Police Harassment of Homosexual Women And Men In New York City 1960-1980

by

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While the New York City Police Department has a long history of encounters with homosexual persons,1 it is only in the last twenty years that these encounters have captured public attention and sparked demands for change. Such contacts, often perceived by homosexual citizens as forms of harassment, have not occurred only as a result of police enforcement of statutes criminalizing homosexual conduct.2 They have also arisen out of police crackdowns on theatrical presentations containing homosexual themes,3 and selective enforcement of statutes regulating liquor licensing4 and proscribing disorderly conduct.5 This paper explores police harassment of homosexual women6 and men in New York City from 1960 to 1980.

Police practices with respect to the homosexual citizenry have changed dramatically over the course of the last two decades. This account of the change

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1. Two nineteenth century examples are recounted in J. Katz, Gay American History (1976). In 1846 the New York Police Department dismissed policeman Edward McCook for alleged homosexuality. Id. at 45. In 1899, New York City Police Captain James K. Price testified to raiding and closing thirsty gay clubs. Id. at 70.
2. The most recent version of this statute is New York Penal Law § 130.38 (McKinney 1975). This statute was recently declared unconstitutional as applied to consenting adults in private. People v. Onofre, 51 N.Y.2d 476, 434 N.Y.S.2d 947 (1980).
3. The Captive, a New York play with a lesbian theme, was raided by the police on February 10, 1927. J. Katz, supra note 1, at 134 (1976).
4. See, e.g., text accompanying notes 44-49 infra.
5. See text accompanying note 32 infra.
6. Lesbians seem to have suffered less harassment at the hands of the police than gay men. Jean O’Leary, a former Co-Executive Director of the National Gay Task Force, began a statement to the U.S. Commission on Civil Rights with these words: “Most of my comments this morning will apply to the gay male community rather than the lesbian community, except where I mention it specifically, because gay men have most of the problems with police brutality.” U.S. COMMISSION ON CIVIL RIGHTS, POLICE PRACTICES AND THE PRESERVATION OF CIVIL RIGHTS 7 (1978).
focuses on three distinct temporal periods. In the early sixties, harassment of homosexual citizens was quite common. The administration of Mayor John Lindsay witnessed a significant upheaval in the relationship between the police and the gay community. By the late seventies, the change in police practices had solidified and had improved prospects for future relations between gay people and the city police.

The shift in police conduct seems due in large measure to the acquisition and exercise of power by the homosexual community. During the period studied, gay people began to fight police repression, using tactics of physical and political resistance which they had never used before. Physical resistance, in the form of sometimes violent demonstrations, convinced the police that gay people were no longer merely passive targets for victimization. Political resistance, in the form of pressure from supportive community officials, warned police that continued harassment might entail grave professional consequences. These factors, viewed against the backdrop of a changing attitude toward homosexuality in the society at large, seem to account for the dramatic change in police practices between 1960 and 1980.

At the outset, it is essential to clarify the meaning of the term "harassment." "Harassment" with respect to homosexual citizens has been defined as "active police conduct which either eliminates public congregations of suspected homosexuals when there are no grounds for an arrest under the penal code or which discourages patronage of establishments via arrests for trivial offenses." This definition is unduly narrow. First, by focusing on "public congregations" and "patronage of establishments" the definition excludes the concerted annoy-

7. A 1968 sociological study of police brutality suggested that perceived passivity was a major explanation for police harassment. "Since deviants generally remain silent victims to avoid public exposure of their deviance, they are particularly susceptible to the use of excessive force." A. Reiss, Jr., LAW AND ORDER: POLICE ENCOUNTERS 57, 80 (1970).

