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GAY KILLINGS IN NEW SOUTH WALES:

VICTIMISATION AND THE LEGAL

RESPONSE

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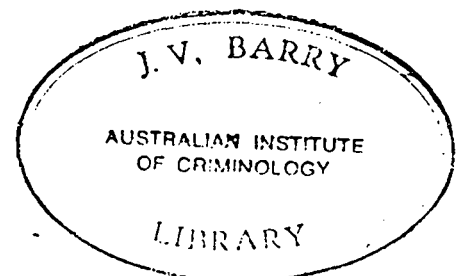
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Summary:

There has been a recent activist, official and media focus on killings of gay men in NSW and the outcome of related criminal trials. However, this form of killing is more widespread than is generally thought and it is not a new type of crime. A survey of murder and manslaughter records for New South Wales since 1980 conducted as part of this research, reveals that at least 74 homicides which could reasonably be termed as gay killings have occurred in that period.

Analysis of court records for the 31 gay-hate killings recorded by the NSW Police Service since 1986, suggest that the evident motives for this violence reflect both elements of homophobia and violent conceptions of heterosexual masculinity. Homophobic hate is directed towards gay and bisexual men who are selected out for assault by assailants on the simple basis of their group sexual identity. At the same time, conventional notions of male identity, often rest behind the felt necessity for a violent response to a real or imagined homosexual pass.

Unfortunately, these elements of homophobia and masculinism extend and are reproduced well beyond the individual motives of the characteristically young men who assault and kill gays. They are also reflected in aspects of the historical and current criminal justice system response to this form of criminal violence. NSW police have moved beyond the complacency of earlier times, and in co-operation with gay and lesbian groups they have begun a serious effort to record and monitor these offences. Consequently, NSW appears to have a much higher rate of gay killings than other Australian States in which the community liaison is in its infancy or still resisted by traditional patterns of policing.

A high proportion of NSW killings have resulted in the apprehension of offenders and in subsequent criminal trials. Some of these have led to the imposition of substantial sentences and clear judicial warnings issued against

perpetrators of homophobic violence. But valid concerns remain about the outcome of trials in which pleas of provocation and self-defence have been raised by offenders who allege their violence was a necessary or excusable response to a homosexual advance. An inquiry into the conduct of these trials and any possible use of the 'homosexual advance defence' is about to report to the Attorney-General of NSW with proposals regarding changes to the substantive law and courtroom procedure.

These legal reforms and changes to police recording and investigatory practices will enhance detailed knowledge of gay killings and importantly signal to the general public the seriousness of this violence. This will have more than a symbolic value and contribute to the longer-term diminution in this sort of crime by a public educative and deterrence effect.

Outline of Research Area and Proposal:

Since the late 1980s, there have been claims of a marked increase in violence directed against lesbians, gay men and other sexual minorities in various nations (Herek & Berrill, 1992; Mason, 1993). In Australia, these claims and heightened concerns were first of all focused on publicising and addressing violence in inner-Sydney. This activist, political and media interest has since been reproduced in regional parts of New South Wales, and in cities and areas in other States.

This development has led some observers into conjecture about a sharp increase, or even an epidemic of violence. It is obvious though, that because these attacks have only very recently become a focus of police attention or research interest, there can only be speculation about their real level of increase. It seems likely that the increased concern with this violence is in large part a result of the efforts of activists themselves. Community research, protest rallies and other publicity, have provided the catalyst for making violence and harassment directed at gay men and lesbians into a public issue. Especially in New South Wales, the lesbian and gay community now has an increased and often open representation in party politics and sections of the State bureaucracy.

It is also now evident that gays and lesbians (particularly in areas like Darlinghurst, Surry Hills and Newtown) in inner-Sydney, have an increased public cultural presence. But many problems arise from efforts to define the different people who now either openly or covertly identify as gay, lesbian, bisexual, homosexual or sexually marginal, and as all being part of any unitary community. Questions of identity in this and other research on anti-homosexual violence, are closely tied to matters of known or assumed criminal motivation, the criminal justice response to various incidents, and the difficult but perhaps necessary effort by a researcher at the classification of a victim's sexual orientation.

North American research on this area of crime include victim surveys conducted by activist organisations in the 1980s and the pioneering research of Comstock (1991). Early Australian research has been mostly conducted by activists themselves, more recently under the auspices of the NSW Police Service, and as the doctoral research of a local academic (Gay & Lesbian Rights Lobby, 1990, 1992; Cox, 1994; Baird et. al. 1994; NSW Police Service, 1995; Mason, 1995). Despite the design and sampling problems of most of these studies, the most significant and relevant of their common findings are the comparatively higher rate of criminal victimisation of the gay men and lesbians surveyed as compared with the heterosexual population, and the relative low rates of reporting of offences, which reflects a marked lack of faith in the police and criminal justice system.

In recent years unpublished activist surveys of gay-hate murders have been conducted in the United States and Brazil. Internationally, there has been a negligible focus on gay homicides by mainstream academic and official researchers. Some major studies of homicide make some mention of gay killings, but with limited analyses that may be clouded by including these crimes under such amorphous categories as crimes of opportunity, gang attacks, victim-precipitated killings, or intra-male violence. This overall neglect is not due to mere oversight, but most probably is tied to the homophobic origins of criminology as a research discipline and its historical incorporation into practices of surveillance and regulation directed against sexual minorities (Tomsen, 1996).

A general pattern of official disinterest has also meant that these killings have only been of minor interest to homicide researchers in Australia. In part this seems to be due to the difficulties experienced with official records. Although violent crime has become topical and politicised in the last decade, many aspects of recording and analysis are still very antiquated or in a situation of flux. Among incidents that are officially recorded by police agencies, there is mostly no indication that these are hate crimes. This may sometimes be

apparent from the laborious study of records, but these cases are only found by chance and many records describe ambiguous crime scenarios. Much of the historical underreporting and underrecording and the unknown level of violence against gays and lesbians is a combined consequence of a lack of social power, and substantial levels of complacent or hostile police attitudes.

The ongoing difficulty for researchers studying official records is to consider both the reluctance of victims like gay men and lesbians to report matters of assault and harassment, and also, the shifting and regionally different ways that these are recorded, making inter-State comparisons of hate crime especially difficult. Most importantly, homophobic violence and hate crime will appear to undergo dramatic rises in jurisdictions in which these offences are given greater priority. Matters like the allocation of police time and resources, as well as the level of political mobilisation of these victim groups will determine this.

