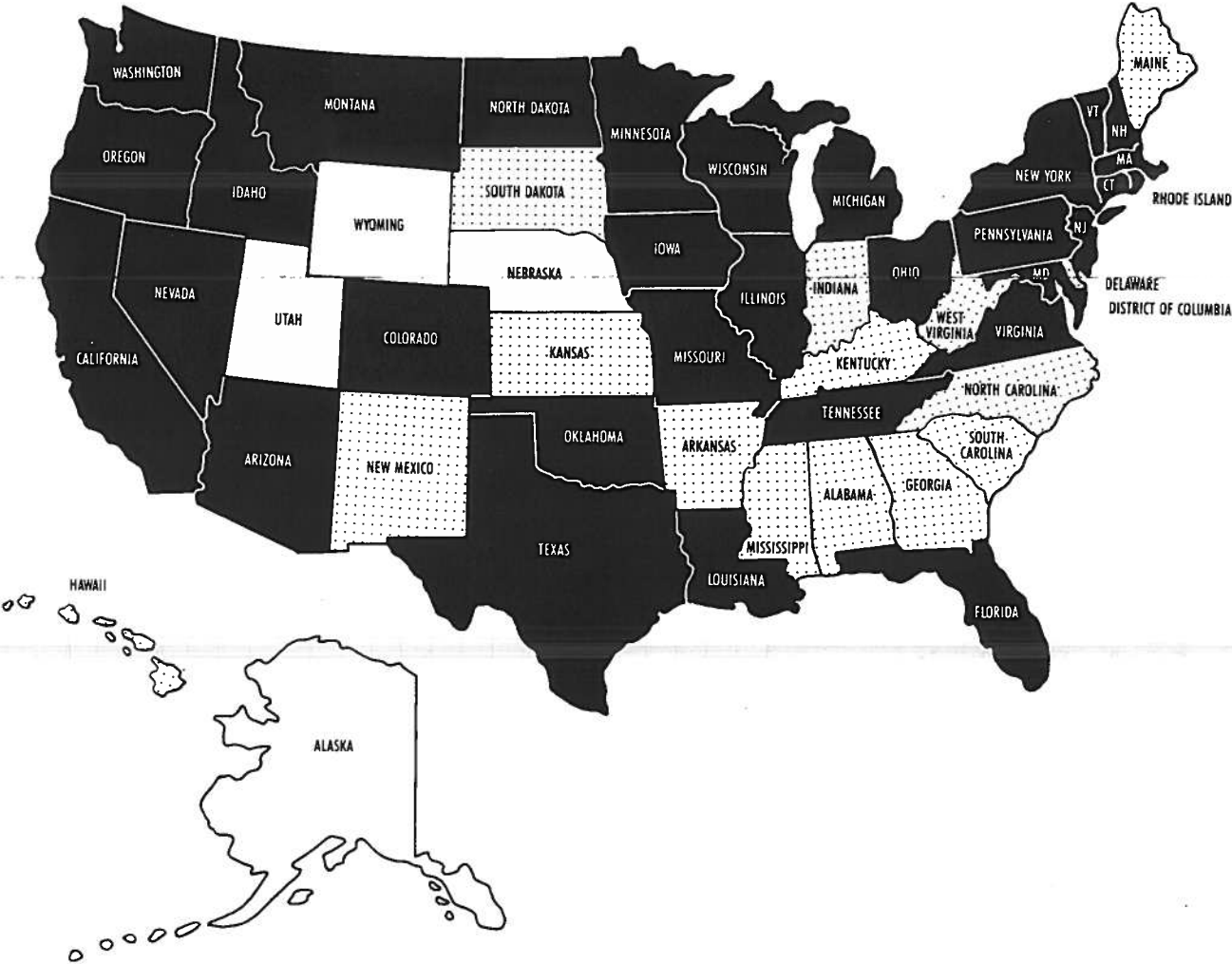
In June of 1991 the Wisconsin Court of Appeals upheld the constitutionality of the Wisconsin hate crimes statute in *State of Wisconsin v. Todd Mitchell*. The statute calls for penalty enhancement for certain enumerated offenses when a perpetrator "intentionally selects the person against whom the crime...is committed...because of the race, religion, color, disability, sexual orientation, national origin or ancestry of that person..." Defendant and other young black men attacked a fourteen-year-old white male who was severely injured. Defendant was convicted of aggravated battery and theft, and the jury separately found that Mitchell intentionally selected the battery victim because of the victim's race. The court rejected defendant's overbreadth and vagueness challenges to the statute. The court emphasized that the law punishes conduct, not speech or beliefs.

VI. Conclusion

Since the Anti-Defamation League was founded in 1913 in response to an especially vicious and brutal hate crime — the lynching of Leo Frank — responding to bias-motivated violence and vandalism has always been one of our highest priorities.

Hate crimes laws are one vitally important means of counteracting such poisonous acts. As Attorney General Dick Thornburgh stated in urging prompt implementation of the federal Hate Crime Statistics Act: “Morally, we all recognize hate as an evil, and we have long struggled as a society to understand hate as a sickness. But legally we must increasingly confront hate as a vicious breaking of the law.”

Appendix A



-  STATES WITH HATE CRIMES LAWS BASED ON OR SIMILAR TO ADL MODEL
-  STATES WITH OTHER FORMS OF HATE CRIMES LAWS
-  STATES WITH NO HATE CRIMES LAWS

Appendix B

State Hate Crimes Statutory Provisions

	AL	AK	AZ	AR	CA	CO	CT	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO
Bias-Motivated Violence and Intimidation					✓	✓	✓		✓			✓	✓		✓					✓	✓	✓	✓	✓	✓
Civil Action					✓	✓	✓		✓			✓	✓		✓						✓	✓			✓
Criminal Penalty					✓	✓	✓		✓			✓	✓		✓						✓	✓	✓	✓	✓
Race, Religion, Ethnicity					✓	✓	✓		✓			✓	✓		✓						✓	✓	✓	✓	✓
Sexual Orientation					✓		✓		✓				✓		✓							✓		✓	
Gender					✓		✓								✓							✓	✓		
Other ¹					✓		✓						✓		✓										
Institutional Vandalism	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓		✓	✓	✓	✓	✓	✓			✓	✓
Cross Burning or Religious Symbol Burning					✓		✓		✓	✓		✓			✓						✓				
Interference with Religious Worship					✓				✓			✓									✓	✓	✓	✓	✓
Wearing of Masks, Hoods & Disguises							✓		✓	✓			✓					✓				✓	✓		
Data Collection²			✓		✓		✓		✓			✓	✓		✓						✓	✓		✓	
One or More Sections Based on/ Similar to ADL Model			✓		✓	✓	✓		✓			✓	✓		✓			✓		✓	✓	✓	✓	✓	✓

¹ "Other" includes mental or physical disability or handicap, (CA, CT, IL, IA, OK, WA, WV, WI), political affiliation (CA, IA, WV) and age (CA, VT).

² States with data collection statutes including sexual orientation are CA, CT, FL, MD, MA, MN, OR.

	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
Bias-Motivated Violence and Intimidation	✓		✓	✓	✓		✓		✓	✓	✓	✓	✓	✓				✓		✓	✓	✓	✓	✓	✓
Civil Action										✓	✓	✓		✓						✓	✓	✓		✓	
Criminal Penalty	✓		✓	✓	✓		✓		✓	✓	✓	✓	✓	✓				✓		✓		✓	✓	✓	✓
Race, Religion, Ethnicity	✓		✓	✓	✓		✓		✓	✓	✓	✓	✓	✓				✓		✓	✓	✓	✓	✓	✓
Sexual Orientation			✓	✓	✓						✓									✓				✓	
Gender				✓			✓		✓											✓				✓	
Other											✓									✓		✓	✓	✓	✓
Institutional Vandalism	✓		✓		✓	✓		✓		✓	✓	✓	✓	✓				✓	✓			✓	✓	✓	✓
Cross Burning or Religious Symbol Burning	✓				✓			✓							✓	✓		✓		✓	✓	✓			
Interference with Religious Worship			✓			✓	✓	✓			✓				✓	✓	✓						✓		
Wearing of Masks, Hoods & Disguises								✓			✓	✓			✓						✓		✓	✓	✓
Data Collection					✓ ³						✓	✓	✓	✓					✓			✓			
One or More Sections Based On/ Similar to ADL Models	✓		✓	✓	✓		✓		✓	✓	✓	✓	✓	✓				✓	✓	✓	✓	✓	✓	✓	✓

³ Executive Directive from N.J. Att. Gen.

* The **District of Columbia** has laws regarding bias-motivated violence and intimidation including provisions for civil action and criminal penalties (sexual orientation is included); institutional vandalism; cross burning; interference with religious worship; and data collection; and its legislation is similar to the ADL model.

Appendix C

Hate Crimes Statutes and Related Provisions Nationwide

FEDERAL

Federal Religious Vandalism Act, 18
U.S.C.A. 247 (West Supp. 1989)

Federal Hate Crime Statistics Act,
Pub.L.No. 101-275 (1990)

STATE

Alabama

Ala. Code 13A-11-12 (1988)

Arizona

Ariz. Rev. Stat. Ann. 13-1504, -1604
(West 1989)

Arkansas

Ark. Stat. Ann. 5-71-207, -215 (1987)

California

Cal. Penal Code 190.2(a)(16) (West Supp.
1991)
Cal. Penal Code 302 (West 1988 & Supp.
1991)
Cal. Penal Code 422.6-.7 (West 1988)
Cal. Penal Code 594, 594.3 (West 1988)
Cal. Penal Code 1170.8 (West 1985)
Cal. Penal Code 11410-11413 (West 1988
& Supp. 1991)
Cal. Civ. Code 51.7 (West 1982 & Supp.
1988)

Colorado

Colo. Rev. Stat. 18-9-113, -121 (West
1990 & Supp. 1991)

Connecticut

Conn. Gen. Stat. Ann. 46a-58 (West 1986)
Conn. Gen. Stat. Ann. 52-251b (West
Supp. 1991)
Conn. Gen. Stat. Ann. 53-37a (West 1986)
Conn. Gen. Stat. Ann. 53a-40a, -181b
(West 1986 & Supp. 1991)
Conn. Gen. Stat. Ann. 29-7m (West 1988)

Delaware

De. Code Ann. tit. 11, 1331 (1987)

Florida

Fla. Stat. Ann. 806.13 (West 1976 &
Supp. 1991)
Fla. Stat. Ann. 871.01-.03 (West 1975 &
Supp. 1991)
Fla. Stat. Ann. 876.17-.19 (West 1976 &
Supp. 1991)

Fla. Stat. Ann. 775.0845, .085 (West 1976
& Supp. 1991)

Fla. Stat. Ann. 877.19 (West 1976 &
Supp. 1991)

Georgia

Ga. Code Ann. 16-7-26 (Harrison 1982)
Ga. Code Ann. 16-11-37 to -38 (1988)

Hawaii

Haw. Rev. Stat. 711-1107 (1988)

Idaho

Idaho Code 18-6201, -7901 to -7904 (1987)
Idaho Code 67-2905 (1989)

Illinois

Ill. Ann. Stat. ch. 38, 12-2(2), 7.1 (Smith-
Hurd Supp. 1991)
Ill. Ann. Stat. ch. 38, 21-1.2 (Smith-
Hurd Supp. 1991)
Ill. Ann. Stat. ch. 38, 1005-5-3.2 (Smith-
Hurd 1982 Supp. 1991)
Ill. Ann. Stat. ch. 127, 55a (Smith-Hurd
Supp. 1991)

Indiana

Ind. Code Ann. 35-43-1-2 (West 1986 &
Supp. 1987)

Iowa

Iowa Code Ann. 729.5 (West 1991 &
Supp. 1991)

Kansas

Kan. Stat. Ann. 21-4111 (1988)

Kentucky

Ky. Rev. Stat. Ann 525.110 (Michie 1990)

Louisiana

La. Rev. Stat. Ann. 9:2799.2 (West 1991)
La. Rev. Stat. Ann. 14:225 (West 1986)
La. Rev. Stat. Ann. 14:313 (West 1991)

Maine

Me. Rev. Stat. Ann. tit. 17-A, 507 (West
1983 & Supp. 1990)
Me. Rev. Stat. Ann. tit. 17-A, 507-A
(West Supp. 1990)

Maryland

Md. Ann. Code art. 88B, 9-10 (1985 &
Supp. 1990)
Md. Ann. Code art. 27, 10A (1988)
Md. Ann. Code art. 27, 470A (1988 &
Supp. 1990)

Massachusetts

Mass. Ann. Laws ch. 6, 116B (Law Co-op. Supp. 1991)
 Mass. Ann. Laws ch. 22 16-19 (Law Co-op. Supp. 1991)
 Mass. Ann. Laws ch. 265, 39 (Law Co-op. Supp. 1991)
 Mass. Ann. Laws ch. 266, 98 (Law Co-op. 1980)
 Mass. Ann. Laws ch. 266, 127A (Law Co-op. Supp. 1991)
 Mass. Ann. Laws ch. 266, 128B (Law Co-op. Supp. 1991)
 Mass. Ann. Laws ch. 272, 38 (Law Co-op. 1980)

Michigan

Mich. Comp. Laws Ann. 752.525 (West 1991)
 Mich. Comp. Laws Ann. 750.147b, .217, .396 (West 1991)

Minnesota

Minn. Stat. Ann. 609.2231, .28, .5531, .595, .605, .735 .795 (West 1987 & Supp. 1991)

Mississippi

Miss. Code Ann. 97-17-39, -35-17 (1973 & Supp. 1990)

Missouri

Mo. Ann. Stat. 79.450 (Vernon 1987)
 Mo. Ann. Stat. 574.085, .090, .093 (Vernon Supp. 1991)

Montana

Mont. Code Ann. 45-5-221 to -222 (1989)

Nevada

Nev. Rev. Stat. Ann. 83.130 (Michie 1991)
 Nev. Rev. Stat. Ann. 201.270 (Michie 1986)
 Nev. Rev. Stat. Ann. 206.125 (Michie Supp. 1989)
 Nev. Rev. Stat. Ann. 207.185 (Michie Supp. 1989)

New Hampshire

N.H. Rev. Stat. Ann. 651.6 (1986 & Supp. 1990)

New Jersey

N.J. Stat. Ann. 2C:12-1 (West 1982 & Supp. 1991)

N.J. Stat. Ann. 2C:33-4, -9 to -11 (West 1982 & Supp. 1991)

N.J. Stat. Ann. 2C:43-7 (West 1982 & Supp. 1991)

N.J. Stat. Ann. 2C:44-3 (West 1982 & Supp. 1991)

New Mexico

N.M. Stat. Ann. 30-13-1, -15-4 (1984)

New York

N.Y. Civil Rights 40-c to -d (McKinney Supp. 1991)

N.Y. Penal Law 240.21, .30, .31 (McKinney 1989)

N.Y. Penal Law 155.30(9) (McKinney Supp. 1991)

N.Y. Penal Law 165.45(6) (McKinney Supp. 1991)

North Carolina

N.C. Gen. Stat. 14-12.12 to -12.15, -144, -199, -200 (1986)

North Dakota

N.D. Cent. Code 12.1-14-04 to -05 (1985 & Supp. 1989)

Ohio

Ohio Rev. Code Ann. 2909.05 (Baldwin 1990)

Ohio Rev. Code Ann. 2927.11-12 (Baldwin (1990)

Oklahoma

Okla. Stat. Ann. tit. 21, 850 (West 1991)

Okla. Stat. Ann. tit. 21, 914-915 (West 1983)

Okla. Stat. Ann. tit. 21, 1765 (West 1983)

Okla. Stat. Ann. tit. 21, 1301-1303 (West 1983)

Oregon

Or. Rev. Stat. 30.190, .200 (1988)

Or. Rev. Stat. 166.075, .155, .165 (1990)

Or. Rev. Stat. 181.550 (1991)

Pennsylvania

18 Pa. Cons. Stat. Ann. 2710 (Purdon 1983)

18 Pa. Cons. Stat. Ann. 3307 (Purdon 1983 & Supp. 1991)

18 Pa. Cons. Stat. Ann. 5509 (Purdon 1983 & Supp. 1991)

71 Pa. Cons. Stat. Ann. 250(i) (Purdon

1990)
71 Pa. Cons. Stat. Ann. 251 (Purdon
1990)

Rhode Island

R.I. Gen. Laws 9-1-35 (1985)
R.I. Gen. Laws 11-11-1, -42-3, -44-31,
-53-1 to -2 (1981 & Supp. 1990)
R.I. Gen. Laws. 42-28-46 (1988)

South Carolina

S.C. Code Ann. 16-7-110, -7-120, -17-520,
(Law Co-op. 1985)

South Dakota

S.D. Codified Laws Ann. 22-27-1 (1988)

Tennessee

Tenn. Code Ann. 39-2-710 (1982)
Tenn. Code Ann. 39-17-309, -311, -313
(Supp. 1989)

Texas

Tex. Penal Code Ann. 42.09 (Vernon
1974 & Supp. 1990)
Tex. Penal Code Ann. 28.03 (Vernon
Supp. 1990)

Vermont

Vt. Stat. Ann. tit. 13, 1454-1457 (Supp.
1990)

Virginia

Va. Code Ann. 8.01-42.1 (1984 & Supp.
1990)
Va. Code Ann. 18.2-127, -138, -415, -422,
-423, -423.1 (1988 & Supp. 1990)
Va. Code Ann. 52-8.5 (1988)

Washington

Wash. Rev. Code Ann. 9.61.160, .180
(West 1988)
Wash. Rev. Code Ann. 9A.36.080 (West
1988 & Supp. 1991)

West Virginia

W. Va. Code 61-6-13, -21, -22 (1989)

Wisconsin

Wis. Stat. Ann. 895.75 (West 1983 &
Supp. 1990)
Wis. Stat. Ann. 939.641, .645 (West 1982
& Supp. 1990)
Wis. Stat. Ann. 943.012 (West 1982 &
Supp. 1990)

District of Columbia

D.C. Code Ann. 22-1114 (1989)
D.C. Code Ann. 22-3112.2 to -3112.4
(1989)
D.C. Code Ann. 4001-4004 (Supp. 1991)

Appendix D

One Hundred First Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday, the twenty-third day of January, one thousand nine hundred and ninety

An Act

To provide for the acquisition and publication of data about crimes that manifest prejudice based on certain group characteristics.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Hate Crime Statistics Act".

(b)(1) Under the authority of section 534 of title 28, United States Code, the Attorney General shall acquire data, for the calendar year 1990 and each of the succeeding 4 calendar years, about crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, including where appropriate the crimes of murder, non-negligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property.

(2) The Attorney General shall establish guidelines for the collection of such data including the necessary evidence and criteria that must be present for a finding of manifest prejudice and procedures for carrying out the purposes of this section.

(3) Nothing in this section creates a cause of action or a right to bring an action, including an action based on discrimination due to sexual orientation. As used in this section, the term "sexual orientation" means consensual homosexuality or heterosexuality. This subsection does not limit any existing cause of action or right to bring an action, including any action under the Administrative Procedure Act or the All Writs Act.

(4) Data acquired under this section shall be used only for research or statistical purposes and may not contain any information that may reveal the identity of an individual victim of a crime.

(5) The Attorney General shall publish an annual summary of the data acquired under this section.

(c) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section through fiscal year 1994.

Sec. 2. (a) Congress finds that—

(1) the American family life is the foundation of American Society,

(2) Federal policy should encourage the well-being, financial security, and health of the American family,

(3) schools should not de-emphasize the critical value of American family life.

(b) Nothing in this Act shall be construed, nor shall any funds appropriated to carry out the purpose of the Act be used, to promote or encourage homosexuality.

Thomas S. Foley
Speaker of the House of Representatives.

Robert C. Byrd

~~Vice President of the United States and~~
President of the Senate. *pro tempore*

APPROVED

APR 23 1990

Clyde B. Burdick

Appendix E

ADL Resources on Hate Crimes

1990 Audit of Anti-Semitic Incidents, Anti-Defamation League of B'nai B'rith, January, 1991

Hate Crime: A Training Video For Police Officers, Anti-Defamation League of B'nai B'rith, 1990. 17-minute training video and 24-page Discussion Manual.

Hate Crimes Statutes: A Response to Anti-Semitism, Vandalism and Violent Bigotry, Anti-Defamation League of B'nai B'rith, Spring/Summer 1988 and 1990 Supplement.

Hate Crime: Policies and Procedures for Law Enforcement Agencies, Anti-Defamation League of B'nai B'rith, 1988.

Hate Groups in America; A Record of Bigotry and Violence, Anti-Defamation League of B'nai B'rith, 1988.

Law Enforcement Bulletin, Anti-Defamation League of B'nai B'rith: Periodic Publication.

Combatting Bigotry on Campus, Anti-Defamation League of B'nai B'rith, 1989.

ADL Conference on Campus Prejudice, Anti-Defamation League of B'nai B'rith, 1990.

Security for Community Institutions, Anti-Defamation League of B'nai B'rith, 1986. Handbook and 1991 Pamphlet on Security Procedures.

Anti-Defamation League of B'nai B'rith

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ATLANTA (Southeast) 3384 Peachtree Road, NE (Suite 660), Atlanta, GA 30326	(404) 262-3470
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NEW YORK STATE 2430 21st Street, Troy, NY 12180	(518) 432-1046
OMAHA (Plains States) 333 South 132 Street, Omaha, NE 68154	(402) 333-1303
ORANGE COUNTY 2700 North Main Street (Suite 500), Santa Ana, CA 92701	(714) 973-4733
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SAN DIEGO 7851 Mission Center Court (Suite 320), San Diego, CA 92108	(619) 293-3770
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KILLING



ANTHONY

The two men didn't know anything about him.
They thought he was gay. That was enough.

By Lisa DePaulo

M

ERRY CHRISTMAS!"

Anthony Milano looked across the bar at the man who had shouted to him, a big bearded guy in a motorcycle jacket.

"Merry Christmas," he replied softly.

"What did ya say?" bellowed the big guy.

"I said, 'Merry Christmas.'"

"If you mean that, you'll come over here and buy us a drink."

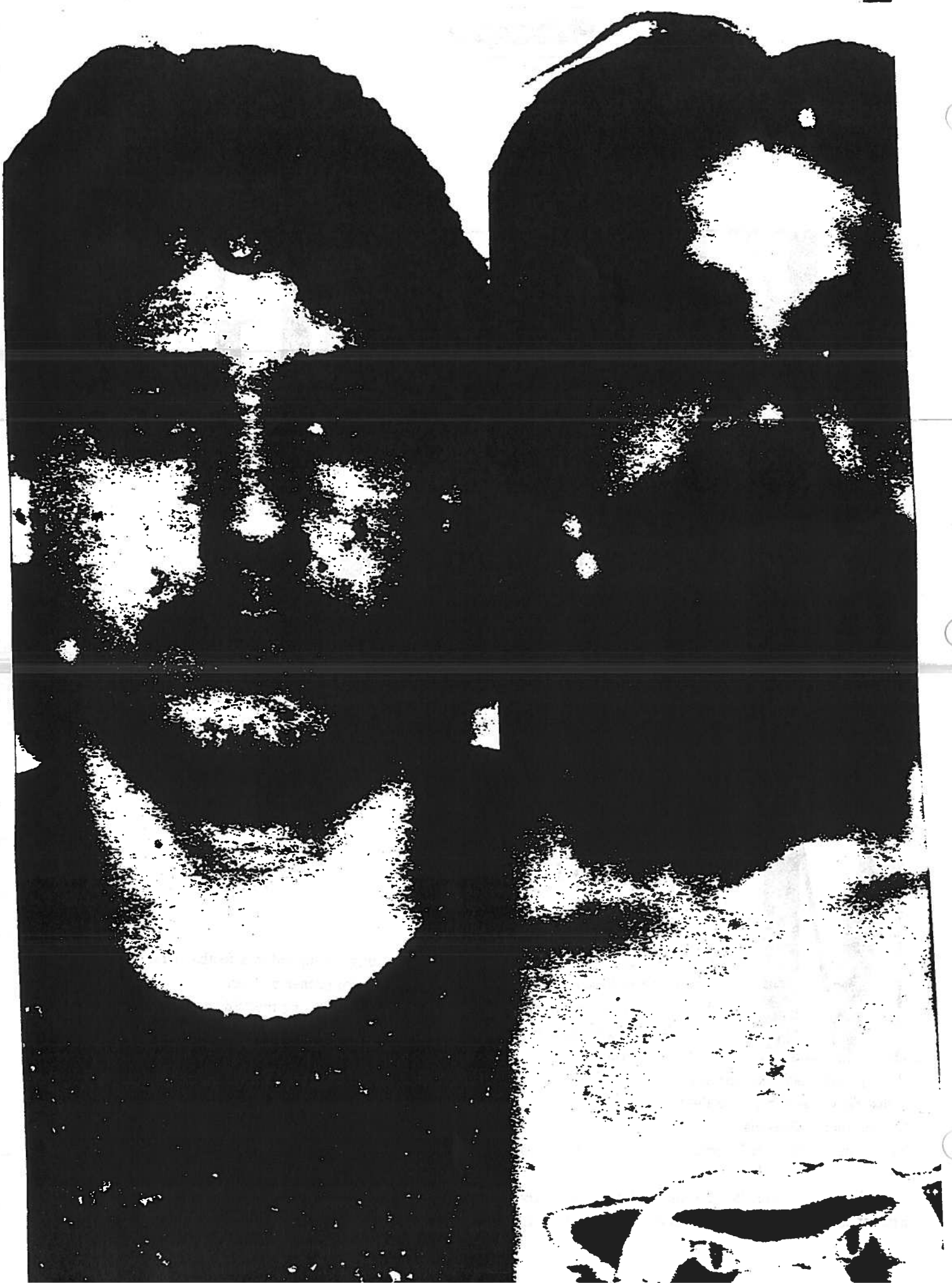
Anthony didn't answer, but the man with the beard kept staring at him, raising his glass, nudging the guy he was

sitting with, a scruffy-looking kid in a football jersey. They were sharing their third pitcher of beer.

Behind them on the wall hung the "Edgely Inn Motto: He who drinks and drinks with grace is always welcome in this place. He who drinks more than his share isn't welcome anywhere."

Anthony Milano had been at the Edgely Inn, a tiny, smoke-filled joint on Bristol's Route 13, for about half an hour. He ate a cheesesteak, drank a beer.

He'd spent the earlier part of that Monday night, December 14, 1987, at a Christian prayer group meeting. He got home at 11:15, dropped his prayer notes on the desk in his bed-





**FROM LEFT:
Frank Chester,
Richard Laird,
and the victim,
Anthony Milano.**

room, put on his black leather jacket and told his mother he was going out for a while. Before he left, he went to the door of his parents' bedroom, where his father, Vito, was already in bed, and said, "Goodnight, Daddy." Then he walked out of the house into his black Chevy Nova and a cold December rain. "Be careful," said his mother.

Anthony glanced uneasily around the bar. The man in the biker jacket was still eyeballing him. It was almost 1 a.m. Anthony finished his beer, stood up, grabbed his black leather jacket, then walked across the bar and sat down with the big bearded man, Richard Laird, and his pal, Frank Chester.

"I'll have a shot of vodka," said Laird.

"Jack Daniels," said Chester.

The bartender looked at Anthony Milano.

"A Sambuca," said Anthony.

Chester and Laird exchanged looks.

"That's licorice," said Chester.

"My family always toasts with it on the holidays," said Anthony.

When the bartender returned for their money, Chester and Laird ignored him. And Anthony reached into his pocket and paid for their drinks.

Several minutes later, he got up to go to the men's room. As he walked to the door, Laird turned to Chester. "I hate fuckin' faggots," he said, loudly enough for everybody to hear.

When Anthony returned from the men's room, he sat with Chester and Laird again.

"Let's do another shot," said Laird, pouring him a beer from their pitcher.

Anthony shook his head. "I don't want another shot," he said.

"Set 'em up!" bellowed Laird.

The bartender looked hesitantly at Anthony.

"I said, 'Set 'em up!'"

The bartender filled the three shot glasses and waited for Laird's money.

Laird just glared at him. He had mastered that look, that intimidating look, narrowing his eyes and aiming them at his target, never moving, never blinking.

"You can take it out of mine," said Anthony.

At 1:30 a.m., three Bristol Township cops walked in. A car had just been stolen from an auto lot down the street, and it was parked in front of the bar. There were only four customers still inside, and three of them sat together. The cops asked to see their I.D.'s.

"Fuck you," said Rick Laird, with that look in his eyes again.

The cops moved one step closer.

"Why don't you go do your fuckin' job and leave us alone," said Laird.

"Yo, Rick," said Frank Chester. "Relax, dude. They're just doin' their job."

Laird backed down, broke the gaze. "We're just havin' a couple beers," he said.

Meanwhile, Anthony Milano had quietly opened his wallet to

"Y
ou are
gonna give us
a ride home,
aren't you?" he
said. Anthony
didn't answer.



show them his I.D. The cops studied it. He looked so young, so different from the other two, they thought he might be underage. They never did see Chester's or Laird's I.D., but they took down their names and addresses, and left after the bartender assured them that the two had been in the bar for hours.

On the way out, one of the cops decided to remain in the lot of the Edgely Inn in case the thief returned. The other two drove off, shaking their heads at the thought of that clean-cut kid in the pin-striped jeans and button-down shirt sitting with the likes of Chester and Laird.

"Talk about a rose between two thorns," said one.

Back in the bar, Laird turned to Anthony. "You'll give us a ride home, right?"

Anthony didn't answer. He had just heard both of them tell the cops that they lived just across Route 13, at the Ambassador Arms apartments.

"You *are* gonna give us a ride, aren't you?" said Laird.

"We don't need a ride," said Chester. "We just live across the street."

"Why should we walk, Frank, when we can get a ride?" said Laird.

The bartender looked suspiciously at Laird and Chester, then started to refill the beer coolers. It was past last call; they'll be out of here soon, he thought. But still, this scene was starting to bug him. He liked this kid Tony; he'd only been in a couple of times, but each time he was quiet, minded his own business. Didn't shoot darts, play pool or get rowdy like the regulars. Just had a sandwich, drank a beer or two, tipped well, and left.

bartender's relief. Rick Laird apologized. "I'm sorry, man," he said, and he motioned for him to come over.

"Listen," he said. "I didn't mean to do that, but I'm just sick and tired of these people trying to infiltrate us."

The bartender knew Laird was referring to Anthony; he wondered if Anthony knew. He stood there, not sure what to do, and then a slow song started playing on the jukebox.

Laird turned to Chester. "Get up," he said. "I wanna dance."

Chester looked embarrassed, then stood next to Richard Laird. They started to slow dance, both of them laughing now, while Anthony Milano watched.

The bartender moved to the only corner in the bar where he couldn't be seen by Chester and Laird, and whispered to Anthony, "Come here." Anthony walked over.

"Tony, these guys are just lookin' to cause trouble," he said. "Get your stuff and get outta here now."

Anthony looked nervous. "I don't want any trouble," he said. "I'll just give them a ride."

"Just leave," said Phillips. "I'll make sure they stay here. You just leave."

Anthony stood there.

"Just *leave*," said Phillips.

Anthony turned around to reach for his jacket—and found himself eyeball to eyeball with Rick Laird.

"You ready to drive us home?" said Laird.

Chester picked up the six-pack they had bought at last call. Laird downed his beer, and the three of them walked out the door.

ANTHONY'S FATHER VITO MILANO WOKE AT 7 a.m., in time to open his barbershop. He dressed and quietly put the coffee on, careful not to wake his son.