8. The upper levels of the police bureaucracy are especially vulnerable to political influence. In the case of the American municipality, police chiefs, at least traditionally, both at law and in practice, are politically accountable officials who ordinarily stand or fall with the fortunes of their civilian superiors (who are lodged in external systems). Given the often controversial nature of police work, and the often "irrational" and unpredictable nature of political fortunes in municipal government, the American police chief who is responsible to a politically elected official comes close to the position of a "patrimonial bureaucrat" in Weber's terms. His tenure as chief, though not necessarily his tenure in the department, depends upon continuing acceptability to the elected official(s).


9. A 1977 Gallup Poll indicated for the first time that a majority (56 percent) of the American public supported equal job rights for gay people. The survey found Americans evenly divided on whether consenting adult homosexuality should be legal. N.Y. Times, July 19, 1977, at 17, col. 1.

ance of homosexual individuals who are alone in public places or who are attending private social functions. Secondly, this definition excludes all arrests for serious criminal offenses, such as sodomy or solicitation, even if the arrests result from entrapment or violations of the right to privacy.

In this paper harassment is defined as active police conduct for reasons unrelated to individual or public safety, directed at persons believed by the police to be homosexual, which has the effect of annoying, impeding, embarrassing, injuring, threatening, or intimidating such persons. This definition includes harsh forms of police conduct, such as entrapment, violence, arrest, and detention, as well as milder forms such as the use of derogatory epithets and uniformed inspection of gay bars without cause. Moreover, this definition also includes less conspicuous forms of conduct, such as employment discrimination against homosexual members of the police force and any unwarranted failure to protect homosexual citizens from crime.

The acute paucity of published documentation hampered the historical research of police harassment in New York City prior to 1970. Many factors account for this pre-1970 informational vacuum. First, journalistic references to homosexuality have long been considered taboo. Secondly, because violence against gay people, often described as “queer-baiting” or “fag-bashing,” so pervades American culture, until recently, few writers considered it worthy of note. Thirdly, homosexual victims of harassment rarely complained prior to

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11. See, e.g., text accompanying note 36 infra.
12. See, e.g., text accompanying note 39 infra.
14. The facts of People v. Earle, 216 Cal. App. 2d 607, 31 Cal. Rptr. 76 (1963), decided before the Supreme Court enunciated the right to privacy, illustrate police violations of the privacy right:

   The police followed them to a hotel, stood outside the door of a hotel room where they heard noises resembling a bed squeaking and “kissing type” noises coming from the room, looked through an opening where the door did not close tightly against the door frame, and saw defendant and codefendant naked on the bed, kissing and embracing each other. The officers then looked through the glass transom over the door and saw a violation of § 288a of the Penal Code being committed, forced open the door and made the arrests.

   The Homosexual and the Law, supra note 10, at 718.
15. An arguable criticism of this definition is that it includes within the meaning of “harassment” police conduct generally regarded as proper, such as arrests for sodomy. Yet despite the legislative prohibition of sodomy, the police have broad discretion in deciding the extent to which the law will be enforced. The Homosexual and the Law, supra note 10, at 734-42. Thus any vexatious police acts which are not prompted by a concern for individual or public safety can be seen as intentional harassment.
1970 because of the foreseeable effects of public exposure on their jobs, families, and social lives. Fourthly, witnesses to police harassment are rare, and they fail to document specific incidents for the same reasons that victims fail to report them. Finally the Police Department has had no impetus to gather such information. Consequently, much of what is known about harassment prior to 1970 is conveyed only as part of an oral history within the gay community.

I

During the early 1960's homosexuality was universally condemned in the United States. Gay people congregated secretly in hidden bars, shunned publicity, and shared the then prevailing notion that homosexuality as such was a mental illness. They rarely admitted their sexual inclinations to even their closest friends and relatives for fear of violence and ostracism. This well-founded fear stemmed from the frequent violence against reputed homosexuals during this period.

