With Malice Aforethought: LGBTQs and the criminal justice system

BY TRACY BAID

The legal definition of malice aforethought includes “an intent willfully to act in callous and wanton disregard of the consequences to human life.” Throughout much of U.S. legal history, this would be an apt description of the legal system’s approach to people beyond the traditional definitions of sexuality and gender identity.

The ways the system has harmed the LGBTQ community are many, but here are a few key historical problems:

— Sodomy and related sex laws. They primarily targeted gay men. Illinois was the first state to get rid of its sodomy law, in 1961, and the U.S. Supreme Court finally banned such laws in Lawrence v. Texas in 2003.

— Targeting “vice.” These commissions and police squads go after any illegal activity, including prostitution. But many over-eager departments have also targeted gay men having consensual sex (without prostitution), and police have had handsome decoys pose as gay men in order to entrap victims in public spaces. Police even placed ads in gay papers’ personals and massage sections seeking to entrap men.

— Cross-dressing laws. Many states and cities had laws that barred people from wearing items traditionally linked to the opposite sex. These laws allowed for police harassment and arrests. It took Chicago until the 1970s (first through legal rulings and later through City Council action) to eliminate the cross-dressing law.

— Dancing queens. While it was technically not illegal, police often harassed and arrested people for dancing with a partner of the same sex. Until the early 1970s, most Chicago-area gay bars banned same-partner dancing to avoid police harassment.

— Official harassment. LGBTQ bars, especially prior to 1980, were targets of police shake-downs, and were often also harassed by the Mafia. The police harassment created a large level of distrust in seeking help from authorities when the businesses experienced other problems, and owners often turned to the Mob for pseudo-protection. Police cooperated with media to provide names of those arrested—resulting in lost jobs and even suicides.

— Fear of authorities. Because of this fear, including potential arrest, many gays did not report crimes, including shake-downs by men impersonating police officers, or blackmail from other criminals. This in turn allowed criminals to flourish. Even today, community organizations often document higher anti-LGBT crime numbers than police do, because of this fear of reporting to authorities.

— Institutionalized bias. Past exclusion of known sexual-minority persons from law licenses, police employment and other jobs meant openly LGBT people did not have a seat at the table in creating policies and enforcing laws. Gay panic. This is a common “defense” used by those charged with violent gay attacks and murders, and it has often been successful. Ignoring violence. Neighbors perceived as “gay” have often been targeted by gay-bashers and serial killers. In the past, because police ignored the crimes or often treated them with little seriousness, LGBTs organized their own street patrols and response, including a whistle-blowing campaign in 1970s Chicago, and a 1980s Pink Angels group. Ignoring violence has gone beyond ignoring neighborhood gay-bashing to ignoring or belittling individual complaints of crime or to inadequate investigations of homicides. Some serial killers likely were able to continue their trade longer because of a lack of police attention to their attacks, and their victims. (John Wayne Gacy, Larry Eyler and Jeffrey Dahmer are three such examples.)

— Criminalization of HIV and AIDS. Gay men have been targeted for their sexuality based on the consequences of these types of laws, many of them still on the books. And new HIV/AIDS transmission laws are also being passed with repressive language.

— Intimate-partner violence. Police and authorities have had a difficult time handling domestic-violence cases involving people of the same gender, or gender non-conforming people. The police ask “who is the man” or “who is the woman” because they do not have the training to understand how LGBT relationships work.

— Mishandling transgender cases. The police across the U.S. have had difficulty with transgender survivors of attacks, and with solving the large number of transgender murder cases.

Vicwims are often treated with shocking levels of ignorance and transphobia.

— Prison problems. Discriminatory denial of prison rights or privileges, degradation, and the debatable issue of segregation, which has sometimes seemed to benefit sexual-minority prisoners but can lead to more discrimination or harassment by guards.

— Criminalization of sex work. Transgender people, who face employment discrimination and lack of access to extremely expensive (often life-saving) gender-related medical care, are disproportionately engaged in sex work. But even those who are not are frequently arrested as sex workers by police simply for “walking while trans.”