Standing at the kitchen sink, he looked out the window. It had rained all night. Good thing he'd turned off the Christmas lights, he thought. Just that weekend he and Anthony had put the manger set on the lawn, strung the lights all around the house, put the new white bulbs in the trees out front . . .

Suddenly he shouted to his wife. "Rosa!"

"What's the matter?" asked Rose, rushing from the bedroom.

"The car is no here!"

"What do you mean?" cried Rose. Then she paused, quickly regaining her composure. Stay calm, she told herself: Vito had a heart condition. She checked her son's room; the door was locked.

"I'm sure his car broke down," she said. "Go to work."

"You call me when he wakes up," said Vito. "I'll help him go get the car."

"I'll call, I'll call," said Rose. "Now go to work, look how late it is."

But the minute the door shut, Rose began to worry. If he had car trouble, why didn't he call? Anthony always locked his bedroom door; that didn't mean he was in there. Could it be that he hadn't come home? Anthony *never* stayed out all night.

She pounded on his door. "Anthony! Wake up! Anthony! Are you in there?"

An hour later, after her daughter, Annamarie, rushed over to the house and climbed through his bedroom window, mother and daughter began dialing the emergency rooms, the police stations, the state troopers . . .

By late afternoon, Annamarie got in her car and went out looking for Anthony. "You stay here, in case he calls," she told her mother. Carrying a picture of her brother, she drove to all the places her mother told her to check: places like the 7-11 in Fairless Hills and the Pathmark in Fairless Hills, where he often stopped at night to pick up a snack. "Wasn't in last night, sorry," they kept telling her.



The Edgely Inn in Bristol Township: When the three men left the bar that night, they got into Anthony's black Chevy Nova and headed down Route 13.

Chester and Laird, on the other hand—especially Laird—were the kind of guys a bartender kept his eye on. Why, earlier that night, he'd come close to kicking Rick Laird the hell out. Not that the bartender, James Phillips Jr., was any tough guy. He was small and thin, about Anthony's size. He wished he'd had the guts to do something when Rick Laird started harassing a guy who was winning at the pool table. Laird kept calling him a pussy and a faggot, loudly announcing to the crowd that if this guy kept winning, he'd ram a pool stick up his ass and make a popsicle out of him. When the customer finally left, the bartender took a deep breath.

It's been one of those nights, he thought, bending over the beer case, when suddenly he heard a shot glass smash behind him on the floor.

He spun around, looked right at Richard Laird, and snapped, "What the *fuck* is your problem?"

There was a moment of tense silence, then, much to the



Before the crime: Richard Laird in the apartment he shared with his girlfriend, Barbara Anne, and her 9-year-old son.



The Milanos—Vito, Annamarie, Anthony and Rose—on Christmas Day, 1986. He was buried one year later, on December 22.



Frank Chester with his puppy, a few weeks before the crime. He had just turned 20 and moved into his own apartment.

Then she followed her own hunch, got on the Turnpike and headed for Trenton, to the gay bar that she knew Anthony frequented. She knew because she often went with him. She'd known for ten years that he was gay—and that he wished he weren't.

The bartender at the gay bar looked at Anthony's picture. "Sure. I know him, but he definitely wasn't in last night."

She raced back home. Her mother was sitting at the kitchen table, praying out loud.

"No one has seen him," said Annamarie.

"Where did you look?" asked Rose, trembling.

"Pathmark and 7-11," said her daughter.

ON THAT MONDAY MORNING, HOURS BEFORE HE'D WALK INTO the Edgely Inn, Anthony Milano decided to pack up his life. He was finally, at 26, ready to make the break, to move from his parents' house in Levittown, a one-story clapboard rancher known in these parts as a Levittowner, to an apartment in Center City. It was a move that Anthony Milano had dreamed of—and dreaded—for almost ten years.

One by one, he gathered his things, packed them in neat little boxes and piled them fastidiously on the shelves in his parents' shed. Everything was labeled in neat black marker: Stoneware dishes. Bric-a-brac. Demitasse set from Aunt Mary. Copies of *GQ* magazine. Telephone. Plant holders. Melitta coffeemaker. His treasured collection of disco records, arranged by the year. And cherubs, an entire box of his beloved cherubs.

Then he went into his bedroom, sorted through the drawers of his desk, and put all of his favorite pictures, his diploma from the Art Institute of Philadelphia, his ticket stubs, his high school awards, even his report cards, in a scrapbook bought specifically for this day.

When he was finished, he called his sister, Annamarie.

"I finally got all my memories together," he told her.

ON THAT SAME MONDAY MORNING, IN AN APARTMENT HALF A mile away, Richard Laird was making love to Barbara Anne Part. She was seven and a half months pregnant with his child; he had her name tattooed across his back.

He'd started courting Barbara Anne from a cell in Bucks County Prison two years earlier, when he was doing time for possession of methamphetamines and she was home raising an seven-year-old son. The fact that he was dating her sister Kim at the time didn't stop either one of them from carrying on a romance through a box marked Inmate Mail.

When he was released, Laird went straight to Barbara's mother's house, where both of the sisters were awaiting his return. He stood in the doorway, a big bearded guy in black boots and a motorcycle jacket, smoking a Kool. Then he strolled past Kim and put his arms around Barbara Anne. "I'm lookin' for a woman

Vito Milano

woke up at 7.

"Rosa!" he cried

to his wife.

"Anthony's car

is no here."

with a heart, baby, and you've got one," said Laird.

Today, almost two years later, 24-year-old Richard Laird woke up with his woman by his side. He rubbed her pregnant belly, complained that his shoulder hurt from swinging his hammer on the job, and decided to blow off work.

ON THAT MORNING IN ANOTHER APARTMENT, DOWN THE ROAD in Bristol, Frank Chester woke up scared. He'd been in a fight a couple of nights before, and though fighting was hardly unusual for Frank Chester, having the rumpers come back the next night and bang on his door with hockey sticks was.

He had just moved into his place—had finally, at 20, moved out of his mother's house. He had a decent job. And he had Colleen, his Bristol beauty, the hot blond shampoo girl at the beauty shop where his mother worked. From the first day he saw her leaning over the sink in the shop he knew he had to have her. He took her to her senior prom and she got his name tattooed on her ass.

But this morning Colleen wasn't speaking to him. They'd had a fight and she'd returned his engagement ring. He tried to call her, but she kept hanging up. He considered calling his mother, but she wasn't speaking to him either. And so he called his buddies, as he usually did in situations like these.

Eventually, his friend Gale Gardner—another pregnant girl whose boyfriend was in jail—came over to commiserate. He told her how depressed he was about Colleen. They sat around all afternoon, while Chester polished off a couple of six-packs of Bud. As it started to get dark, Frank began to get scared again—



Anthony's torched car: It was the fire that led police to the body, 30 feet into the woods. Whoever killed him had returned to the scene of the crime hoping to destroy the evidence.

jumping every time he heard a car door open and peeking through the windows to see if his enemies had come back. Chester was proud of his skills as a fighter: he often bragged about his training in karate and kick-boxing. Yet propped against the wall were a baseball bat and 12-gauge shotgun. Still worried, he picked up the phone and called up his closest relative. He knew if his cousin Barbara Anne came over, so would her boyfriend Rick Laird. And nobody messed with Rick Laird.

"CAR 2543 . . . RESPOND TO ASHBY AND BEAVER DAM FOR A VEHICLE fire . . . suspicious."

Officer Charles McGuigan was heading down Route 13 when the call came in over the radio. It was 11:15 on the night of Tuesday, December 15th, a night that was filled with the usual week-before-Christmas-in-Bristol stuff. Traffic violations, burglaries, guys beating up on their wives. There were a couple of those tonight. Happened every Christmas. It's what they meant

at the police academy when they said a Bristol Township cop would see more action in three years than a Philly cop saw in 15. There was something about that that made a young guy like McGuigan, with 27 months on the force, feel pretty damned important.

"2543 responding," said McGuigan into the mike.

He sped down the commercial strip, past the diners, the auto marts, the Christmas trees for sale, and turned into the dark narrow road behind Manny's Place, into the Venice-Ashby projects that bordered on the woods. Before him he could see a ball of flames. A fire on that road was like a beacon in the night.

He jumped out of the patrol car in time to take down the license plate number. He called it in to headquarters and his lieutenant radioed back.

"Owner is a Rose Milano," the lieutenant reported, reaching for a paper on his desk. "Lady reported her son missing this morning. Better open up the trunk."

McGuigan found nothing but a spare tire. As they towed the car away, he was told to finish his report and go back into service. At 1 a.m., his lieutenant called him into headquarters.

"Better go out to Rose Milano's, McGuigan. Tell her we found the car but not her son."

The cop felt uneasy. Surely Rose Milano would ask if they had checked the area. Would it be all right, he asked, if he looked around the woods first?

When he got back to the scene of the fire, another Bristol cop was there to meet him. They walked ten feet into the woods

and headed in different directions, shining their flashlights into the trees. Twenty feet later, Officer McGuigan screamed. "Oh, my God!"

His neck . . . is gone. McGuigan thought, as he stared at the dead boy lying under a tree. All he could see was a big red hole from the chin to the chest. McGuigan pushed the button on his radio, but couldn't move his lips. The boy's face was white, his left eye was wide open, a big jagged gash ran from his left ear to his chin.

The other cop grabbed the radio from McGuigan's hand. "Calling all captains, all lieutenant captains, all detectives . . ."

They had to wait till dawn to photograph the body and the crime scene. So one by one the cops took turns sitting with the mutilated

corpse of Anthony Milano, waiting for the sun to come up.

McGuigan's turn was first. He sat with him alone till his relief came at 2 a.m. The boy was lying on his back with his hands underneath him. He was fully clothed and soaking wet from the rain that continued to fall on his face, his open eye, and what was left of his neck. Around him, pieces of bloody flesh clung to the branches on the ground.

But it wasn't just the body that so horrified Charles McGuigan. It was the sickening feeling that he'd seen this kid somewhere before.

It clicked the next day, when he went to work, bleary-eyed, and looked at another report still sitting on his desk. "My God," thought McGuigan, "the kid at the Edgely Inn." He was the first to see him dead and the last to have seen him alive. Well, not the last, thought McGuigan, as he tore through the report of his visit to the bar. "Other two men identified as Frank Chester and Richard Laird."

LESS THAN 24 HOURS HAD PASSED BETWEEN THE TIME Anthony Milano was killed and the time the cops discovered his body. The Milanos spent those hours praying by a telephone that didn't ring.

Their son took his last breath at roughly 3:15 a.m. At 3:30, Frank Chester was running. And Richard Laird was right behind him. They continued to run, nearly a mile in the dark, until they reached the Lakeview Manor apartments. Chester had friends who lived there. He ran to their building, bolted up the steps and pounded on the door of Apartment E-5.

Rich Griscavage had been sleeping on the couch when he heard the pounding and Frank Chester's voice yelling, "Open up the door!"

"Yo," said Griscavage, "what's goin' on?"

Chester rushed in, covered with mud, sweat and blood, and blurted to Griscavage, "We got in a fight and the dude is dead!"

Laird walked in behind him. "Shut the fuck up!" he snapped. He was wearing boots, jeans and a motorcycle jacket—but no shirt. Griscavage was staring at the blood on his pants when Laird tossed him his jacket, strolled into the kitchen and turned on the faucet in the sink.

A few minutes later, Pete Carpinona walked out of the bedroom he shared with his girlfriend and their baby.

He looked in the kitchen and saw Richard Laird washing his hands in the sink.

"What the hell's going on?" he asked Chester.

"Something fucked-up happened," Chester told him.

"Shut up!" said Laird.

At that point Carpinona's girlfriend walked out in a nightgown. She looked at the man with the big tattoos and a nipple ring in his chest standing in her kitchen.

"Get back in the fucking bedroom," Laird told her. "This ain't no place for a woman."

She went back to bed.

"Get him out of here," Carpinona told Griscavage, pointing to Laird.

"Yeah," said Laird. "Gimme a ride home."

Griscavage took Laird on his motorcycle to the Ambassador Arms apartments, across the street from the Edgely Inn.

When they left, Carpinona asked Chester what had happened. They met a guy in a bar. Chester said, asked him for a ride home, and got into a fight with him. "And the next thing I knew, Rick was on top of him cutting him."

When Griscavage got back, Chester was still talking. "I can't believe that fucking asshole did this," he said. "He's ruining my fuckin' life."

Then he asked Griscavage if he'd drive him over to Laird's.

BACK AT LAIRD'S APARTMENT, HIS GIRLFRIEND BARBARA ANNE was sobbing. She'd left Laird and Chester at the Edgely Inn at 11 o'clock that night and gone back to her apartment with another young woman, Gale Gardner. Barb had never met Gale before. Her cousin Frank introduced them that evening. She felt bad for the girl, who was 17 and pregnant, her boyfriend in jail. She told her she could sleep on the couch in her apartment. Gale didn't tell Barbara Anne what she'd later tell her friends, that before the women left the Edgely, Laird had made a pass at her—told her, right in front of another guy at the bar, that he'd be the best fuck she ever had, then graphically described the other sexual acts he'd like her to perform. When Gale looked offended, she says, Laird threatened her. "You tell my old lady about this and I'll kill you, *bitch*."

By midnight, Gale and Barbara and Barb's nine-year-old son David were watching a movie when the telephone rang. It was Richard Laird.

"Do you want me to pick you up?" Barbara asked him, but he said no.

Gale was asleep on the couch when she heard the door open at 4:30 in the morning. She saw blood on Laird's clothes and boots. She thought to herself, "I don't even *know* this guy."

"Where's Frank?" asked Gale.

"Shut up and go to sleep," said Laird.

He left his boots by the door and walked into the bedroom, but Barbara Anne wasn't there. Paricked, she'd gone out looking for him.

When she returned a few minutes later, he was standing on the front porch. All he asked was, "Where were you?"

"Where were *you*?" asked Barbara Anne.

Laird didn't answer and she started to cry. She'd been in pain all through her pregnancy; this she didn't need.

"What, were you out getting laid?" shouted Barbara.

"Yeah," said Laird. "I was out getting laid."

He walked into the bedroom, took his clothes off and fell asleep.

Barbara was still in tears when the doorbell rang, a few minutes later. It was her cousin, Frank Chester.

"Where's Rick?" he asked.

"He's in bed."

"Get him up!"

"Damn it, Frank!" said Barbara, crying. "Every time you two go out, you get in trouble."

"I don't control his mind, Barbara Anne. I don't stop Rick from doing what he does."

She picked up a motorcycle helmet and hurled it at her cousin. "Wake him up yourself," she said.

Chester stormed into the bedroom.

"Get the fuck up!" he shouted.

"Leave me the fuck alone," mumbled Laird.

"What are you gonna do?" cried Chester. "Lay here until the cops come?"

"Frank, you better get the fuck outta here, man," said Laird. "You're ruinin' my fuckin' life."

Then he rolled over and went back to sleep.

While Chester kept trying to wake Laird, Barbara sat crying in the living room. Then she walked to the door, picked up her boyfriend's boots and scrubbed them in the kitchen sink.

BY 9 THAT MORNING, ROSE Milano had called every emergency room in the Philadelphia area. She used the phone in Anthony's bedroom, so the other line would be open if he called. The scrapbook he just made sat next to the telephone. Hidden underneath it was his Christmas list. "A sweater for Dad, oil paints for Mom . . ."

The same time that morning, Rick Laird got out of bed, washed off the knife that was used the night before, and slid it in the pocket of his pants. Chester and Gale were still awake and sitting in the living room.

At 10 a.m. Laird made a phone call. "Things got a little crazy last night, I have to talk to you," Gale heard him saying. "Just wait till I get there, I'll talk to you in person."

When he hung up the phone, he picked up his clothes from the night before, stuffed them in a plastic bag, and put them in the trunk of his car.

"C'mon, Frank," he said. The five of them—Rick, Barbara, Gale, Chester and little David—got in Laird's car, so he could

continued on page 180

“Y
ou could
bury the body in
the mountains.
Or dump it in
a lake,” said
his friends.

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drop Chester and Gale at Chester's apartment, then head off to Bensalem to meet his older brother for lunch.

At one point during the ride, Laird slid the knife from his pocket and held it in his hand. It was a utility knife, the kind with a razor-sharp blade that pops out when a button on the handle is pressed. "No evidence, no crime," he said, snapping it closed and slipping it back in his pocket.

"What time did we get home last night, about 2 o'clock?" he asked.

"I think so, yeah," said Gale.

"No," said Barbara Anne. "Remember, I called the bar after 2 and the bartender told me you had left."

"Aw, shit," said Laird.

When they pulled up to Frank's apartment, Laird got out of the car. "Yo, Frank," he said to Chester. "Just be cool. You know what I mean? Just keep it cool."

OVER THE YEARS, GALE GARDNER HAD listened to a lot of crazy stuff from Frank Chester, from the days when he dated her sister Gretchen to his latest—and constant—obsession with his new girlfriend, Colleen. She was used to seeing Frank act a little bit nuts, but this, this whole morning, was insanity.

She sat him down on the couch.

"Now tell me what happened."

He told her about the bar and a guy named Tony and how Laird cut his throat and the blood squirted out, and Frank heard all these gurgling noises. She asked if he had hurt him, too. First Frank told her he knocked him out of the way, then he said he knocked him unconscious, then he said no, he wasn't unconscious.

A few minutes into this, Griscavage came over.

"Tell me what happened, Frank."

"Some faggot came walking into the bar," Frank told him, "and Rick kept on fucking with him." He told Griscavage all he had done was kick him a little. Later, Pete Carpinona showed up, as did Alan Hilton, a friend who'd driven Chester and Laird to the Edgely Inn that night but had left before Anthony Milano walked in.

Throughout the day, and into the evening, there'd be as many as five people in Frank Chester's living room at any given time, all asking questions, offering suggestions.

They discussed whether he should leave town. And Frank kept saying he was worried about the car. "My fingerprints are in it," he said.

When Pete Carpinona went out for cigarettes, Frank told him to drive by the Venice-Ashby projects and see if the car was still there.

At one point the phone rang. "Yo, what's up?" said Frank. When he hung up, he told his friends that the call was from Laird. "Him and his brother are gonna

take care of it, blow the car up," said Chester.

At one point, the group in the apartment tossed out ideas on how to get rid of the body.

"You could bury it in the mountains," said one friend.

"Dump it in a lake."

"Take it up to the Poconos."

Chester asked Alan Hilton if he'd take the body to the Poconos.

"Fuck no!" said Hilton. "You want my advice? If you didn't do the slashing, you should just go to the cops, come clean with all this."

Chester said he couldn't tell the cops, because he was afraid of Rick Laird.

Toward evening, a guy named Mike showed up in his brand new red Chevy Beretta.

"Hey, Mike," said Chester. "Can I borrow your car?"

"What for?" he asked.

*He'd been carved from
ear to ear, all the way
down to the bone,
through the spinal cord.
It was as if someone had
tried to behead him.*

"I got a dead deer I have to get rid of."

Mike looked around the room suspiciously. "Sorry, Frank," he said, and turned to walk out the door. Gale ran after him. "Can you give me a ride home?"

Carpinona said he had to leave, too. He had to go pick up a Christmas tree.

ON THE MORNING OF WEDNESDAY, December 16th, Rose Milano and her daughter were called to police headquarters. When they got there, Annamaria heard someone whisper. "The family's here." An hour later, Vito Milano would look out the door of his barbershop to see his wife and daughter being led in, supported by the arms of police officers. "No! No!" he screamed, falling to his knees on the white tile floor. "My boy . . . my boy . . ."

That afternoon, Rick Laird and Barbara Anne went Christmas shopping. They bought little David a pile of ninja toys and some army shirts.

By the end of that afternoon, the autopsy on Anthony Milano was completed. Three cerebral hemorrhages. A fracture of the skull. Front teeth punched in. Chin kicked or hit. Cheeks slashed and bruised. Neck cut so many times the pathologist lost count. He'd been carved from ear to

ear—cut right through the jugular vein, the thyroid gland, the Adam's apple, the voicebox, all the way down to the spinal cord, so deep it cut the bone of the spine. It was as if someone had tried to behead him.

It was determined, based on the blood they found in his lungs, that Anthony had been alive, and gasping, for five to ten minutes during the cutting.

From his chest to his toes, he'd hardly been touched.

"BOSS, WE HAVE A MURDER."

Bucks County D.A. Alan Rubenstein lit up a cigarette and listened as his chief detective filled him on the latest grisly discovery.

"His throat slashed?" asked Rubenstein. "Tell me some more." At the time he'd gotten that first call, the body hadn't even been identified, let alone the suspects. But Rubenstein knew the minute he saw the photograph of the corpse, a few hours after the call, that this was a case he would keep for himself. No assistant prosecutor was going to try this one.

So far, all he had in terms of evidence was a torched car and a wet pack of Kool cigarettes, found under the body. Neither was likely to turn up any fingerprints. And though the Venice-Ashby area was known for its drug-related robberies and other crimes, he knew this wasn't a case of a deal gone sour. Milano's wallet was on him, with his credit cards, his driver's license and \$10.50 in bills and change. In fact, the only thing missing was his car keys.

Rubenstein paced the room until the early report from the autopsy came in. He suspected a homosexual tie from the start—mostly because he'd been around the block enough times to know that the way the boy was killed was typical of the most extreme cases of gay-bashing: gory mutilation of the face and the neck. This wasn't a case of a couple of stab wounds. It was an angry and vicious frenzy, where the killer was face to face with his victim, kneeling on his shoulders, pinning his arms down under him so he couldn't fight back, as he hucked away at his neck.

When, less than a day later, a motive began to take shape—that it was possible Milano was killed because two thugs in bar thought he was gay—Rubenstein was determined to run both of his suspects up on first-degree murder. Now it was just a question of how.

Within 24 hours of the discovery of the body, the D.A. had probable cause to arrest both Frank Chester and Richard Laird. He had a statement from the bartender, he had statements from the cops at the Edgely—including one who'd seen the three of them leave together. And anonymous calls started coming in from

"friends," calls that made it very clear that one of his suspects was a talker.

But death penalty cases, as he knew—as he hoped—this one would be, weren't built on probable cause. Rubenstein wasn't going to lock either of them up until he was sure he had everything he needed. And he knew exactly how he'd get it: He'd give the talker a chance to dig both of their graves. It was risky, but if the plan worked, he'd have both Chester and Laird exactly where he wanted them.

On the 18th of December, he put the plan into action. Frank Chester was stopped by a patrol car as he drove down Route 13.

"You Frank Chester?"

Shaking, he nodded his head. "What I do?"

"Aw, nothin', Frank. Just a matter of some outstanding traffic tickets is all. Why don't you come down to headquar-

All Chester had to do, as the cops told him, was get Laird to admit to the killing. But he also had to find a way to clear himself.

ters, we'll get it all straightened out."

"Yes, sir," said Chester.

Later, as he was about to leave the precinct, one of the cops stopped him. "Listen, by the way," he said. "We're investigating a murder, kid left with his throat slashed out near Venice-Ashby. You don't know anything about it, do you, Frank?"

"No," he said quickly. Then he added, "Just what I read in the papers."

The cop paused, took a few steps around the room. "Just read about it, huh Frank?"

"It's in all the papers."

"Right. Well, see, Frank, we have a little problem. There's this bartender out at the Edgely Inn says you were with the guy that night."

"Yeah, well, I saw him," said Frank.

"So you saw him . . ."

"Yeah. I went to the Edgely Inn that night, had a couple beers and left. When I left, he was sitting at the bar . . . with Rick Laird."

At that point, Detective Frank Dykes walked into the room. He was the guy Rubenstein had picked to lead the investigation.

"Frank," he said, "that's not gonna work, either. We have a cop, see, who

says he saw you leave with Milano."

By the end of the conversation, Chester had changed or embellished his story several times. The last version was that he did leave the bar with Laird and Milano, but got dropped off first. He insisted that was the whole truth, and that he didn't come forward because he was afraid of Richard Laird. Especially when he read what had happened to the kid.

"We can understand that, Frank," said Dykes. "But we need you to help us out."

"Anything I can do," said Frank Chester.

"Why don't you come in tomorrow, take a polygraph to clear your name from all this, and maybe answer a few more questions."

Following Rubenstein's directions, the cops shook his hand and sent him home. That night Chester told his friends that the cops were on his side; they weren't after Frank Chester, they were after Richard Laird. Rubenstein's plan was working.

The next day, Detective Dykes picked Chester up at his apartment and brought him back to Bristol Township headquarters. As is routinely done in a polygraph exam, the questions were recited to Chester before the test was given. When Frank heard that one of the questions was whether he was present when the murder actually took place, he reconsidered. "I don't think I want to take this," he said.

"All right, Frank," said Dykes. "But let's go through this again."

By the end of the conversation, Chester's version went something like this: He had lied the day before about getting dropped off first. Actually, he said, he did stay in the car with them and they drove around for 45 minutes. Anthony kept pleading to go home, said Chester. But eventually, they stopped the car on Ashby Avenue. Laird and Anthony got out and walked into the woods. Through the shadows, said Chester, he could see them fighting. When he got out to see what was going on, he heard grunting, and the next thing he knew, Laird came out of the woods with blood all over him, and Frank Chester began running.

Dykes thanked Chester for his cooperation, shook his hand and sent him home again—this time, with the promise that he'd return and make a wiretapped phone call to Richard Laird. The detective added one condition: that Chester have no contact whatsoever with Richard Laird until the time of the call.

The phone call was scheduled for the evening of the 19th. That afternoon, Rose and Vito Milano picked out a casket for their son. Barbara Anne Parr hung stockings over her fireplace and started to decorate the tree. And D.A. Alan Rubenstein dressed for a holiday dinner party, leaving orders for his detectives to call him when

Chester showed up.

But Chester never did show up. For the first time, Rubenstein panicked. All along, he'd been banking on the hope that, as long as he kept sending Chester home, he'd be stupid enough to keep coming back.

"What do you mean, he didn't show up?" he screamed to his detectives, over the happy chatter of the dinner party guests. He lowered his voice. "Just get him in here!"

The next morning, Frank Chester calmly answered the phone in his apartment. "Sorry," he told Dykes. "Colleen and I got in a fight."

At 2 o'clock that Sunday, December 20th, Chester sat in a room with two county detectives and nervously waited as they dialed Laird's number.

All he had to do, as the cops told him, was get Laird to admit to the killing. But he also had to find a way to clear himself.

"Yo, what's up?" said Laird.

"Yo," said Chester.

"What's up?"

"Are you gonna be able to do this or not?" Laird asked. "I don't know," Chester replied. "You know I've never been in this kind of shit before."

Chester: "So what's, what's, what we gonna do? What's going on?"

Laird: "Huh?"

Chester: "What's going on?"

Laird: "Nothing, man."

Chester: "A lot of people coming around asking me questions about you and me in the bar."

Laird: "So?"

Chester: "So . . ."

Laird: "What's up with that? There ain't nothing up with that."

Chester: "No, but, you know, if [the cops] come to me and wanna talk to me, what am I going to say?"

Laird: "What do you mean, what are you gonna say? . . . Nothing. You just say, yeah, we were there drinking. . . . We got fucking wrecked and came to my house and passed out."

Chester: "Yeah."

Laird: "Did they talk to you yet?"

Chester: "No."

Laird: "The cops didn't?"

Chester: "No."

Laird: "Oh, well, what the fuck, Frank. You got me shittin' my pants, dude."

Chester: "Why?"

Laird: "I thought you said the cops

continued from page 189

questioned you and shit."

Chester: "No."

Laird: "No? . . . I thought that's what you said last night."

Chester: "I didn't talk to you last night."

The cops exchanged glances. They could only hear Chester's part of the conversation, but if he had contacted Laird the night before, he was deep into another lie.

Laird: "Yes, you did."

Chester: "No, I didn't."

Laird: "The fuck you didn't, Frank."

Chester: "I was with Colleen."

Laird: "Frank, you called me last night."

Chester: "No, I didn't."

Laird: "Yes, you did, dude."

A few seconds later, Laird told Chester, "I'm gonna fucking hide until this blows over."

Chester: "Why, do you think it will?"

Laird: "Yeah, eventually it will have to go into a dead case."

Chester: "Are you sure?"

Laird: "Yeah, the statute of limitations is something like seven years."

Chester: ". . . That has nothing to do with it when something, you know, something like that."

Laird: "I know, but there's no evidence, Frank, you know?"

Chester: "Yeah . . ."

Laird: "We didn't do nothing, you know?"

Chester: "Yeah."

A little later, Chester asked, "So what are you gonna do, just hang out there?"

Laird: "No, we're getting ready to go out."

Chester: "Where are you going?"

Laird: "I don't know, somewhere. Christmas shopping or something . . . What are you gonna do?"

Chester: "I don't know. Like, what am I supposed to do if they come up to me and, and, you know, 'cause you can't, you, if they do tell you to take a polygraph test, you can't, you know, pass them things."

Laird: "With downs."

He suggested that Frank try to get some downers from a doctor.

Laird: "You gonna be able to do this or not?"

Chester: "I don't know . . . you know I've never been in this kind of shit before. . . . I'm scared."

Laird: "Yeah."

Chester: "'Cause that's, what can they do to you, what can they do for that?"

Laird: "Kill you."

Chester: "They can kill you?"

Laird: "Lethal injection . . . [Or] put you in jail for fucking life. Which would you rather have?"

Chester: "Nothing, I didn't do nothing."

Laird: "Me neither. Just go away for a

whole man."

Chester: "I can't leave."

Laird: "Why?"

Chester: "'Cause it's Christmas . . ."

Laird: "So what?"

Chester: ". . . You know what I mean, my family and shit."

Later in the taped conversation Laird told Chester, "You just be cool, man. Like, the motherfucker gave us a ride here and that was it. We came in and passed the fuck out."

Chester: "Yeah."

Laird: "Can you handle that?"

Chester: "Yeah."

Laird: "I hope so, Frank, man."

Chester: "So do I."

Laird: "What do you mean, so do you?"

Chester said he might get nervous.

Laird: "You know, if they ask you what you're nervous about, say what the fuck you think? You're trying to pin a fucking homicide on me, you know?"

Chester: "Yeah."

Laird: "You know? I ain't no fucking murderer, you gotta be fucking crazy."

Rubenstein walked Frank Chester to the door and told him to go home. By dusk of that night, December 21st, Chester had disappeared.

Chester: "All right, so what are you gonna do? Go shopping?"

Toward the end of the conversation, Laird told Chester, "You got me a paranoid fucking wreck, man, you know? I don't want nobody try pinning no fucking homicide on me either, you know? I ain't got it in me to kill somebody, you know?" To which Chester replied, "Yeah, all right, how long you gonna be [shopping]?" The call lasted 14 minutes. As they hung up, Laird said, "Just get your shit together and stick to it, all you gotta do it stick to your guns. . . . No evidence, no case, you hear me?"

THE FOLLOWING MORNING, CHESTER and his girlfriend Colleen showed up at the Bucks County Courthouse. "I'm Frank Chester," he told the secretary. "I'd like to see the D.A."

Rubenstein thought his secretary was joking. He'd heard the taped conversation several times by now, and knew that it hadn't gone very well for Chester. There he was, out to prove that Laird was the killer, and yet every time Laird denied having done it, all Frank could say was "Yup, all right." Not "What do you mean? You cut him!" Just "Yup, all right." But

ANTHONY

what really struck Rubenstein was their attitude through the whole conversation—referring to Tony as “the dude” and “the motherfucker,” talking about shopping for Christmas presents, for Chrissake. It’s like they ran over a dog, thought Rubenstein.

“Come in, Frank,” he said.

He kept it casual, rolled up his shirt sleeves, lit up a cigarette, offered one to Frank.