A conventional wisdom among researchers is that records for homicides are the most thorough among all categories of violent crime. But homicide research in Australia, and the official police and coronial records that this is mostly based upon, rarely mention or only hint at the sexuality of an offender or victim as a relevant factor, and the real number of these murders in this country is unknown. For these reasons, police and a range of concerned parties have only a very rudimentary knowledge of gay-hate killings; including the historical extent of these and the typical and varying characteristics of fatal incidents.

As noted above, it is now known that victimisation rates for homosexuals are generally higher than for heterosexuals. Lesbians report victimisation in different settings than gay men, and in some studies, a higher proportion of harassment than physical attacks (Mason, 1995; Gay & Lesbian Rights Lobby, 1992). But little is known about the different rates between different groups of gay men and lesbians such as the variable victimisation that may be

associated with social class, age, ethnicity, residence, and other related aspects of lifestyle. Australian researchers have a far greater current knowledge of the comparative risk of HIV infection among gay men than the risk of crime victimisation.

It appears that the very substantial number of gay men who are killed with criminal violence is the dual outcome of negative social constructions of marginal sexual identity and the rigid maintenance of conventional notions of manhood. Accordingly, this project has investigated the relationship between social constructions of masculinity and recent homicides in which victims were selected out by their killers on the basis of their perceived homosexuality. It did this firstly with, an examination of press, police and legal reports for those recent attacks which have been prosecuted. This provided insights into the particular links between homophobia, male identity and violent behaviour which result in these homicides.

Secondly, this project focused on recent New South Wales trials in which pleas of provocation and self-defence have been made regarding an alleged sexual assault or sexual advance by the deceased. This is a phenomenon similar to the use of the so-called 'homosexual panic defense' in American courts, which has been locally renamed as 'homosexual advance' (Harvard Law Review, 1989; Keenan, 1993). Trial records and reported cases were studied to examine the place of masculinist notions of social honour in leading to this form of retaliatory fatal violence, and the different understandings of male identity and sexuality that arise in courtroom settings.

It is hoped that this research will allow further understanding of the motivations of assailants who perpetrate this violence and of the rationale behind criminal justice system reactions. An issue which has captured the attention of activists is whether or not the official response and depiction of gay male victims in the legal system amounts to some injustice, and whether the sentences meted out to offenders are fair and appropriate. There are some

reflections on this within this report. More broadly, this study does not accept that high rates of anti-gay violence are inevitable in any society characterised by institutional heterosexism. It is also directed towards a more fundamental understanding of the motivation and circumstances of attacks, with the future avoidance or reduction of the risk of these in mind.

Additionally, this research seeks to interrogate the notion that the killings of gay men can always be unproblematically termed as 'hate crimes'. An appreciation of the complex interrelation of homophobia and masculinity is fundamental in understanding the motivation of killers, and even more broadly the historical pattern of response to this violence that has come from police and the criminal courts as masculinist institutions.

Sources of Data and Sampling:

From 1986 to 1996 the NSW Police Gay & Lesbian Liaison Unit has recorded the details of 31 fatal incidents that are regarded as gay-hate killings. These incidents formed the principal sampling frame for this research. Records and transcripts concerning sixteen trials for the solved killings, were obtained from both the registry of the Supreme Court and the Director of Public Prosecutions. Additionally, Coroner's Court records have been obtained in order to study aspects of unsolved killings. NSW Police records indicate that at least eleven such killings have occurred between 1986 and the present. Finally, a search of press records of homicides in NSW between 1980 and 1988 (the year of full commencement of NSW police monitoring) was conducted to obtain a broader historical overview of the scale of this form of crime.

The initial process of sampling faced the difficulties of defining each crime as a 'gay-hate' killing and imputing the motives of homophobia to each offender prior to study. For convenience, the 31 incidents listed by the NSW police were accepted as a basis for studying court records. But the press search was more widely directed at uncovering probable 'gay killings'. These are

homicides in which the sexuality of the victim was judged as having some likely important relation to the fatal incident. This precludes cases where the homosexuality of the deceased appears to be incidental. Domestic homicides between same-sex lovers were also excluded.

Some criminologists note that 'hate crime' is a highly problematic term (Fraser, 1996). They are wary of the individualistic and psychologistic notions of crime that seem to be inscribed in it and much related discussion about prevention and punishment. This can lack a systemic perspective regarding the marginalisation of the sexual, racial and ethnic minorities that are subjected to violence and harassment on the basis of their group identity. Furthermore, an analysis of violence against lesbians and gay men which problematises identity suggests that a continuous representational struggle concerning sexuality is played out within official agencies (police and courts) and official discourses (the heterosexism and masculinism of the law). Much violence may be motivated by hatred and contempt for homosexuals, but an understanding of this should not preclude an analysis of aspects of social marginality that lead to vulnerability and criminal victimisation.

Further difficulties beset attempts to define homicides as 'gay killings' and categorise victims as gay. This is not because fewer people are homosexually inclined than has been previously thought by social researchers. But from a constructionist view, this is a historically recent label that increasingly describes a similar culture and social outlook among certain homosexual groups, rather than the actual sexual practices of individuals. Many of the victims studied in this research had only marginal or no apparent links to any gay subculture. The subjectivism of the term is acknowledged in this research. However, it is still regarded as worth retaining in description and analysis. This is especially so given the importance of exploring any possible causal link between the increasingly public and ambiguous representation of an urban gay culture, and violence that is directed against victims who were viewed by their assailants as unequivocally 'gay'.

The overall number of gay killings that have been recently recorded in NSW is remarkably higher than the number recorded in other States. Sexual migration has boosted the gay male and lesbian population of inner-Sydney which reputedly has the largest gay subculture in Australia. However, these NSW victims comprise a mix of men from city, suburban and other locations. It seems that most of the large gap between rates of gay killings in NSW and elsewhere, is a reflection of variations in recording practices and the lower level of monitoring in other States where only limited police resources have been dedicated to this task.