The most obvious form of police harassment resulted from the enforcement of statutes criminalizing acts of sodomy between unmarried persons. Statistics from the New York City Department of Correction indicate that the police

In high school I sat next to a pretty boy named Jack who went down to Greenwich Village on weekends and beat up queers. That's how he referred to it, beating up queers... Jack knew there was no way that his victims would go to the police. As homosexuals, they were not protected by law on the street. Once in a great while, a police officer might stumble into the alley or public toilet or clump of bushes where Jack and his friends were beating up queers, but all Jack had to do was flick on that angelic smile and explain that he had been propositioned. His manhood had been challenged and he was taking revenge. Usually, the cop would just nod and move on.


18. P. CHEVIGNY, POLICE POWER 122 (1969). In fact, Chevigny suggests that complaints of harassment tend to be filed by heterosexual persons who were mistakenly believed to be homosexual by the harassing officers. Id. at 115. "[T]he complaint of an ordinary citizen mistaken for a deviant must stand in place of all the deviants who were afraid to complain." Id. at 128.

19. Id. at 128.

20. According to Chevigny, many such witnesses disappear. Id. at 127.

21. Most of the conduct described below was regarded as part of ordinary police business at the time it was performed. The police generally did not perceive such conduct as harassment at all: they were merely doing their duty. Thus there was no reason for the police to maintain special records. Even if the New York Police Department does keep a file on the harassment of homosexual citizens, the author's inquiries directed at the offices of the New York City Police Department did not persuade them to produce it.

22. For this reason, much of the information regarding harassment before 1970 was obtained through personal interviews with people who have shared in the tradition of oral history.

23. Interview with Louis Gitlin, longtime resident of New York City, in Miami, Florida (Nov. 5, 1980).

24. Id.

25. See note 2, supra.
detained hundreds of men and women on sodomy charges throughout the early 1960's. Table A summarizes these statistics:

**FIRST ADMISSIONS TO CORRECTIONS INSTITUTIONS ON SODOMY CHARGES**

<table>
<thead>
<tr>
<th>Year</th>
<th>Detention Institutions</th>
<th>Sentence Institutions</th>
<th>Percentage of Detainees Sentenced</th>
</tr>
</thead>
<tbody>
<tr>
<td>1959</td>
<td>256</td>
<td>9</td>
<td>3.5%</td>
</tr>
<tr>
<td>1960</td>
<td>321</td>
<td>29</td>
<td>9.6%</td>
</tr>
<tr>
<td>1961</td>
<td>346</td>
<td>13</td>
<td>3.8%</td>
</tr>
<tr>
<td>1962</td>
<td>263</td>
<td>10</td>
<td>3.8%</td>
</tr>
<tr>
<td>1963</td>
<td>140</td>
<td>24</td>
<td>17%</td>
</tr>
<tr>
<td>1964</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>1965</td>
<td>356</td>
<td>26</td>
<td>7.3%</td>
</tr>
</tbody>
</table>

**TABLE A**

The table reveals the low rate of conviction of detainees charged with sodomy. During all but one of the years studied, fewer than 10 percent of those detained on charges of sodomy were ultimately sentenced. In half of the years studied, fewer than 4 percent of those detained were sentenced. These statistics suggest that the police detained many persons for whom they had insufficient evidence.

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26. The statistics break down offenders by gender. The overwhelming majority of detainees were men.

27. These statistics appear in the Annual Reports of the Department of Correction, New York City, for the years 1955 to 1965. After 1965, the Department stopped publishing this information in its Annual Report.

28. *Id.* The absolute reliability of these statistics is doubtful. The higher figures for sodomy sentences in 1960 and 1961, for example, may be attributable in part to the statistical inclusion of sentences served in the House of Detention during those two years. Department of Correction, City of New York, Seventh Annual Report xlix (1960); Department of Correction, City of New York, Eighth Annual Report lx (1961). The statistics do not indicate the proportion of sodomy violations that were consensual, and therefore within the meaning of ‘harassment’ as defined above.