“I got some, thanks.”

“So what’s on your mind?”

Chester said he just wanted to talk. Gradually he gave the D.A. more details to go on—like the fact that he was a kick-boxer, and that there was a girl named Gale who’d spent that night at Laird’s. Then finally he asked Rubenstein what he thought of the phone call.

“It was OK, Frank,” said Rubenstein. “But we want you to make one more.”

Chester began to shake. “OK, sure,” he said.

Rubenstein walked him to the door, shook his hand, and told him to go home and wait for a call from Detective Dykes.

By dusk that night, on the 21st of December, Frank Chester had disappeared.

AT THEIR TINY HOUSE IN LEVITTOWN, Rose and Vito Milano were dressing for their son’s viewing.

They had decided that Anthony would be laid out in his new blue suit, the one they’d bought him for his graduation from the Art Institute just two months before.

When they handed the suit, along with a crisp white shirt and tie, to the funeral director, he nodded and put it aside. Vito was the undertaker’s barber; they’d known each other for years. He couldn’t find the words to tell him that his son’s body had been so horribly butchered that it would take a work of art to conceal the carnage. Instead, the undertaker took the suit, told them it was beautiful, then quietly went to work on a plaster of paris cast to rebuild Anthony’s neck.

The casket was placed in a room filled with flowers and memories of Anthony, most of them selected from the scrapbook he’d made on the last day of his life. There were photographs of him laughing, snapshots with his sister, Annamarie. His portfolio from the Art Institute, which was voted best in the class, was displayed on a table. Next to it was a picture of him wearing the blue suit, holding up his diploma and smiling with pride. Vito and Rose were beaming that afternoon as they watched their only son graduate with honors. It was the kind of day Vito Milano might have only dreamed of years ago, as he arrived in this country from Bari, Italy, his new bride on his arm, knowing just enough English to find his way to Philadelphia.

In 28 years of marriage, Rose had

never before seen her husband cry. Now every time Vito tried to talk he started sobbing, his thin body shaking so violent that it took all of Rose’s energy just to help him walk. They were both so tiny—each under 5’5”—that they looked lost in the big chairs next to their son’s coffin.

On the sidewalk in front of the funeral home that night, a long line of people stood in the freezing December air, slowly filing in. A few of them were men Anthony had met at gay bars. Many more of them were from the Milanos’ Mennonite church. The family had left Catholicism for the Mennonite faith when Anthony was 15, embracing a religion whose members frowned on drugs and alcohol, refused to bear arms (they are excused from military combat and can’t become cops), and led such pious lives that owning a car insurance—for which the Mennonites have their own program—costs as little as \$1 a month. They also adhere to the strict word of the Bible on virtually all things, including homosexuality.

It would be days after the viewing before Vito Milano would read in the newspapers that his son was gay; to this day he refuses to believe it.

But that night, all he knew was that his boy lay dead beside him, and that somewhere out in the cold December night, his killer or killers continued to live. “Please pray,” Vito said through his tears and broken English to the people who paid the respects. “that they find who did this to my son.”

“OPEN UP! POLICE!”

A half-dozen armed cops stood outside the door of Room 32 of the Falls Motel, a run-down roadside stop in Falls Township, on the morning of December 22nd.

Richard Laird’s Pontiac was parked in front. When they entered the room, they found Laird and Barbara Anne Parr in bed. Laird’s brother Mark and his girlfriend (Barbara’s sister Lisa) in the other room, and Parr’s nine-year-old son David sleeping on a bed made of two chairs.

“Don’t move,” said one of the officers pointing a pistol at Laird. Another held a shotgun as he ripped back the sheet that was covering Rick Laird. They reached for his arms to handcuff him while little David began crying in the corner.

“You’re under arrest for the murder of Anthony Milano . . .”

Barbara Anne began to scream.

“You have the right to remain silent. Anything you say can and will be used against you . . .”

As they led Laird out the door, handcuffed in his long johns and sneakers, he looked back at the very pregnant Barbara Anne. “I love ya, baby,” he said.

Detective Dykes was waiting for Laird back at the Bristol Township police headquarters. He was waiting and he was ready.

“There’s a couple of things we need to get straight,” said Dykes, at

him down. "First of all, Rick, the death penalty in this state is carried out by electrocution, not lethal injection."

Laird glared at him.

"And the other thing, Rick. There is no seven-year statute of limitations on a homicide charge. . . . Do you know what I'm saying?"

"Yeah," said Laird. "I *really* know what you're saying."

"Then you know why you're here. . . . So where's Chester?"

"I'm no rat," said Laird. "Are two rats better than one?"

"When was the last time you spoke to him?"

"Don't *you* know?" said Laird.

"Listen," said Dykes. "You're the one in the cell right now, you better start thinking about your own problems."

"I am," replied Laird, grinning while they took his mug shot. "You're trying to pin a homicide on me."

"I've heard that before, too," said Dykes, referring again to the taped phone conversation.

"Yeah, I already figured that out," said Laird.

As they continued the process of booking him, Dykes turned to him again. "You know," he said, "you should have taken off somewhere good. Rick, instead of just running to the Falls Motel."

"Yeah, you're right, but . . ." Laird made a gesture with his hand, rubbing his thumb and two fingers together, implying that he didn't have the money to run any farther.

Dykes shook his head and grinned at the officer standing next to him.

"You know, Rick," he said, "in our experience, this was the dumbest homicide we ever saw."

AT 11 O'CLOCK THAT MORNING, THREE days before Christmas, the body of Anthony Milano was lowered into the ground at Levittown's Rosedale Memorial Park. Rose had asked that a photo of her son be inserted on the brass and marble plate, under Anthony V. Milano, 1961-1987. Underneath the picture it said, "We will always love you."

Nine days passed before the cops found Frank Chester. They knew he hadn't gone far, because twice over the Christmas holiday, lawyers called Alan Rubenstein, trying to arrange his surrender in exchange for a deal.

Rubenstein told the lawyers to have a nice Christmas. "The only deal I was willing to offer Frank Chester," he says, "was AC current or DC current."

So they waited. And they searched, meanwhile gathering statements from the friends of Frank Chester who had listened as he spilled his guts.

Finally, on December 30th, a Bristol attorney who was friendly with Chester's

family called Rubenstein. Chester was ready to turn himself in. Two county detectives were waiting in the lawyer's office when Chester walked in with his stepfather at his side. He was silent as they read the charges on the arrest warrant: first-degree murder, kidnapping, criminal conspiracy and others. Then he was handcuffed, put in a car and brought to police headquarters, where Detective Dykes was waiting.

"So, Frank," he said, "would you like to add anything to your previous statements?"

"The last story I told you was the truth," said Chester.

"Well, we have information that's different from your last truthful statement, Frank."

Chester laughed. "Well, maybe I didn't tell you *all* of the truth," he said.

THE NEW YEAR BEGAN IN LEVITTOWN with Chester and Laird both behind bars. But the truth—certainly all of the truth—was locked up with them. Five months would pass before they'd sit in a county courtroom, on trial for the murder of Anthony Milano. When the trial began on May 13th, it was still uncertain exactly what happened in the woods that night.

From the time of Laird's arrest, when all communication stopped between the two suspects, they turned against each other, each building a separate defense, each with a different version of what happened. Laird's version blamed it all on Chester; Chester's blamed it all on Laird. And the D.A. stood in the middle with a third theory: Neither man could have done this to another man alone.

Rubenstein gathered evidence for his theory: photographs and medical reports and bloodstained clothing wrapped in plastic bags. But the truth of his theory went deeper than the evidence.

The killing of Anthony Milano began long before that night at the Edgely Inn. Because before this was a case of murder, it was a case of men—of one man struggling to deny his sexuality and two other men struggling to defend theirs. ■

Next Month: Killing Anthony, Part 2: The Trial and the Truth

Editor's Note

The events surrounding the murder of Anthony Milano were reconstructed from courtroom testimony and from interviews over a six-month period with witnesses, attorneys, defendants Richard Laird and Frank Chester and families of the accused and the victim. In all instances, reported dialogue is based on testimony from at least one of the speakers, and corroborated with interviews, further testimony, or statements made to police.

KILLING



ANTHONY

As the trial began the question lingered:
What really happened in the woods that night?

By Lisa DePaulo

PART II

FIVE MONTHS AFTER THE MURDER OF HIS son, Vito Milano sat in a packed Bucks County courtroom and, choking back the tears, told the jury, "I said goodnight."
And after that evening, you did not see your son again?

Vito began to sob. "I never see him anymore."

"... No further questions."

On the Friday before, a sunny May afternoon, Bucks County District Attorney Alan Rubenstein delivered his opening argument in the case of the commonwealth vs. Frank Chester and Richard Laird.

"You will hear testimony in this courtroom," Rubenstein bellowed, "that what [we] found was horrifying. The *unspeakable*. Horror in the form of a young boy, a young man, who had his throat slashed. Not once, not twice, but more times than you can count. *More times than you can count.*"

"Anthony Milano was beaten, *violently*. He had a skull fracture. He was hit. He was kicked. He was stomped. . . . He had a brain hemorrhage. His brain was expanding in his head. . . ."

Rubenstein pivoted on his heels, pacing before the jury box, locking eyes with the jurors.

"Now you may say to yourself, 'What was the reason for

this? Was it a robbery?' *No . . . Did they take his ring and his watch and his clothes and his car? Of course not.* 'There had to be a reason. Why would someone do that to another human being? There must have been some provocation.' *No. You won't hear that.*

"There was a reason," Rubenstein thundered. "Because on the last day Anthony Milano was alive, he had the misfortune to walk into the Edgely Inn. And he meets Richard Laird, who sits here, and Frank Chester, who sits here. He has nothing in common with them. He doesn't know them. He's there to get a sandwich and a couple of beers before going home.

"But they don't *like* him. They didn't like his clothes. They didn't like his style. They didn't like the way he looked. They thought—they *thought* he was a homosexual. And because of that, they *killed* him."

The parents, Rose and Vito Milano, seated in the second row of the courtroom, clutched each other's arms and wept. Then the D.A. paused, narrowed his eyes at the defendants, and turned again to the jurors.

"But the key words in this trial," he declared, "are not that they didn't like the way he was dressed, that they didn't like the way he was talking. . . . The key thing isn't even that he was or may have been a homosexual. The key word is that he *was*. He is no more. He's dead. He was *butchered*. They did it!"

As Rubenstein fired those last three words, he spun around dramatically and pointed to Chester and Laird.

Neither of them even blinked.

They sat together at the defense table, flanked by their attorneys. These two young men were once so close that they shared the male bonding ritual of being tattooed. They were so close that one had asked the other to be the godfather of his baby. But now the bonds were coming apart, as each decided to plead not guilty and to try to put the blame entirely on the other.

Chester, five months shy of 21, was cleanly shaven for the trial. He had a new short haircut and a crisp charcoal suit. He would sit for most of the six days' testimony with his hands folded in front of him, his eyes darting nervously from the witness stand to the jury box to his hands. For the duration, he was under strict orders from his lawyer, Tom Edwards, not even to look at Richard Laird.

But Laird would look at Frank Chester. Often throughout the trial he would glare at his former friend, his eyes seeming never to flicker. Even his own attorney, Ron Elgart, worried about "those eyes. They were just . . . *cold*." He had even considered fitting his client with a pair of eyeglasses, so the eyes would seem less penetrating to the jurors. Instead, he positioned Rick Laird so that he *could* stare down Frank Chester, in view of the jury, as if to say, "Look what you got me into, man."

What Elgart hadn't anticipated was how Laird would stare down the crowd as well. As it happened, the members of the press covering the Milano murder trial were mostly women and gay men. Laird leered at the women in the press row and snickered at both the male reporters and the gay rights activists who had come to witness the proceedings. Occasionally, he'd stretch his neck back to look up at the clock on the wall behind him. He had better things to do, Richard Laird seemed to be indicating.

Like Chester, Laird looked nothing at all like the man who'd

been arrested in December. His long scraggly hair was cut stylishly short, a navy suit covered up the tattoos, and the bushy beard that once had hung to the middle of his chest was neatly thinned and trimmed. Not actually shaven, though, since the fact that Rick Laird had a beard would figure prominently in his defense, but cleaned up to the point that the new Rick Laird looked strikingly handsome.

In less than two and a half days, the D.A. marched 25 witnesses up to the stand, from Orpha Newswanger, a Bible teacher, who knew—but dared not speak—of Anthony Milano's tortured mind, to Dr. Raafat Ahmad, who described his tortured body. Newswanger came to court to testify that before Anthony went to the Edgely Inn on the night he was murdered, he had been with her—studying the Bible.

Dr. Ahmad came to demonstrate—graphically—what had happened to the young man. For over 50 chilling minutes, she stood before a life-size picture of the victim and drew, with red and black markers, the lines of every slash, every bruise and every injury. When she was finished, the neck of the cardboard poster was awash in bright red ink.

"And according to your testimony," Rubenstein asked her, "he was alive for some [five to ten] minutes while this was happening?"

"Yes."

"Cross-examine."

Every morning, Rose and Vito Milano walked slowly into the courthouse, Rose holding Vito by the arm. He dressed each day in a dark blue suit, his eyes red and puffy. Rose wore all black and clutched a patent leather handbag. The tiny gold crucifix Anthony had given her the year before on Mother's Day hung from her neck. When they informed D.A. Rubenstein that they were going to attend the trial, he insisted that they not sit through Dr. Ahmad's testimony. And so they read the accounts of the torture—their first real hint of how brutal it was—in the papers the following day.

Anthony's parents wept through most of the proceedings—as their son's bloody clothes were held before the jury, as their son was referred to by Chester's friends as a dead deer that had to be gotten rid of, as the torture of the night unfolded with every witness.

But from the very beginning, it was Anthony's mother who showed incredible strength in the face of tragedy, and it was his father—his strong Italian father—who fell to pieces.

At each recess, as the defendants were led in and out of the courtroom in handcuffs and shackles—Chester with his head bowed, Laird grinning and snickering—Rose pressed her fingers tightly into Vito's arm. She had tried repeatedly to keep her husband from attending. But he was determined to be there, with or without her, and she wouldn't let her husband be alone.

"I have to know," he kept repeating, "what happened to our son."

It was the question on everyone's mind: What *really* happened in the woods that night? And perhaps even more disturbing was the question of *why* Anthony Milano walked out of a bar with two men who had called him "faggot." Who was this young man and how did he come to such an end? As the trial revealed and as an examination of Anthony Milano's short life would demon-

He told his sister he had put his feelings for men "on the shelf," hoping they would go away.



strate. this was no ordinary case of murder. Indeed, it said rather extraordinary things about the lives of all three men.

ANTHONY MILANO'S PARENTS MET IN ITALY IN 1959. ROSE WAS 29 at the time and had returned with her parents from the States to their birthplace of Laterza for a two-week vacation. She came home with a husband. Rose taught Vito English, and he went to work as a landscaper and then a clothes presser to support his new wife. When he knew enough of the language to pass a written test, he became a certified barber in America: in Italy he'd cut the townspeople's hair since the age of seven.

Vito had dreamed of owning his own business here—and he dreamed of having a son. When little Anthony Vito was born in September of 1961, Vito wrote home to his family in Italy that America was the greatest place in the world, and vowed to give his son every opportunity he himself had never had.

Rose, for her part, doted on Anthony. By the time he was 22 months old she was convinced that he was smarter than the other kids, and she taught him to identify words she had written on pieces of cardboard and scattered around the floor. The *Philadelphia Daily News* wrote a feature on the "wonder tot" who had learned to read 75 words. It was with equal passion that Rose taught her son about God and religion.

But toward the end of his years in high school, Rose's happy child began to come home in tears. Rose always knew when something had happened to Anthony because he'd go into his room, lock the door, and play his records as loudly as possible—so she couldn't hear him crying.

At first there were little things that Rose brushed off as "kid stuff." Like the day he tripped in chorus and all the other kids laughed at him. Or the times when he'd walk out to his car to find other students sitting on it, taunting him for rides home. Anthony always reluctantly said OK. It was easier, he told his younger sister Annamarie, than getting teased.

But there was one incident that, even years later, he'd write about in his diaries as though it had happened yesterday. Anthony, who suffered from allergies, had often been excused from gym. It was an arrangement that made him relieved, because he always felt awkward competing in sports with the other kids. Still, it kept him conspicuously on the sidelines. One day the

gym teacher announced loudly to the class. "Now we'll all go and play ball and leave Anthony to take care of the dishes." Anthony stood against the wall fighting back tears as the kids all laughed at him. Then the gym teacher threw the ball at him. It hit him in the stomach and bounced to the ground. "What's the matter, Anthony?" the teacher singsonged. "Is the ball too heavy for you?"

After that day, he was never the same leaving for school in the morning. His grades suffered and he went out less with classmates. He began to tell his mother, with tears in his eyes, that someday he'd be famous and none of the teasing would matter anymore. When he graduated in 1979, he had inscribed on his class mug, "Anthony V. Milano—Famous Person."

Six years later, still struggling and certainly not famous, he was still writing in his journals about the humiliations he'd felt in high school: "Often I am tempted to put in the garbage can my sapphire class ring, the medals I earned for being in chorus, my forensics award with the ruby, my National Honor Society pin, my graduation tassel, the four yearbooks I helped design . . . the Italian award . . . the awards for best Halloween costume. . . . Anyway, all this crap is sloppily dumped in a paper bag—well hidden under boxes and old clothes out in the stupid shed, where I don't have to be confronted every day, painfully reminded of what it was like. . . ."

On the last day of his life, Anthony confronted those demons when he walked into "the stupid shed" and packed up all his memories. At age 26, he had decided that it was time to move away from home. He was planning to rent an apartment in Center City.

Through all of Anthony's early adult

years, he had latched on to people who didn't tease him—people he knew from his Mennonite church. Most of them were older women who often looked at their own kids and said, "Why can't you be more like Anthony?" Always so polite, remembering their birthdays and holidays, sitting over coffee with them, listening to their troubles and making them laugh. If there was a common thread in the people he befriended, it was that usually they too felt like underdogs or outcasts. One woman in her 40s, who counted Anthony among her closest friends, weighed nearly 600 pounds. "He was the only person I ever met," she says, "who looked at me and didn't see a fat person. It was like he could feel other people's pain."



Frank Chester, top, appeared nervous during the trial; Richard Laird stared down the crowds.

ART: GENTILE/PHILADELPHIA COUNTY COURIER TIMES
 PHILADELPHIA COUNTY COURIER TIMES

But what Anthony rarely discussed with the women he knew from church was the pain he himself was feeling. And, of course, neither he nor the women could ever permit themselves to utter the word "homosexual." As one of them put it, "We all just sort of *knew* about Anthony, and I think he knew that we knew. But it wasn't something you *asked* about." Like others from the church, she believed that someday he'd "gain control" of his sexuality. "I knew he was repenting," she says. "With the help of Jesus Christ, you can overcome anything."

The one person he shared his secret with was Annamarie. They'd always been close as kids, and they trusted each other—enough that when he was 18 and she was 16, he began to take her along to gay bars. Anthony just called them "clubs," and at first Annamarie, with her new fake I.D., was too naive to realize they were cruising the gay bar scene. She wasn't even sure at first, when she did realize what it was about...if it meant that her brother was gay. Maybe he just liked those clubs better, she thought. She knew she did. At straight bars, Annamarie had always felt awkward or ignored, but the men at the gay bars were always kind to her. "Your sister's so pretty!" they'd tell Anthony. No one but her brother had ever told her that before.

Anthony and Annamarie began to make regular trips to gay bars such as the CasaLido in Trenton and Equus and Kurt's in Center City. When Anthony bought a membership to Philly's DCA club, he bought one for his sister, too.

Sometimes they brought her girlfriend Melanie along. For years Melanie had had a crush on Anthony, from the day they met in a 9th-grade play. They quickly became friends and started going on what she thought were dates. He even took her to the Christmas Ball. Dating was new to Melanie, so at first she never dwelled on the fact that they never did things her friends did on dates. Finally, she started to push him, and the more upset he got, the more she was convinced that it was because she wasn't attractive enough. Melanie, like many of Anthony's older women friends, was very overweight. When Annamarie told him what Melanie thought, Anthony was so concerned about her feelings that he decided to tell her the truth: "Never think you're not pretty enough, Melanie," he told her. He wished he *could* love her that way, he said, but the truth was that he was gay. "I had to tell you," he said, "because I'd never want you to think it was your fault."

Melanie's response to Anthony's revelation was to reassure him that she'd still be there waiting for him—as soon as he "changed."

Then one night at the CasaLido, Melanie was horrified. "Annamarie!" she said. "Anthony is kissing a *man*!"

ANNAMARIE DECIDED THAT NIGHT THAT SHE WOULDN'T BRING it up unless he did. And eventually he did. It wasn't an an-

nouncement; he just began to talk about men the way she talked about men. It depressed him, he told her, that his relationships with men just never seemed to work out, no matter how hard he tried.

"What do you mean?" she asked.

"They just never work out," he said. "And maybe it's not meant to be anyway. God doesn't want it that way, that's probably why they never work out."

Once he went to the shore with a man he met at the Lido. He told his sister how excited, but nervous, he was; it was someone he really liked a lot. Someone who was kind and hand-

some and wore Acqua di Selva cologne, he said, giggling in a way she'd never heard from her brother. But when he came back from the weekend, he was terribly depressed. "It's over," he told his sister.

Later, he told Annamarie that he had put his feelings for men "on the shelf," hoping they would just go away.

When Anthony first got out of high school, he wasn't sure what he wanted to do. His father assured him that when he decided, there would be money for schooling. For years, Vito had put aside his tip money—carrying a jar home to Rose every week—to

save for Anthony's and Annamarie's college educations.

But with his bitter feelings from high school, Anthony decided to postpone college for a while. He got a job in the display department at Pomeroy's, then worked for a furniture store, then went to work for Bamberger's (now Macy's) as a salesman in the men's shoe department.

In a matter of months, he had reached his goal of becoming department manager. Rose saw her son's self-confidence take a positive turn after that, so she and her husband were happy when he announced he'd decided to go to art school. Aware of how expensive tuition was, and not wanting to burden his father, Anthony finished a three-year course in two years at the Art Institute of Philadelphia, graduating in September of 1987 with straight A's. He started working as a free-lance artist.

The Milanos had sacrificed much for their son's schooling. When Rose, who handled all the money in the household, realized that Anthony's tuition bills were more than her husband was bringing home, she secretly got a part-time job, sneaking out of the house to care for a woman who had Alzheimer's disease. Fearful of hurting her husband's pride, she kept her secret for months. When Vito learned the truth, he ordered her to quit. Anthony remained protected from the truth.

"Thank you for the two happiest years of my life," he announced in a toast to his parents at his art school graduation. That day was exactly three months before his murder. When they handed him a gift of \$1,000, he was so touched he kept the check in a frame, until finally they made him cash it. He told his mother he was going to use the money for a deposit on an apartment he'd found near Rittenhouse Square; the lease was to

"Laird is like the primal heterosexual man," his lawyer argues.

"Very confident about his sexuality."



Anthony's parents, Vito and Rose Milano.

start after the first of the year. The week of his death, he'd begun to send his résumé out for full-time jobs.

At 26, it seemed he was finally ready to live on his own. But there was also something about that independence that frightened him. He told friends he felt guilty about leaving his parents; he told his parents he felt guilty about moving so far from Annamarie. His friends noticed that he'd begun wearing a gold wedding band on his left hand. And lately he'd been telling his father that what he really wanted to do was "find a good girl, get married and have kids."

"You make me so proud," Vito would say.

Yet, to Annamarie, he spoke of different plans. He always told her that his dream was to move to New York City. Whenever they went clubbing there, he'd say, "This is where I want to be."

His sister believes his ambivalence may have been a fear of temptation. Though Anthony Milano reached out to the gay scene, he hardly embraced it. Even when he did go to the bars, he ended up befriending men who seemed as tortured and oppressed about their gayness as he was. One of his closest friends, whom he had met one night at Equus, has since become a monk. After Anthony was buried, he wrote to Annamarie from his religious community: "I know how Tony struggled with his gayness. . . . When I was around Tony, I talked to him a lot about how I never felt comfortable in the gay life that I had seen and had participated in for a while. I knew he felt the same way." Orpha Newswanger, the woman

with whom Anthony shared Bible studies, talked about his inner struggle with homosexuality, and how he wished to be "healed." She too assured Anthony that anything was possible with Christ.

In the hours before Anthony was murdered, he attended his ninth Bible study with Orpha. The theme that night was "Thinking Like a Servant Thinks." One part dealt with the "natural mind vs. the renewed mind." The natural mind, Anthony scribbled in his notes, "listens to man instead of God, perceives flesh rather than heart."

On another page, under "Blessed Are Those Who Have Been Persecuted," Anthony wrote that a peacemaker was "one who settles quarrels rather than initiates them," and that "avoiding the issue breeds aggression."

On yet another page, he scribbled two questions: "What is it I am not forgiving?" and "What are some of the reasons it still hurts?"

Two hours later, he was sitting on a bar stool at the Edgely Inn, with Richard Laird and Frank Chester.

BY THE TIME FRANK CHESTER WAS 20, HE WAS ON HIS OWN. His mother, Elaine Holley, was proud of her Frankie's new independence. Or maybe she was relieved. She'd had problems with her youngest child since he was 10, when his father left home for good. Despite the beatings Frank claims he got from his dad, the boy worshiped his father. Frank's father, an exterminator and handyman, denies ever having laid a hand on his son. He does agree with his ex-wife that when he left home, it seemed like "the trouble with Frank" began overnight. One day, little Frankie was an altar boy, smiling through mass at Sacred Heart Church. The next, he was being brought home by the cops.

Elaine had three other teenagers to raise by herself. Luckily, they adjusted to the split, went to work part time, helped her out. But the problems with Frankie just kept getting worse. He began to steal, from both his parents and from his stepfather, and was constantly getting into fights, as though beating were a

sport. By the age of 11, he started to run away—so many times that Elaine lost count. There were days when she'd come home from her job at the beauty salon, almost expecting to find that he'd left home again. It seemed that her kid did nothing *but* run away. And every time he ran, she'd call her ex-husband.

Elaine knew she had to find help for her son. She started calling social agencies, only to hear that unless he committed a crime, there was little the state could do. Eventually he began committing those crimes, and so the next places Frank Chester ran away from were juvenile detention centers. Finally he was sent by the courts to Glen Mills, a school for delinquent male

teens. There, a teacher who counseled Frank sat his mother down and tried to explain what was wrong. Running away, he told her, was Frank's way of getting his father back, because every time he fled, his mother called his dad.

On the open campus of Glen Mills, Frank Chester was free to run, but to his mother's surprise, he didn't. Instead, he excelled on all the sports teams, held a job at the snack bar, and was known as a friendly and likable kid. He started to talk about someday being a counselor there, like the one who had helped him, and whom Frank had begun to trust and worship.

When he got out of Glen Mills, he landed a job as a cashier at Bristol's DeGrand Diner, where he responsibly handled the money every night. Meanwhile he got interested in the work his older brother did, cleaning up toxic waste for a pollution control company. And, after taking courses to learn the trade, he got a job with his brother's

company.

About the same time, he met Richard Laird.

Laird, who was 24 at the time of the murder, had been in and out of prisons for five years—on everything from drug charges to assault charges to the time he stole somebody's boat "just for the hell of it."

He was born in South Carolina, the son of a Marine sergeant, and he spent most of his childhood moving from city to city, mostly in the South. When he was ten his parents split, and his mother eventually settled, with Rick and his younger brother Mark, in Levittown. His father remained in Louisiana, where he's still in the Marines. His mother eventually was remarried, to a Pennsylvania state trooper.

After Laird's arrest for the murder of Anthony Milano, his father visited him for the first time in years. In an interview from prison, Laird declined to discuss his mother, other than to say that he was proud that she recently earned a nursing degree (she is an L.P.N.) and that they are "very close." Records show she, too, has a criminal record. She pleaded guilty in March 1987 to 12 counts of forgery, theft and embezzlement brought against her by an employer. The employer told police she said she stole the money for her sons (97 of the 339 checks she forged were made payable to Rick Laird).

When he was 15, Rick Laird met a girl named JoAnn at the Levittown Rollerama. They were married and had two kids—a son named after Rick, who was seven at the time of the murder, and a daughter, four. When they split up several years ago, he had his "JoAnn" tattoo covered up with clouds. That didn't stop her—or his mother-in-law—from taking their vacation time from work to attend the Milano murder trial in support of Rick Laird. "I still love him. I'll *always* love him," JoAnn told reporters at the trial. Until a couple of months ago, she was still refusing to sign for a divorce.

The effect Rick Laird had on his women was legendary. At the trial, reporters needed a score card to keep track of all the



Laird's girlfriend Barbara Anne with their child.

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women who had come to support their Rick. In one corner were his estranged wife JoAnn and her mother, who took turns checking on Laird's son, who had to be removed from school when his fellow second-graders began to torment him after learning of his father's arrest for murder. In another corner sat current girlfriend Barbara Anne Parr holding the 11-week-old infant she had by Laird—born two months after Laird's arrest for murder.

Outside the courtroom, Rick's women spent much of their time glaring at each other. One day JoAnn and Barbara Anne happened to end up in the same elevator, Barbara Anne with Rick's baby in her arms. They emerged screaming "Fuck you" at each other, and engaged in a shoving match.

Laird had known the former Barbara Anne Kessler since she was 13 and he

When she finally had to choose between her man and her cousin, Barbara Anne stood by her man. "I still love my cousin Frankie," she says. "But I know my Rick could never kill someone."

was 12 and they lived in the same neighborhood. Though they were barely in their teens, their world was hardly innocent. In those days, Levittown—particularly the neighborhood they grew up in—was plagued by a motorcycle gang called The Breed. In its heyday, over a decade ago, its members, dressed in jackets with an American flag logo, ran one of the biggest methamphetamine rings in the state.

Any affection Laird may have felt for Barbara Anne was futile by the time she'd turned 15, because she was pregnant with another man's child. That marriage lasted only a couple of months, and then George Parr, the president of The Breed, claimed her as his own. George was 22 years older than Barbara Anne. When she met him, he had just gotten out of prison, where he did federal time on drug charges. During their five-year relationship, she was a princess in a world where the princes drove Harley-Davidsons.

Barbara Anne met Richard Laird again when he was separated from his wife and dating her sister Kim. She was divorced again, raising her son David, and trying to

put her past life behind her. "I couldn't stand him at first," she recalls in a sweet, quiet voice. "I thought he was a little loud for me. And to be honest, after I separated from George, I didn't want that kind of stuff in my life anymore."

But Richard Laird worked his charms on Barbara Anne—the woman he'd tried to steal from George Parr so many years before—and she began to fall in love with him. When he went back to prison on a parole violation he started to write her love letters, announcing his intention to care for her and her son. And she started to break the news to her sister. Kim found someone else and Barbara waited for Rick, hanging his prison poems on her bedroom wall. One of them was titled "In My Heart":

You are my woman and
I am your man. Baby,
we will walk through
this life hand in hand.

It may be a little rough
in the start, but we can
count on the love that
is in our hearts. It will be
so beautiful I just know
this is true. Barbara Anne
I love you
I love you
I love you.

As soon as he was released they moved in together, and promptly decided to have a baby. She tried for months to conceive, and when she finally did, she called her cousin, Frank Chester, first, to break the news. Then Laird got on the phone and asked Frank to be the baby's godfather.