Methodology and Details of the Data:

Basic information regarding 74 different killings was gathered through a search of press sources. Additionally, an archival search of official coroner's court records of unsolved killings (post-mortem reports, incident narratives, police exhibits and coroner's findings), and of trial transcripts (cross-examination, records of interview, Dock statements and judgments) obtained from the Supreme Court and Director of Public Prosecutions was conducted. A summarising and coding and analysis of these official records for detailed information regarding the location and pattern of these offences, relevant situational factors and the characteristics of the parties involved was carried out.

The text of these documents was also subject to a content analysis concerned with the themes of male honour and the 'naturalness' of some violence, constructions of male sexuality and different depictions of gay men as either legitimate or illegitimate victims. Such an analysis of courtroom representations and narratives does not mean the uncovering of lies or repressive ideologies, but commonsense views of crime scenarios that incorporate categories of understanding violence and sexual identity that can disadvantage crime victims.

Very little is officially known about the typical pattern and circumstances of these killings, and the interactions and victimisation patterns than characterise gay homicides. Details of the social characteristics of assailants and victims, and the interactive circumstances and role of environmental factors in these incidents have been previously unstudied.

Fatal Incidents, Offenders and Victims:

The 31 victims of 'gay-hate' killings monitored by police since 1986 are generally older than other male victims of homicide. Age is often given a negative correlation to victimisation, with younger men regarded as most at risk of fatal involvements with violence. This does not appear to hold true with attacks on gay men. Most were middle-aged males or even older; nineteen were in their thirties or forties when killed, seven were in their fifties or sixties, and only five victims were in their twenties.

However, a very high proportion of gay victims were apparently single at the time of their killing (though this is even harder to assess than the single status of heterosexual men which is more readily known and recorded) and a general correlation is often found by researchers between older male single status and victimisation. Possibly the perceived physical vulnerability and social isolation of older gay men is a factor in opportunistic killings, especially in cases where the victim and offender were friends or acquaintances.

This form of victimisation appears to be spread among men from different regions. The victim's lived in a wide variety of areas, with ten in the inner-city of Sydney, eleven in Sydney's suburbs, four in regional cities, and another six in small towns or rural settings. Researchers have found that the general risk of homicide among men is concentrated among males who have low socio-economic status. This may be partly true for gay men. The victim's occupation is known in only twenty-three cases. Seven were unemployed or pensioners, six worked in unskilled areas and hospitality, four in skilled

trades or lower clerical positions, and a further six in business or professions. Despite the small size of this sample, it also seems to be the case that a higher proportion of gay as against heterosexual men who are middle class professionals are at risk of victimisation, and the insulation from violent crime that those with higher social status generally experience is counteracted by factors related to sexuality.

As already noted, there are considerable difficulties in attempting to readily classify the sexuality of each of these victims. Although they had a varied pattern of identification with the gay and lesbian subculture, twenty-one victims could be reasonably termed as gay or were known as homosexual. The remainder may have been more secretive about their sexuality or even may have engaged in same-sex activity without identifying in any way as gay or homosexual. One victim, Gordon Tuckey, who was bashed to death on a Wollongong cycleway in 1993, was apparently a transsexual.

But regardless of whatever is the best label for the sexuality of each victim, a fatal assault can still be reasonably termed as a gay-hate killing if the offender either rightly or wrongly perceived his victim as gay and this motivated the attack. In a growing number of criminal trials, offenders have made accusations of a homosexual advance or assault by the deceased. In such cases, the death may be classified as a gay-hate killing. But it is possible that some of these victims were neither homosexual in their identity or pattern of desire. They may have been wrongly perceived as such by their assailants, or else this is a convenient rationalisation for a fatal assault which in reality had other motivations. For example, the killing of Robert Maclean in a Sydney bar in 1992 was allegedly preceded by anti-gay abuse. However, on currently known evidence the accused seemed to have little reason to believe that the deceased was actually homosexual other than his drunken state of friendliness before his death.

However, it would not be reasonable to suggest that because of such factors

these 31 gay-hate killings have been improperly classified and their real number is much lower than thought. Many other sorts of pressures exist that can prevent homicides being classified in this way. The sensitivities of the families and friends of victims are a matter of real consideration to police officers investigating these crimes, and there can be personal difficulties in cases where a victim never divulged his sexuality to these parties. But any excessive caution in this regard, will reduce the value of the official monitoring of this form of offence.

A striking example of this dilemma can be found in the official records of the killing of Peter Simpson in 1986. Simpson was a forty-six year old accountant, a highly respected and senior scoutmaster, and married with three children. He was bludgeoned to death on the edge of Lake Macquarie by a younger male acquaintance who he accompanied to a party. This offence is currently listed by NSW police as a gay-hate killing on the basis of information given informally by investigating officers to the Gay & Lesbian Liaison Unit. But the detailed trial records make no mention of the issue of sexuality or previous sexual activity between the deceased and the accused. Apparently a courtroom consensus was reached that these elements would not be discussed. An alleged (non-sexual) assault by the victim that occurred as the accused was in the 'vulnerable' position of publically urinating, had 'no apparent reason' behind it. Nevertheless, the accused was convicted of manslaughter and received an eight year sentence with a minimum of three and a half years imprisonment.

Whereas many of the victims of these gay-hate killings are middle-aged or quite old, the offenders tend to be significantly young. They appear to be even younger than is generally the case for other forms of homicide between men, including disputes between heterosexual men where offenders are lesser in age than the men who kill their female partners. Two offenders were more than thirty years old, ten were aged in their twenties, and a striking twenty-two offenders or co-offenders were teenagers at the time of the crime. These younger offenders tended more to attack in groups. Eight teenagers were

involved in the killing of Richard Johnson, and three teenagers each were involved in the killings of Rattana Jurathaporn, Sidney Hoare and John Milicevic. Two youths were charged in relation to the death of Gordon Tuckey, though a much larger number were questioned about their possible involvement.

Coroner's Court records indicate that groups of teenagers who had come under police surveillance for their involvements with gay bashings were also the main suspects in some of the unsolved killings. This factor of youthfulness and the greater than expected age of victims creates some very substantial age gaps. Victims were at least ten years older than offenders in ten different killings. In a further eight homicides they were twenty years or more older than the teenagers and young men who killed them.