The statistics fail to indicate the number of persons who were arrested or merely warned by police without being detained on charges of sodomy. Nor do the statistics include the large number of persons detained on lesser charges, such as solicitation and loitering. See text accompanying note 32 infra. For these reasons, the statistics probably underestimate the incidence of police use of sodomy statutes to harass homosexual citizens.

29. Data for 1964 were unavailable at the Department of Correction.

30. In 1963, the only year in which the number of detainees ultimately sentenced exceeded ten percent, the number of persons admitted to detention institutions was less than half of the average number of persons detained in all other years.
evidence to obtain convictions. Such detentions constituted a significant form of harassment in the early 1960’s.

Prosecutions for sodomy were not the most common form of harassment during this period. A sociological study of homosexuality in New York, San Francisco, and Northern Europe noted that:

[T]he enforcement of sodomy laws is [relatively] sporadic and rare, and the greatest involvement of homosexuals with the criminal law occurs under misdemeanor statutes. These statutes proscribe solicitation, disorderly conduct, lewd and lascivious behavior, and vagrancy, all of which are used ostensibly to control the homosexual’s sexual behavior and the public pursuit of sexual partners. Often the “disorderly conduct” laws are used to arrest persons for acts for which no other punishment is provided in the code. “Lewd and lascivious behavior” provisions are used to punish acts which range from dancing and hand holding to more explicit sexual behavior. “Vagrancy” laws are a convenient catch-all used in a variety of instances to harass homosexuals. It should be noted that most homosexuals are charged on misdemeanors rather than felony offenses not only because these laws are easier to apply but also because it is easier to get a conviction on a misdemeanor charge with its lesser penalties.31

The study went on to focus on the situation in New York City.

[M]ost prosecutions for homosexual behavior in New York come under the disorderly conduct statutes. The new penal code created the crime of loitering which deals with those who linger in public places for the purpose of engaging in or soliciting another person to engage in deviate sexual intercourse, punishable by a maximum of fifteen days imprisonment (Section 240.35). It is this provision that is usually invoked against those homosexuals who pursue partners in public places, especially public restrooms and parks.32

Although criminal convictions resulting in imprisonment or fines were a particularly severe consequence of harassment, police arrests in themselves often had serious consequences. Humiliation, anger, and inconvenience attend all arrests, especially when the person arrested has done nothing s/he perceives as wrong. In addition, arrest records are retained on file by the Police Department and arrestees may be required to disclose information about the arrest on employment applications, government forms, and insurance questionnaires.33 The mere fact of an arrest, even when the police had insufficient evidence to obtain a

32. Id. at 32.
conviction, often resulted in the loss of jobs and credit, as well as diminished opportunities for future employment.\textsuperscript{34}

In other cases harassment did not involve arrests at all. Police officers would randomly stop citizens, ask them for identification, frisk them, and urge them to keep moving, without making a formal arrest. Such actions were intimidating and reinforced the victims' feelings of inferiority even if no arrest record was created.

Although harassment in all of these forms was common prior to the election of Mayor John Lindsay, accurate statistics on the incidence of such police conduct are unavailable for reasons suggested above. Nevertheless, the following examples are typical of the kinds of police action prevalent in the early sixties:

Craig Rodwell, a homosexual rights activist, arrived in New York in 1959. He suffered on several occasions at the hands of the police during the years following his arrival.\textsuperscript{35} The first incident occurred at Riis Park beach on Labor Day weekend in 1961. One part of the beach was populated mainly by gay men during the summer months. Twice yearly, at the beginning and end of each summer, plainclothes police officers came to the gay area of the beach to hassle sunbathers. They fined gay male beachgoers who wore bathing suits which left the navel exposed or which were too short to cover the midpoint of the thigh. When Rodwell was stopped by the police, he complained that they had no right to fine him, since he had done nothing wrong. They hurled him to the ground shouting "faggot!", and made a spectacle for the benefit of the other gay people at the beach. Then they locked him in a holding cell and interrogated him. He was asked to give his name over and over again. Several hours later, he was arraigned and released. A fine was imposed. When he went to the hearing to contest the fine, Rodwell discovered that he was also charged with inciting to riot. He denied all of those charges and testified that he was indeed homosexual. Although the incitement charge was dropped, the judge imposed the maximum penalty of three days in jail for indecent exposure.\textsuperscript{36}