But from the beginning of Barbara Anne's pregnancy she had a difficult time, and was under doctor's orders to spend most of her time in bed. Laird had gotten a job doing the carpentry work at their apartment complex, the Ambassador Arms, and all through the day he would check on Barbara Anne. When he'd get home, he'd make the dinner and clean up the house. Barbara Anne, who'd cleaned houses for a living at one point, was a meticulous housekeeper—even the cops who took photos of their place after the murder talked about how "clean and homey" Laird's place was—but Rick would insist when he left in the morning, says Barbara Anne, that she leave the work for him. In the evening he'd help little David with his homework. "He'd tell me," says David, now ten, "that he'd give me 15 chances to get it right." By now, Barb's son had begun to call Rick Laird "Dad." Rick took him to the malls, to Great Adventure and on hayrides. When David's school had a parent/teacher meeting, it was Rick Laird, in his biker boots and black leather jacket, who attended.

Barbara Anne knew that the Rick she lived with was no angel in the eyes of others. But it was her little theory that his life of crime and drug abuse was behind him, that as long as he stayed home with her and David—the life he *really* wanted—

he'd be fine.

Barbara Anne felt that the one person who always disturbed their happy domestic life was Cousin Frank, who never came to visit without a case of beer and a couple of pals. Once, before she lived with Rick, she had welcomed her cousin's visits. But now, the two together meant trouble. "I love my cousin," says Barbara Anne, "but he was the kind of guy who, when he'd come to your home, would stay. I don't know if you've ever had company like that."

She says her cousin Frank turned to Rick constantly to help him out of trouble.

"Rick and I fought for an hour before we went over to his place that night," says Barbara Anne. "But I knew as long as Rick wanted to go, we'd go. He always wore the pants in this family. And to be honest with you, I liked it that way."

When the choice came down to her man or her cousin, as the details of the murder began to unravel, Barbara Anne stood by her man. "I still love my cousin Frankie," she says, "but I know he was the killer. My Rick could never kill someone."

TODAY FRANK CHESTER SAYS HE WAS never friends with Rick Laird; he just put up with him because of Barbara Anne, who he still thinks could clear him. He also insists that he was always more fearful of Laird than he was adoring. Regardless, the two made an interesting combination: Chester, always the follower, always in search of the hero, and Laird, big tough womanizing Laird, who had nothing to prove. Or did he?

As the trial progressed, there was increasing doubt as to which of the defendants was scarier. Which was tougher. Who really was the bigger "pussy," to use Laird's term—Laird, the one who wore his macho like a badge, or Chester, who lived in awe of his buddy's arrogant swagger?

When the two of them got tattooed together, Frank Chester chose a little devil for his forearm; Richard Laird chose a pair of lips with semen dripping out.

They were also close enough to share an assault charge, almost one year to the day before the Milano murder. The incident involved a man who dropped off Barbara Anne Parr one night and ended up beaten with a baseball bat. As with the Milano killing, Chester said that Laird did it and Laird accused his buddy Chester. At any rate, the charges were dropped when the subject decided he couldn't remember his attacker.

EVERY DAY, AMONG THE WOMEN WHO showed up for the trial were Frank Chester's mother, Elaine, escorted by her two daughters, and Colleen Ingram, the pretty blond shampoo girl she had fixed Frank up with. Together, the four women sat on a

bench holding hands. As the trial progressed, Chester's mother seemed to age, the circles under her eyes becoming darker, the wrinkles in her face more apparent. By the end of the week, she could barely walk without assistance from her daughters, and her blank expression seemed to change only when someone offered her coffee. Then she'd wipe her tears, apologize, and say, "Thank you." Often, with tears brimming in her eyes, she'd ask reporters how Rose Milano—seated on another bench—was holding up. Even D.A. Rubenstein noticed this suffering among the women—all of them. "I don't know what's worse," he said, watching Rose and Elaine passing each other in the corridor, "being the mother of Anthony or the mother of Frank."

Occasionally Frank's girl Colleen, who sat clutching the prom picture taken of her and Frank exactly one year before, would rub Elaine's arm and say, "It's all gonna be all right."

As the families and friends of both the accused and the victim waited for Laird

Chester's lawyer painted the picture of a mixed-up kid who was petrified of Laird. Frank might have changed his story, he admitted, but that didn't make him guilty of murder—just stupidity.

and Chester to take the stand, so did yet another group. These were the gay rights activists, who attended in "silent protest" of the most extreme case of anti-gay violence ever to occur in the Philadelphia area. Every one of them seemed to have experienced at least a part of what Anthony had experienced—whether it was the taunting, the guilt, or the struggle of coming to terms with one's sexuality.

Anthony Milano came to symbolize the worst of their fears, the ultimate "silencing," a literal silencing.

Despite D.A. Rubenstein's attempt to downplay "the gay thing" in the Milano killing (he never mentioned it again after his opening argument), the activists in the courtroom saw this prosecutor, who was seeking the death penalty, as something of a hero. It was almost with reverence that they greeted him each morning.

So intense were the emotions at the trial that all spectators were scanned with a metal detector and stripped of all possessions every time they entered the courtroom. Richard Laird's attorney had even considered fitting his client with a

bulletproof vest. For his part, Laird returned the enmity: At one point he requested that his estranged wife JoAnn be allowed to sit in a different row, so she wouldn't "catch anything from the homos" that could be passed on to his kids.

At the start of the trial, the families and the gay activists were separated by more than a bench. But the tension began to break on the second day, when Rose Milano discovered Rita Addessa, spokesperson for the group. Anthony's mother approached Addessa and thanked her for being there. The two women found they had more in common than having suffered at the hands of anti-gay bigots: Rita had a son almost Anthony's age.

By the end of the trial Addessa found herself comforting none other than JoAnn Laird's tough-talking brother, Mike Walters, who carried a cane with a brass serpent curled over the top and had spent previous days muttering obscenities behind Addessa's back. Now they were chatting over a cup of vending-machine coffee.

Walters was telling Addessa, "Look, I don't mind men in dresses," and that in fact, he knew a few "dykes and homos" himself, but he wouldn't want his friends to know that.

"Sure, sure," said Addessa. "I understand." And she meant it.

She tried to explain what her role here was.

"Yeah," said Walters. "But if anything happens to me or my kids 'cause I told you I had gay friends, are you gonna support me?"

Addessa assured him once again that she understood. She certainly *did* understand. And she hardly believed that the solution to the problem of anti-gay violence would come out of this court, or any court, for that matter. She also had something in common with the macho young man: Neither believed in the death penalty.

"In other words, she's not here just to see Rick fry," said one of the Laird relatives. So as they sat in the courtroom together a lot more seemed to be at stake than the fate of the accused. Somehow, the victim's parents, the families and friends of the accused, and the gay activists all seemed to be in this together. How they'd all come out of it would depend on what happened when the prosecution finally rested.

FRANK CHESTER HAD RETAINED BRISTOL attorney Tom Edwards, who built his defense largely around the tactics of the cops. Why, he wanted to know, if they had in their charge a guy they were so sure had committed an unspeakable crime, did they continuously send him home, drive him back, send him home? He reminded the jury that nearly every witness here came courtesy of Frank Chester, who had given all of their names to the detectives. They had gained his

trust by not arresting him immediately, instead letting him slowly implicate both Rick Laird and himself. Edwards painted the picture of a mixed-up young kid petrified of Laird, horrified by what he'd seen and gradually more trusting of the cops he thought he was cooperating with.

Frank Chester was at the scene of the crime. Edwards argued, but that didn't make him guilty. Frank might have changed his story, he admitted, but it didn't make him guilty of murder. It was guilty of stupidity. Frank at least had conscience. Edwards insisted—or wouldn't have blabbed to his friends during those days after the crime while Laird unfeelingly went about his Christmas shopping. He had turned to the only people he knew—a bunch of scared teenagers—to help him out, and that was why he acted so foolishly. Chester's only crime, his attorney argued, was being at the wrong place at the wrong time—with Rick Laird.

Laird's lawyer, Ron Elgart of Fink, Fink & Associates, the largest criminal defense firm in Lower Bucks County, was just 28, and was trying his first murder case. From the moment he first saw Laird, on Christmas day in prison, he knew this was going to be a doozy. Unlike Chester, Laird didn't feel the need to claim innocence repeatedly. He just looked at his lawyer and said it once: "I didn't kill him. Frank Chester killed him." And that was that. So Elgart tried to get a fix on Rick Laird, tried to understand the "Croydon code" he operated by. Croydon, just south of Bristol, is a tough blue-collar town notorious for its brawls.

Ron Elgart describes the Croydon code as "a lot like the South Philly code, in that there's no honor in being a squealer. And you don't drag somebody else down because of something you did."

His defense was built mostly on the theory that Rick Laird was guilty of nothing but trying to protect his friend, Frank Chester—who really did the killing. His remarks on the phone, suggesting that Chester get out of town, his destruction of the evidence—all were designed to cover up for his buddy. His smug arrogance, his Christmas shopping in the days after the murder, even his attitude in the courtroom, Ron Elgart saw as further proof of his client's innocence, not of his guilt.

When Elgart took a look at the evidence, he knew there was something that had to have triggered what he called "a frenzy killing, the absolute worst kind of knifing." In his mind he painted the nightmare. "You're holding a short knife. So your fingers are right in the blood and you're slashing and dragging this knife through the throat. You can hear the sounds of the blood gushing and the trachea breaking. You're being sprayed by blood, and you're face to face, you're eye to eye with the victim. There was just a huge amount of anger involved in this kill-

ing." And that anger, he decided, would not have come from Laird.

"Laird is like the primal heterosexual man," Elgart says. "Like a caveman. Knock a woman over the head and drag her into his cave. Very confident about his sexuality. Didn't have anything to prove to anybody."

Elgart argued to the jury that the prosecution's entire case against Rick Laird was based on "the gospel according to Chester," an admitted liar and a man who had a reason that night to be carrying a weapon (since he feared retaliation from a rumble he'd been in). He told the jury that Laird's only crime had been treating Frank Chester like a friend.

"You may not like Rick Laird," he said in his closing argument. "You may not invite him to your place for coffee when this is over. . . . He is foul-mouthed. He is obnoxious. He lacks the social graces, as one would say. . . . You may think he's

Chester described for the jury a 45-minute horror ride, starting when they left the Edgely Inn. Laird slapped Anthony around, he said, while Anthony begged to go home.

crude, and frankly, he is." But that didn't mean he was guilty of murder, said his attorney.

Edwards and Elgart had drastically different styles. But what both of them managed to do for D.A. Alan Rubenstein was unequivocally put both of their clients at the scene of the murder. With a weapon.

That helped, for Rubenstein had more than a murder charge to prove. He had conspiracy and he had kidnapping. The latter seemed the least likely, at first. Anthony, by all accounts, willingly left the bar with Chester and Laird. A cop had even witnessed their departure: no struggle, no force of any kind. But under state law, kidnapping doesn't necessarily mean ransom and abduction. All it requires is that a victim be moved "a substantial distance" against his will. Proving the kidnapping charge would depend on what happened from the time they left the Edgely Inn to the time they got to the woods off Ashby Avenue.

Conspiracy was really the key to the case. Because, as Rubenstein kept repeating to the jury, if they believed there

was proof of conspiracy—that is, two people acting in concert toward the same objective—it did not make a bit of difference which of the two men actually cut Anthony Milano's throat. As accomplices, they'd be equally guilty regardless of who did the kicking and who wielded the knife.

The real question for the jury was whether they believed that either man could have acted alone. And answering that question depended as much on their assessment of the men as it did on their judgment of the hard evidence.

"THE DEFENSE CALLS FRANK CHESTER."

On the morning of May 18th, after the prosecution rested its case, Frank Chester took the witness stand. This time, the more he talked, the more he filled in the pieces of what he claimed happened in the car—from the time that the pair left the bar with Anthony Milano to the time they arrived in the woods. He described for the jury a 45-minute horror ride, with Anthony driving, Chester in the back seat, and Laird in the front seat, telling him where to drive and slapping him around, as Anthony pleaded to go home.

Chester testified that he got into the car expecting to be dropped off with Laird at his apartment practically across the street from the bar. But Laird wanted to drive around first. They made three stops, he said, before they got to the woods near Ashby Avenue. The first stop was at a 7-11. When they pulled up to the store, both of them got out of the car—Laird went to the pay phone in front of the building to make a call, Chester went inside to buy cigarettes. At this point, Anthony—presumably sensing a chance to escape—tried to back the car out of the lot. More interesting was that, according to Chester, Anthony waited for him to get back in the car before he tried to flee. But he hit the gas so quickly that the car stalled. Laird, seeing him try to get away, furiously slammed down the phone and jumped back in the car. It was then that the beating started in earnest, said Chester.

They made two more stops along the way, said Chester—once for drugs (Rick Laird got out of the car, approached a house, changed his mind, and got back in the car) and once "to take a piss." Chester swore that the three of them got out and relieved themselves, though the coroner's report showed that Anthony had a full bladder.

According to the route Chester said they took—about six miles altogether—they'd have passed both the back yard of Anthony Milano's house as well as his Mennonite church. They also passed several all-night diners and gas stations. Why Anthony didn't pull over, flash his lights, do something to escape, was never explained.

But there was also a question as to whether he was behind the wheel the entire time. In one of Chester's earlier ver-

sions. Laird took over the wheel after one stop. It's possible that someone else drove: Anthony's keys have never been found.

They were also heavily intoxicated—all three of them. Anthony, who had drunk the least of the three, had a .23 blood/alcohol count, more than double the limit for legal intoxication. His reactions—or lack thereof—may have been simply due to a combination of alcohol and fear.

Though Chester blamed Laird for every act of violence in the car, Rubenstein theorizes that what happened on the ride was a steady escalation of torture on the part of both of them, an escalation that ended with the slashing in the woods.

"I think that once they got him into the car, they started to intimidate him," said Rubenstein later. "You know, 'Let's have some fun with this guy, let's bash in a fag.' And that they started in the car to punch him, maybe beat him, and by the time they got to the woods, it was 'Let's kick his head in,' 'Let's punch him in the mouth,' 'Let's teach him a lesson.' I really don't believe that Frank Chester intended, or for that matter, Richard Laird intended, when they first got in the car, that they were going to slash his throat. I think their intentions were, 'Let's teach the fag a lesson. He's just a fag.' And it just escalated and escalated, with each trying to prove to the other how tough he was."

Frank Chester gave this version of what happened when they got to the woods. They had stopped there to buy drugs from a guy who lived across the street. He and Anthony both got out on the driver's side, Laird on the passenger side, near the woods.

"I had the six-packs with me," said Chester. "I got out of the car, started walking toward [the] house," when he noticed that Rick Laird and Anthony Milano were walking toward the woods. He said that Rick Laird had one arm around Anthony, and with the other, punched him squarely in the face. He said he saw this from the back, then he ran over and pushed Anthony Milano to the ground.

"Why did you push Anthony Milano?" asked his lawyer, Tom Edwards.

"Well, look at the size of Rick . . ."

"Did you want to stop a fight?"

"Yeah, you could say that. I didn't want to see the kid get beat up there for no reason."

"So you pushed Milano out of the way?"

"Yes, sir."

"Then what happened?"

"I said to Rick, 'Let's get out of here' . . . And then Rick said, 'Fuck that,' and jumped on him."

"Then what happened?"

" . . . I thought he was hitting him, you know what I mean? Because when you're on top, you can hit something like this.

[He described Laird kneeling on Anthony's chest, pinning his arms underneath him.] When I walked, when I went over there, he was doing . . . the thing."

"What was he doing?"

"Slashing his throat."

"What did you do?"

"I froze. I never seen anything like that. [Even] on TV."

"Then what happened?"

"Well, I was just, like, standing there.

[Then Rick] looked up at me. I turned around and I ran."

When Rubenstein cross-examined him, Chester elaborated for the district attorney how he saw "blood squirting up" from Anthony Milano's neck and how he heard "gurgling noises."

"You were afraid of Rick Laird, correct?" asked Rubenstein.

"Yes. I mean, I wouldn't want to have to fight him."

"Me neither!"

"Objection!"

"Objection sustained," said the judge.

"After you saw Rick Laird making these

From the moment when Ron Elgart asked his client what the weather was like that night, and Laird replied, "Kinda shitty," it was clear that Laird would play the tough guy to the end.

motions back and forth with his hands, did that scare you?"

"Yeah."

"Were you worried?"

"I was in shock . . ."

"Never saw that before?"

"No."

"Kind of stuff they won't show on TV?"

"No, they don't."

"Pretty horrible, wasn't it?"

"Yes."

" . . . Scared as you were of Richard Laird, you went back to his apartment that night, didn't you?"

Later, Rubenstein turned his questions back to the specifics of the crime.

"You mentioned that you saw Rick Laird punch him in the face *once*, right?"

"Yes."

"Then all of a sudden, Rick's on top of him, right?"

"Yes."

"Are you sure about that?"

"Positive."

"One punch in the face?"

"Yeah. Bang."

"Bang, right in the face. That's it?

That's all you saw?"

"Like I said . . . that's what I seen."

Rubenstein turned the life-size drawing of Anthony Milano around, as the victim's mother gasped and rushed from the courtroom.

"OK," said Rubenstein, pointing dramatically to the drawing, "Who did *this* injury, this bang to the head, do you remember that?"

"Do I remember? No."

"How 'bout this bang to the head here?" He slapped the canvas.

"No."

"How 'bout the bang to the chin?"

"No."

"You *heard* the pathologist's testimony, right?"

"Yes."

"Wasn't Rick Laird, was it?"

THERE WERE OTHER THINGS ABOUT Chester's testimony that just didn't jibe with the evidence. He didn't explain, for instance, how the body ended up more than 30 feet into the woods (there was no evidence whatsoever that Anthony had been dragged). Nor did he explain what he was doing—besides being in shock—for the ten minutes the knifing apparently lasted. But what Laird's attorney Elgart tried to establish, as he cross-examined Chester, was other inconsistencies. For one thing, as Chester described the slashing—and because of the way the body was found—it was clear that Milano was pinned down. Chester said Laird was kneeling on his chest. Yet Laird is big, well over 200 pounds. And the one thing the pathologist did *not* find on the body was any evidence of bruising, such as the kind he would have if Rick Laird were kneeling on him. More damning, in Elgart's opinion, was the fact that no one had testified to blood on Rick Laird's beard, a beard that hung down to his chest. It was Elgart's contention that had Laird done the cutting, he "would have looked like Eric the Red."

But any small relief Ron Elgart may have felt when he finished with Frank Chester ended moments later, when the defense called Richard Laird.

From the moment when Elgart asked his client what the weather was like that night, and Laird turned toward the jury, laughed, and said, "Kinda shitty," it was clear that Laird would play the tough guy to the end. His testimony was peppered with expletives. His style and language clearly put the jury off.

There was a stir in the courtroom as Elgart led his client through the events of the night. Laird admitted—rather proudly, in fact—that sure, he called Milano a faggot. "I call lots of people faggot," he explained later in an interview. But he insisted that it wasn't he but Chester who asked Anthony for a ride home. It was Chester, he said, who *needed* a ride home. He himself lived just across the street. He added that when they left the bar, they

headed in the direction of Frank's place, several miles away. None of which, of course, explained why he went along for the ride with a guy he thought was "a faggot."

Laird swore that there were no stops between the Edgely and Ashby Avenue, no torture ride that he knew of, and though he sat in the passenger seat, he said he never laid a hand on Anthony.

"What happened when you pulled up on Ashby Avenue?" asked Elgart.

"I got out my side there and I started walking towards the houses."

Immediately, some of the same inconsistencies that surfaced in Chester's version began to surface in Laird's. Namely, how he didn't notice the other two weren't with him until they were 30 feet into the woods.

"What happens next?"

"Well, I heard [Frank yell], 'Yo, over here!' . . . I turned around. I started walking over towards him . . . I heard a punching and a smacking, that's what it sounded like."

"Noises?"

"Yeah."

"Voices?"

"Just grunts."

"What happened when you went towards the noise?"

"I started, you know, I got up towards it, and I seen him rolling around on the ground . . . they were rumbly, you know? And I says, 'Yo, Frank! What the fuck you doin', man?'"

"And what happened next?"

"Well, [Frank] jumped up, you know? . . . And [Anthony] started to get up, and he was all wobbling, you know? And he grabbed onto my jacket . . ."

"What happened next?"

"I heard some noise coming [from] behind me."

"And then what?"

"And then Tony's eyes got *real big*, man. And I started getting sprayed with all this hot shit, you know? And I heard this fucking noise like water going down the drain."

He ran, he said, and when Chester caught up with him, his buddy was like a wild man. From this point on, the Croydon code kicked in on the witness stand, as Laird got meaner and angrier, explaining the extremes to which he'd gone to protect Frank Chester. First he took the knife from his hand, wiped it on his shirt, then handed Frank the shirt so he could clean himself up. When they got to Frank's friends' apartment, sure he told him to shut up; he didn't want his pal sent away for life. In fact Laird said that everything he did—from throwing his own bloody clothes and the knife in a dumpster to the advice he gave him on the phone, even Laird's saying that *he* himself was leaving town, was all a grand attempt to

help Frank beat the rap.

At one point, Laird stopped in mid-sentence, fixed his steely eyes on Frank Chester, and shouted abruptly from the stand:

"I loved you like a brother, dude, and you *fucked me*, you know that?!"

There was a moment of silence in the courtroom. Chester fidgeted in his chair. The "code" that was becoming most apparent wasn't Laird's or even Chester's, but the one that existed between them.

When Rubenstein cross-examined Laird, he didn't even bother questioning him on what happened in the woods. Instead he tried to goad Richard Laird into continuing to be as "normal" as possible.

"You had an OK relationship with Frank Chester for a couple years?" asked Rubenstein.

"Yeah."

"So you can't figure out any other reason why he is saying that you carved up Anthony Milano?"

"Any other reason?"

"You can't think of any reason why he

The most telling part of the trial came when Chester—who claimed to remember the most intricate details of the night—couldn't remember slow dancing with Richard Laird.

would say that, would you?"

"I can't *think* of any? Look where I'm sitting! He's trying to get the fuck out of this and what he did."

Rubenstein moved on to the taped phone conversation, in which Laird told Chester to get out of town, and in a couple years all this would blow over.

"You figured if he could hide out for seven years, he would have this rap beat?"

"I told him that," said Laird.

"All he had to do was hide out . . . and people just forget about this murder, right?"

"I was trying to keep him calm, sir."

"Seven years pass by like Milano was never there, right? *That's* what you told him?" Rubenstein snapped his fingers. "*Just like that?*"

Laird turned to the jury, brazenly snapped *his* fingers in the air, and repeated, "*Just like that.*"

Afterward, Rubenstein said that at that moment, he was convinced that every juror was on his side.

It was neither Rubenstein's job nor his

desire to demonstrate conclusively what *really* went on that night in the woods. Whether Chester's version or Laird's was closer to the truth. Or if the truth really lay elsewhere.

Psychologists who study such things say that in most attacks on homosexuals, the individual is really striking out against himself. His fears, his insecurities, his own doubts about his sexuality. And in some ways, Laird and Chester—with their tattoos, hard drinking, hard talk and tough-guy mentality—seemed to be textbook cases: men who were trying, perhaps too hard, to be . . . well, men.

The armchair psychologists—the reporters and the local lawyers who hung around the trial—formed their own hypotheses outside the courtroom, hypotheses that rarely discounted the notion that something besides murder happened in the woods that night.

The most common theory assumed that sometime during the ride either Laird or Chester, or both, had intended to do more than fight with Anthony. "Let us suppose," said one lawyer, "just for the sake of argument, that Laird makes this big thing about hating faggots, and let us suppose he wants to do something with this kid, and Anthony is agreeable, or perhaps has little choice in the matter, and somewhere during the course of the sexual act, Laird snaps. Really snaps."

Far less possible, though certainly suggested, was the thought that Anthony had in some way, before they left the bar, propositioned one of his killers. The idea is unlikely mostly because even gay men as closeted as Anthony are usually quite perceptive about such things. They can almost sense who's game and who isn't. Gay men call it "gay-dar," and it doesn't go off out of fear—which there's no doubt Anthony felt. If there was an interest among them, it was probably not coming from Anthony.

Whatever the surmises, there was no evidence that a sexual act had been *completed* that night. But that didn't necessarily mean that one had not been attempted.

"But even if a sexual thing did take place, or start to," Rubenstein said later, "neither one of them would ever, *ever* admit it. They would have admitted killing him before they'd ever admit that."

In fact the most telling testimony of the trial came during Rubenstein's cross-examination of Chester, when the D.A. was trying to determine exactly what happened in the bar. The bartender had already testified that one of the ways Laird and Chester ridiculed Anthony Milano in the bar that night was by slow dancing together. Laird, when he testified, confirmed it as well. "Yeah, we slow danced," he said in his nothing-to-prove tone.

But Chester, who claimed to remember the most intricate details of the night, couldn't seem to remember slow dancing with his buddy.

"Now, this dancing or not dancing,"

said Rubenstein mockingly. "You weren't peek to cheek with [Laird], were you?"

"No, sir!"

"Then how did this happen, this thing that people have described as dancing which you say was not. Can you tell us about that?"

"How it happened? If I'm saying it didn't? If it did, I don't remember it."

"In other words, you're not saying that you didn't dance with Laird, just that you don't recall?"

"I'm saying to my recollection."

"Let me ask you this question: Do you usually make it a habit to dance with other guys, and I don't mean that as a joke, Mr. Chester, but do you usually make it a habit?"

"No, sir!"

"So if you *did* that, you would probably remember that, right?"

No response.

AFTER CHESTER AND LAIRD HAD THEIR say, Rubenstein delivered his closing argument to the jury. He reminded them not to "get caught up . . . in who plunged the knife, who hit first, who hit where. Ladies and gentlemen, it doesn't make a difference."

Under the law, it didn't. But Rubenstein admits that to this day, even *he* isn't absolutely sure which of the two really did the slashing.

"We're not here," he also told the jury, "because Frank Chester and Richard Laird may have been friends. We're not here because they want to point the finger at each other. We're here because, together, with the coldness of heart that's hard to believe, and with an evil intention of mind that we just sometimes can't comprehend, and with ice water running through their veins . . . they treated him like a cheap piece of tenderloin and they carved him up!"

AT 11:20 A.M. ON FRIDAY, MAY 20, 1987, the jury convicted Frank Chester and Richard Laird of first-degree murder, kidnapping, conspiracy, and a half dozen other related offenses. As the verdicts were read—"Guilty . . . guilty . . . guilty . . . guilty . . ." over and over, 32 times, Frank Chester's mother Elaine and Rose Milano both bowed their heads and cried. Laird's girlfriend, Barbara Anne Parr, stared at the ring on her left hand and sobbed. Chester's girlfriend, Colleen Ingram, fainted in the arms of a guard. Neither defendant showed any emotion.

As Rick Laird was led out of the courtroom, through the lights of TV cameras, Barbara Anne stood holding their baby.

A TV reporter shouted, "Any comment on the verdict?"

"Fuck you!" said Laird, then turned his head toward his woman and the baby he'd seen for the first time that week, and said,

"I love ya, babe."

A few feet from Barbara Anne, JoAnn Laird, tears and mascara dripping down her face, was being interviewed by another TV crew. "I love him," she said.

Later that day, five women were called to the witness stand to plead that the jury spare the lives of Frank Chester and Richard Laird.

"I don't want you to take my son's life," begged Elaine Holley. She was followed by her two daughters and Colleen Ingram.

"I love him with all my heart," said Colleen. "Please let him live."

Barbara Anne, in a powder blue polyester suit, took the stand for Rick Laird. "I love Richard very much," she told the jury. "He's a wonderful person . . . We all love him . . . and we all need him."

At that point, defense attorney Ron Elgart walked out of the courtroom and returned with 11-week-old Nicholas Laird wrapped in his arms. As the attorney handed the baby to Barbara Anne on the witness stand, Richard Laird burst into tears.

In Anthony's bedroom, his Christmas list still sits on his desk. The things he packed that day are exactly as he left them. "Why?" asks his mother. "Why did they have to kill him?"

The jury returned 30 hours later.

"All rise."

The court clerk addressed the jury foreman.

"Do you the jury unanimously sentence the defendant Frank Chester to death or to life imprisonment?"

"To death."

"Do you the jury unanimously sentence the defendant Rick Laird to death or to life imprisonment?"

"To death."

Chester bowed his head. Richard Laird said, "Shit."

WHEN ALL WAS SAID AND DONE, WHEN Frank Chester and Richard were led away in handcuffs to await their turn on death row, all that remained were the living victims: the women.

Almost a year after the murder, Barbara Anne Parr sits in the kitchen of her mother's home, rocking her baby and wiping the tears from her eyes. She sided with her man instead of her cousin and ended up losing them both. She often wonders how her Aunt Elaine is doing.

Barbara Anne moved in with her mother when all this happened because Rick used to pay all the bills, and has just recently found an apartment she can afford on her own. She goes to Bible school once a week, collects her welfare check, and has enrolled in classes at Bucks County Community College to build a career. She's majoring in psychology. Once a week, she packs up the children for the ten-hour round trip to visit Rick in prison. Each time he's moved he's sent farther away from her, closer to joining the 87 other men waiting on Pennsylvania's death row. Once a month, she waits for her phone call. She sends him the books he asks for—mostly classic. He writes every day.

She is asked what she is going to do with the rest of her life.

"I'm going to stand by him," says Barbara Anne Parr.

IN A YELLOW HOUSE IN TULLYTOWN, Barbara Anne's Aunt Elaine quietly says, "I believe my son."

"If you just could have seen my Frank," she says, "the night he told us what was happening. Sitting right here at the kitchen table, holding his head, shaking and sobbing, saying, 'I just can't believe what I've seen.'"

She wipes the tears. "I tried so hard with him. I really did. And I knew when I heard the story, I knew he would have to serve time. He was there. I know that. I knew he'd have to go to jail. But I just never dreamed . . ."

Frank's girlfriend Colleen continues to speak to Frank in whichever prison he is moved to. But her visits are tapering off. "I have to go on with my life," she says now. A few weeks before her 19th birthday, she walked into a tattoo parlor and had the "Frank" on her buttock covered with a peacock.

Both the verdict and the penalty are now on appeal. Frank's mother continues to visit her son in jail, but every time she walks into the prison she loses control.

"I know that's not good for Frank to see me that way," says Elaine. "But I can't help it . . . I'm his mother."

IN ANTHONY MILANO'S BEDROOM, HIS Christmas list still sits on his desk, with his prayer notes and the scrapbook he made. The lights he hung last Christmas still frame his bedroom window. In the shed, the things he packed that day are exactly as he left them. Outside on the sidewalk cement are his handprints, made long ago when he was Rose's little boy.

Rose Milano sits with the curtains drawn at the kitchen table. "Why did they kill him?" she asks. "Why did they have to kill my son?"

Every weekend, Anthony's sister Annamarie visits her brother's grave, kneeling in front of the stone that bears a picture of her brother.

"Anthony," she says, "always wanted to be famous."

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Myths About Sexual Orientation:
A Lawyer's Guide to Social Science Research

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Myths About Sexual Orientation: A Lawyer's Guide to Social Science Research

Gregory M. Herek*

This article provides an overview of social science theory and empirical research concerning sexual orientation. The paper begins with a brief discussion of terminology, basic concepts of internal validity and generalizability, the application of data to individuals and groups, and the burden of proof in scientific research on homosexuality. The bulk of the article is devoted to a discussion of current data relevant to eight common, inaccurate characterizations of lesbians, gay men, and homosexuality. These myths concern: (1) the relationship of homosexuality to mental illness; (2) the psychological effects of stigma on lesbians and gay men; (3) the origins of sexual orientation and possibilities for changing it; (4) homosexuality and child molestation; (5) the effects of lesbian and gay parents and role models on children; (6) lesbian and gay male intimate relationships; (7) lesbian and gay people as a minority group; and (8) the effects of lesbian and gay people on organizational efficiency and morale. The social science research reviewed here consistently indicates that lesbians and gay men, as a group, do not differ in significant ways from heterosexuals except in terms of their sexual orientation.