These are just a few of the problems related to LGBTs and the criminal justice system. There are many more problems related to the civil courts. In the civil courts, LGBTs have lost custody of children, lost their homes after a partner dies, been refused adoptions and encountered many other biased decisions based on their sexuality or gender identity.

Many of these problems have decreased in recent decades, solved in part by pressure from activists, help from allies, and the coming out of LGBT police officers, lawyers, judges and elected officials.

But this recent history of harassment and abuse by law enforcement and the courts still has a residual impact, causing mistrust of the system, and in some cases appearing on people’s criminal records still today. For example, an adult man arrested for supposedly public consensual sex with another adult man may have to register as a sex offender.

In this special Windy City Times series, we will look in depth at the criminal legal system and the LGBTQ community in Cook County. Our reporters spent several months researching the archives, looking into public records, interviewing authorities, visiting county facilities and talking to people who have an up-close view of the criminal justice system.

In many ways, the problems LGBTs face with the prison industrial complex are a reflection of the larger societal problem with incarceration and of a society that would spend $50,000 incarcerating someone for smoking marijuana or for stealing $100, rather than take a realistic approach to drugs and survival crimes. But perhaps by investigating further this one area of the system, we can see alternative solutions for a system desperately in need of being fixed.
A report in a 1975 edition of The Gay Crusader noted that no arrests had been made in three of six gay-related murders.


Gay bars were among those pulled into a federal investigation of police harassment, and a judge overturned the cross-dressing ban, The Gay Crusader September 1973.

Confession claimed in Terrace bartender murder

A man jailed in Sandusky (O.) has confessed to killing Mike’s Terrace Lounge bartender Daniel Powell in July 1974, according to Chicago police. James K. Gill, 27, whose last Chicago address was 403 W. Washington Ave., admitted stabbing Powell during a robbery of the tavern at 1237 N. Dearborn Ave., police said.

Matters in addition, Chicago police say they have evidence linking him with another double murder at Irish Mike’s 644 Club, 644 N. State St., June 22. However, according to police, although orally admitting the June 2 murders, Self would not sign a written statement because he is writing his autobiography and did not want details to be published prematurely.

Self had been in Chicago until two months ago, police said. Since then, he has allegedly been involved in a Puerto game ring, a Radical tavern playing, and a gun battle with the Missouri State Highway Patrol. Sources told the Gay Crusader that Self had allegedly been employed by the management of the two Chicago taverns and was known there.

Contrary to reports published by another Chicago gay news service, Self had been a police suspect in the case for some months, and police were not led to him for the first time through the confession which he allegedly made to a Florida detective investigating the case.

A rare case of a murder of a gay person solved, through a confession reported in The Gay Crusader September 1975.

GayLife Dec. 10, 1976 (left) and Nov. 26, 1976 (below) report on yet more violence against gays in Chicago.
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GayLife April 4, 1977 reported on the murder of gay bartender Frank Rodde III, 29; his murder was never solved. His name was used for a Tavern Guild gay fund and a gay community center.

GayLife Jan. 4, 1980 reported on the police raid of the South Loop Rialto Tap. One hundred men were arrested at the bar, which catered mostly to African American gay men.


Vandalism at the Rogers Park gay Center, reported in GayLife Aug. 5, 1977.

GayLife Aug. 11, 1983 as a response to anti-gay violence. Curtis Silvea of the Guardian Angels is pictured middle. Photo by Tracy Baim

GayLife May 10, 1984 coverage of a triple murder on Chicago’s West Side.

June 14, 1984, coverage of a suspect in bombs planted at 24 gay bars.

Baton Show Lounge owner Jim Flint was among gay bar owners forced to testify in a case against mob shakedowns on the North Side. From GayLife Oct. 4, 1984.

gayMurders in Illinois and Indiana.

Alynn Toler (left) founded the Pink Angels in 1991 as a response to anti-gay violence. Curtis Silvea of the Guardian Angels is pictured middle. Photo by Tracy Baim

More coverage of Larry Eyler, and one of his victims, Danny Bridges, who was killed after Eyler had been let out of jail because evidence was ruled inadmissible against Eyler. GayLife, Sept. 6, 1984.


