



Is an  
unwelcome  
sexual  
advance  
sufficient  
excuse for  
homicide?  
Some juries  
seem to  
think so.

**T**he initial news coverage suggested a brutal, horrific murder. The amount of blood and the state of the victim suggested a violent and perhaps prolonged bashing. Within hours it had been added to Sydney's growing list of gay-hate murders.

The slaying of Maurice McCarty, a 46 year old mechanist with the Australian Ballet, at his Newtown home on 7 April 1991, focussed public attention on the dimensions of anti-gay violence. Other murders had already received extensive coverage; this one made the TV news in graphic detail. Several of the other murders had been committed in parks or other open spaces. This one had occurred in the victim's home.

On 24 November 1993, a NSW Supreme Court jury acquitted Christopher Paul McKinnon, a 22 year old Artarmon man, of McCarty's murder. According to a brief report in the Sydney Morning Herald the following day, McKinnon had claimed that "McCarty had made sexual advance to him and he was defending himself".

On 10 December, the Sydney Star Observer reported the verdict under the front page headline "ROLL A FAG' AND GO FREE". The "roll a fag" quote was taken from the Crown's evidence.

During the trial, McKinnon made a dock statement (an unsworn statement which cannot be subject to cross-examination) in which

# HE TOUCHED ME!

FEATURE BY LARRY GALBRAITH

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he claimed he had acted in self-defence after McCarty allegedly attacked him. He claimed he believed McCarty had a knife, and when he attempted to get out the door was locked. Struggles ensued, the door was unlocked and McCarty allegedly attacked him again. In the course of defending himself, he said he pushed McCarty against a wall who went limp. He believed McCarty was not seriously hurt.

"By bringing down a unanimous not-guilty verdict, the jurors accepted McKinnon's version of events," the Star Observer noted, adding that they "were not satisfied beyond a reasonable doubt that a conviction for murder was just". ▶



**Brian Walker, 30 was strangled at Merrylands in Sydney on 23 July 1992 after allegedly making sexual advances to a non-gay friend. An arrest has been made but the Director of Public Prosecutions has decided not to proceed.**

► Even so, sexual advance allegations may influence the severity of sentence, according to another barrister. "In other instances, the defendant may be charged with manslaughter, rather than murder, and plead guilty in the hope that he will end up with a lesser sentence."

In several other recent cases, defendants charged with crimes of violence have claimed they acted in self-defence, alleging that their victims had made sexual advances. The outcomes have varied:

● On 10 June 1993, Leeton Jacky was sentenced to a minimum of two and a half years in prison, and an additional two and a half years, after pleading guilty to the manslaughter of Noel Walsh, 50. Jacky had bashed Walsh to death on 23 May 1991 at South Kempsey, alleging Walsh had made sexual advances to him.

● In the Newcastle Supreme Court on 9 October 1993, Justice Peter Newman sentenced Steven Fraser McGregor to a minimum of 12 years gaol, with an additional four years, for slaying Robert Knox, 37. Knox had died on 31 January 1992 after being bashed with a spade and stabbed repeatedly. Homosexual advances were also alleged.

● In the same issue of the Star Observer that carried the McKinnon acquittal story, a news brief reported that a NSW Supreme Court judge had sentenced a Wollongong man to a minimum of two years gaol for stabbing a friend. Craig William Stevenson, 23, told the court that Gregory Payne, 40, had made sexual advances towards him as they sat on the sofa watching television. An argument was sparked when Payne put his hand on his (Stevenson's) groin. In police interviews, however, Stevenson had said the two men had argued when Payne refused to show him a pornographic video. In rejecting Stevenson's version of events, Justice Studdert said: "I do not find that Mr Payne made any sexual advances before the stabbing occurred."

● Brian Walker, 30 was strangled at Merrylands in Sydney on 23 July 1992 after allegedly making sexual advances to a non-gay friend. An arrest has been made but the Director of Public Prosecutions has decided not to proceed.

● In November 1993 a 17 year old youth appeared before Port Kembla Children's Court for allegedly bashing and stabbing a 64 year old South Coast man, causing him to die. According to a report in the Sydney gay newspaper Capital Q, the deceased invited the youth into his home for "a drink" on the night of 30 June, 1993. Neighbours found the deceased in his home the following morning, and a subsequent post-mortem examination found he had died from 13 stab wounds and

seven skull fractures. The youth allegedly told police in a video-taped interview: "I done it in self-defence. He was trying to crack onto me." The trial's outcome has not been reported.

● A man has been committed for trial in the NSW District Court for allegedly bashing and stabbing of a 36 year old Mudgee man to death in his home on 20 May 1993. Sexual advance allegations have also been made in this instance.

● On 16 December 1993, the Sydney Morning Herald reported that a 19 year old man charged with "the bashing murder of a transvestite" told police he had punched and kicked his victim to get away from unwanted sexual advances.

Wollongong Local Court heard evidence that Gordon Bryan Tuckey, 23, had been found on a Woonoona cycle track on or about July 3, 1993. He was lying in a pool of blood, naked from the waist down and had suffered extensive facial injuries. A stocking was tied tightly round his penis.

The court was told that Thomas Albert Dunn was arrested after he walked into Corrimal Police Station with his mother at about 9.30pm on 3 July. The Herald reports that in an interview with police, Dunn claimed he had been walking along the cycle track when Tuckey—wearing makeup, a skirt and "something around his penis"—leapt out at him from behind bushes and wrestled him to the ground.