I. INTRODUCTION

Lawyers and policy makers considering issues related to sexuality and civil rights are routinely confronted with questions about lesbians and gay men: whether they are mentally ill, can be good parents, are capable of sustained relationships, are members of a minority group. Many of these

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questions arise from longstanding cultural myths and stereotypes that depict lesbians and gay men as immoral, criminal, sick, and drastically different from what most members of society would consider "normal."

A considerable body of social science data now is available to answer such questions and to separate myth from reality. The present article provides members of the legal profession with an overview of social science theory and empirical research concerning sexual orientation. Eight common, inaccurate characterizations of lesbians, gay men, and homosexuality are described briefly and relevant data concerning them are summarized.

II. PRELIMINARY CONSIDERATIONS

Although highly technical prose is generally avoided in this article, a few methodological and theoretical concepts should be explained at the outset to provide readers with background information for understanding the empirical studies to be reviewed.

A. *Problems of Definition*

A necessary first step is to clarify some terminology used in this area. *Sexual orientation* can be defined as an enduring erotic, affectional, or romantic attraction to individuals of a particular gender. It usually is characterized as *homosexual*, a primary or exclusive attraction to individuals of one's own gender; *heterosexual*, a primary or exclusive attraction to individuals of the other gender; or *bisexual*, significant attractions to members of both genders.¹

Many different aspects of human sexuality are discussed under the rubric of sexual orientation. These include: (1) engaging in specific *sexual behaviors* with partners of a particular gender; (2) having a *personal preference* for or ongoing attraction to partners of a particular gender; (3) developing a *private personal identity* as gay, lesbian, heterosexual, or bisexual; (4) establishing a *public identity* based on sexual orientation; and (5) *identifying with a community* of sexual orientation. Although we often observe consistency among these different dimensions, this is not always the case. Some people engage in heterosexual or homosexual behaviors without considering themselves to be "straight" or "gay."² For exam-

1. See Gregory M. Herek, *Sexual Orientation*, 1 *WOMEN'S STUD. ENCYCLOPEDIA* 344, 344 (Helen Tierney ed. 1989).

2. No uniform terminology exists for describing people in terms of their sexual orientation. In the present article, "homosexual" is used adjectivally to refer to sexual behavior between men or between women. "Heterosexual" is used adjectivally to refer to sexual behavior between women and men; it also is used as a noun to describe people whose personal identity is based upon a heterosexual orientation or heterosexual relationships. "Gay" is used to describe a person whose personal identity is based upon a homosexual orientation. Because "gay" is sometimes assumed to refer only to men, the term "lesbian" is used when appropriate to clarify that both women and men are being described. The use of "homosexual" as a noun has been avoided because of its clinical connotations and its historic association with pathology. See Committee on Lesbian and Gay Concerns, *Avoiding Heterosexual Bias in*

ple, individuals in prisons and other sex-segregated institutions may have sex with others of their own gender but may still prefer heterosexual contacts and identify personally and publicly as heterosexual.³ Alternatively, some radical feminists publicly identify themselves as lesbian and consider themselves part of the larger lesbian community without having engaged in homosexual activity.⁴ Lesbian and gay male intimate relationships, like their heterosexual counterparts, do not always include an overtly sexual component.⁵ Many lesbians and gay men have "come out of the closet" privately (*i.e.*, they have affirmed their homosexual orientation to themselves) but are publicly "closeted" (*i.e.*, have not disclosed their sexual orientation to others).⁶

B. Methodological Concerns

1. Internal Validity

Empirical studies are evaluated on the basis of their internal validity and the generalizability of their findings. As used here, internal validity refers to the adequacy of a study's methodology for accurately observing phenomena and ruling out alternative explanations for what is observed. When the term is applied to a particular procedure or test, *validity* refers to how well a method actually assesses what it is purported to assess. In order for data to be valid, observational procedures must be reliable. *Reliability* refers generally to consistency or stability: the extent to which a method yields similar results when applied to the same phenomenon at different times or when used by different trained observers. To illustrate the concepts of validity and reliability, consider a method for assessing intelligence by counting the number of letters in a person's name; the more letters, the higher the person's intelligence score. This procedure would be highly reliable (because the same score would be obtained repeatedly regardless of who made the observations) but it would not be valid (obviously, the length of one's name is unrelated to intelligence). To the extent that an empirical study measures its variables through proce-

Language, 46 AM. PSYCHOLOGIST (forthcoming 1991); WAYNE DYNES, *HOMOLEXIS: A HISTORICAL AND CULTURAL LEXICON OF HOMOSEXUALITY* (1985).

3. See, *e.g.*, WAYNE S. WOODEN & JAY PARKER, *MEN BEHIND BARS: SEXUAL EXPLOITATION IN PRISON* (1982); Rose Giallombardo, *Social Roles in a Prison for Women*, 13 SOC. PROBLEMS 268 (1966).

4. See Lillian Faderman, *The "New Gay" Lesbians*, 10 J. HOMOSEXUALITY 85 No. 3/4 (1984). See also Adrienne Rich, *Compulsory Heterosexuality and Lesbian Existence*, 5 SIGNS: J. WOMEN CULTURE & SOC. 631 (1980).

5. See Letitia Anne Peplau & Susan D. Cochran, *A Relationship Perspective on Homosexuality*, in *HOMOSEXUALITY/HETEROSEXUALITY: CONCEPTS OF SEXUAL ORIENTATION* 321 (David P. McWhirter, Stephanie A. Sanders, & June M. Reinisch eds. 1990).

6. *E.g.*, ALAN P. BELL & MARTIN S. WEINBERG, *HOMOSEXUALITIES: A STUDY OF DIVERSITY AMONG MEN AND WOMEN* 62-68 (1978); see W. DYNES, *supra* note 2, regarding terminology.

dures with high levels of reliability and validity, greater confidence can be placed in its results.⁷

2. *Sampling and Generalizability of Findings*

In most empirical research, observations realistically cannot be made of every member of the population of interest. Instead, inferences are made about the larger population using data collected from a subset, or *sample*, of that population. Two general approaches to sampling are used in social science research. With *probability sampling*, all elements (*e.g.*, persons, households) in the population have some opportunity of being included in the sample, and the mathematical probability that any one of them will be selected can be calculated. With *nonprobability sampling*, in contrast, each population element's chance of being selected is unknown. Consequently, mathematical theory cannot be used to estimate the extent to which the sample differs from the population.

For example, consider a study with the goal of estimating the proportion of city voters who support either of two mayoral candidates. Obtaining a probability sample would involve defining the population (in this case, all eligible voters in the city) and using one of many available procedures for selecting a relatively small number (probably less than 1,000) of those people for interviewing. A nonprobability sample also could be obtained through any of several procedures, but none of them would include the entire population as potential respondents. For example, the researchers might ascertain the voting preferences of their own friends and acquaintances; or they might interview shoppers at a local mall; or they might publish two telephone numbers in the local newspaper and ask readers to call either number in order to "vote" for one of the candidates. The important feature of these samples is that they would systematically exclude some members of the population (in the examples here, eligible voters who, respectively, do not know the researchers, do not go to the shopping mall, and do not read the newspaper would be excluded). Consequently, their findings could not be generalized to the population of city voters.⁸

7. General discussions of reliability and validity can be found in most introductory psychology and methodology textbooks. For more detailed discussions, see AMERICAN PSYCHOLOGICAL ASSOCIATION, *STANDARDS FOR EDUCATIONAL AND PSYCHOLOGICAL TESTS* (1974); ANNE ANASTASI, *PSYCHOLOGICAL TESTING* (6th ed. 1988); George W. Bohrnstedt, *Measurement*, in *HANDBOOK OF SURVEY RESEARCH* 69 (Peter H. Rossi, James D. Wright, & Andy B. Anderson eds. 1983); and CHARLES F. TURNER & ELIZABETH MARTIN, *1 SURVEYING SUBJECTIVE PHENOMENA* (1984), among others.

8. Samples are evaluated primarily according to the procedures by which they were selected rather than by their final composition or size. Even if the demographic characteristics of the hypothetical sample of the researchers' friends closely resembled those of the city electorate (*e.g.*, the same ratios of women to men and Blacks to Whites), the sample's representativeness would be unknowable. And even if several thousand people called one of the published telephone numbers, the sample would be seriously biased. For further explanation of sampling theory and procedures, see NORMAN M. BRADBURN & SEYMOUR SUDMAN, *POLLS AND SURVEYS: UNDERSTANDING WHAT THEY TELL US*

Most published social science studies use nonprobability samples of students, paid volunteers, patients, prisoners, or members of friendship networks or organizations. Studies with such samples are useful primarily for documenting that a particular characteristic occurs within a given group or, alternatively, demonstrating that not all members of that group manifest a particular trait. Sometimes matched nonprobability samples are used to compare two groups (*e.g.*, gay people and heterosexuals) on the variable of interest (*e.g.*, psychological test scores). With this procedure, each individual in the first sample has a counterpart in the second sample of the same gender, race, educational background, age, or whatever other characteristics are judged to be relevant. The purpose of matching is to eliminate known sources of bias; however, the problem of potential bias from hidden sources still remains.

With a hard-to-reach population (*e.g.*, gay people or persons who engage in homosexual behavior), a series of studies with nonprobability samples can suggest rough estimates of the proportion of the population manifesting various characteristics. When similar results are obtained repeatedly with many different nonprobability samples, the likelihood that those results apply to the population is greater than when only a single nonprobability sample is used. Nevertheless, inferences based on such data must be cautious because of the possibility of hidden systematic bias. Strictly speaking, inferences cannot be drawn from a nonprobability sample about the proportion of the population manifesting (or not manifesting) a particular characteristic. Realistically, however, funding limitations and the methodological difficulties of sampling a relatively small and partially hidden population usually prohibit the use of probability samples in research on sexual orientation.

C. *Groups vs. Individuals*

Social science data usually are of a probabilistic nature, describing groups rather than individuals. Simply because members of a group generally tend to manifest a characteristic does not guarantee that any particular group member will manifest that characteristic. For example, knowing that 70 percent of Americans agree with a policy does not permit prediction of whether any randomly selected individual agrees with that policy. However, if we were asked to guess the views of each of 100 individuals (lacking any other information about them) and we always guessed that the individual favored the policy, we could anticipate being correct approximately 70 times. The more often we repeated the proce-

(1988); Howard Schuman & Graham Kalton, *Survey Methods*, in 1 HANDBOOK OF SOCIAL PSYCHOLOGY 635 (Gardner Lindsey & Elliot Aronson 3d eds. 1985); and SEYMOUR SUDMAN, *APPLIED SAMPLING* (1976).

dure with new groups of 100, the more confident we would be that our average number of correct guesses would be 70.

D. *Burden of Proof*

Finally, readers of social science research should always be aware of how research questions have been framed. Based on the empirical studies documented in this article, most comparisons of heterosexuals with lesbians and gay men should start from the assumption that no differences exist between the two groups. In other words, researchers should assume the burden of proof for showing that lesbian and gay people differ from heterosexuals on social and psychological variables.⁹

III. EIGHT MYTHS ABOUT SEXUAL ORIENTATION

A. *Myth #1: Homosexuality is a form of mental illness.*

Several different perspectives have competed for supremacy in discussions of human sexuality during the last century. Longstanding religious and legal proscriptions on sexual behavior have been challenged by medical perspectives and, more recently, by the perspectives of psychology and the behavioral and social sciences.¹⁰ Even within the sciences, discourse on homosexuality has shifted more than once during the last 100 years. Early in the twentieth century, Havelock Ellis argued for an accepting stance toward homosexuality. He maintained that homosexuality was inborn and therefore not immoral, that it was not a disease, and that many homosexuals made outstanding contributions to society.¹¹ Sigmund Freud's basic theory of human sexuality was different from that of Ellis. He felt that all human beings were innately bisexual, and that they become heterosexual or homosexual as a result of their experiences with parents and others.¹² Nevertheless, Freud agreed with Ellis that a homosexual orientation should not be viewed as a form of pathology. In a now-famous letter to an American mother in 1935, Freud wrote:

Homosexuality is assuredly no advantage, but it is nothing to be ashamed of, no vice, no degradation, it cannot be classified as an

9. For a general discussion of bias in research on sexual orientation, see Gregory M. Herek, Douglas Kimmel, Hortensia Amaro, & Gary Melton, *Avoiding Heterosexist Bias in Psychological Research*, 46 AM. PSYCHOLOGIST 957 (1991).

10. See, e.g., ALAN BÉRUBÉ, *COMING OUT UNDER FIRE: THE HISTORY OF GAY MEN AND WOMEN IN WORLD WAR TWO* (1990); JOHN D'EMILIO & ESTELLE B. FREEDMAN, *INTIMATE MATTERS: A HISTORY OF SEXUALITY IN AMERICA* (1988); MARTIN B. DUBERMAN, *MARTHA VICINUS, & GEORGE CHAUNCEY, JR., HIDDEN FROM HISTORY: RECLAIMING THE GAY AND LESBIAN PAST* (1989) [hereinafter M. DUBERMAN]; and George Chauncey, Jr., *From Sexual Inversion to Homosexuality: Medicine and the Changing Conceptualization of Female Deviance*, 58-59 SAL-MAGUNDI 114 (1982-1983).

11. See PAUL ROBINSON, *THE MODERNIZATION OF SEX* 4-7 (1976).

12. See Sigmund Freud, *Three Essays on the Theory of Sexuality*, in 7 THE STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD 125 (James Strachey ed. 1905).

illness; we consider it to be a variation of the sexual function produced by a certain arrest of sexual development. Many highly respectable individuals of ancient and modern times have been homosexuals, several of the greatest men among them. (Plato, Michelangelo, Leonardo da Vinci, etc.) It is a great injustice to persecute homosexuality as a crime and cruelty too. . . .

. . . If [your son] is unhappy, neurotic, torn by conflicts, inhibited in his social life, analysis may bring him harmony, peace of mind, full efficiency, whether he remains a homosexual or gets changed.

13

Later psychoanalysts did not follow this view, however. Sandor Rado rejected Freud's assumption of inherent bisexuality, arguing instead that heterosexuality is inborn and that homosexuality is a phobic response to members of the other sex.¹⁴ Other analysts later argued that homosexuality resulted from pathological family relationships during the oedipal period (around four to five years of age) and claimed that they observed these patterns in their homosexual patients.¹⁵ Socarides proposed that the etiology of homosexuality was pre-oedipal and, therefore, even more pathological than had been supposed by earlier analysts.¹⁶

Although psychoanalytic theories of homosexuality have had considerable influence in psychiatry and in the larger culture, they have not been subjected to rigorous empirical testing. Instead, they have been based on analysts' clinical observations of patients known by them to be homosexual. Two major problems result from this procedure. First, the analyst's theoretical orientations and personal attitudes are likely to bias her or his observations.¹⁷ Second, samples of patients or incarcerated individuals cannot be used to make valid inferences about the general noninstitutionalized population.

A more tolerant stance toward homosexuality was adopted by researchers from other disciplines. Zoologist and taxonomist Alfred C. Kinsey, in his groundbreaking empirical studies of sexual behavior among Ameri-

13. *Historical Notes: A Letter from Freud*, 107 *AM. J. PSYCHIATRY* 786 (1951).

14. See Sandor Rado, *A Critical Examination of the Concept of Bisexuality*, 2 *PSYCHOSOMATIC MED.* 459 (1940); Sandor Rado, *An Adaptational View of Sexual Behavior*, in *PSYCHOSEXUAL DEVELOPMENT IN HEALTH AND DISEASE: THE PROCEEDINGS OF THE 38TH ANNUAL MEETING OF THE AMERICAN PSYCHOPATHOLOGICAL ASSOCIATION* 159 (Paul Hoch & Joseph Zubin eds. 1949).

15. See, e.g., IRVING BIEBER, HARVEY DAIN, PAUL R. DINCE, MARVINE G. DRELLICH, HENRY G. GRAND, RALPH H. GUNDLACH, MALVINA W. KREMER, ALFRED H. RIFKIN, CORNELIA B. WILBUR, & TOBY B. BIEBER, *HOMOSEXUALITY: A PSYCHOANALYTIC STUDY* (1962).

16. See CHARLES SOCARIDES, *THE OVERT HOMOSEXUAL* (1968). For a detailed history, see KENNETH LEWES, *THE PSYCHOANALYTIC THEORY OF MALE HOMOSEXUALITY* (1988); for briefer summaries, see RONALD BAYER, *HOMOSEXUALITY AND AMERICAN PSYCHIATRY: THE POLITICS OF DIAGNOSIS* (2d ed. 1987); Charles Silverstein, *Psychological and Medical Treatments of Homosexuality*, in *HOMOSEXUALITY: RESEARCH IMPLICATIONS FOR PUBLIC POLICY* 101 (John C. Gonsiorek & James D. Weinrich eds. 1991) [hereinafter *HOMOSEXUALITY*].

17. See ROBERT ROSENTHAL, *EXPERIMENTER EFFECTS IN BEHAVIORAL RESEARCH* (1976), for a discussion of how a researcher's expectations can influence results.

can¹⁸ adults, revealed that a significant number of his research participants reported having engaged in homosexual behavior to the point of orgasm after age 16.¹⁹ Further, Kinsey and his colleagues reported that 10 percent of the males in their sample had been more or less exclusively homosexual in their behavior for at least three years between the ages of 16 and 55.²⁰ Six percent or fewer of the females (depending on marital status) had been more or less exclusively homosexual in each of the years between 20 and 35 years of age.²¹ Despite frequent extrapolations by modern commentators from Kinsey's data to the United States adult population, the representativeness of his nonprobability sample cannot be assessed.²² Nevertheless, his work revealed that many more American adults than previously suspected had engaged in homosexual behavior or had experienced same-sex fantasies. This finding cast doubt on the widespread assumption that homosexuality was practiced only by a small number of social misfits.²³

Other social science researchers also argued against the prevailing negative view of homosexuality. In a review of published scientific studies and archival data, Ford and Beach found that homosexual behavior was widespread among various nonhuman species and in a large number of human

18. Following popular usage, the term "American" is used here to refer to residents of the United States.

19. See ALFRED C. KINSEY, WARDELL B. POMEROY, & CLYDE E. MARTIN, *SEXUAL BEHAVIOR IN THE HUMAN MALE* 610-66 (1948) [hereinafter A. KINSEY, *HUMAN MALE*]; ALFRED C. KINSEY, WARDELL B. POMEROY, CLYDE E. MARTIN, & P.H. GEBHARD, *SEXUAL BEHAVIOR IN THE HUMAN FEMALE* 446-501 (1953) [hereinafter A. KINSEY, *HUMAN FEMALE*].

20. See A. KINSEY, *HUMAN MALE*, *supra* note 19, at 651.

21. See A. KINSEY, *HUMAN FEMALE*, *supra* note 19, at 473-74.

22. For methodological and statistical critiques, see Lewis M. Terman, *Kinsey's "Sexual Behavior in the Human Male": Some Comments and Criticisms*, 45 *PSYCHOLOGICAL BULL.* 443 (1948); WILLIAM G. COCHRAN, FREDERICK MOSTELLER, & JOHN W. TUKEY, *STATISTICAL PROBLEMS OF THE KINSEY REPORT ON SEXUAL BEHAVIOR IN THE HUMAN MALE* (1954); W. Allen Wallis, *Statistics of the Kinsey Report*, 44 *J. AM. STATISTICAL A.* 463 (1949).

23. A common assumption today is that 10% of the United States population is gay. Although this figure is usually attributed to the Kinsey studies, Kinsey did not categorize his research participants according to sexual orientation. Instead, he chose to emphasize sexual behavior and fantasy. Additionally, because Kinsey did not collect his data from a probability sample, valid inferences cannot be made from them to the larger population. A recently published analysis of data collected in a 1970 survey with a national probability sample estimated that between 19.9% and 21.1% (depending on which statistical assumptions were made) of American males had engaged in homosexual behavior; between 3.0% and 6.2% had engaged in such behavior occasionally or fairly often after age 20. See Robert E. Fay, Charles F. Turner, Albert D. Klassen, & John H. Gagnon, *Prevalence and Patterns of Same-Gender Sexual Contact Among Men*, 243 *SCI.* 338, 346 (1989). In a 1989 national poll commissioned by the San Francisco Examiner, and conducted by Teichner Associates, 6.2% of the national respondents and 10% of the Bay Area respondents identified themselves as lesbian, gay, or bisexual to the interviewer; approximately 27,000 calls were made to obtain 800 responses. See Larry Hatfield, *Method of Polling*, *San Francisco Examiner*, Jun. 5, 1989, at A-20, col. 1. For both the Kinsey and Teichner surveys, the investigators believed that their data underestimated the actual prevalence of homosexuality because of the widespread reluctance among respondents to acknowledge their own homosexuality, even in anonymous surveys. For further discussion, see *infra* note 57; Gregory M. Herek, *The Tyranny of Ten Percent*, *THE ADVOCATE*, Aug. 1, 1989, at 46; AIDS: *SEXUAL BEHAVIOR AND INTRAVENOUS DRUG USE* (Charles F. Turner, Heather G. Miller, & Lincoln E. Moses eds. 1989).

societies.²⁴ They reported that homosexual behavior of some sort was considered normal and socially acceptable for at least some individuals in 49 of the 76 societies (64 percent) in their sample; in the other 28 societies, adult homosexual activity was reported to be totally absent, rare, or carried on only in secrecy.²⁵ As with Kinsey, whether this proportion applies to all human societies cannot be known because a nonprobability sample was used. However, the findings of Ford and Beach demonstrate that homosexual behavior occurs in many societies and is not always condemned.²⁶

Although dispassionate scientific research on whether homosexuality should be viewed as an illness was largely absent from the fields of psychiatry, psychology, and medicine during the first half of the twentieth century, some researchers remained unconvinced that all homosexual individuals were mentally ill or socially misfit. Bérubé²⁷ has reported the results of previously unpublished studies conducted by military physicians and researchers during World War II. These studies challenged the equation of homosexuality with psychopathology, as well as the stereotype that homosexual recruits could not be good soldiers.

A common conclusion in their wartime studies was that, in the words of Maj. Carl H. Jonas, who studied fifty-three white and seven black gay men at Camp Haan, California, "overt homosexuality occurs in a heterogeneous group of individuals." Dr. Clements Fry, director of the Yale University student clinic, and Edna Rostow, a social worker, who together studied the service records of 183 servicemen, discovered that there was no evidence to support the common belief that "homosexuality is uniformly correlated with specific personality traits" and concluded that generalizations about the homosexual personality "are not yet reliable. . . ."

. . . Sometimes to their amazement, [researchers] described what they called the "well-adjusted homosexuals" who, in [William] Menninger's words, "concealed their homosexuality effectively and, at the same time, made creditable records for themselves in the service." Some researchers spoke in glowing terms of these men. "The homosexuals observed in the service," noted Navy doctors Greenspan and Campbell, "have been key men in responsible positions whose loss [by discharge] was acutely felt in their respective departments." They were "conscientious, reliable, well-integrated and abounding in emotional feeling and sincerity." In general, "the homosexual leads a useful productive life, conforming with all dictates of the community, except its sexual requirements" and was "neither a burden nor a

24. See CLELLAN FORD & FRANK BEACH, *PATTERNS OF SEXUAL BEHAVIOR* (1951).

25. See *id.* at 125-33.

26. For more recent cross-cultural data, see *RITUALIZED HOMOSEXUALITY IN MELANESIA* (Gilbert H. Herdt ed. 1984); W.L. WILLIAMS, *THE SPIRIT AND THE FLESH: SEXUAL DIVERSITY IN AMERICAN INDIAN CULTURE* (1986).

27. A. BÉRUBÉ, *supra* note 10.

detriment to society." Fry and Rostow reported that, based on evidence in service records, homosexuals were no better or worse than other soldiers and that many "performed well in various military jobs" including combat.²⁸

Today, a large body of published empirical research clearly refutes the notion that homosexuality *per se* is indicative of or correlated with psychopathology. The classic study in this area was conducted by Hooker, who administered three projective tests (the Rorschach, Thematic Apperception Test, and Make-A-Picture-Story Test) to thirty homosexual males and thirty heterosexual males recruited through community organizations.²⁹ The two groups were matched for age, IQ, and education; none of the men were in therapy at the time of the study.³⁰ Unaware of each subject's sexual orientation, independent experts evaluated the men's overall adjustment using a five-point scale.³¹ They classified two-thirds of the heterosexuals and two-thirds of the homosexuals in the three highest categories of adjustment.³² When asked to identify which protocols were obtained from homosexuals, the experts could not distinguish respondents' sexual orientation at a level better than chance.³³ Hooker concluded from her data that "homosexuality as a clinical entity does not exist" and that homosexuality is not inherently associated with psychopathology.³⁴

Dozens of empirical studies have since supported Hooker's conclusion that no correlation exists between sexual orientation and psychopathology. Freedman, for example, replicated Hooker's basic design using samples of lesbian and heterosexual women and objectively scored personality measures; he reached similar conclusions.³⁵ In a review of published studies comparing homosexual and heterosexual samples on psychological tests, Gonsiorek found that, although some differences have been observed in test results between homosexuals and heterosexuals, both groups consistently score within the normal range.³⁶ Gonsiorek concluded that "homosexuality in and of itself is unrelated to psychological disturbance or maladjustment. Homosexuals as a group are not more psychologically disturbed on account of their homosexuality."³⁷

28. *Id.* at 170-71 (footnotes omitted).

29. See Evelyn Hooker, *The Adjustment of the Male Overt Homosexual*, 21 J. PROJECTIVE TECH. 18, 19-20 (1957).

30. *Id.* at 19-20.

31. *Id.* at 21.

32. *Id.* at 22.

33. *Id.* at 23.

34. *Id.* at 30-31.

35. See MARK FREEDMAN, *HOMOSEXUALITY AND PSYCHOLOGICAL FUNCTIONING* 67-85 (1971).

36. See John C. Gonsiorek, *Results of Psychological Testing on Homosexual Populations*, 25 AM. BEHAV. SCI. 385, 394 (1982).

37. *Id.* at 389; see also reviews by Gonsiorek, *The Empirical Basis for the Demise of the Illness Model of Homosexuality*, in *HOMOSEXUALITY*, *supra* note 16, at 115; Maureen Hart, Howard Roback, Bennett Tittler, Larry Weitz, Barbara Walston, & Embry McKee, *Psychological Adjustment of Nonpatient Homosexuals: Critical Review of the Research Literature*, 39 J. CLINICAL PSY-

Confronted with overwhelming empirical evidence and changing cultural views of homosexuality, psychiatrists and psychologists have radically altered their views during the last two decades. In 1973, the American Psychiatric Association removed "homosexuality" as a diagnosis from the Diagnostic and Statistical Manual (DSM-III), replacing it with the more restrictive "ego-dystonic homosexuality." In 1986, even the "ego-dystonic homosexuality" diagnosis was eliminated; consequently, the revised DSM-III contains no diagnostic category for homosexuality.³⁸ The American Psychological Association (APA) promptly endorsed the psychiatrists' actions and has since worked intensively to eradicate the stigma historically associated with a homosexual orientation.³⁹ Although some psychologists and psychiatrists may privately continue to regard homosexuality negatively, empirical evidence and professional norms do not support any linkage of sexual orientation with psychopathology.

B. Myth #2: Because of social stigma, lesbians and gay men are more likely than heterosexuals to manifest low self esteem, to be depressed, or to be suicidal.

Whereas the myth that homosexuality *per se* is linked to maladjustment attributes the cause of psychological dysfunction to sexual orientation, another erroneous belief blames social stigma for creating allegedly widespread problems among lesbian and gay people. An example of the latter argument was contained in *High Tech Gays v. Defense Indus. Sec. Clearance Office*, in which the government suggested that "a homosexual may face emotional tension, instability, or other difficulties *since society has not recognized his sexual practice as mainstream.*"⁴⁰ As long ago as 1950, intelligence officers testified to the Senate Subcommittee on Employment of Homosexuals and Other Sex Perverts in Government that homosexual personnel were high-strung and neurotic as a result of leading double lives.⁴¹ Arguments of this sort are not only made by those hostile to lesbi-

CHIATRY 604 (1978) [hereinafter Hart]; and Bernard F. Reiss, *Psychological Tests in Homosexuality*, in *HOMOSEXUAL BEHAVIOR: A MODERN REAPPRAISAL* 296 (Judd Marmor ed. 1980).

38. See AMERICAN PSYCHIATRIC ASSOCIATION, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* (3d ed. revised 1987). See R. BAYER, *supra* note 16, for an account of the events leading up to the 1973 and 1986 decisions.

39. See John J. Conger, *Proceedings of the APA, Inc., for the Year 1974: Minutes of the Annual Meeting of the Council of Representatives*, 30 AM. PSYCHOLOGIST 620, 633 (1975); AMERICAN PSYCHOLOGICAL ASSOCIATION, *POLICY STATEMENTS ON LESBIAN AND GAY ISSUES* (undated publication) (available from the Committee on Lesbian and Gay Concerns, American Psychological Association, 1200 Seventeenth Street, Washington, D.C. 20036). The APA voted in 1987 to "urge its members not to use the '302.0 Homosexuality' diagnosis in the current ICD-9-CM or the '302.00 Ego-dystonic Homosexuality' diagnosis in the current DSM III or future editions of either document." *Id.* They took this action because, although the American Psychiatric Association dropped "homosexuality" from the DSM-III-R, the revised manual was not expected to be published immediately. Further, another widely used listing of mental disorders—the INTERNATIONAL CLASSIFICATION OF DISEASES, (9th ed) (ICD-9)—still included "homosexuality" as a diagnosis.

40. 668 F. Supp. 1361, 1374 (N.D. Cal. 1987) (emphasis added).

41. See A. BÉRUBÉ, *supra* note 10, at 265-67.

ans and gay men. In a paper that condemned societal prejudice, for example, Saunders and Valente asserted that lesbian and gay people as a group experience greater alienation from society and therefore "have significantly high rates of risk factors that increase suicide risk such as suicide attempts, alcohol abuse, drug abuse and interrupted social ties."⁴²

It is true that lesbians and gay men encounter numerous psychological stressors as a result of society's hostility toward them. Although many cope successfully with the stress created by prejudice, some are negatively affected by it. It is also true that similar stressors are encountered by members of other stigmatized groups: members of racial, religious, and ethnic minorities; people who are physically disfigured or unattractive; and disabled people.⁴³ More than thirty-five years ago, Allport described several ego defensive strategies, adaptive as well as maladaptive, that many American Blacks, Jews, and other minority group members were likely to employ as a response to prejudice.⁴⁴ He wrote, for example, that some minority group members might display passivity and withdrawal in the face of prejudice, or might adopt the "clown" role; they might manifest self-hatred, identification with their oppressors, aggression against members of their own group, and prejudice against other out-groups. Others, in contrast, might display increased militancy or enhanced striving to overcome the handicaps imposed by stigma; they might develop strong feelings of solidarity with other group members, might develop "sly" and "cunning" strategies for dealing with the limitations imposed upon them by the majority group, and might display increased sympathy for other out-groups.⁴⁵

Some of Allport's characterizations may well apply to lesbians and gay men today. However, assertions that lesbians and gay men manifest a disproportionate level of psychological problems either are based on unfounded stereotypes, as in *High Tech Gays*⁴⁶ and the 1950 Senate hearings, or on unwarranted generalizations from limited data, as in the article by Saunders and Valente. The empirical studies cited in the latter paper used nonprobability samples, which restricts the inferences that can be drawn from them to the larger population. Further, Saunders and Valente acknowledged that comparisons among the various studies cited in

42. Judith M. Saunders & S.M. Valente, *Suicide Risk Among Gay Men and Lesbians: A Review*, 11 DEATH STUD. 1, 1 (in Abstract) (1987).