As is the usual case with homicides among male groups, offenders and co-offenders were overwhelmingly male. Four females were involved in these killings, two directly and another two as accomplices who assisted their male partners in attempts to cover their crimes. Other aspects of the profile of typical offenders are unsurprising. The majority have low socio-economic status. Though the remarkable youth of many offenders means that they were schoolboys at the time of their offence, most had a limited education and were either unemployed or worked in unskilled manual occupations. Several have had a personal history of drug and alcohol abuse. Some had minor criminal records. However, one offender was already on bail for another murder when he killed, and another offender has also been subsequently charged with a second killing.

The 31 fatal gay-hate attacks recorded by the NSW police since 1986 have been regarded as equal to approximately one quarter of all so-called 'stranger murders' occurring in this state in the same period, and men are generally regarded by crime researchers as being more at risk than women from attacks by strangers. However, a closer scrutiny of records indicates a more complex

pattern of relations between offenders and gay male victims. In fourteen cases the victim did not know their killer(s). This was definitely so in six cases, but in other instances it can be reasonably assumed from police inquiries and the location and circumstances of the attack. But in another fifteen homicides the victim and offender were friends or acquaintances. Three victims were described as very close friends of their killers, and in only another three of these fifteen instances the parties involved were short-term acquaintances who had met hours previously.

These fatal attacks take place in a variety of settings; ten attacks took place in the victim's flat or house, two in the offender's residence, and one in a motel room. Fourteen incidents occurred in a public street, park, walkway or reserve. One attack was carried out in an alleyway off Oxford Street. Significantly nine killings occurred in or adjacent to known homosexual beats, and attacks at or near three different Sydney beats (Bondi Cliffs, Alexandria, Rushcutters Bay) accounted for six homicides.

Most assailants relied on kicking and punching with great force to kill their victims, often as a group activity. But other offenders displayed more creativity and adaption in their choice of weapons. These included knives, scissors, forks, a rock, a stick, a clawhammer, a bottle, a metal tape dispenser, a spade, a tyre lever, a ceramic Piggy bank, a plaster garden Gnome and a hunting bow and arrows. Remarkably, none of these 31 victims were attacked with a firearm, though earlier examples of such attacks on gay men were found.

Many of these offences are notable for their particular brutality and the frenzied form of attacks, with victims tormented and wounded repeatedly. For example, in one case from the early 80s, a victim was stabbed sixty-four different times, and most blows were apparently delivered after he had already died. The non-use of firearms may suggest a lack of prior planning by some offenders. However, it may also reflect a wider preference for a more 'hands

on' approach to this form of violence.

Two general crime scenarios emerge from the official records of these homicides. The first of these can be characterised as an attack in public space on a victim who is gay or presumed to be gay and who is usually a complete stranger to the assailant(s). Offenders typically attack: in groups, and victims seem to be most vulnerable when attacked at well-known beats. These locations are selected by offenders because of the expected ready availability of victims. But additionally, offenders may be attracted by the compromised situation of any potential victims who may be seeking out casual sexual contacts. The negative consequences of reporting are a substantial fear to many victims. In two instances men who were attacked at beats died without taking up the opportunity to get medical treatment or police assistance.

Twelve fatal attacks appear to fit this sort of scenario. Some of the most publicly known of these killings which have resulted in criminal trials were the deaths of Richard Johnson, Rattana Jurathaporn, John Milicevic, Gordon Tuckey and Stephen Dempsey. Other deaths remain unsolved but Coroner's and police records give much reconstructed detail of these incidents. Most disturbingly the frequency of gay-bashing in some locations and the regular systematic involvement of different and unconnected groups of assailants appears to have complicated police inquiries. Information regarding the killings of Raymond Keam and John Russell, reflects a high degree of local public support or indifference to this violence. In the former case, this resulted in an expression of outrage from the sitting Coroner.

In the second typical scenario for these crimes, a personal dispute between two men, possibly over sexual activity or an alleged sexual advance, leads to fatal violence between parties who are generally friends or acquaintances. These offences usually occur in private settings. The prosecutions and criminal trials that follow from these killings often lead to the controversial use of pleas of self-defence and provocation. The best known of these cases are

the killings of Maurice McCarty, Kevin Marsh and Tom Argæt; with the subsequent criminal trials of offenders resulting in two full acquittals and one finding of manslaughter only. Other killings of this sort include the deaths of Gary Webster, Michael Martin, Robert Knox, Brian Walker, Donald Gillies and Barry Webster.

Trial Patterns and Outcomes:

A high proportion of these killings are regarded as solved by police as offender(s) have been detected and apprehended, with resulting prosecutions in the Supreme Court. There are added difficulties attached to police investigations of gay killings; especially the general reluctance of other gay victims to report assaults and the legacy of a long history of suspicion and animosity between police and homosexuals. But the high clearance rate (two-thirds) for these crimes most probably reflects the seriousness with which NSW police now regard these offences, and the advantages in criminal investigation that NSW police have begun to reap from a developed system of gay and lesbian liaison.

Twenty-one of the 31 gay killings have been regarded as solved. One matter (the killing of Brian Walker) was not billed, and four others (the killings of Jim Meeks, Craig Thomas, Gordon Mills and Stephen Dempsey) are still proceeding. Accordingly, sixteen trials have been studied as part of this research (including two different trials for the killers of Rattana Jurathaporn).

Criticisms of the criminal courts, the judiciary and various judicial findings in regard to the position of women and racial and ethnic minorities as victims, have increased in Australia in the last decade. Similar doubts have been raised by gay and lesbian activists about the experience of individuals from sexual minorities as crime victims. However, great difficulties attach to any attempt at a straightforward assessment of different legal outcomes as being either unfair or just. This is not only because public opinion about the relative social worth

of different victims, and the personal merits of different offenders and their actions, is so varied.

Judicial personnel and researchers who are familiar with the intricate detail of these criminal trials are aware that there are both obvious and subtle differences between cases which are at first glance identical. Apparently irrational variations in findings and sentencing can often be better comprehended with a thorough knowledge of the circumstances of the crime and the offender's actions, which far exceeds the level of understanding made available in most media coverage. Furthermore, comments that are made by counsel or by judges in obiter can only be fairly related to the overall direction of a trial and the full pattern of representation of the parties.