"I tried to get back up and he kicked me in the leg. He was rubbing up and down my leg with his dick. So I got into him and started punching him," Dunn allegedly said.

Dunn allegedly claimed that Tuckey would not let him go, so "had to just keep hitting him". He was attempting "to get out of there in one piece", so used all the force he had. The Herald reports he told police that he fled after Tuckey collapsed on the cycle track, hitting his head.

The hearing's outcome was not known at the time of going to press.

Sue Thompson, the NSW Police Service consultant responsible for gay and lesbian issues, believes that "the players involved in the criminal justice system" need to be aware of the apparent trend of people accused of violent crimes claiming they acted in self-defence against alleged sexual advances.

Barrister Virginia Bell, however, says that it is not a uniform trend. "You get different results in different cases for a whole complex of reasons, and it's a bit difficult to generalise from a small number," she says.

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Gay barrister David Buchanan suggests that "we need to find out a lot more about the phenomenon".

"I think it is a very complex phenomenon about which we know very little. There appears to be no literature in Australia," he says.

He suggests that there may be some instances where a male who, although confused about their sexuality, seek sex with another male. Subsequent feelings of guilt lead to them inflict violence on their victim, which they then explain by alleging that a homosexual advance was made. Many allegations of homosexual advance may be fraudulent, Buchanan suggests. "They are made by gay bashers by and large, although not entirely, who are caught. They are made in circumstances where there are no other witnesses.

"I think all we have is a feeling in the bones of a lot of lesbians and gay men there is something seriously wrong when a jury acquits and the only defence was 'I did it because the victim made a sexual advance to me and I panicked'."

The popular community belief is that such acquittals are the result of anti-gay prejudice. Bruce Grant, of Sydney's Anti-Violence Project, believes the legal system needs to address issues of prejudice.

"Has the legal system looked at how it actually deals with that prejudice? How does it deal with a jury's prejudice? Have they done any work around this? I don't think they have," Grant says.

Jury prejudice may not be the only factor. Ignorance may also play a part.

Sue Thompson observes: "There is ignorance and there is prejudice, and people come at varying places along that continuum. There are some people whose prejudices are blatant and homophobic. There are other people whose ignorance will lead them to see things in a certain way ... because they may never have had contact with those kind of issues."

OutRage understands that material presented to the jury in one trial included information obtained from the dead man's gay friends in the course of police investigations. The material included details about the man's sexual life: he did not like the gay scene, preferred anonymous sex at public toilets and adult cinemas and was described as "active".

One could easily imagine the conclusions that a jury might draw about the deceased when presented with that information. They could, for example, conclude that such a person might have made the unwanted sexual advances.

"People have so many myths in their minds about homosexuality," observes Thompson, "including the myth of sexually predatory behaviour. In a trial context that myth, if not challenged, could hold a lot of sway in people's minds."

David Buchanan believes research and judicial education are needed. "At this stage, though, I would be hard pressed to design a component of an education course for judicial officers which didn't have a lot of threads dangling, and didn't invite many questions that I would feel uncomfortable about answering with any degree of confidence. And this is why we need to do a lot more work," he says. ●

## COMING OUT

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Jim Sostiropoulos, who runs the VAC youth support groups, says most gay teenagers begin to deal with their sexual identity soon after puberty. "But it's not until they're 17 or 18 that most people actually tend to come to groups. Often, that's when they really begin the coming out process—talking to other people about it. They may be starting work or tertiary study, and they're ready to deal with the consequences of coming out.

"When they're younger it might be more difficult to use services such as these, actually being able to get away from home for the period of time needed. Or just feeling comfortable to talk about things.

"One of the overwhelming things young people feel is that they're very isolated and the only ones going through all this. They don't know there's support there and that it's only a matter of linking into it."

Only a minority find their way to support groups such as these. Those who do confirm the fundamentally middle-class nature of the gay community—and cause one to wonder how many we don't include.

Says Sostiropoulos: "The people we see tend to be relatively educated people from two-parent families who live in a nice area and who know to pick up the gay press and find out about services. There's also the expectation that their parents will be more understanding. But it's a minority of people who have supportive families and who feel acceptance by their straight peers."

Many young people deal with the fear of family rejection by moving away from home and all but destroying the relationship with their parents. But for Sostiropoulos, who grew up in a Greek-Australian family with many traditional values, that wasn't an option. He went to school in an affluent upper middle-class area and, like many children of migrant families, experienced a culture clash.

"My parents are quite liberal, in my mind, but what I was getting at home and what I was getting at school were two different things. Why should it be easier for so-and-so to come out to his family than for me?

"I made up my mind that I was gay and nothing anyone could say would change my mind. It was a matter of telling my family in a way they could accept. It was very important for me [to come out to them] because my parents are a big part of my life. What is important in my life should also be important in theirs, and they should know about it. But it took me quite some to gain the courage. I thought about it for a couple of years before I did anything about it. That was when I was 18.

"I told my mother first. Mothers always know; I think she knew since I was about 14. One of the first reactions was: 'It's because you read too many books'. It certainly wasn't an easy time. Lots of stress, lots of hysteria. I was expecting worse.

"But I still don't have total acceptance from my family. I don't think I ever will." ●