43. See generally ERVING GOFFMAN, STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY (1963); EDWARD E. JONES, AMERIGO FARINA, ALBERT H. HASTORF, HAZEL MARKUS, DALE T. MILLER, & ROBERT A. SCOTT, SOCIAL STIGMA: THE PSYCHOLOGY OF MARKED RELATIONSHIPS (1984) [hereinafter E.E. JONES]; Jennifer Crocker & Brenda Major, *Social Stigma and Self-Esteem: The Self-Protective Properties of Stigma*, 96 PSYCHOLOGICAL REV. 608 (1989).

44. See GORDON ALLPORT, THE NATURE OF PREJUDICE (1954).

45. *Id.* at 138-58.

46. 668 F. Supp. 1361 (N.D. Cal. 1987).

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their review were problematic because of the lack of uniform definitions of suicide, attempted suicide, and sexual orientation.⁴⁷

This is not to deny that many lesbians and gay men face difficult situations in their day-to-day lives as a result of the stigma attached to their sexual orientation. Nor is it to deny that some lesbians and gay men experience these situations as stressful and develop psychological problems as a consequence. In particular, the pressure to hide one's sexual orientation and the threat of physical assaults and other hate crimes can have many negative effects, including psychological and physical pain. However, empirical data do not indicate that lesbians and gay men, as a group, show a greater propensity to psychological dysfunction than do heterosexuals.⁴⁸ Recognizing this fact, we can briefly consider some of the principal sources of stress created by societal stigma.

Because most children internalize society's ideology of sex and gender at an early age, lesbians and gay men usually experience some degree of negative feeling toward themselves when they first recognize their own homosexuality in adolescence or adulthood. This sense of *internalized homophobia* often creates a "basic mistrust or hatred for one's sexual and interpersonal identity,"⁴⁹ and interferes with the process of identity formation.⁵⁰ "Coming out"⁵¹ is a process of reclaiming disowned or devalued parts of the self, and developing an identity into which one's sexuality is well integrated.⁵²

In the course of coming out, most lesbians and gay men successfully overcome the threats to psychological well-being posed by societal stigma. Psychological adjustment appears to be highest among those who are committed to their lesbian or gay identity and who do not attempt to hide their homosexuality from others.⁵³ As with other stigmatized minorities,⁵⁴ lesbians and gay men probably maintain self esteem most effectively when

47. See Saunders & Valente, *supra* note 42, at 15-18. It is clear from their paper that Saunders and Valente did not intend to portray all lesbians and gay men as psychologically disturbed, but instead wished to inform clinicians and counselors about the reasons why some lesbians and gay men may be at risk for suicide.

48. See M. FREEDMAN, *supra* note 35; Gonsiorek, *supra* note 36; Gonsiorek, *supra* note 37; Hart, *supra* note 37; Hooker, *supra* note 29; Reiss, *supra* note 37.

49. Terry S. Stein & Carol J. Cohen, *Psychotherapy With Gay Men and Lesbians: An Examination of Homophobia, Coming Out, and Identity*, in *INNOVATIONS IN PSYCHOTHERAPY WITH HOMOSEXUALS* 59, 61 (Emery S. Hetrick & Terry S. Stein eds. 1984) [hereinafter *INNOVATIONS*].

50. See Allen K. Malyon, *Psychotherapeutic Implications of Internalized Homophobia in Gay Men*, 7 *J. HOMOSEXUALITY* 59 (1981-1982) (Nos. 3/4).

51. Wayne Dynes defines "coming out" as the process through which individuals recognize their own homosexual orientation and disclose it to others. See W. DYNES, *supra* note 2, at 33-34.

52. See Malyon, *supra* note 50; Stein & Cohen, *supra* note 49.

53. See A. BELL & M. WEINBERG, *supra* note 6, at 139-216; Sue Kiefer Hammersmith & Martin S. Weinberg, *Homosexual Identity: Commitment, Adjustment, and Significant Others*, 36 *SOCIOMETRY* 56, 77-78 (1973).

54. See Crocker & Major, *supra* note 43.

they identify with and are integrated into the larger lesbian and gay community.⁵⁵

However, as a result of societal prejudice, many lesbians and gay men feel compelled to hide their homosexuality or "pass" as heterosexual.⁵⁶ Respondents to the Teichner national telephone survey of 113 lesbians and 287 gay men, for example, waited an average of 4.6 years after knowing they were gay until they came out.⁵⁷ Depending on the area of the country, between 23 percent and 40 percent had *not* told their family that they were gay; between 37 percent and 59 percent had *not* disclosed their sexual orientation to coworkers.⁵⁸

Some gay people who have not yet come out, who feel compelled to suppress their homoerotic urges, who wish that they could become heterosexual, or who are isolated from the lesbian and gay community may experience significant psychological distress, including impairment of self-esteem.⁵⁹ Retrospective reports suggest that the time period between recognizing one's own homosexual attractions and establishing a positive gay identity may carry special risks for psychological distress and, for some, even suicide attempts.⁶⁰

As with members of other stigmatized groups who "pass," closeted lesbians and gay men may experience a painful discrepancy between their public and private identities.⁶¹ Passing also can create considerable strain for lesbian and gay male couples. Even openly gay people do not have institutional support for their long-term relationships in the form of tax and inheritance benefits, employee benefits programs, and immigration

55. See Linda Garnets, Gregory M. Herek, & Barrie Levy, *Violence and Victimization of Lesbians and Gay Men: Mental Health Consequences*, 5 J. INTERPERSONAL VIOLENCE 366 (1990).

56. See, e.g., LAUD HUMPHREYS, *OUT OF THE CLOSETS: THE SOCIOLOGY OF HOMOSEXUAL LIBERATION* (1972).

57. See *Results of Poll*, San Francisco Examiner, Jun. 6, 1989, at A-19, col. 1. In March and April of 1989, the *San Francisco Examiner* commissioned Teichner Associates to conduct telephone interviews with a lesbian and gay national sample (n=400) and a sample of gay residents of the San Francisco Bay Area (n=400). The national sample was 82% White, 6% Black, 6% Hispanic, and 5% Asian; the mean age of respondents was 33.5 years; 27% of the men and 44% of the women had been or currently were married; the sample was 46% white-collar, 12% blue-collar, 18% self-employed, and 12% professional; the median income was \$29,129 for men and \$26,331 for women. Although the sample is biased in that it excludes respondents unwilling to identify themselves as gay to a telephone interviewer, the poll represents the first published study of its kind in the United States. See also Hatfield, *supra* note 23, for additional survey results.

58. See *Results of Poll*, *supra* note 57. The Teichner survey report did not define "coming out," but presumably this term referred to disclosing one's homosexual orientation to at least one family member or co-worker.

59. See A. BELL & M. WEINBERG, *supra* note 6; Hammersmith & Weinberg, *supra* note 53; Malyon, *supra* note 50; MARTIN S. WEINBERG & COLIN J. WILLIAMS, *MALE HOMOSEXUALS: THEIR PROBLEMS AND ADAPTATIONS* (1974).

60. See Stephen G. Schneider, Norman L. Farberow, & Gabriel N. Kruks, *Suicidal Behavior in Adolescent and Young Adult Gay Men*, 19 SUICIDE & LIFE-THREATENING BEHAV. 381 (1989).

61. See L. HUMPHREYS, *supra* note 56. See generally, E. GOFFMAN, *supra* note 43; E.E. JONES, *supra* note 43. For a discussion of "passing" and AIDS (Acquired Immune Deficiency Syndrome), see Gregory M. Herek, *Illness, Stigma and AIDS*, in *PSYCHOLOGICAL ASPECTS OF SERIOUS ILLNESS: CHRONIC CONDITIONS, FATAL DISEASES, AND CLINICAL CARE* 103 (Paul T. Costa & Gary R. VandenBos eds. 1990).

and naturalization policies.⁶² Added to this, those who pass also must actively hide or deny their relationship to family and friends. This denial can create strains in the relationship and, when it prevents the partners from receiving adequate social support, may have a deleterious effect on psychological adjustment.⁶³

Coming out can eliminate these problems but also can create new ones. Once they come out, lesbians and gay men risk personal rejection by others,⁶⁴ discrimination,⁶⁵ and even violence,⁶⁶ all experiences that can have enduring psychological consequences. Being the target of discrimination, for example, often leads to feelings of sadness and anxiety;⁶⁷ it also can increase one's sense that life is difficult and unfair, and can lead to dissatisfaction with one's larger community.⁶⁸ Suffering antigay assault or other overt victimization can create considerable distress, including feelings of personal loss, rejection, humiliation, and depression; agitation, restlessness, and sleep disturbances; somatic symptoms such as headaches and diarrhea; and deterioration in personal relationships.⁶⁹ Additionally, attempts to make sense of the attack, coupled with the common need to perceive the world as a just place, may lead to feelings that one is being punished for being gay. This type of self-blame can lead to feelings of depression and helplessness, even in individuals who are comfortable with their sexual orientation. Those who are still coming to terms with their lesbian or gay identity may experience added psychological distress, both because they lack a strongly developed gay identity that would increase

62. See Gregory M. Herek, *The Context of Anti-Gay Violence: Notes on Cultural and Psychological Heterosexism*, 5 J. INTERPERSONAL VIOLENCE 316 (1990).

63. See Lawrence Kurdek, *Perceived Social Support in Gays and Lesbians in Cohabiting Relationships*, 54 J. PERSONALITY & SOC. PSYCHOLOGY 504 (1988); Bianca C. Murphy, *Lesbian Couples and Their Parents: The Effects of Perceived Parental Attitudes on the Couple*, 68 J. COUNSELING & DEV. 46 (1989).

64. See Gregory M. Herek, *Stigma, Prejudice, and Violence Against Lesbians and Gay Men*, in HOMOSEXUALITY, *supra* note 16, at 60.

65. See Martin P. Levine, *Employment Discrimination Against Gay Men*, 9 INT'L REV. MOD. SOC. 151 (1979); Martin P. Levine & Robin Leonard, *Discrimination Against Lesbians in the Work Force*, 9 SIGNS: J. WOMEN CULTURE & SOC. 700 (1984).

66. See Gregory M. Herek, *Hate Crimes Against Lesbians and Gay Men: Issues for Research and Policy* 44 AM. PSYCHOLOGIST 948 (1989); *Special Issue: Violence Against Lesbians and Gay Men: Issues for Research, Practice, and Policy*, 5 J. INTERPERSONAL VIOLENCE 267-543 (1990) [hereinafter *Violence Against Lesbians and Gay Men*].

67. See Kenneth L. Dion, *Responses to Perceived Discrimination and Relative Deprivation*, 4 RELATIVE DEPRIVATION & SOC. COMPARISON: THE ONTARIO SYMP. 159 (James M. Olson, C. Peter Herman, & Mark P. Zanna eds. 1986).

68. See Catherine M. Birt & Kenneth L. Dion, *Relative Deprivation Theory and Responses to Discrimination in a Gay Male and Lesbian Sample*, 26 BRIT. J. SOC. PSYCHOLOGY 139 (1987).

69. See, e.g., MORTON BARD AND DAWN SANGREY, *THE CRIME VICTIM'S BOOK* (1979); Irene H. Frieze, Sharon Hymer, & Martin S. Greenberg, *Describing the Victims of Crime*, in VICTIMS OF CRIME AND VIOLENCE: FINAL REPORT OF THE APA TASK FORCE ON THE VICTIMS OF CRIME AND VIOLENCE 19 (Arnold S. Kahn ed. 1984); *Special Issue: Reactions to Victimization*, 39 J. SOC. ISSUES 1-222 (1983) (No. 2).

their psychological resilience and coping skills, and because they lack adequate social support from others who can affirm their gay identity.⁷⁰

Nevertheless, the fact that they often are exposed to serious stressors does not cause lesbians and gay men as a group to display abnormally low self esteem, depression, or other forms of psychological distress. Like other minority group members, most gay people function effectively in American society despite their experiences with stigma.⁷¹ Indeed, as members of a stigmatized group, lesbians and gay men probably develop a variety of adaptive strategies for coping with their status and minimizing its negative psychological consequences.⁷² Such strategies can protect one's self-esteem, "not only from explicit prejudice or discrimination, but also in some cases, from daily setbacks, failures, and rejections."⁷³ Just as some Blacks experience problems in dealing with racism and some heterosexuals experience emotional problems adjusting to their adult sexuality, some lesbians and gay men undoubtedly experience emotional problems adjusting to their sexual orientation. Although the seriousness of these cases should not be minimized, they do not provide a basis for assuming that gay people as a group manifest low self esteem, depression, suicidal behavior, or other psychological symptoms to a greater degree than do heterosexuals.

C. Myth #3: Being homosexual is a choice that can be changed.

The questions of whether sexual orientations are inborn or acquired and, if the latter, whether they are immutable or changeable, have aroused considerable controversy. Some arguments for societal acceptance of lesbians and gay men have been based on the notion that homosexuality is an innate condition over which an individual has no choice. Writing as parents of gay children, for example, Griffin, Wirth, and Wirth described their own initial concerns that they might have caused their children's homosexuality.⁷⁴ They argued for a biological explanation of homosexuality partly because

our society will accept gayness only if the vast majority of its citizens see it as a naturally occurring event. If most people understand that a certain percentage of society will be gay no matter what their family background is, or what their sexual experiences were, then gay people have a better chance of living their lives free from fears of retaliation.⁷⁵

70. See Craig L. Anderson, *Males as Assault Victims: Multiple Levels of Trauma*, 7 J. HOMOSEXUALITY 145 (1982) (Nos. 2/3); Garnets, *supra* note 55.

71. See M. FREEDMAN, *supra* note 35; Gonsiorek, *supra* note 36; Gonsiorek, *supra* note 37; Hart, *supra* note 37; Hooker, *supra* note 29; Reiss, *supra* note 37.

72. See, e.g., M. FREEDMAN, *supra* note 35. See generally Crocker & Major, *supra* note 43.

73. Crocker & Major, *supra* note 43, at 612.

74. See CAROLYN W. GRIFFIN, MARIAN J. WIRTH, & ARTHUR G. WIRTH, BEYOND ACCEPTANCE: PARENTS OF LESBIANS AND GAYS TALK ABOUT THEIR EXPERIENCES 20-21 (1986).

75. *Id.* at 29.

Perhaps agreeing with Griffin and others' equation of "natural" and "innate," Americans who believe that homosexuality "is something that people are born with" are more likely to have accepting attitudes of gay people than are those who believe it is an acquired characteristic or a personal preference.⁷⁶

Based upon similar reasoning, conservative religious groups have argued that being gay is a choice. For example, in its S.H.A.P.E. ("Stop Homosexual Advocacy in Public Education") newsletter, the California Coalition for Traditional Values stated that "the homosexual community is trying to sugarcoat their lascivious lifestyle by making people think they were born homosexual thus they cannot help it and should be accepted as if they were a minority."⁷⁷ The ensuing article asserted that "people are not born homosexual"⁷⁸ and "people can be healed from homosexuality."⁷⁹ These statements are considered critically below.

1. *The Origins of Sexual Orientation*

Sexual orientation must be distinguished conceptually from at least three other related processes: (1) *biological sex*, which is determined by genetic and prenatal hormonal influences and usually is unambiguous at birth; (2) *gender identity*, a child's sense of self in terms of maleness or femaleness; usually, boys develop a sense of self as male and girls a sense of self as female early in life; (3) *gender role orientation*, patterns of behavior that are identified by the culture as typical of males (and are referred to as "masculine"), typical of females ("feminine"), or gender-neutral.⁸⁰

76. See William Schneider & I.A. Lewis, *The Straight Story on Homosexuality and Gay Rights*, 7 PUB. OPINION 16, 20 (1984). In the 1983 *Los Angeles Times* national survey on which Schneider and Lewis based their observations, 16% of respondents believed that homosexuality is "something a person is born with." *Id.* at 19. In a 1985 poll by the *Los Angeles Times*, the percentage rose to 20%, with another 22% believing it is "something that develops because of the way people are brought up," and 42% believing it is "just the way that some people prefer to live." Roper Center, University of Connecticut at Storrs [hereinafter Roper Center]. In a 1989 Gallup poll, 19% of the respondents felt that homosexuality is "something a person is born with," and another 12% felt that it results in a combination of inborn factors and factors of upbringing and environment. Diane Colasanto, *Gay Rights Support Has Grown Since 1982, Gallup Poll Finds*, San Francisco Chron., Oct. 25, 1989, at A-21, col. 1. In a 1982 Gallup poll, the comparable figures were 17% (inborn) and 13% (both); in 1977, the figures were 12% and 14%, respectively. *Id.*

The national survey data described in this Article were obtained from published reports and through the computer database of the Roper Center at the University of Connecticut at Storrs. I am grateful to Professor Bliss Siman of Baruch College, City University of New York, for her assistance in securing the Roper Center data.

77. *Homosexual Propaganda Exposed*, Stop Homosexual Advocacy in Public Education, Feb. 1989, at 3 (copy on file at the Law & Sexuality office).

78. *Id.*

79. *Id.* at 6.

80. See JOHN MONEY & ANKE A. EARHARDT, *MAN & WOMAN, BOY & GIRL: DIFFERENTIATION AND DIMORPHISM OF GENDER IDENTITY FROM CONCEPTION TO MATURITY* 1-23 (1972). See also John Money, *Sin, Sickness, or Status? Homosexual Gender Identity and Psychoneuroendocrinology*, 42 AM. PSYCHOLOGIST 384 (1987).

The reasons why a particular sexual orientation develops in any individual are complex and not well understood. Various theories have proposed widely differing sources for adult sexual orientation, including genetic and prenatal hormonal factors,⁸¹ unconscious mental processes related to early childhood events or family relationships,⁸² learned associations between physiological arousal and external stimuli,⁸³ reinforcement of sexual experiences with partners of a particular gender and subsequent applications of social labels to one's experiences,⁸⁴ and bonding experiences with same-sex or other-sex peer groups at the onset of sex drive in adolescence.⁸⁵

No single theory has enjoyed unequivocal empirical support. Using retrospective reports from 1023 men (337 heterosexual and 686 homosexual) and 433 women (140 heterosexual and 293 homosexual), Bell, Weinberg, and Hammersmith found that none of the many social, psychological, and experiential variables that they assessed were able to differentiate reliably between heterosexual and homosexual persons of either sex.⁸⁶ The most consistently observed difference was that the lesbians and gay men in their sample were more likely than the heterosexuals to report childhood gender nonconformity. The authors emphasized, however, that even this difference was far from universal:

About half the homosexual men appear to have been typically "masculine," both in personal identity and in interests and activities (and nearly a quarter of the heterosexual men were *not* conforming in these respects). Likewise, only about a fifth of the lesbians and about a third of the heterosexual women were highly "feminine" while they were growing up.⁸⁷

From a review of empirical research on the biological antecedents of homosexuality, Money argued that attempting to dichotomize the sources

81. See, e.g., Lee Ellis & M. Ashley Ames, *Neurohormonal Functioning and Sexual Orientation: A Theory of Homosexuality-Heterosexuality*, 101 *PSYCHOLOGICAL BULL.* 233 (1987); EDWARD O. WILSON, *ON HUMAN NATURE* (1978).

82. See, e.g., OTTO FENICHEL, *THE PSYCHOANALYTIC THEORY OF NEUROSIS* (1945); Freud, *supra* note 12.

83. See, e.g., A. KINSEY, *HUMAN MALE*, *supra* note 19; WILLIAM MASTERS & VIRGINIA JOHNSON, *HOMOSEXUALITY IN PERSPECTIVE* (1979).

84. See, e.g., JOHN H. GAGNON & WILLIAM SIMON, *SEXUAL CONDUCT: THE SOCIAL SOURCES OF HUMAN SEXUALITY* (1973).

85. See, e.g., Michael D. Storms, *Attitudes Toward Homosexuality and Femininity in Men*, 3 *J. HOMOSEXUALITY* 257 (1978) (No. 3). One school of thought in the scientific study of sexuality, *social constructionism*, argues that the very concept of sexual orientation is culture bound. Rather than being a universal aspect of human experience, social constructionists would argue that sexual orientation has evolved within western industrialized societies as a means of regulating sexual behavior. Consequently, they would consider any nonsocial explanation of sexual orientation to be erroneous. See M. DUBERMAN, *supra* note 10; Herek, *supra* note 1.

86. See ALAN P. BELL, MARTIN S. WEINBERG, & S.K. HAMMERSMITH, *SEXUAL PREFERENCE: ITS DEVELOPMENT IN MEN AND WOMEN* (1981).

87. *Id.* at 188 (emphasis in original).

of sexual orientation as either innate or the product of social experience (the so-called nature-nurture debate) is not useful.⁸⁸ He concluded that "there is no human evidence that prenatal hormonalization alone, independently of postnatal history, inexorably preordains either [a homosexual or bisexual] orientation. Rather, neonatal antecedents may facilitate a homosexual or bisexual orientation, provided the postnatal determinants in the social and communicational history are also facilitative."⁸⁹ Money suggested, in other words, that nature and nurture appear to interact to produce sexual orientation in humans. Given the current lack of knowledge about why some individuals develop a heterosexual orientation while others become homosexual, most social and behavioral scientists share Money's view that sexuality is shaped through a complex interaction of biological, psychological, and social forces. The relative importance of each, however, remains a topic of dispute.

2. *Changing Sexual Orientation*

In a 1989 Gallup poll, 31 percent of the respondents felt that, given the choice, most homosexuals would rather not be homosexual (compared to 38 percent who felt that they would rather be homosexual and 31 percent who did not know).⁹⁰ Despite societal stigma, however, the vast majority of lesbian and gay male respondents in Bell & Weinberg's study reported that they would not change their sexual orientation even if they could (a comparable question apparently was not asked of heterosexuals in the study sample).⁹¹ Even for the relatively small number of gay people who wish to become heterosexual, the many failures of so-called "conversion" therapies indicate that, once established, sexual orientation is highly resistant to change.⁹²

Although some therapists have reported change of sexual orientation (from homosexual to heterosexual) in their clients, critics have detailed numerous ambiguities and problems with their methods and results.⁹³ For example, in many reports of "successful" conversion therapies, the participants' initial sexual orientations have not been adequately assessed; many bisexuals have been mislabeled as homosexuals with the consequence that the "successes" reported for the conversions actually have occurred among bisexuals who were highly motivated to adopt a heterosexual behavior pattern. An additional problem is that "success" usually has been defined as suppression of homoerotic response or mere display of physiological

88. See Money, *supra* note 80.

89. *Id.* at 398.

90. See Colasanto, *supra* note 76.

91. See A. BELL & M. WEINBERG, *supra* note 6, at 339.

92. See Douglas C. Haldeman, *Sexual Orientation Conversion Therapy for Gay Men and Lesbians: A Scientific Examination*, in *HOMOSEXUALITY*, *supra* note 16, at 149.

93. For a review, see Haldeman, *supra* note 92.

ability to engage in heterosexual intercourse; neither of these should be equated with adopting the complex set of attractions and desires that constitute sexual orientation. Many interventions aimed at changing sexual orientation have succeeded only in reducing or eliminating homosexual behavior rather than in creating or increasing heterosexual attractions; they have, in effect, deprived individuals of their capacity for sexual response to partners of either gender. Another problem is that even these inadequate operational definitions of change often have been assessed only through therapists' impressions or participants' self reports rather than through objectively verifiable indicators.⁹⁴ As recently as January of 1990, Dr. Bryant Welch, Executive Director for Professional Practice of the American Psychological Association, stated that "no scientific evidence exists to support the effectiveness of any of the conversion therapies that try to change one's sexual orientation" and that "research findings suggest that efforts to 'repair' homosexuals are nothing more than social prejudice garbed in psychological accouterments."⁹⁵

In summary, the assertion that homosexuality is a choice that can be changed is erroneous for the vast majority of lesbians and gay men. Although the origins of sexual orientation are not well understood, neither heterosexuality nor homosexuality appear to represent a conscious choice for most people. Attempts to change sexual orientation that have been documented sufficiently to permit critical evaluation appear to have been largely unsuccessful.

D. Myth #4: Homosexuals are more likely than heterosexuals to molest children sexually.

Gay people often have been accused of preying on children. This is a manifestation of a general cultural tendency to portray disliked minority groups (e.g., Jews, Blacks) as threats to the dominant society's most vul-

94. See Eli Coleman, *Changing Approaches to the Treatment of Homosexuality: A Review*, in *HOMOSEXUALITY: SOCIAL, PSYCHOLOGICAL, AND BIOLOGICAL ISSUES* 81 (William Paul, James D. Weinrich, John C. Gonsiorek, & Mary E. Hotvedt eds. 1982) [hereinafter *HOMOSEXUALITY ISSUES*]; Haldeman, *supra* note 92; A. Damien Martin, *The Emperor's New Clothes: Modern Attempts to Change Sexual Orientation*, in *INNOVATIONS*, *supra* note 49, at 23. The highly controversial claims by religious organizations to have changed homosexuals to heterosexuals generally have not been documented in such a way as to permit their critical evaluation. Consequently, they are not considered here. See Haldeman, *supra* note 92.

95. Statement of Bryant L. Welch, J.D., Ph.D., at the American Psychological Association meeting (Jan. 26, 1990) (available from the American Psychological Association, 1200 Seventeenth Street N.W., Washington, DC 20036) [hereinafter APA]; see James Buie, "Heterosexual Ethic" Mentality is Decried, *APA MONITOR*, Mar. 1990, at 20 (available from the APA); Elizabeth Fernandez, *This Ministry Works to Put Gays Straight*, *San Francisco Examiner*, Feb. 4, 1990, at A-1, col. 1.

Even if conversion therapies can change sexual orientation in a small number of cases, the question remains of whether it is ethical to do so. Gerald Davison, a former president of the Association for the Advancement of Behavior Therapy, argued that change of orientation programs are ethically improper and should be eliminated, and that their availability only confirms professional and societal biases against homosexuality. See Gerald C. Davison, *Constructionism and Morality in Therapy for Homosexuality*, in *HOMOSEXUALITY*, *supra* note 16, at 137.

nerable members.⁹⁶ When Anita Bryant campaigned successfully in 1977 to repeal a Dade County, Florida, ordinance prohibiting antigay discrimination, she named her organization "Save Our Children," and warned that "a particularly deviant-minded [gay] teacher could sexually molest children."⁹⁷ The number of Americans who believe the accusation that lesbians and gay men are child molesters appears to be decreasing. Gallup poll data in 1989 showed that 42 percent of Americans would allow gay people to be elementary school teachers, compared to 27 percent in 1977.⁹⁸ Nevertheless, many of the remaining 58 percent probably continue to accept the stereotype.

When evaluating empirical research on child molestation, sampling issues and problems of terminology must be considered. Societal condemnation of and criminal penalties for child molestation further intensify the difficulties inherent in attempting to draw representative samples of sexual minorities. Most empirical studies have been conducted with convicted perpetrators, thereby excluding those who were not prosecuted or convicted. Consequently, while relying on available data, we must recognize that, because of sampling biases, the results do not necessarily reflect societal patterns.

A second problem in evaluating empirical research on child molestation concerns terminology. Sexual abuse of male children by adult men is often referred to as "homosexual molestation," which implies that the perpetrator is himself gay or has a homosexual orientation.⁹⁹ Usually, however, the adjectives "homosexual" and "heterosexual" refer to the victim's gender in relation to that of the perpetrator, not to the latter's sexual orientation. For example, Fisher assessed the psychological needs of 50 "homosexual pedophiliacs" (who were categorized as such because they had been convicted of a sexual offense against male children and no offenses against female children) and 100 "heterosexual pedophiliacs" (who had been convicted of a sexual offense against female children).¹⁰⁰ However, no information was provided about the offenders' adult sexual orientations or behavior. Similarly, Marshall referred to the males in his sample who

96. See BARRY D. ADAM, *THE SURVIVAL OF DOMINATION: INFERIORIZATION AND EVERYDAY LIFE* (1978); Herek, *supra* note 64.

97. ANITA BRYANT, *THE ANITA BRYANT STORY: THE SURVIVAL OF OUR NATION'S FAMILIES AND THE THREAT OF MILITANT HOMOSEXUALITY* 114 (1977).

98. See Colasanto, *supra* note 76.

99. Sexual abuse by women appears to be relatively rare. When it occurs, it typically involves a female accomplice who assists a perpetrator in procuring victims or, occasionally, a woman who seduces a young male. See W.D. Erickson, N.H. Walbek, & R.K. Seely, *Behavior Patterns of Child Molesters*, 17 *ARCHIVES SEXUAL BEHAV.* 77, 80 (1988) [hereinafter Erickson]. Consequently, the child molester stereotype is applied more often to gay men than to lesbians.

100. See Gary Fisher, *Psychological Needs of Heterosexual Pedophiliacs*, 30 *DISEASES NERVOUS SYS.* 419 (1969); Gary Fisher & Leisla M. Howell, *Psychological Needs of Homosexual Pedophiliacs*, 31 *DISEASES NERVOUS SYS.* 623 (1970).

molested boys as "homosexual molesters."¹⁰¹ In a personal communication to this author, Marshall reported that only three of the seven men in his sample who had molested boys could be considered gay or homosexual; the other four had been heterosexually married. All of the fourteen men who molested young girls were considered by Marshall to have a heterosexual orientation.¹⁰²

The distinction between gender of the victim and sexual orientation of the perpetrator is important because many child molesters have never developed the capacity for mature sexual relationships with other adults, either men or women. Recognizing this, Finkelhor and Araji proposed that discussions of the sexual attractions of perpetrators should be conceptualized along a continuum ranging in degrees from exclusive interest in children to exclusive interest in adult partners.¹⁰³ Similarly, Groth and Birnbaum categorized child molesters as either fixated or regressed.¹⁰⁴ Fixation was defined as "a temporary or permanent arrestment of psychological maturation resulting from unresolved formative issues which persist and underlie the organization of subsequent phases of development"; fixated offenders never developed an adult sexual orientation.¹⁰⁵ Regression was defined as "a temporary or permanent appearance of primitive behavior after more mature forms of expression had been attained, regardless of whether the immature behavior was actually manifested earlier in the individual's development."¹⁰⁶ Regressed molesters can be adult homosexuals, heterosexuals, or bisexuals; what is important is that they report sexual relationships with other adults, whether men or women. In a sample of 175 adult males who were convicted in Massachusetts of sexual assault against a child, Groth and Birnbaum found that none had an exclusively homosexual adult sexual orientation. A plurality of the men (83 or 47 percent) were classified as "fixated"; 70 others (40 percent) were classified as regressed adult heterosexuals; the remaining 22 (13 percent) were classified as regressed adult bisexuals.¹⁰⁷ Of the last group, Groth and Birnbaum observed that "in their adult relationships they engaged in sex on occasion with men as well as with women. However, in no case did this attraction to men exceed their preference for women. . . .

101. See W.L. Marshall, *The Use of Sexually Explicit Stimuli by Rapists, Child Molesters, and Nonoffenders*, 25 J. SEX RES. 267, 273 (1988).