Rodwell had another confrontation with the New York police and the incident occurred in January of 1964. Rodwell was sitting on a bench in Washington Square Park, a popular outdoor meeting place for homosexual men at that time. Around 11 p.m., he was accosted by four plainclothes police officers. First they asked him for identification. As he reached for his wallet, one of them poked him with a nightstick and said, "You better get moving faggot." When he protested, they took him to the precinct station as if they were going to book him. They told him that they wanted to keep "faggots" out of the park, and they warned him of dire consequences should they find him there again. At the police

\textsuperscript{34} R. Simpson, From the Closets to the Courts 138-39 (1976).
\textsuperscript{35} Interview with Craig Rodwell, homosexual rights activist and New York City resident, in New York City (December 9, 1980).
\textsuperscript{36} Id.
station they baited him for over an hour, trying to elicit a hostile reaction. After blasting Rodwell with derogatory epithets, the police released him without making a formal arrest.37

Another typical example of harassment involved a police raid on a private social gathering of gay people in 1966. About fifty guests were attending a party in an East Village apartment one Saturday night when several uniformed police officers pushed their way into the room. At least one officer had drawn his revolver. When one of the guests asked a policeman for his shield number, the officer hit him in the face with a flashlight. The police proceeded to search the apartment and arrested several guests for loitering and possession of narcotics. At the arraignment, the police were unable to explain why they broke into the party, and all of the charges were eventually dismissed.38

Police harassment during this period often went beyond simple arrests and violence. Officers have often employed rather creative means to obtain convictions of homosexual persons.39 During the early sixties plainclothes decoys often staked out gay bars in order to entice solicitations. They wore clothes which were fashionable among gay men at the time, such as fuzzy sweaters and tennis shoes, stood at the bar, and encouraged homosexual propositions. As one commentator explained, "The officer may ask a likely youth for a cigarette light. He strikes it rich when the youth says, 'I can give you more pleasure than a thousand girls.' "40

Harassment of gay bars, the only public places where gay people could meet with relative safety during this period, was a particularly effective means of

37. Rodwell said, "'They were looking for an excuse to work me over.'" Id.
38. Id.
39. P. CHEVIGNY, supra note 18, at 122-23 (1969). "[T]he police felt less compunction about breaking into a party of obvious homosexuals than they would have felt about intruding upon another party. When outcasts are involved, the restraints on police action begin to weaken, not only those against assault, but those against unlawful entry and search as well." Id. at 123.
40. Because homosexual crimes usually involve the consent of their participants, they are somewhat akin to narcotics cases—there is usually no victim who will complain. Suggestive enforcement techniques must be employed to enforce the laws. These involve the use of plainclothes police decoys and clandestine observations. Less frequently used enforcement methods are routine patrol, harassment, and revocation of licenses of business establishments catering to the homosexual trade.

The Homosexual and the Law, supra note 10, at 686. This study, conducted in Los Angeles in the early sixties, goes on to describe the great lengths to which police officers will go to obtain convictions of gay people.
41. Craig Rodwell, supra note 35.
42. It is doubtful whether operations of homosexuals [sic] would be successful if the decoy merely stood at the problem location waiting to be solicited. The social sanctions that deter males from making unprovoked solicitations of females operate against the homosexual as well. Further, the homosexual creates a risk of physical danger when he tenders solicitations to males.