The outcome of some NSW trials resulting from public gang attacks offered reassurance to gay men and lesbians in the early 90s that these killings were being taken seriously by the judiciary and legal system. Key among these were the prosecution of three teenagers arrested and charged with the murder of a Thai national, Rattana Jurathaporn, bashed with a claw hammer and apparently thrown from Bondi Cliffs in 1990, and the trials of eight youths involved in the killing of a schoolteacher, Richard Johnson, who was punched and kicked to death in a public toilet in inner-Sydney in the same year.

Three of the youths involved in this killing were convicted of murder (maximum sentences of eighteen, thirteen and eighteen years) and another five of manslaughter. All three assailants in the Bondi Cliffs killing were convicted of murder (maximums of nineteen, twenty and twenty years). In the midst of the considerable media attention surrounding the **Johnson** case, the sentencing judge also voiced a clear warning to any likely perpetrators of homophobic violence.

It is interesting to compare these outcomes with the legal response to some earlier crimes. In 1982, Ian Bridge was killed by two brothers in a park next

to Nepean Rowing Club, west of Sydney, which was at that time a beat and meeting place for gay men. The offenders travelled home to obtain a shotgun after being outraged by seeing the victim seated in his parked car near the Club. Soon after, they were witnessed by a group of fishermen chasing him along the riverbank as he begged for his life before being shot several times in the back. Both offenders were convicted of manslaughter (Sydney Morning Herald, 1/9/82).

With a growing consciousness of violence against gay men and lesbians, courts recently appear more ready to punish these obvious cases of planned and public homophobic attacks which are closest to the first common scenario of these killings. However, this shift is not so evident in cases fitting the second scenario where offenders allege that fatal violence was necessary to repel, or provoked by, a sexual advance or assault from a gay male victim.

Activist misgivings about these cases and their outcomes, surround the impossibility of a deceased victim responding to these allegations and the possibility that some of these claims could be merely a convenient explanation for homophobic attacks or planned assaults with robbery. Speakers at a 1994 public forum in Sydney, gay and gay-sympathetic politicians, and many other commentators, have voiced concern about whether what is called the 'homosexual panic defense' has begun to emerge in Australian criminal trials (Lesbian & Gay AVP, 1995).

The controversial circumstances of trials in the United States in which this criminal defence has been raised, have led some to argue that this term creates the misleading impression in courtrooms that many offenders have acted because of a pathological condition, and that in reducing levels of responsibility, it exonerates this form of violence (Keenan, 1993). An internal inquiry conducted in 1994 by the NSW Attorney-General concluded that this defence has no formal existence in Australian law. Nevertheless, further concerns resulted in the establishment of another NSW inquiry with gay and

lesbian community representation in 1995.

Although this second inquiry has not yet reported, it is still evident that existing rules regarding pleas of provocation and self-defence are deployed in local courts with a result that is similar to the outcome sought by accused Americans adopting the 'homosexual panic defense'. Australian cases of this sort date back at least to the 1950s (see *R. v Howe*).

This study has found that these claims regarding self defence and provocation against a sexual assault have regularly been effective in reducing sentences, and appear to be growing in frequency. Offenders have made claims of sexual advances or assaults in eighteen of the twenty-one killings that are regarded as solved by police, and in thirteen of the sixteen trials (comprising fifteen killings) studied here. The impact of these allegations against the deceased are reflected in the two full acquittals and six findings of manslaughter in completed trials which have occurred so far. Offenders in five instances (the killings of Gary Webster, Michael Martin, Robert Knox, Donald Gillies and John Milicevic) who made such allegations were still convicted of murder. But in the majority of instances where these allegations about sexual assault are raised (eight of thirteen killings) they have demonstrably served the defence of offenders.

Furthermore from the viewpoint of the defence, these claims may still be worth making even if they do not counter a charge of murder, but raise factors that are taken into consideration when sentencing is determined. The lightest sentence for murder imposed on any of the adult offenders who made claims of a sexual assault, was imposed on Graham Hort (the killer of Gary Webster) in 1992. Trial evidence concerning ongoing and 'degrading' relations between Webster and Hort, allowing the deceased to perform oral sex on him in return for money, may have had some link with this.

An interesting further aspect of these type of claims is the possible impact of

evidence concerning previous instances of alleged sexual assault, which may have occurred many years in the past. In some cases claims are made that the offender has previously been subjected to sexual abuse by the deceased, or the killing of a gay victim is explained by reference to previous abuse by some other party.

This had some relevance in five trials; though the alleged sexual abuse of Peter Simpson's killer was never directly mentioned in court. Graham Hort's murder of Gary Webster was regarded as partly due to an alleged rape by a football coach when he was only fourteen, and his sexual exploitation by the deceased. Long and confused courtroom accounts of the offender's sexuality never considered the possibility that he found real sexual pleasure in his involvements with Webster. Similarly, the killing of Sidney Hoare was partly explained by an ongoing exchange of sex for money between the principal offender and the victim, and the alleged earlier raping of the offender by an uncle.

Sometimes the assumed causal link between this abuse and the fatal incident becomes much weaker, as when these assaults have allegedly been perpetrated on someone other than the offender. Sidney Hoare's killer argued that he was provoked by directly witnessing a sexual advance made by Hoare upon his younger brother. But sometimes neither the deceased or offender were directly involved in the alleged abusive incident. Defence counsel representing the killer of Donald Gillies suggested that his special sensitivity to an alleged advance was due to his father's previous sexual abuse of his sisters.

Offenders were convicted of murder in two of the five trials in which the issue of sexual abuse was raised in these ways. However, the real impact of these claims may be reflected in the other three cases which resulted in findings of manslaughter with sentences that could be regarded as quite lenient. Peter Simpson's killer received a maximum sentence of eight years imprisonment.

Sidney Hoare was killed by two brothers who knew well of his homosexuality and apparently visited him at home as friends seeking more of the financial help he had previously given to one of them. Property was stolen from the victim, and the offenders initially lied to the police in an elaborate cover-up. But the key offender received a maximum sentence of only six years imprisonment.

Gordon Tuckey's killer, alleged a sexual advance by his victim, was convicted of manslaughter and received a maximum sentence of eleven years gaol for a particularly vicious crime. This comprised two assaults that were separated in time by the offender visiting friends and then resolving to return to the scene and resume the attack. The offender alleged that molesters of children had been seen frequently in the same area as where he met up with his victim.