102. See Letter from W.L. Marshall to Gregory M. Herek (Oct. 31, 1990).

103. See David Finkelhor & Sharon Araji, *Explanations of Pedophilia: A Four Factor Model*, 22 J. SEX RES. 145 (1986).

104. See A. Nicholas Groth & H. Jean Birnbaum, *Adult Sexual Orientation and Attraction to Underage Persons*, 7 ARCHIVES SEXUAL BEHAV. 175, 176-77 (1978). See also A. Nicholas Groth, William F. Hobson, & Thomas S. Gary, *The Child Molester: Clinical Observations*, 1 J. SOC. WORK & HUMAN SEXUALITY 129 (1982).

105. Groth & Birnbaum, *supra* note 104, at 176.

106. *Id.* at 177.

107. See *id.* at 178.

There were no men who were primarily sexually attracted to other adult males "108

Failing to distinguish between an offender's sexual orientation and the gender of his victim can lead to overestimation of the proportion of gay men among the population of child molesters. For example, Cameron purported to review published data to answer the question, "Do those who commit homosexual acts disproportionately incorporate children into their sexual practices?"¹⁰⁹ He concluded that "at least one-third of the sexual attacks upon youth are homosexual"¹¹⁰ and that "those who are bi-to homosexual are proportionately much more apt to molest youth" than are heterosexuals.¹¹¹ Cameron, however, assumed that all male-male molestations were committed by homosexuals.¹¹² A subsequent paper by Cameron and others described data collected in a door-to-door survey in seven United States cities and towns,¹¹³ and generally repeated the conclu-

108. *Id.* at 180 (emphasis in original).

109. Paul Cameron, *Homosexual Molestation of Children/Sexual Interaction of Teacher and Pupil*, 57 *PSYCHOLOGICAL REP.* 1227, 1227 (1985).

110. *Id.* at 1228.

111. *Id.* at 1231.

112. *Id.* at 1230. This assumption is puzzling in that it suggests inattention by the author to the literature he himself claimed to have reviewed. For example, he cited the Groth & Birnbaum, *supra* note 104, study as evidencing a 3:2 ratio of "heterosexual" (*i.e.*, female victim) to "homosexual" (*i.e.*, male victim) molestations, and notes that "54% of all the molestations in this study were performed by bisexual or homosexual practitioners." Cameron, *supra* note 109, at 1231. As already noted, however, Groth & Birnbaum, *supra* note 104, reported that none of the men in their sample had an exclusively homosexual adult sexual orientation, and that none of the 22 bisexual men were more attracted to adult males than to adult females. Cameron's 54% statistic does not appear anywhere in the Groth & Birnbaum article, nor does Cameron explain its derivation. It also is noteworthy that, although Cameron assumed that all male-male molestations were committed by homosexuals, he assumed that not all male-female molestations were committed by heterosexuals. He incorporated a "bisexual correction" into his data manipulations to increase further his estimate of the risk posed to children by homosexual/bisexual men. Cameron, *supra* note 109, at 1231.

In the latter half of his paper, Cameron considered whether "homosexual teachers have more frequent sexual interaction with their pupils." Cameron, *supra* note 109, at 1231. Based on 30 instances of sexual contact between a teacher and pupil reported in eleven different sources published between 1920 and 1982, Cameron concluded that "a pupil would appear about 90 times more likely to be sexually assaulted by a homosexual practitioner"; the ratio rose to 100 times when Cameron added his bisexual correction. Cameron, *supra* note 109, at 1232. This ratio is meaningless because no data were obtained concerning the actual sexual orientation of the teachers involved; as before, Cameron assumed that male-male contacts were perpetrated by homosexuals. Further, Cameron's rationale for selecting particular sources appears to have been entirely idiosyncratic. He described no systematic method for reviewing the literature, and appears not to have reviewed the voluminous literature on the sexual development of children and adolescents. His final choice of sources appears to have slanted his findings toward what Cameron described as "the relative absence in the scientific literature of heterosexual teacher-pupil sexual events coupled with persistent, albeit infrequent, homosexual teacher-pupil sexual interactions." Cameron, *supra* note 109, at 1232.

113. See Paul Cameron, Kay Proctor, William Coburn, Nels Forde, Helen Larson, & Kirk Cameron, *Child Molestation and Homosexuality*, 58 *PSYCHOLOGICAL REP.* 327 (1986) [hereinafter Cameron]. Cameron's study also suffers from severe methodological problems. The sampling methods were not adequately described; the representativeness of the sample is highly doubtful; the locations for data collection (Omaha, Neb.; Los Angeles, Cal.; Denver, Colo.; Washington, D.C.; Louisville, Ky.; Bennett, Neb.; and Rochester, N.Y.) appear to have been selected solely on the basis of convenience. Cameron, *supra* note 113, at 328. For a detailed critique, see Robert D. Brown & James K. Cole, *Letter to the Editor*, 70 *NEB. MED. J.* 410 (1985). Additionally, the response rate appears to have

sions reached in Cameron's 1985 article.¹¹⁴ As before, male-male sexual assaults were referred to as "homosexual"¹¹⁵ and the perpetrators' sexual orientations apparently were not assessed.¹¹⁶ Such confusions can affect subsequent research. Cameron's equation of same-sex molestation with an adult homosexual orientation appears to have led Freund and others to study why "the proportion of sex offenders against male children among homosexual men is substantially larger than the proportion of sex offenders against female children among heterosexual men."¹¹⁷ However, Freund and his colleagues failed to find greater sexual arousal among gay men (in their terminology, "androphiles") who were shown visual images of young males than among heterosexual men ("gynephiles") who were shown visual images of young females.¹¹⁸

Recognizing the many problems created by the lack of representative samples and ambiguous terminology, we can critically evaluate the empirical research relating to adult sexual orientation and molestation of children. In this process, we must search for consistent trends in the results of empirical studies that have adequately assessed and reported the sexual orientation of perpetrators. It appears from these studies that gay men are no more likely than heterosexual men to molest children.¹¹⁹

been unacceptably low, so that their sample does not permit generalizations from the data to any larger population. See Herek, *supra* note 64, at 80 n.10.

114. See Cameron, *supra* note 109.

115. Cameron, *supra* note 113, at 327 (in Abstract).

116. During the mid-1980s, Paul Cameron was labeled in the gay press as "the most dangerous antigay voice in the United States today." David Walter, *Paul Cameron*, THE ADVOCATE, Oct. 29, 1985, at 28; see also Ann Fettner, *The Evil That Men Do*, NEW YORK NATIVE, Sep. 23, 1985, at 23. In 1984, all members of the American Psychological Association received official written notice that "Paul Cameron (Nebraska) was dropped from membership for a violation of the Preamble to the Ethical Principles of Psychologists" on Dec. 2, 1983, by the APA Board of Directors. Letter from APA to all members (1984) (discussing persons dropped from membership in the American Psychological Association) (copy on file at the Law & Sexuality office). At its membership meeting on Oct. 19, 1984, the Nebraska Psychological Association adopted a resolution stating that it "formally dissociates itself from the representations and interpretations of scientific literature offered by Dr. Paul Cameron in his writings and public statements on sexuality." Lynda S. Madison, *Minutes of the Fall Meeting*, 25 NEB. PSYCHOLOGICAL A. F. 2, 3 (Winter 1984) (available from the Nebraska Psychological Association, 1515 North Fifty-first Street, Omaha, Nebraska 68104). In 1985, the American Sociological Association adopted a resolution that included the assertion that "Dr. Paul Cameron has consistently misinterpreted and misrepresented sociological research on sexuality, homosexuality, and lesbianism." *Sociology Group Criticizes Work of Paul Cameron*, Journal Star, Sept. 10, 1985, at 1, col. 1 (Lincoln, Neb.). Cameron's credibility has also been questioned outside of academia. In his written opinion in *Baker v. Wade*, 106 F.R.D. 526 (N.D. Tx. 1985), Judge Buchmeyer of the United States District Court of Dallas referred to Cameron's sworn statement that "'homosexuals abuse children at a proportionately greater incident than do heterosexuals,'" and concluded that "Dr. Paul Cameron . . . has himself made misrepresentations to this Court" and that "there has been no fraud or misrepresentations except by Dr. Cameron." *Baker*, 106 F.R.D. at 536.

117. See Kurt Freund, Robin Watson, & Douglas Rienzo, *Heterosexuality, Homosexuality, and Erotic Age Preference*, 26 J. SEX RES. 107, 115 (1989).

118. See *id.*

119. For an earlier review, see David Newton, *Homosexual Behavior and Child Molestation: A Review of the Evidence*, 13 ADOLESCENCE 29 (1978).

This is not to suggest that molestations of children by adult homosexual men never occur. For example, Erickson, Walbek, & Seely reported that 86% of the men in their sample who had molested males under age 14 described themselves as homosexual or bisexual. Erickson, *supra* note 99, at 83.

E. Myth #5: Being exposed to a homosexual parent or role model is likely to have negative effects on a child.

In addition to fears of sexual molestation, another often cited reason for restricting contact between children and adult lesbians and gay men is that such interactions might change a previously heterosexual child into a homosexual or, at least, might create personal sexual conflicts and confusions for the child. For example, in the S.H.A.P.E. newsletter described previously, a Los Angeles public schools program for counseling lesbian and gay male teenagers was criticized under the heading "Recruiting Through Role Models": "The homosexual advocacy groups want to have a parade of homosexuals in the various classrooms as positive role models such as lawyers, doctors, *etc.*, who tell the students they are gay."¹²⁰ This would "advocate a lifestyle that is against the religious teaching of a large proportion of the families and is against the law in many states."¹²¹

The bulk of empirical research in this area has focused on the most powerful role models available to most children: parents. Several papers have been published in recent years reviewing data on the influences of a lesbian mother or gay father on the social, psychological, and sexual development of children.¹²² They have concluded that no evidence exists that having a gay parent or role model is harmful to the child.¹²³ Nor do the children of gay parents differ significantly from children raised in heterosexual households in their development of gender identity or sexual orientation.

Green and his colleagues compared children raised by 50 lesbian mothers (30 daughters, 26 sons) with children raised by 40 single heterosexual mothers (28 daughters, 20 sons).¹²⁴ They found no differences between the two groups of children on measures of intelligence, gender identity, wishes to be the other sex, popularity with peers, or social

Unfortunately, Erickson and others did not report the actual number associated with this percentage (based on their data, the number appears to be approximately 54 out of 229 child molesters studied, or 24%). Nor did they differentiate homosexual from bisexual men, or report how many of the so-called homosexual men were heterosexually married (although some apparently were, based on the authors' other comments). Of critical importance is the fact that the authors did not determine if the self-reported homosexual and bisexual men were involved in homosexual relationships with adults of the same sex, or whether the self-applied labels were used to describe the gender of their under-age victims (in Groth & Birnbaum's terminology, *supra* note 104, whether they were fixated).

120. *Project 10—Recruiting Students into Homosexuality*, Stop Homosexual Advocacy in Public Education, Feb. 1989, at 2 (copy on file at the Law & Sexuality office.)

121. *Id.*

122. See, e.g., Patricia J. Falk, *Lesbian Mothers: Psychosocial Assumptions in Family Law*, 44 AM. PSYCHOLOGIST 941 (1989); Comment, *Assessing Children's Best Interests When a Parent is Gay or Lesbian: Toward a Rational Custody Standard*, 32 UCLA L. REV. 852 (1985) (authored by Steve Susoeff).

123. See Falk, *supra* note 122, at 946.

124. See Richard Green, Jane B. Mandel, Mary E. Hotvedt, James G. Gray, & Laurel Smith, *Lesbian Mothers and Their Children: A Comparison With Solo Parent Heterosexual Mothers and Their Children*, 15 ARCHIVES SEXUAL BEHAV. 167 (1986).

adjustment.¹²⁵ Daughters of lesbian mothers differed from the daughters of heterosexual mothers in several respects. They were more likely to dress in boys' clothes; to aspire to traditionally masculine occupations such as doctor, lawyer, engineer, and astronaut; to engage in rough-and-tumble play; to show considerable interest in play-acting and role-taking; to play with trucks and guns; and to demonstrate interest in boy-type activities.¹²⁶ None of these differences were judged to indicate any disorder in gender identity.¹²⁷ The two groups of sons did not differ on any of these variables.¹²⁸ Green and others concluded that "boys and girls raised from early childhood by a homosexual mother without an adult male in the household for about four years do not appear appreciably different on parameters of psychosexual and psychosocial development from children raised by heterosexual mothers, also without an adult male present."¹²⁹

In an earlier paper, Green reported on 37 children being raised in households with a lesbian or transsexual parent.¹³⁰ All but one of the children manifested childhood toy, game, clothing, and peer group preferences typical for their sex.¹³¹ Similarly, Hoeffler found no significant differences between children of lesbian and heterosexual mothers in their preference for toys; children in both groups generally preferred toys traditionally associated with their own sex or sex-neutral toys.¹³² Golombok, Spencer, and Rutter also found no differences in sex role behaviors between children of lesbian and heterosexual mothers, nor did they observe group differences in warmth shown toward the children.¹³³ Kirkpatrick, Smith, & Roy failed to find differences in psychological adjustment or gender development between 20 children of lesbian mothers and 20 children of heterosexual single mothers.¹³⁴

Findings from several studies suggest that lesbian mothers and gay fathers may be less encouraging than heterosexual parents of sex-typing in their children's toys and activities (*i.e.*, they tend not to restrict their children to toys and activities that are traditionally associated with the child's gender). Golombok and others reported that only three of the 27 lesbian mothers in their sample strongly sex-typed their children's activities to-

125. See *id.* at 174-79.

126. See *id.* at 176-79.

127. See *id.* at 179-80.

128. See *id.* at 179.

129. *Id.* at 182.

130. See Richard Green, *Sexual Identity of 37 Children Raised by Homosexual or Transsexual Parents*, 135 AM. J. PSYCHIATRY 692 (1978).

131. See *id.* at 696.

132. See Beverly Hoeffler, *Children's Acquisition of Sex-Role Behavior in Lesbian-Mother Families*, 51 AM. J. ORTHOPSYCHIATRY 536, 542-43 (1981).

133. See Susan Golombok, Amy Spencer, & Michael Rutter, *Children in Lesbian and Single-Parent Households: Psychosexual and Psychiatric Appraisal*, 24 J. CHILD PSYCHOLOGY & PSYCHIATRY 551, 571 (1983) [hereinafter Golombok].

134. See Martha Kirkpatrick, Catherine Smith, & Ron Roy, *Lesbian Mothers and Their Children: A Comparative Study*, 51 AM. J. ORTHOPSYCHIATRY 545, 550-51 (1981).

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ward traditional gender roles; most mothers allowed their children to engage in a wide variety of activities and to play with both sex-typed and non-sex-typed toys.¹³⁵ Hoeffler observed that the 20 lesbian mothers in her sample were more likely than the 20 heterosexual mothers to encourage play with a mix of toys traditionally associated with each gender; both groups of mothers, however, displayed a preference for gender-neutral toys over sex-typed toys.¹³⁶

Researchers similarly have not observed differences between children from gay and heterosexual households in development of sexual orientation. All 13 of the children examined by Green who were old enough to report erotic fantasies or sexual behaviors were heterosexually oriented.¹³⁷ Huggins interviewed 36 adolescent children, one-half living with a divorced lesbian mother and one-half living with a divorced heterosexual mother.¹³⁸ Only one of the children was a self-designated homosexual; that child was from the heterosexual mothers' sample.¹³⁹ The same researcher also found no significant differences in self esteem between male and female adolescent children of divorced lesbian and heterosexual mothers.¹⁴⁰ She noted that a child's self esteem tended to be higher when the mother was coupled (*i.e.*, living with a female lover or heterosexually remarried).¹⁴¹

Golombok and others reported no significant differences between heterosexual and lesbian mothers in the sexual orientation of their children.¹⁴² Of the nine pubertal or post-pubertal children of lesbian mothers in their sample, six reported definite heterosexual interests, two had no definite interests, and one girl reported a crush on a female teacher.¹⁴³ Of the 11 children with heterosexual single mothers, four reported definite heterosexual interests and seven reported no definite sexual or romantic interests.¹⁴⁴ Of the prepubertal children in the same study, the friendship groups of all but one consisted primarily of same-sex peers or mixed-sex groups; the one boy whose friendships were mainly with girls was in the heterosexual mothers' sample.¹⁴⁵ Gottman compared 35 adult daughters of lesbians with 70 adult daughters of heterosexual divorced mothers; one-half of those in the heterosexual mothers' group reported that their

135. See Golombok, *supra* note 133, at 561.

136. See Hoeffler, *supra* note 132, at 40.

137. See Green, *supra* note 130, at 693. See also Richard Green, *The Best Interest of the Child With a Lesbian Mother*, 10 BULL. AM. ACAD. OF PSYCHIATRY & L. 7 (1982).

138. See Sharon L. Huggins, *A Comparative Study of Self-Esteem of Adolescent Children of Divorced Lesbian Mothers and Divorced Heterosexual Mothers*, 18 J. HOMOSEXUALITY 123, 123 (in Abstract) (1989) (Nos. 1/2).

139. *Id.* at 134.

140. See *id.* at 131.

141. See *id.* at 132.

142. See Golombok, *supra* note 133, at 571.

143. *Id.* at 564.

144. *Id.*

145. *Id.*

mother had remarried or lived with a man.¹⁴⁶ She reported no differences among the groups in their adult sexual orientation, although her method of assessing sexual orientation was not clearly described.¹⁴⁷

Concerns sometimes are raised that children of lesbian or gay male parents may experience considerable stigma, as might children of parents from other minority groups.¹⁴⁸ Empirical research on this topic is sparse, but it suggests two tentative conclusions: (1) children of lesbian and gay parents often recognize the existence of societal stigma and understand the importance of exercising discretion in revealing their parents' sexual orientations to others;¹⁴⁹ and (2) although children sometimes experience harassment, the incidents appear to be usually infrequent and relatively minor, such as name-calling.¹⁵⁰ In a study by Wyers, 58.8 percent of the children of 34 lesbian mothers, and 21.1 percent of the children of 32 gay fathers were reported to have experienced "relationship problems with other people because of their knowledge of their parents' homosexuality, although most of the problems are not considered to be serious."¹⁵¹ Unfortunately, the number of children upon which those percentages were based was not reported by Wyers. Green documented only infrequent instances of minor verbal teasing directed at children of lesbian mothers.¹⁵²

Bozett observed that most of the 18 gay fathers whom he interviewed took precautions to protect their children from others' hostility.¹⁵³ Such precautions included avoiding affection with a male partner when a child's friends were present, limiting activities that would publicly identify them as gay (e.g., marching in a gay pride parade), arranging for their children to have multiple friendship networks (so that ostracism from one group would not leave the child friendless), and preparing their children to respond to bigotry when they eventually encounter it.¹⁵⁴ An impressionistic article by Lewis, based on interviews with 21 children of lesbian parents, suggested that an important consequence of antigay social stigma may be that it often leaves children of lesbian and gay parents without

146. Julie S. Gottman, *Children of Gay and Lesbian Parents*, 14 MARRIAGE & FAM. REV. 177, 188 (1989).

147. *Id.* at 190.

148. See Falk, *supra* note 122, at 943, 946.

149. See, e.g., Karen Gail Lewis, *Children of Lesbians: Their Point of View*, 25 SOC. WORK 198, 199 (1980).

150. See Frederick W. Bozett, *Gay Fathers: A Review of the Literature*, 18 J. HOMOSEXUALITY 137, 143 (1989) (Nos. 1/2); Brian Miller, *Gay Fathers and Their Children*, 28 FAM. COORDINATOR 544 (1979); Brian Miller, *Unpromised Paternity: The Life-Styles of Gay Fathers*, in GAY MEN, THE SOCIOLOGY OF MALE HOMOSEXUALITY 239 (Martin P. Levine ed. 1979).

151. Bozett, *supra* note 150, at 144, 148 (citing N.L. Wyers, *Lesbian and Gay Spouses and Parents: Homosexuality in the Family*, School of Social Work, Portland State University, Portland, Or. (Bozett does not indicate whether Wyers work is published or unpublished)).

152. See Green, *supra* note 130.

153. See Frederick W. Bozett, *Gay Fathers: How and Why They Disclose Their Homosexuality to Their Children*, 29 FAM. RELATIONS 173, 177-78 (1980).

154. See *id.*

larger social support systems in which they can talk about their own feelings and concerns related to their parents' homosexuality.¹⁵⁵

This discussion so far has focused on how having a gay parent or role model might possibly harm a child. However, interacting with an openly gay adult also might be beneficial, especially to children who are themselves forming a gay or lesbian identity. In such cases, an openly gay adult might serve as a positive role model, a source of information, and a trusted confidante; these generally unavailable resources are even more important for lesbian and gay male youths who have been rejected by their own parents and peers.¹⁵⁶ Even heterosexual youth might benefit from exposure to gay adults in that such exposure might increase their understanding and comfort for gay people in particular and for diverse groups of people in general (see the discussion below about the effects of interpersonal contact on prejudice).

In summary, having a gay male or lesbian role model does not appear to be deleterious to children, nor does it influence the sexual orientation eventually adopted by a child. However, such role models might have beneficial effects for gay and heterosexual young people.

F. Myth #6: Lesbians and gay men are not capable of sustained relationships; homosexual relationships are inferior to heterosexual relationships.

The available data comparing heterosexual and homosexual relationships indicate that the two types of pairings are equally diverse in the forms they take and in the levels of psychological health associated with them.¹⁵⁷ A large proportion of gay people are in steady relationships. In the Teichner poll, which used a national probability sample, 60 percent of the gay or bisexual men and 64 percent of the lesbian or bisexual women reported that they were currently in a relationship.¹⁵⁸ In various studies with nonprobability samples, the proportions of lesbians reporting that they are currently in a same-gender relationship often have been higher than in the Teichner sample.¹⁵⁹ Comparable studies with gay men (all of

155. See Lewis, *supra* note 149, at 202.

156. See Eli Coleman & Gary Remafedi, *Gay, Lesbian, and Bisexual Adolescents: A Critical Challenge to Counselors*, 68 J. COUNSELING & DEV. 36 (1989); A. Damien Martin, *Learning to Hide: The Socialization of the Gay Adolescent*, in 10 ADOLESCENT PSYCHIATRY: DEVELOPMENTAL & CLINICAL STUDIES 52 (Sherman C. Feinstein, John G. Looney, Allan Z. Schwartzberg, & Arthur D. Sorosky eds. 1982); Barbara R. Slater, *Essential Issues in Working With Lesbian and Gay Male Youths*, 19 PROF. PSYCHOLOGY: RES. AND PRAC. 226 (1988).

157. See generally, Letitia Anne Peplau, *Lesbian and Gay Relationships*, in HOMOSEXUALITY, *supra* note 16, at 177; Peplau & Cochran, *supra* note 5.

158. See *Results of Poll*, *supra* note 57.

159. See, e.g., A. BELL & M. WEINBERG, *supra* note 6, at 318 (70-72%); Wayne L. Cotton, *Social and Sexual Relationships of Lesbians*, 11 J. SEX RES. 139, 142 (1975) (83%); KARLA JAY AND ALLEN YOUNG, *THE GAY REPORT* 302 (1977) (80%); Andrea K. Oberstone & Harriet S. Sukoneck, *Psychological Adjustment and Life Style of Single Lesbians and Single Heterosexual Women*, 1 PSYCHOLOGY WOMEN Q. 172, 180 (1976) (80%); Letitia Anne Peplau, Susan D. Cochran,

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them conducted before the AIDS (Acquired Immune Deficiency Syndrome) epidemic) have reported slightly smaller proportions than in the 1989 Teichner sample.¹⁶⁰ When asked, most gay people have indicated that they want to have a steady love relationship; only a minority indicate that a permanent relationship is not at all important to them.¹⁶¹

Wide variability is apparent in the duration of gay relationships. The median length of the current relationship reported by respondents to the Teichner poll was 2.5 years for the men and 1.8 years for the women. In that survey, 63 percent of the men and 62 percent of the women reported having three or fewer relationships during the previous 10 years; the mean number of relationships during that time period was 2.5 for both men and women.¹⁶² Anecdotal reports from older lesbians and gay men indicate that relationships of 20 years duration and longer are not uncommon.¹⁶³

No consistent differences have been observed in the psychological satisfaction associated with same-gender and heterosexual relationships. Lesbians, gay men, and heterosexuals involved in steady relationships all tend to score high on scales that assess degree of liking and love for their partner.¹⁶⁴ When asked to describe the best and worst things about their relationships, homosexual and heterosexual individuals give similar answers.¹⁶⁵ When relationship adjustment and satisfaction are assessed with standardized scales, lesbian and gay male couples tend to be as well-adjusted and satisfied as matched heterosexual couples.¹⁶⁶

Karen Rook, & Christine Padesky, *Loving Women: Attachment and Autonomy in Lesbian Relationships*, 34 J. SOC. ISSUES 7, 12 (1978) (No. 3) (61%).

160. See, e.g., A. BELL & M. WEINBERG, *supra* note 6, at 318 (51-58%); K. JAY AND A. YOUNG, *supra* note 159, at 339 (46%); Letitia Anne Peplau & Susan D. Cochran, *Value Orientations in the Intimate Relationships of Gay Men*, 6 J. HOMOSEXUALITY 1, 4 (1981) (No. 3) (41%).

161. See A. BELL & M. WEINBERG, *supra* note 6, at 322; Peplau, *supra* note 157, at 179.

162. See *Results of Poll*, *supra* note 57.

163. See *LONG TIME PASSING: LIVES OF OLDER LESBIANS* (Marcy Adelman ed. 1986); EDWARD M. BRECHER, *LOVE, SEX, AND AGING: A CONSUMERS UNION REPORT* (1984); D. MERILEE CLUNIS & G. DORSEY GREEN, *LESBIAN COUPLES* (1988); DAVID P. McWHIRTER & ANDREW M. MATTISON, *THE MALE COUPLE: HOW RELATIONSHIPS DEVELOP* (1984); MARY MENDOLA, *THE MENDOLA REPORT: A NEW LOOK AT GAY COUPLES* (1980); CHARLES SILVERSTEIN, *MAN TO MAN: GAY COUPLES IN AMERICA* (1981); KEITH VACHA, *QUIET FIRE: MEMOIRS OF OLDER GAY MEN* (Cassie Damewood ed. 1985).

164. See Peplau, *supra* note 157, at 181 (citing Letitia Anne Peplau & Susan D. Cochran, *Sex Differences in Values Concerning Love Relationships*, paper presented at the annual meeting of the American Psychological Association in Montreal, Canada (Sep. 1980)); Letitia Anne Peplau, Christine Padesky, & Mykol Hamilton, *Satisfaction in Lesbian Relationships*, 8 J. HOMOSEXUALITY 23, 27-28 (1982) (No. 2); see also Nancy L. Adler, Susan S. Hendrick, & Clyde Hendrick, *Male Sexual Preference and Attitudes Toward Love and Sexuality*, 12 J. SEX EDUC. & THERAPY 27 (1986).

165. See Peplau, *supra* note 157, at 181-82 (citing Susan Cochran, *Romantic Relationships: For Better or For Worse*, paper presented at the meeting of the Western Psychological Association in San Francisco, Cal. (Apr. 1978)).

166. See Mona Cardell, Stephen Finn, & Jeanne Maracek, *Sex-Role Identity, Sex-Role Behavior, and Satisfaction in Heterosexual, Lesbian and Gay Male Couples*, 5 PSYCHOLOGY WOMEN Q. 488 (1981); Lawrence Kurdek & J. Patrick Schmitt, *Relationship Quality of Partners in Heterosexual Married, Heterosexual Cohabiting, Gay, and Lesbian Relationships*, 51 J. PERSONALITY & SOC. PSYCHOLOGY 711 (1986); see generally Peplau, *supra* note 157.

Same-sex relationships may be less likely than heterosexual relationships to involve gender-typed roles. Available data indicate that most lesbians and gay men do *not* play rigid "husband/wife" roles in such areas as decision-making, sexual behavior, and the division of household tasks; although task specialization often occurs, it typically is based on individual skills and preferences, with neither partner assuming exclusively "masculine" or "feminine" tasks.¹⁶⁷

Whereas sexual monogamy is an issue for heterosexual, lesbian, and gay male couples alike,¹⁶⁸ same-gender couples may be more likely than male-female couples to discuss and negotiate the issue directly.¹⁶⁹ Many gay male partners, distinguishing between sexual exclusivity and emotional fidelity, allow each other the option of having sexual liaisons with other males. This usually occurs with the proviso that certain rules are followed (*e.g.*, that no high-risk activities occur, that the liaison not be allowed to threaten the couple's emotional intimacy, that the liaison be discussed with the partner, or that the liaison *not* be discussed with the partner).¹⁷⁰ Lesbian couples appear to be more likely than gay male couples to be sexually exclusive.¹⁷¹ Although social norms prescribe sexual exclusivity in marriage, heterosexual couples generally fall somewhere between lesbian and gay male couples, less sexually exclusive than the former and more sexually exclusive than the latter. Within heterosexual couples, men are more likely than women to have outside sexual relation-

167. See A. BELL & M. WEINBERG, *supra* note 6, at 325; PHILIP BLUMSTEIN & PEPPER SCHWARTZ, *AMERICAN COUPLES: MONEY, WORK, SEX passim* (1983); JOSEPH HARRY, *GAY COUPLES* (1984); K. JAY & A. YOUNG, *supra* note 159; D. MCWHIRTER & A. MATTISON, *supra* note 163; Oberstone & Sukoneck, *supra* note 159, at 181; Letitia Anne Peplau & Hortensia Amaro, *Understanding Lesbian Relationships*, in *HOMOSEXUALITY ISSUES*, *supra* note 94, at 233; MARCEL T. SAGHIR & ELI ROBINS, *MALE AND FEMALE HOMOSEXUALITY: A COMPREHENSIVE INVESTIGATION* (1973); Margaret S. Schneider, *The Relationships of Cohabiting Lesbian and Heterosexual Couples: A Comparison*, 10 *PSYCHOLOGY WOMEN Q.* 234, 237 (1986).

168. See Peplau, *supra* note 157.

169. See David Blasland & Letitia Anne Peplau, *Sexual Exclusivity Versus Openness in Gay Male Couples*, 14 *ARCHIVES SEXUAL BEHAV.* 395 (1985); P. BLUMSTEIN & P. SCHWARTZ, *supra* note 167, at 267-302; see also Peplau & Cochran, *supra* note 160.

170. See A. BELL & M. WEINBERG, *supra* note 6; Blasland & Peplau, *supra* note 169; Joseph Harry, *The "Marital" Liaisons of Gay Men*, 28 *FAM. COORDINATOR* 622 (1979); J. HARRY, *supra* note 167; Joseph Harry & Robert Lovely, *Gay Marriages and Communities of Sexual Orientation*, 2 *ALTERNATIVE LIFESTYLES* 177 (1979); Lawrence Kurdek & J. Patrick Schmitt, *Relationship Quality of Gay Men in Closed or Open Relationships*, 12 *J. HOMOSEXUALITY* 85 (1985) (No. 2); D. MCWHIRTER & A. MATTISON, *supra* note 163.

Most currently published studies of gay male couples were conducted before the beginning of the AIDS epidemic in the early 1980s. Recent empirical research indicates that some gay men have developed sexually exclusive relationships as a response to AIDS, whereas others have restricted their sexual activities outside the relationship to behaviors unlikely to transmit Human Immunodeficiency Virus (HIV). For a review, see Marshall H. Becker & Jill G. Joseph, *AIDS and Behavioral Change to Reduce Risk: A Review*, 78 *AM. J. PUB. HEALTH* 394 (1988).