A Queer Nation anti-violence march in Chicago, August 1991. Photo by Genyphyr Novak

Windy City Times reported Dec. 18, 1986 on a $15 million lawsuit filed against officers of the Northwestern Metropolitan Enforcement Group from a Sept. 12, 1985 raid on the gay bar Carol’s Speakeasy.

Ron Cayot was shot in 1992 while coming out of a gay bar on Halsted. He lost the ability to speak normally from the assault. Photo by Tracy Baim


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When Cruising Goes Bad: The private aspects of public indecency

BY MATT SIMONETTE

Every place with a gay presence has had a place where men have gone to try—like the Ramble in New York City, Dolores Park in San Francisco and Union Station in Los Angeles—are just a few.

Numerous locations around the city—the suburbs in the Old Marshall Field & Co. building and the Palmer House—have been popular at least on State Street, the Lawson YMCA and several parts of the Loop. There are several other clubs where people who said they were actually having sex there.

The Chicago city ordinance says that any person appearing in specified public places with the person’s private areas “exposed to public view” is subject to some of between $100 and $500. The Illinois statute defines public indecency as an act of prostitution or sexual conduct in public, as well as a “lewd exposure of the body done with the intent to arouse or to satisfy the sexual desire of the person.” The law defines “public” spaces as those where the conduct can reasonably be expected to be viewed by others.

Attorney Jon Erickson, who has defended a number of individuals against public indecency charges, pointed out a conundrum at the heart of some cases.

“Is there to be an expectation that you would be viewed if you are accused of public indecency,” Erickson said. “But that expectation is not there if you are accused of public indecency,” Paul admitted.

And same-sex dancing, he said.

and avoid having their patrons arrested and having their liquor license revoked decades ago. Some forbade patrons from buying each other drinks, lest anyone be charged with prostitution. Patrons were also discouraged from close contact and same-sex dancing, he said.

The Chicago Police Department has been getting far more complaints about public indecency than it did in the past. The Chicago Police Department had been doing a lot of business, but the city has been cracking down on public indecency.

In 1969, a bar called The Trip was one of the places where the police got involved in public indecency cases.

and the management had overlooked indecency on the premises.

People were afraid to be seen going into bars, Kelley said, “not to be afraid to be going into Marshall Field’s.” But he was not convinced that the bar raids were the sole reason gays gravitated toward cruising spots.

“Some CPD [Chicago Police Department] busts in bars literally drove gay men looking for sex into the streets,” added Mogul.

People who were afraid to be seen going into bars, Kelley said, “were afraid to be seen going into Marshall Field’s.” But he was not convinced that the bar raids were the sole reason gays gravitated toward cruising spots.

“I’ve always thought they did it because of a preference for variety,” Kelley said.

Thugs would beat and/or rob men, often counting on their victims’ being too embarrassed to report the attack. One of Mogul’s first cases stemmed from a cruising incident involving helping a man who had been viciously beaten by a group of young men wielding broken-off car antennas, for example. But police could be equally violent.

“Younger officers were especially vicious,” Mogul said. “They seemed to be having some is-...
In 1977, Anita Bryant launched her crusade against a recent amendment to Florida’s Constitution that banned discrimination on the basis of sexual orientation. As the leader of a coalition named “Save Our Children,” Bryant and her supporters tapped into an anxiety about the sexual predations of children.

In a now-famous statement, she declared, “As a mother, I know that homosexuals cannot biologically reproduce children; therefore, they must recruit children.” The gay marriage debate reached the U.S. Supreme Court, two married gay men in Massachusetts were in fact gay sex offenders on the registry, registra-
Corey Rayburn Yung, a law professor at the University of Kansas, pointed out that it was difficult to gauge how many people who committed sodomy crimes before Lawrence v. Texas might still be on sex offender registries. “But there certainly are people who are engaged in consensual sodomy and are on the registry,” Yung said. “Given that so many of our sex laws have overwhelmingly been used to target sexual minorities, it’s not surprising that there’s going to be a lot of people left over from that era and continuing criminal laws that are in LGBTQ communities.”