Although recent public discussion of these trials concerns the effect of straightforward claims of a sexual assault or advance by the victim, these above cases suggest that it is also necessary to consider the complexity of matters where more indirect sexual abuse is alleged. Courts can be expected to be moved by genuine cases where offenders, or someone close to them, have greatly suffered from some previous incident of sexual abuse. However, individuals from sexual minorities could also have reasonable misgivings about any trial evidence in which they are seemingly made to bear a form of collective responsibility for this abuse and this has some impact on the judging of an unrelated killing.

There is a real possibility that a genuine claim or fear of a sexual assault from the deceased has triggered the offender's violence in some of these instances of the 'homosexual advance defence' (as it is now locally termed) being put before courts. But the distinction between a sexual assault and an advance has to be strongly stressed, regardless that even an unwanted homosexual proposition might compel many heterosexual men to respond with violence.

It is strongly emphasised in the draft report of the NSW Working Party on the Homosexual Advance Defence that the retaliatory violence must be proportional to the real degree of threat to the offender, and that:

To allow a non-violent advance to amount to sufficient provocation is wrong because it reinforces the notion that fear, revulsion or hostility are valid reactions to homosexual conduct. A murderous reaction toward gay men should not be regarded as ordinary behaviour but as an exceptional characteristic of the accused... A homosexual advance should therefore be insufficient provocation as a matter of law (HAD Report, 14).

A disturbing aspect of this form of defence is the extent in recent years to which these claims of a sexual assault by the homosexual victim are becoming more common in NSW courts, and the way in which it has been successfully argued in a broader range of circumstances. In the early 90s a further momentum towards equal legal treatment for homosexual victims was built on the firm punishment and judicial warnings concerning instances of obvious homophobic attacks in public settings such as the Johnson and Bondi Cliffs killings. More difficulties and ambiguity arose in the prosecution of gay killings that fitted the type two scenario, with fatal violence typically arising from a dispute occurring between two men in a private space. The **McKinnon**, **Gnome** and **Bonner** trials are the best known examples of these.

But more recently these pleas and allegations have been deployed in such a way that the different legal response to the trial of cases arising from these two general homicide scenarios appears to have conflated. This trend characterised the trial of the killer of Gordon Tuckey, in which the court accepted that the offender, in the company of another friend, had been sufficiently provoked to retaliatory violence by an alleged proposition and sexual exposure from the deceased as he walked along a public walkway.

Although one of the three juveniles who had gone out with a knife to 'roll

someone' and were involved in the killing of John Milicevic in a public park in 1993 was convicted of murder, a maximum sentence of twelve years gaol was imposed. This offender also alleged a form of sexual advance, insisting that the deceased 'licked his lips like a faggot' and looked as if he 'wanted to kiss me', as his apparent explanation for fatally stabbing the victim in the face and chest and stealing his wallet.

This case exemplifies one of the more regular difficulties of assessing the fairness of the outcome of the trials of offenders accused of killing gay men. As noted already, the young age of offenders who are in their teens and very early adulthood is a characteristic feature of many of these fatal attacks. As a general rule, courts will reserve higher hopes of rehabilitation and impose lighter sentences on young offenders. Sometimes it will be impossible to distinguish if any apparent lenience is due to this factor or the discriminatory notion that young men need some special protection from an introduction to homosexual activity (such as which rests behind the currently unequal age of consent laws in several States).

But the real concern that arises from this apparent trend is whether the 'homosexual advance defence' is now also having an extended impact on the outcome of trials which some observers might view as more straightforward cases of opportunistic homicide or group hate killings directed at gay men.

Results of Analysis:

Although the 31 homicides studied here have all been classified as gay-hate killings by NSW police, a mix of apparent motives sit behind these crimes. The hatred that offenders feel towards homosexuals has an obvious connection with some of these. A striking characteristic of these killings is their exceptional brutality. The extreme form of these fatal attacks reflects an apparent contempt for the victim based on a knowledge or judgment of their sexuality. Even in cases of robbery the level of violence is often well in excess of what

would be needed to effect this aim alone.

This hatred is especially obvious with attacks where killers have embarked on a plan to hunt down and kill unsuspecting strangers who are, or thought to be, homosexual. Examples of this include the Johnson and Bondi Cliffs killings, or the alleged 1994 killing and subsequent dismemberment of Stephen Dempsey by a man armed with a bow and arrows at a beach in Sydney's northern beaches.

Some offenders make no secret of this anti-gay motive. Gary Webster's killer used his murder weapon to carve the word 'poof' on a mattress at the crime scene. Early statements made to friends by another offender included bragging about his actions. Statements to police further suggest that the sexual identity of the victim was a key factor motivating many of these crimes; with some offenders and informants seeming surprised or indignant that these attacks were being taken seriously. The courtroom joking and laughter of the three juveniles charged in relation to John Milicevic's death, drew warnings from the sitting magistrate. Youths charged in connection with a further two trials had apparent histories of gay-bashing which they had proudly related to friends.

But homophobia has a less obvious and more subtle role to play in some of these killings. Robbery appears as a significant factor in these offences. Property including cash, wallets, rings and other jewellery, drugs and clothing, was stolen from at least thirteen victims. One offender robbed and killed an earlier victim a few months before killing Michael Martin, and the alleged killer of Stephen Dempsey has been accused of a second killing with robbery. In both cases the other victims were heterosexuals and anti-gay sentiments had no apparent relation to the crimes.

Nevertheless, the sexuality of the deceased may be a relevant factor in their selection as victims for robbery with violence. Homosexuals may be viewed by

offenders as 'soft targets' by virtue of their compromised circumstances at many crime scenes, a historical reluctance to report victimisation, and a degree of public disinterest or condoning of these attacks. It also seems possible that some offenders opportunistically place themselves in a situation where a homosexual advance will probably happen, and in so doing intend to create an excuse for the retaliatory violence and robbery which will follow. Furthermore, there is an overlapping of motive in many of the killings. This is evident in cases where property is taken from a victim as 'spoils' by offenders for whom perpetrating violence against a hated minority group is viewed as a satisfying activity. As already noted, this mix of motives is sometimes apparent in the very heightened level of violence that may accompany a robbery.