171. See P. BLUMSTEIN & P. SCHWARTZ, *supra* note 167; Lawrence Kurdek, *Relationship Quality of Gay and Lesbian Cohabiting Couples: A 1-Year Follow-Up Study*, 6 *J. SOC. & PERSONAL RELATIONSHIPS* 39 (1989).

ships, suggesting that gender may have a greater effect on sexual exclusivity than does sexual orientation.¹⁷²

In summary, lesbian and gay male couples manifest the same range of diversity as heterosexual couples. Many gay people are currently in ongoing relationships, some of which have lasted for many years. Heterosexuals and gay people appear to be similar in their satisfaction with their relationships and their feelings of liking and loving for their partner. Same-sex partners may differ from heterosexual couples in that they are less likely to play rigid, gender-based roles and are more likely to openly discuss issues of sexual exclusivity.

G. Myth #7: Gay people are not a minority group.

The notion that gay people constitute a minority group comparable to racial, ethnic, and religious minorities was articulated at least forty years ago.¹⁷³ Social scientists have proposed many different definitions and criteria for minority groups, recognizing that not all groups fit all criteria. The most important feature is that a minority group's members must manifest one or more characteristics that society uses as a basis for discrimination, despite the irrelevance of those characteristics to the setting in which discrimination occurs.¹⁷⁴ Other features that have been used to define the characteristics of a minority group include: a self-conscious sense of community through which group members feel bound to each other by common ties; transmission of minority group membership to succeeding generations by a rule of descent; and a tendency to marry within the minority group.¹⁷⁵

Lesbians and gay men clearly do not manifest the last two characteristics. Although sexual orientation may have a biological component (see discussion in subpart III(C)(1) above), it is not transmitted to succeeding generations in the same manner as race or ethnicity. Nor, for obvious reasons, do gay people tend to marry within their own group. In these respects, they are different from many racial and ethnic groups. Another difference is that, unlike race and ethnicity, sexual orientation transcends

172. See P. BLUMSTEIN & P. SCHWARTZ, *supra* note 167; K. JAY & A. YOUNG, *supra* note 159; Peplau, *supra* note 157; Letitia Anne Peplau & Gordon, *The Intimate Relationships of Lesbians and Gay Men*, in *THE CHANGING BOUNDARIES: GENDER ROLES AND SEXUAL BEHAVIOR* 226 (Elizabeth R. Allgeier & Naomi B. McCormick eds. 1982); Lawrence Kurdek, *Relationship Quality of Gay and Lesbian Cohabiting Couples*, 15 *J. HOMOSEXUALITY* 93 (1988) (Nos. 3/4); Kurdek, *supra* note 171.

173. See DONALD W. CORY, *THE HOMOSEXUAL IN AMERICA: A SUBJECTIVE APPROACH* (1951); see also Helen Hacker, *Homosexuals: Deviant or Minority Group?*, in *THE OTHER MINORITIES* 65 (Edward Sagarin ed. 1971) [hereinafter *OTHER MINORITIES*]; Franklin Kameny, *Homosexuals as a Minority Group*, in *OTHER MINORITIES* at 50.

174. See Melvin Seeman, *Intergroup Relations*, in *SOCIAL PSYCHOLOGY: SOCIOLOGICAL PERSPECTIVES* 378 (Morris Rosenberg & Ralph Turner eds. 1981); HENRI TAJFEL, *HUMAN GROUPS AND SOCIAL CATEGORIES: STUDIES IN SOCIAL PSYCHOLOGY* (1981).

175. See GEORGE E. SIMPSON & J.M. YINGER, *RACIAL AND CULTURAL MINORITIES: AN ANALYSIS OF PREJUDICE AND DISCRIMINATION* 10 (1965) (citation omitted).

social class and economic status. Lesbians, gay men, bisexuals, and heterosexuals appear to be distributed throughout society's strata, although antigay discrimination can have economic consequences for its targets.¹⁷⁶

Despite these differences from racial and ethnic minorities, lesbians and gay men can reasonably be viewed as a minority group in the contemporary United States because they manifest a characteristic that is held in low esteem by the dominant segments of society and is used as the basis for discrimination; further, they form a self-conscious community based on their sexual orientation.¹⁷⁷ Each of these characteristics will be considered in turn.

1. *Lesbians and gay men manifest a characteristic that is held in low esteem by the dominant segments of society.*

Roughly two-thirds of Americans condemn homosexuality or homosexual behavior as morally wrong or a sin;¹⁷⁸ this pattern appears not to have changed significantly from the late 1970s.¹⁷⁹ According to Gallup polls, only a plurality of Americans feel that homosexual relations between consenting adults should be legal (47 percent versus 36 percent who say they should not be legal).¹⁸⁰ Many heterosexual Americans also reject gay people at the personal level.¹⁸¹ In a 1985 *Los Angeles Times* poll, 35 percent of the respondents reported that they felt discomfort around either gay men (6 percent) or lesbians (11 percent) or both (18 percent); 50 percent reported that they did *not* feel uncomfortable around gay people.¹⁸² For some members of the public, negative attitudes toward lesbians and gay men may have been intensified in the early years of the AIDS epidemic;¹⁸³ for those who already were prejudiced, the epidemic may have provided an opportunity for expressing hostility.¹⁸⁴

176. See William Paul, *Minority Status for Gay People: Majority Reactions and Social Context*, in *HOMOSEXUALITY ISSUES*, *supra* note 94, at 351.

177. See, e.g., Seeman, *supra* note 174; H. TAJFEL, *supra* note 174.

178. Polls by the American Broadcasting Company (Mar. 1986 & Aug. 1987); L.A. Times, (Aug. 1987); Roper, (Sep. 1985) (these polls are available from the Roper Center, *supra* note 76).

179. Polls by Yankelovich (Mar. 1978); Gallup (Nov. 1978) (these polls are available from the Roper Center, *supra* note 76).

180. See Colasanto, *supra* note 76.

181. See Gregory M. Herek, *The Social Psychology of Homophobia: Toward a Practical Theory*, 14 N.Y.U. REV. L. & SOC. CHANGE 923 (1986); Gregory M. Herek, *Can Function Be Measured? A New Perspective on the Functional Approach to Attitudes*, 50 SOC. PSYCHOLOGY Q. 285 (1987); Gregory M. Herek, *Heterosexuals' Attitudes Toward Lesbians and Gay Men: Correlates and Gender Differences*, 25 J. SEX RES. 451 (1988); Herek, *supra* note 64.

182. See John Balzar, *The Times Poll: American Views of Gays: Disapproval, Sympathy*, N.Y. Times, Dec. 20, 1985, § 1, at 1, col. 5.

183. See Colasanto, *supra* note 76.

184. See Herek, *supra* note 61; Gregory M. Herek & Eric K. Glunt, *An Epidemic of Stigma: Public Reactions to AIDS*, 43 AM. PSYCHOLOGIST 886 (1988); Gregory M. Herek & Eric Glunt, *AIDS-Related Attitudes in the United States: A Preliminary Conceptualization*, 28 J. SEX RES. 99 (1991).

2. *Lesbians and gay men are self-consciously bound together as a community by virtue of their sexual orientation and the social status it carries.*

D'Emilio described the emergence and growth of lesbian and gay male communities in major American cities after World War II.¹⁸⁵ Levine used a definition of "ghetto" derived from sociological research¹⁸⁶ to document the existence of at least three fully developed gay male ghettos in American cities (Los Angeles, New York, and San Francisco) in the late 1970s.¹⁸⁷ He also described 12 other ghettos that were partially developed at that time (in the same three cities as well as in Boston and Chicago). Wolf described the San Francisco lesbian community in considerable detail.¹⁸⁸ Murray compared the Toronto gay male community with ethnic communities on a variety of defining characteristics and concluded that "the Toronto gay community fits the criteria for community as an entity at least as well as Toronto ethnic communities."¹⁸⁹ Other shared characteristics of lesbians and gay men also have been described, such as language;¹⁹⁰ culture;¹⁹¹ and myth, religion, and spirituality.¹⁹²

3. *Societal prejudice and inaccurate stereotypes surrounding sexual orientation cause gay people to receive differential treatment.*

In the Teichner national telephone survey, 5 percent of the 287 men and 10 percent of the 113 women reported having been physically abused or assaulted in the previous year because they were gay.¹⁹³ Nearly half (47 percent) reported experiencing discrimination in at least one category at some time in their life based on their sexual orientation: 16 percent on the job, 15 percent in housing, 13 percent in health care, and 39 percent in social situations (with some reporting discrimination in multiple categories).¹⁹⁴ Other research similarly has found that significant numbers of

185. See J. D'EMILIO & E. FREEDMAN, *supra* note 10.

186. See LOUIS WIRTH, *THE GHETTO* (1928).

187. See Martin Levine, *Gay Ghetto*, in *GAY MEN: THE SOCIOLOGY OF MALE HOMOSEXUALITY* 182 (Martin Levine ed. 1979).

188. See DEBORAH G. WOLF, *THE LESBIAN COMMUNITY* (1979).

189. Stephen Murray, *Institutional Elaboration of a Quasi-Ethnic Community*, 9 *INT'L REV. MOD. SOC.* 165, 175 (1979).

190. See *GAYSPEAK: GAY MALE AND LESBIAN COMMUNICATION* (James W. Chesebro ed. 1981); W. DYNES, *supra* note 2; BRUCE RODGERS, *THE QUEEN'S VERNACULAR: A GAY LEXICON* (1972).

191. See DENNIS ALTMAN, *THE HOMOSEXUALIZATION OF AMERICA, THE AMERICANIZATION OF THE HOMOSEXUAL* (1982); MICHAEL BRONSKI, *CULTURE CLASH: THE MAKING OF GAY SENSIBILITY* (1984).

192. See ARTHUR EVANS, *WITCHCRAFT AND THE GAY COUNTERCULTURE* (1978); JUDY GRAHN, *ANOTHER MOTHER TONGUE: GAY WORDS, GAY WORLDS* (1984); TROY PERRY, *THE LORD IS MY SHEPHERD AND HE KNOWS I'M GAY* (1972); *GAY SPIRIT: MYTH AND MEANING* (Mark Thompson ed. 1987).

193. See *Results of Poll*, *supra* note 57.

194. *Id.*

lesbians and gay men have been the targets of discrimination,¹⁹⁵ verbal abuse, or physical assault¹⁹⁶ because of their sexual orientation.

Although lesbians and gay men meet the central criteria for a minority group, they have begun to be recognized as such only recently. To date, no published national survey of public opinion has asked respondents whether they consider lesbians and gay men to constitute a minority group. However, many institutions have recognized gay people as a minority or have begun to treat them as such. For example, the American Psychological Association's previously mentioned resolution of 1975 included a statement of the organization's support for "the enactment of civil rights legislation at the local, state, and federal level that would offer citizens who engage in acts of homosexuality the same protections now guaranteed to others on the basis of race, creed, color, etc."¹⁹⁷ The APA voted at the same time to amend its own employment policy to prohibit discrimination on the basis of sexual orientation.¹⁹⁸ Similar resolutions were passed by the American Psychiatric Association in 1973; the American Public Health Association in 1975; the National Education Association in 1974; and the American Library Association in 1971.¹⁹⁹ Many United States corporations and universities now list "sexual orientation" as a protected category in their nondiscrimination policies.²⁰⁰ Many municipalities now accord the same civil rights protection to lesbians and gay men as to other minorities.²⁰¹

In addition to being a sexual minority group, lesbians and gay men also might be considered members of a religious minority because antigay discrimination and hostility are frequently justified on religious or moral grounds. Indeed, Supreme Court Justices White and Burger both cited Judeo-Christian teachings in their written opinions upholding the constitutionality of state sodomy statutes.²⁰² Because homosexuality is con-

195. See Larry Gross, Steven K. Aurand, & Rita Addressa, *VIOLENCE AND DISCRIMINATION AGAINST LESBIAN AND GAY PEOPLE IN PHILADELPHIA AND THE COMMONWEALTH OF PENNSYLVANIA*, Philadelphia Lesbian and Gay Task Force (1988) (available from the Lesbian and Gay Task Force, 1501 Cherry Street, Philadelphia, PA 19102); Levine, *supra* note 65; Levine & Leonard, *supra* note 65.

196. See Kevin Berrill, *Anti-Gay Violence and Victimization in the United States: An Overview*, 5 J. INTERPERSONAL VIOLENCE 274 (1990); Herek, *supra* note 23; *Violence Against Lesbians and Gay Men*, *supra* note 66; Paul, *supra* note 176.

197. Conger, *supra* note 39, at 633.

198. See *id.*

199. See HUMAN RIGHTS FOUNDATION, *DEMISTIFYING HOMOSEXUALITY: A TEACHING GUIDE ABOUT LESBIANS AND GAY MEN* 153-54 (1984); National Gay and Lesbian Task Force, *Who's Behind the Gay Rights Movement: Statements and Policies in Support of Gay and Lesbian Civil Rights* (1988) (available from the National Gay and Lesbian Task Force, 1734 Fourteenth Street N.W., Washington, D.C. 20009).

200. See HUMAN RIGHTS FOUNDATION, *supra* note 199 at 153-54; National Gay Task Force, *The National Gay Task Force Corporate Survey* (undated publication) (available from The National Gay and Lesbian Task Force, *supra* note 199).

201. See National Gay and Lesbian Task Force, *Gay and Lesbian Rights Protections in the U.S.* (undated publication) (available from the National Gay and Lesbian Task Force, *supra* note 199).

202. See *Bowers v. Hardwick*, 478 U.S. 186, 196 (1986).

demned by several major religions, it is sometimes argued that laws prohibiting discrimination would require heterosexual individuals to violate their personal moral standards. Such arguments are no longer widely accepted to excuse racial or religious intolerance, but they still carry sufficient weight when applied to homosexuality that religious institutions often are exempted from antidiscrimination statutes (as in the case of the 1989 Massachusetts state antidiscrimination law).²⁰³ Many Roman Catholics, fundamentalist Christians, and orthodox Jews have used religious teachings to justify their active opposition to enactment of statutes or policies designed to protect gay people from discrimination.²⁰⁴ The correlation between religiosity and antigay prejudice is well documented.²⁰⁵ Thus, although they do not manifest a unified religious ideology, gay people often are persecuted on the basis of the dominant majority's religious beliefs.²⁰⁶

Lesbians and gay men also can be viewed as members of a political minority. The relatively recent flourishing of visible gay communities is largely a result of political and legal struggles against prejudice and discrimination that have spanned four decades.²⁰⁷ These communities now constitute a political force for gay concerns, especially in cities like San Francisco.²⁰⁸ Acknowledging one's membership in the community through coming out to others can itself be defined as a political act²⁰⁹ and can be motivated by the desire to challenge antigay policies or attitudes.²¹⁰ This was recognized by the California Supreme Court in 1979.²¹¹ Noting that

203. See *No Gay Rights Vote in Massachusetts*, N.Y. Times, Jul. 8, 1990, § 1, at 11, col. 1.

204. For statements of the argument, see A. BRYANT, *supra* note 97; Congregation for the Doctrine of the Faith, Letter to the Bishops of the Catholic Church (1986) (on the pastoral care of homosexual persons); TIM LAHAYE, WHAT EVERYONE SHOULD KNOW ABOUT HOMOSEXUALITY (1978); for descriptions of antigay activism by Church officials, see ENRIQUE RUEDA, THE HOMOSEXUAL NETWORK: PRIVATE LIVES AND PUBLIC POLICY 269-383 (1982).

205. See, e.g., Margaret M. Bierly, *Prejudice Toward Contemporary Outgroups as a Generalized Attitude*, 15 J. APPLIED SOC. PSYCHOLOGY 189 (1985); Cynthia S. Gentry, *Social Distance Regarding Male and Female Homosexuals*, 127 J. SOC. PSYCHOLOGY 199 (1987); Gregory M. Herek, *Beyond "Homophobia": A Social Psychological Perspective on Attitudes Toward Lesbians and Gay Men*, 10 J. HOMOSEXUALITY 1 (1984) (Nos. 1/2); Gregory M. Herek, *Religious Orientation and Prejudice: A Comparison of Racial and Sexual Attitudes*, 13 PERSONALITY & SOC. PSYCHOLOGY BULL. 34 (1987); ALBERT D. KLASSEN, COLLIN J. WILLIAMS, & EUGENE E. LEVITT, SEX AND MORALITY IN THE U.S.: AN EMPIRICAL ENQUIRY UNDER THE AUSPICES OF THE KINSEY INSTITUTE (1989); Stephen M. Maret, *Attitudes of Fundamentalists Toward Homosexuality*, 55 PSYCHOLOGICAL REP. 205 (1984); Schneider & Lewis, *supra* note 76.

206. See Herek, *supra* note 61; Paul, *supra* note 176.

207. See BARRY ADAM, THE RISE OF A GAY AND LESBIAN MOVEMENT (1987); A. BÉRUBÉ, *supra* note 10; JOHN D'EMILIO, SEXUAL POLITICS, SEXUAL COMMUNITIES: THE MAKING OF A HOMOSEXUAL MINORITY IN THE UNITED STATES (1983).

208. See D. ALTMAN, *supra* note 191; RANDY SHILTS, THE MAYOR OF CASTRO STREET: THE LIFE AND TIMES OF HARVEY MILK (1982).

209. See generally CELIA KITZINGER, THE SOCIAL CONSTRUCTION OF LESBIANISM (1987).

210. See generally HOWARD BROWN, FAMILIAR FACES, HIDDEN LIVES: THE STORY OF HOMOSEXUAL MEN IN AMERICA TODAY (1976); MIKE HIPPLER, MATLOVICH: THE GOOD SOLDIER (1989).

211. See *Gay Law Students Ass'n v. Pacific Tel. and Tel. Co.*, 24 Cal. 3d 458, 595 P.2d 592, 156 Cal. Rptr. 14 (Cal. 1979).

the civil rights struggle of the gay community "must be recognized as political activity"²¹² and that publicly acknowledging one's own homosexual orientation is an important aspect of this struggle, the Court ruled that discrimination against openly gay individuals constitutes illegal discrimination on the basis of political activity.²¹³

H. Myth #8: Gay people are detrimental to the morale, discipline, or efficiency of an organization or institution.

The argument that lesbians and gay men impair the effectiveness and morale of an organization has been advanced most forcefully in recent years by the United States government to justify its policies of excluding gay people from military service²¹⁴ and of frequently denying them civilian security clearances.²¹⁵ The government has insisted on discharging lesbian and gay male military personnel, even in the face of information indicating that many such individuals are highly motivated and skilled.²¹⁶

Although the government's claims concerning morale and efficiency have not been directly addressed in empirical research, evidence from several sources casts doubt on their validity. Lesbians and gay men function with varying degrees of openness in many civilian work settings with no

212. *Gay Law Students Ass'n*, 24 Cal. 3d at 488, 595 P.2d at 611, 156 Cal. Rptr. at 33.

213. *See id.*

214. According to Department of Defense (DOD) Directive 1332.14 (Jan. 28, 1982), pt. 1, § H: Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the Military Services to maintain discipline, good order, and morale; to foster mutual trust and confidence among servicemembers; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of servicemembers who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the Military Services; to maintain the public acceptability of military service; and to prevent breaches of security.

Several of these reasons have little or no factual basis. For example, no evidence exists to show that lesbians and gay men are more likely than heterosexuals to breach security. Gregory M. Herek, *Gay People and Government Security Clearances: A Social Science Perspective*, 45 AM. PSYCHOLOGIST 1035 (1990). Nor does it seem likely that accepting openly gay recruits would lower the public acceptability of military service since, according to a 1989 Gallup poll, the public favors allowing gay people into the military by a margin of 60% to 29%. *See Colasanto, supra* note 76. Additionally, concerns about sexual harassment that are implied in the government's references to rank and to privacy are equally applicable to heterosexual personnel, and could be dealt with in the same way that heterosexual harassment is handled.

215. *See Herek, supra* note 214; Gary B. Melton, *Public Policy and Private Prejudice: Psychology and Law on Gay Rights*, 44 AM. PSYCHOLOGIST 933 (1989); William Snyder & Kenneth Nyberg, *Gays and the Military: An Emerging Policy Issue*, 8 J. POL. & MIL. SOC. 71 (1980).

216. *See Jane Gross, Navy is Urged to Root Out Lesbians*, N.Y. Times, Sep. 2, 1990, at A-9, col. 6; Michael McDaniel, *Preservice Adjustment of Homosexual and Heterosexual Military Accessions: Implications for Security Clearance Suitability*, Defense Personnel Security Research and Education Center (1989), reprinted in *GAYS IN UNIFORM: THE PENTAGON'S SECRET REPORTS* (Kate Dyer ed. 1990); Theodore R. Sarbin & Kenneth E. Karols, *Nonconforming Sexual Orientations and Military Suitability*, Defense Personnel Security Research and Education Center (PERSEREC), PERS-TR-89-002 (Dec. 1988), reprinted in *GAYS IN UNIFORM: THE PENTAGON'S SECRET REPORTS* (Kate Dyer ed. 1990); Elaine Sciolino, *Report Urging End of Homosexual Ban Rejected by Military*, N.Y. Times, Oct. 22, 1989, at § 1, col. 6.

apparent disruption to the organization. As already noted, between 41 percent and 63 percent of the respondents to the Teichner survey (depending on geographic region) reported that they had come out to one or more coworkers.²¹⁷ Recognizing the irrelevance of sexual orientation to individual job performance and the functioning of the workplace, many large organizations (including governments, universities, and major corporations) have implemented nondiscrimination policies in this area.²¹⁸

Although no published studies exist of the influences on morale of having lesbian and gay male members in the armed forces, many gay people have served in the United States military, often with distinction.²¹⁹ Bérubé has provided extensive documentation of lesbian and gay male soldiers and sailors during World War II, many of whom were known by their comrades to be gay.²²⁰ Although these data are anecdotal, they belie the government's claim that gay people inevitably impair the functioning of a military unit. This claim is also weakened by the fact that lesbians and gay men have been allowed to join the armed forces of other countries (Denmark, the Netherlands, and Sweden) without ill effects.²²¹

Anti-gay prejudice probably exists among members of the military, just as it exists in civilian work settings. In 1987, a *Roper* poll found that 25 percent of the respondents to a national survey (of civilians) would strongly object to working around people who are homosexual, and another 27 percent would prefer not to do so; only 45 percent "wouldn't mind."²²² It is reasonable to assume that resistance to working with gay people is as prevalent among members of the armed forces as among the general population. However, the military has dealt successfully with prejudice in its ranks in the past. For example, anti-Black attitudes were widespread in the military when President Truman ordered an end to racial discrimination in the armed forces in 1948.²²³ The suggestion that

217. See *Results of Poll*, *supra* note 57.

218. See HUMAN RIGHTS FOUNDATION, *supra* note 199, at 149-57; National Lesbian and Gay Task Force, *supra* note 200.

219. See A. BÉRUBÉ, *supra* note 10; EDWARD L. GIBSON, *GET OFF MY SHIP: ENSIGN BERG VS. THE U.S. NAVY* (1978); Joseph Harry, *Homosexual Men and Women Who Served Their Country*, 10 J. HOMOSEXUALITY 117 (1984); M. HIPPLER, *supra* note 210; MARY HUMPHREY, *MY COUNTRY, MY RIGHT TO SERVE: EXPERIENCES OF GAY MEN AND WOMEN IN THE MILITARY, WORLD WAR II TO THE PRESENT* (1990); LAWRENCE L. MURPHY, *PERVERTS BY OFFICIAL ORDER: THE CAMPAIGN AGAINST HOMOSEXUALS BY THE UNITED STATES NAVY* (1988); C.J. WILLIAMS & M.S. WEINBERG, *HOMOSEXUALS AND THE MILITARY: A STUDY OF LESS THAN HONORABLE DISCHARGE* (1971).

220. See generally A. BÉRUBÉ, *supra* note 10.

221. See Rob Tielman & Taco deJonge, *Country by Country Survey: A Worldwide Inventory of Discrimination and Liberation of Lesbians and Gay Men*, in *SECOND ILGA PINK BOOK* 185 (Pink Book Editing Team ed. 1988).

222. See *Roper Center*, *supra* note 76.

223. See Stephen Ambrose, *Blacks in the Military in Two World Wars*, in *THE MILITARY AND AMERICAN SOCIETY: ESSAYS AND READINGS* 177 (Stephen E. Ambrose & James A. Barber eds. 1982).

For example, a 1937 report from senior officers at the United States Army War College included the following conclusions:

the military utilize its past experiences with racism in dealing with anti-gay prejudice was contained in a report first commissioned and then rejected²²⁴ by the military:

The order to integrate blacks was first met with stout resistance by traditionalists in the military establishment. Dire consequences were predicted for maintaining discipline, building group morale, and achieving military organizational goals. None of these predictions of doom has come true. . . . It would be wise to consider applying the experience of the past 40 years to the integration of homosexuals.²²⁵

The government's policy itself is likely to perpetuate antigay attitudes in the military for at least two reasons. First, it creates a general norm that supports intolerance of lesbians and gay men. Second, it reduces the likelihood that heterosexuals will have personal contact with gay people. Empirical research with other minority groups has shown that inter-group contact often reduces prejudice in the majority group when the contact meets several conditions: When it is encouraged by the institution in which it occurs, makes shared goals salient, and fosters inter-group cooperation; when the contact is ongoing and intimate rather than brief and superficial; and when members of the two groups are of equal status and share important values.²²⁶ The applicability of this contact hypothesis to antigay prejudice is supported by data showing that heterosexuals with openly gay friends or acquaintances are more likely than others to hold accepting attitudes toward gay people in general.²²⁷ Thus, institutionally-fostered contact between heterosexual and gay members of the military would be likely to reduce prejudice and thereby increase overall morale.

In summary, the claim that lesbians and gay men impair the functioning of a large organization such as the military is contradicted by the

As an individual the negro is docile, tractable, lighthearted, care free [sic] and good natured [sic]. If unjustly treated he is likely to become surly and stubborn, though this is usually a temporary phase. He is careless, shiftless, irresponsible and secretive. He resents censure and is best handled with praise and by ridicule. He is unmoral [sic], untruthful, and his sense of right doing [sic] is relatively inferior.

Quoted in Ambrose, *id.* at 177.

224. See Sciolino, *supra* note 216.

225. Sarbin & Karols, *supra* note 216, at 25.

226. See G. ALLPORT, *supra* note 44; Yehuda Amir, *Contact Hypothesis in Ethnic Relations*, 71 *PSYCHOLOGICAL BULL.* 319 (1969).

227. See, e.g., Gentry, *supra* note 205; Herek, *supra* note 205; Herek, *supra* note 181; Schneider & Lewis, *supra* note 76.

This pattern may result partly from a preference among gay people for disclosing their sexual orientation to others perceived as likely to respond in a positive or supportive way. See Beth E. Schneider, *Coming Out at Work: Bridging the Private/Public Gap*, 13 *WORK & OCCUPATIONS* 463 (1986); THOMAS S. WEINBERG, *GAY MEN, GAY SELVES: THE SOCIAL CONSTRUCTION OF HOMOSEXUAL IDENTITIES* (1983); Joel W. Wells & William B. Kline, *Self-Disclosure of Homosexual Orientation*, 127 *J. SOC. PSYCHOLOGY* 191 (1987). However, knowing an openly gay person is predictive of supportive attitudes even in demographic groups where hostility is the norm, e.g., among the highly religious and those with lower educational levels. See Schneider & Lewis, *supra* note 76.

experiences of private corporations and other entities that have adopted policies of nondiscrimination based on sexual orientation. The accuracy of these claims also seems doubtful in light of evidence showing that lesbians and gay men have served successfully in the United States military, including in combat. Although the military is likely to encounter some resistance within its ranks to allowing openly gay people to serve, it has overcome similar problems of prejudice in the past.

IV. CONCLUSION

Attorneys involved with litigation concerning gay rights often must refute myths and erroneous stereotypes about lesbians and gay men. A growing body of social science literature provides a wealth of information useful for this task. Some of this research already has been presented to the courts by expert witnesses or in *amicus* briefs.²²⁸

As with all social science data, each empirical study must be evaluated critically to assess its internal validity and the generalizability of its conclusions. Additionally, the results of each study must be considered in relation to other relevant research addressing the same question. Following these guidelines, the present article has attempted to demonstrate that the overwhelming conclusion to be drawn from empirical data is that lesbians and gay men, as a group, do not differ significantly from heterosexuals in their psychological and social functioning.

228. See *amicus* briefs submitted by the American Psychological Association in *Bowers v. Hardwick*, 478 U.S. 186 (1986); *Watkins v. United States Army*, 837 F.2d 1428 (9th Cir. 1988), and *BenShalom v. Marsh*, 703 F. Supp 1372 (E.D. Wis. 1988); see also Melton, *supra* note 215.



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Summary

Task Force Recommendations

Re: Bias Crime and Civil Rights

Pennsylvania House of Representatives

April 1992

Given the national epidemic of violence against lesbian women, against gay men, and against women in this country and in this Commonwealth,¹ the Task Force strongly encourages the Pennsylvania Legislature to support an amendment to the "Ethnic Intimidation Act" [Bias Crime Statute] to include the category "sexual orientation" and "gender". In tandem, the Task Force asks the Legislature to consider the compelling need for extending civil rights protection to lesbian women and gay men within the rubric of the Pennsylvania Human Relations Act and the Fair Educational Opportunities Act, as amended.

The Task Force calls upon the Legislature for leadership in addressing the problem of bias crime in the Commonwealth. We ask the Legislature, in collaboration with the Attorney General, to sponsor a series of documented hearings throughout the Commonwealth to fully assess the scope and range of both violence and discrimination on the basis of race, color, religion, national origin, gender and sexual orientation and other appropriate categories, similar to the California Attorney General's initiative in 1987.²

In addition, the Task Force encourages the Legislature to define hate motivated crime as a crime that deprives victims of their civil rights and that violates constitutional rights of freedom of speech and and freedom of association. Further, the Task Force encourages the Legislature to assure that victims of bias crime are permitted to bring civil suit for injunctive relief, compensatory and punitive damages as well as reasonable attorney fees and other appropriate relief.

The Task Force encourages the Pennsylvania Legislature to mandate that the Pennsylvania Attorney General in collaboration with state and local criminal justice and civil rights law enforcement agencies vigorously enforce this legislation and that the Legislature require an annual Bias Crime Report, for the Legislature's scheduled review and analysis.

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Recommendations, continued

While the Hate Crime Statistics Act of 1990 requires Attorneys General to establish guidelines and collect data about crimes that manifest evidence of prejudice, gender as a category has been arbitrarily excluded from the Act.

The Task Force asks the Legislature to authorize the Pennsylvania Attorney General to establish a standard and uniform data collection and reporting system, inclusive of gender, with clearly defined sanctions for non-compliance by relevant agencies and departments within the criminal justice and civil rights law enforcement system.

The Task Force asks the Legislature, as well, to authorize an adequate budget to assure (1) efficient data collection and efficient reporting systems, (2) and professional in-service training programs on bias crime for all state and local police forces, on diversity issues, inclusive of sexual orientation and gender.³

The Task Force calls on the Legislature to assume responsibility for oversight and performance evaluation of the criminal and civil rights law enforcement system's response to bias crime through a thorough annual and public review of a mandated Attorney General's Report on Bias Crime, which should include, but not be limited to, the number of bias incidents reported, the number of bias crime arrests completed, and the number of convictions obtained, together with a description of the resolution of such claims throughout the Commonwealth on a county-by-county basis.

Incidents of bias-motivated police brutality, which should be aggressively examined, investigated and resolved by the Attorney General's Office, should be included within the report.

Testimony of Rita Addessa follows