“I think that young people who committed sodomy before Lawrence v. Texas might still be on sex offender registries. But there certainly are people who engaged in consensual sodomy and are on the registry,” Yung said. “Given that so many of our sex laws have overwhelmingly been used to target sexual minorities, it’s not surprising that there’s going to be a lot of people left over from that era and continuing criminal laws that are in LGBTQ communities.”

Rebecca Curtis, of Luray, Va., was 21 when she, as she put it, fell in love with a 12-year-old girl who was also the daughter of the man drywalling her home in 2004. Today, they are married.

Curtis said that the girl’s mother neglected her and told her she could have her daughter move in with her for $500, claiming she needed the money for bills and rent. (Curtis also said that the woman offered to sign over full guardianship for $5,000 but that she refused.)

Over the next few years, Curtis and the young girl developed a sexual relationship while they lived together, until the mother filed charges against her—Curtis claimed this was an attempt to deflect attention from having left her 4-1/2-year-old son unattended for two hours.

Curtis was convicted as a nonviolent sex offender in 2007, but when Virginia laws changed to comply with the AIBA, she was recategorized as a violent sex offender.

The relationship continued, and they eventually married in Washington, D.C.; Curtis’ wife is currently five months pregnant.

Being all too rare, it is a bit heartening that there are people for Curtis and her wife, since Curtis will be banned from gatherings that include children.

Such cases represent a range of ways in which LGBTQ people can find themselves placed on sex offender registries. Both Haugh and Brett were targeted in the kind of chat rooms in which gay men in particular often find themselves. Inter-generational sex offenders are more likely to be prosecuted between adults and minors than so-called “biker” cases, because of the many naked photos and videos on the walls of many gay homes, but the young man who was the subject of man-boy sex is still a forbidden one.

His nude studies of young Sicilian farm boys, his drawings of boys, continue to grace the walls of many gay homes, but the young man who was the subject of man-boy sex is still a forbidden one.

In the current state of things, the issue of sexual violence continues to be a significant one. “Registries seem to be the in thing now,” he said. “It’s easy, cheap, and it gets votes.”

Erika Meiners, a professor at Northwestern Illinois University in Chicago, is also a co-founder of St. Leonard’s Adult High School, an alternative high school for formerly incarcerated men and women. She’s the author of several books and articles that address the intersection of LGBT politics, the prison industrial complex, and public health education. She has, in both her research and activism, encountered people trying to get back to normal life after prison and while on the registry.

When asked if sex offender laws might deliberately or inadvertently target LGBTQs in particular, as in gay chat rooms pointing out that they’re not the only ones affected by the law’s relationship to sexual identity.

“The people I interact with may or may not identify as queer. They are people who engaged in non-heterosexual or non-gender-conforming sexual practices, including sex work that then makes them more vulnerable towards being picked up by police, being under surveillance, where they can live or move, how their bodies are seen in particular locations in the city,” Meiners said. “So that’s in addition to gay men being targeted in chat sites or the idea of gay male sexuality as predatory being recriminalized.” For Meiners, it’s important to consider how sex offender laws are set up to target the most vulnerable among us.

Meiners said about a need to do two things at once. The first is to develop ways for people harmed by sexual violence to recover from the trauma. The second is to make sure that those who are on sex offender registries are not stigmatized, and that without society’s resorting to harsh and long-lasting measures such as sex offender registries. “There’s no evidence that registries are successful in preventing sexual assault or disrupting criminal behavior,” he said. “And people who have to lodge complaints often find themselves violated by the system itself.”

Meiners noted that the “ideological scaffolding” that has pushed prison expansion in the past decade.

That expansion has happened with such little critical interrogation from the general public and also queer groups as well as from the national gay rights movement. “Now is a politically important moment for LGBT people to interrogate these claims of law and order that we believe are coming from them, who doesn’t. Because decades ago, those claims were being leveled against us.”

The crime series continues in next week’s Windy City Times.