A continuous backdrop to these motives are mainstream constructions of male identity and the deviant positioning of male homosexuality in the codes, practices and discourses that reproduce social understandings of masculinity (Connell, 1995). This is reflected in the very high proportion of young male offenders, and a strong evident concern with the establishment of male identity among groups of offenders. Gay-bashing appears to serve a dual purpose of constructing a masculine and heterosexual identity for offenders through a simultaneous involvement with violence and clearly establishing homosexuals as an opposed group of social outsiders.

Several offenders convicted in group hate-killings including the Johnson and Bondi Cliffs murders and youths questioned in regard to other offences, had a strong declared interest in fighting and formal training in boxing and martial arts (which are ironically referred to in one trial as skills marking good character because they were acquired at Police Boys' Clubs). The group status of some offenders was built on a reputation for violence. A further unfortunate reminder of the influence of young male peer groups in directing this violence, was the gaoling of one assailant in the Johnson killing who was apparently involved in this fatal bashing so as to counter a reputation for

being a 'wimp'.

The protection of a heterosexual male identity also has a powerful relation to many of the type-two killings that generally arise from a personal dispute between two men. A considerable body of crime research suggests that many disputes between males that result in serious injuries and death are prompted by overreactions to trivial or minor affronts that challenge male honour (Archer, 1994; Polk, 1994).

These arise regularly in everyday activities like drinking in hotels, driving, travelling and socialising in public space (Tomsen, 1991, 1994). The circumstances of some of the killings studied, suggest that the protection of male honour was a critical aspect motivating the offender's actions. Warding off the dishonour that can arise from a homosexual pass is a distinct concern from either genuinely fearing or fighting off a sexual assault, but aggression and violence are viewed by many offenders as the most appropriate response to a sexual advance by another male. A striking example of the force of this code of male honour in causing fatal violence is the 'bottom pinch murder', a 1987 case where a Sydney man shot a workmate dead for pinching his buttocks and then held police at bay in a subsequent siege (Sydney Morning Herald, 9/12/87).

Homophobia and restrictive notions of male identity and behaviour have a relevance well beyond the individual or shared motives of offenders, and may have a significant impact on the legal response to these killings. No researcher has access to the deliberations of jurors serving on these trials. But in some cases it is evident that commonly held beliefs about homosexuality are consciously projected and focused on by defence counsel.

Further gay and lesbian uneasiness surrounds the courtroom depiction of the character and lifestyles of some victims, especially when this runs in tandem with allegations about an unwanted sexual advance. One researcher has already demonstrated the way in which the introduction of detailed evidence

regarding the sexual history of the victims in the **McKinnon** and **Gnome** trials meant they were represented as sexually promiscuous or predatory, and by implication, perhaps deserving of their violent fate (George, 1994). In cases like the **McKinnon** trial, this sort of evidence was originally gathered by investigating police as part of a serious effort to solve a killing. But in so doing police may also unintentionally produce material that may have a prejudicial effect on the outcome of any future trial if it should be entered as evidence. This possibility is very obvious in detailed Coroner's records concerning the sex life of the deceased in one of the unsolved matters.

This courtroom approach could play on either the existing homophobia of individual jurors and their ignorance of gay culture and lifestyles. It may also rely on the limited and stereotyped understanding of homosexuality that has been made available through the popular media. This was the case in the **Bonner** trial, which resulted in a full acquittal. Defence counsel repeatedly emphasised the heterosexuality, youth and good looks of the accused, and asked the jury to understand the motivations of the deceased through their own recollections of media accounts of the actions of participants in the Sydney Gay and Lesbian Mardi Gras parade.

This process might also be built upon a negative depiction of the deceased as someone with a sexual interest in younger men, and by implication a paedophile. This approach may have had an impact on the **Gnome** case, and it could become an increasingly powerful courtroom tactic in view of the wider effect of the current moral panic about intergenerational sex in NSW. Offenders in a significant number of killings have attempted to rationalise their violence with dubious claims that the deceased or some other person who had been in the same area where the offence occurred, were the sexual molesters of children. Gordon Tuckey's killer sought to explain his brutal attack to police with a nebulous reference to the 'rockspiders' he was guarding against.

Young men who were interviewed in regard to the death of Raymond Keam, also

referred to the child molesters who they believed had previously lurked about near the scene of the crime. In this way, they tried to represent their personal histories of regular gay-bashing as an involvement in some form of community service. As legal bodies and media commentators can have considerable difficulty making an effective distinction between homosexuality and paedophilia, or choose not to, it is unsurprising that criminal offenders will have trouble with the same task or seek an excuse for their violence in this form of confusion and conflation.

As with allegations of a sexual advance, it is difficult to isolate the direct effect on trial outcomes of these sort of claims about the sexual identity of the deceased. But it is also apparent that police must be alert to the possible effect of this factor on any homicide investigation. In one case studied, a gay victim who was described in some police documents as a paedophile and as having a HIV-positive status, was at first wrongly described as having died in an accidental fall at home.

Conventional notions of masculinity are also inscribed into current criminal law regarding homicides in a form which can be hidden, and may therefore have an ongoing but unnoticed impact on these trials. Anglo-American case law has outlined a specific range of slights and insults (such as female infidelity) which may be regarded as provoking male violence. Feminist researchers have demonstrated that uses of the provocation plea have followed this masculine model of quick, aggressive and violent responses to personal affronts, but NSW statutory amendments have largely left these characteristics of the plea intact (Allen, 1982). In the two trials for gay killings which resulted in acquittals, and the six resulting in findings of manslaughter, courts have appeared to accept that the masculinity of the accused or co-accused had been placed under threat by a homosexual advance, and this partly excused fatal violence.

Masculine heterosexual identity is generally built around ensuring the sanctity

of the body, with rigid limits imposed on the circumstances and socially admitted forms of male physical contact (Connell, 1983). At trial, the matter of bodily touching featured as a critical feature of this provocation. The accused in the **McKinnon** and **Gnome** cases both strongly stressed in court the threat to their masculinity involved in this fondling of their genitals and buttocks. But in one case, the deceased had broken male codes as regards his own bodily presentation. Gordon Tuckey's public appearance in female clothing was found to have comprised an important element of his killer's provocation to extreme violence.

Conclusion/ Recommendations:

This research suggests that the real number of gay killings that have occurred in NSW since 1980 is much larger than has been previously thought. This is probably also the case elsewhere in Australia, but systematic monitoring of this form of homicide has not been attempted in other States and Territories. The development of more thorough formal systems of monitoring, and the upgrading of recording methods which do not track violence against sexual minorities, are essential preconditions to countering this form of crime. Analysis of the crime scenarios in gay-hate killings suggests that although offenders may often regard homosexuals as 'soft targets' for victimisation, homophobia and notions of male identity and behaviour which condone violence also determine the motives behind these offences.

The additional study of sixteen trials related to these killings, suggests that these factors are also evident in the pattern of representation of events, victims and offenders in the courtroom. Because of the range of different circumstances to each offence and the multiplicity of factors (including the young age of many accused) that may be considered in sentencing, it is often hard to gauge whether this has had an unfair effect on trial outcomes. But recently it appears that this form of representation and allegations of a sexual advance from a deceased gay victim, have been deployed in a widening range

of circumstances in NSW trials. These include cases which might be viewed as apparently conscious homophobic killings or unacceptable instances of the protection of male honour with fatal violence.

Homophobia and violent conceptions of masculinity may appear to be cultural phenomena which are widespread and intractable. But the criminal justice system plays a pivotal role in shaping social opinion about this form of crime. Specific reforms to courtroom procedure in cases of gay killings and anti-gay assaults have been suggested by the NSW Working Party on Homosexual Advance Defence. These include directions to jurors regarding the sexuality of victims and the nature of the provocation plea (HAD Report, 17-18). There is considerable merit in these proposals. A continuous sensitising of investigating police, prosecution staff and the judiciary to typical aspects of these homicides and related trials, could have an equally important long-term effect in countering this form of violence.

Appendix A -List of all gay hate killings recorded by NSW
Police to 1996 (N=31) (solved=21)

1986

Peter Simpson S (killed 1/11/86)

1987

Raymond Phillip Keam U (13/1/87)

1988

Bill Allen U (29/12/88)

1989

Ross Warren U (July, 89)

John Russell U (22/11/89)

1990

Wayne Tonks U (21/5/90)

Krichakorn Rattanaajurathaporn S (20/7/90)

Gary Webster S (23/8/90)

Richard Johnson S (24/10/90)

Michael Martin S (7/12/90)

1991

Maurice McCarty S (7/4/91)

Noel Walsh S (4/5/91)

Felipe Marcelo Flores U (2/9/91)

William Dutfield U (19/11/91)

1992

Robert Knox S (31/1/92)

Brian Walker S (23/7/92)

Cyril Olsen U (22/8/92)

Robert Maclean S (11/9/92)

Sidney Hoare S (11/9/92)

1993

Donald Gillies S (19/5/93)

Kevin Marsh S (30/6/93)

Gordon Tuckey S (3/7/93)

John Milicevic S (15/8/93)

Tom Argaet S (31/10/93)

Crispin Dye U (25/12/93)

Barry Webster S (November, 93)

1994

Gordon Mills S (15/3/94)

Stephen Dempsey S (2/8/94)

1995

Jim Meeks S (8/3/95)

Kenneth Brennan U (13/6/95)

Craig Thomas S (30/8/95)

Appendix B -List of unsolved-gay hate killings recorded by NSW Police

(N=10)

1987

Raymond Phillip Keam (killed 1/1/87)

1988

Bill Allen (28/11/88)

1989

Ross Warren (21/7/89)

John Russell (23/11/89)

1990

Wayne Tonks (19/5/90)

1991

Felipe Marcelo Flores (1/9/91)

William Dutfield (20/11/91)

1992

Cyril Olsen (22/8/92)

1993

Crispin Dye (24/12/93)

1995

Kenneth Brennan (11/6/95)

Appendix C -List of relevant trials

R v Becker NSWSC 25/9/87 Justice Slattery
Killing of Peter Simpson;
Manslaughter, 3.5 -8 years

R v M, H, M, & Y NSWSC 15/4/91 Justice Badgery-Parker
Killing of Richard Johnson;
M -Murder, 10-18 years
H -Murder, 8-13 years
M -Murder, 10-18 years
Y -Manslaughter, 5-8 years

Others accused:
2/10/90 Justice Wood
F -Manslaughter, 4.5 -6.5 years

9/10/90 Justice Wood
C -Manslaughter, 8-10 years

9/10/90 Justice Wood
J -Manslaughter 5.5 -8 years

2/8/90 Justice Sharpe
L -Manslaughter, 7-9 years

R v Richards NSWSC 15/4/92 Justice Finlay
Killing of Michael Martin;
Murder, 15-20 years

R v Hort NSWSC 18/5/92 Justice Finlay
Killing of Gary Webster;
Murder, 9-14 years

R v D NSWSC 10/7/92 Justice Wood
Killing of Rattanajurathaporn;
Murder, 11-19 years

R v S & D NSWSC 7/8/92 Justice Wood
Killing of Rattanajurathaporn;
S -Murder, 12-20 years
D -Murder, 12-20 years

R v McGregor NSWSC 9/10/92 Justice Newman
Killing of Robert Knox;
Murder, 12-16 years

R v Jacky NSWSC 10/2/93 Justice Campbell
Killing of Noel Walsh;
Manslaughter, 2.5- 5 years

R v McKinnon NSWSC 24/11/93 Justice Studdert
Killing of Maurice McCarty;
Acquitted of murder

R v G & B NSWSC 30/3/94 Justice Simpson
Killing of Sidney Hoare;
G -Manslaughter, 2.5 -6 years,
B -3 year bond

R v Green NSWSC 7/6/94 Justice Abadee
Killing of Donald Gillies;
Murder, 10-15 years
Appeal Dismissed NSWCCA 8/11/95

R v T NSWSC 14/7/94 Justice Grove
Killing of Kevin Marsh;
Manslaughter, 3-6 years

R v Chapman NSWSC 16/12/94 Justice Hunt
Killing of Barry Webster;
Manslaughter, 5-8 years

R v A, A & D NSWSC 10/2/95; 15/3/95 Justice Simpson
Killing of John Milicevic;
D -Murder, 8-12 years;
A -Manslaughter, 3-7 years;
A -3 year bond.

R v Bonner NSWSC 19/5/95 Justice Dowd
Killing of Tom Argat;
Acquitted of murder

R v Dunn NSWSC 21/9/95 Justice Ireland
Killing of Gordon Tuckey;
Manslaughter, 7-11 years

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