The Homosexual and the Law, supra note 10, at 692 n.37.
victimizing gay people. The police exercised stringent control over the bars, especially through the laws regulating the sale of liquor. During the administration of Mayor Robert Wagner, nearly all of the gay bars were closed by the police to make the city respectable for the World’s Fair in 1964 and 1965. Uniformed police would raid a bar by checking the identification of patrons and by pushing them around. Then, “Raided Premises” signs were posted and police officers were stationed inside of the bar. Some bars posted notices warning, “If you’re gay, please go away.” Because New York bartenders believed that liquor licensing laws subjected bar owners and their staffs to legal liability for serving persons known to be homosexual, they prohibited men from dancing together or touching each other in most bars, and some did not even allow men to enter unless they were accompanied by a woman. Several homosexual bathhouses were also raided during this period.

Clearly, throughout the early sixties police harassment of homosexual individuals was quite common. It had two basic features: 1) it did absolutely nothing to preserve individual or public safety; and 2) it forced all gay people in New York City to live under the constant spectre of police repression.

II

In the mid-1960’s a dawning awareness of homosexual repression arose around the world. In 1965 the British House of Lords approved a bill to decriminalize consensual adult sodomy. Relying on the recommendations of the 1957 Wolfenden Report, the Lords surprised many people who expected them to kill the controversial legislation. The House of Commons eventually ratified decriminalization in 1967. The British experience brought homosexual rights to the front page headlines in New York and prompted serious discussion of the issue.

44. “[T]he business of selling liquor by the drink is governed by a complex system of state and local laws, infractions of which can lead to criminal penalties as well as suspension and loss of license.” KNAPP COMMISSION, REPORT ON POLICE CORRUPTION 133 (1973).
45. Interview with Richard Greenbaum, longtime New York City resident, in New York City (Dec. 6, 1980).
46. Id.
47. Craig Rodwell, supra note 35. See N.Y. Times, April 22, 1966, at 43, col. 4.
48. Id.
49. Craig Rodwell, supra note 35.
50. Richard Greenbaum, supra note 45.
Meanwhile the New York State Commission on Revision of the Penal Law followed the lead of the Model Penal Code by exempting from criminal liability "deviant sexual intercourse" between consenting adults. Although the state legislature failed to enact this portion of the revision due to pressure from the Catholic Church, the discussion of homosexual rights in Albany signalled an effort to confront a problem that had previously been ignored.

At the same time, significant changes were taking place within New York City. The World's Fair ended and Republican John Lindsay announced his candidacy for mayor in 1965. During his campaign, Lindsay criticized the Wagner administration's treatment of crime and brutality and called for an end to single party rule. His image as a reform candidate won him the votes of many normally Democratic minority groups and enabled him to carry the election. Although he did not appeal explicitly to homosexual voters, in his January, 1966 inauguration speech, Lindsay promised to combat terror in the streets and to work for corruption-free law enforcement. His actions shortly after the election, however, cast doubt on the sincerity of his promise.

In February, Mayor Lindsay embarked on a plan to rid Times Square of "promenading perverts." He hired a new police commissioner, Howard Leary, who assumed the responsibility for a crackdown on gay people and prostitutes in the Times Square area. The crackdown provoked a cry of protest from the New York Civil Liberties Union after over 100 people were arrested. When the civil libertarians charged that the police were illegally entrapping homosexual men, both in Times Square and in Greenwich Village, police officials declined to comment on the extent of entrapment, but urged the public to report any cases of entrapment to the police department. A representative of the Civil Liberties Union commented, "It's alarming to think that the chief inspector doesn't know


A spokesman for the Mattachine Society, Inc. of New York, an organization that provides legal and medical aid for homosexuals and information about them, questioned the worth of the police officials' appeal. "The last thing homosexuals are going to do is complain about something," the society spokesman said. "They'll just sit there like a possum, they're so afraid of their families finding out or losing their jobs."

Id. at 60, col. 2.
that a large number of police spend their duty hours dressed in tight pants, sneakers, and polo sweaters... to bring about solicitations.\footnote{Id.}

Under this pressure, Mayor Lindsay met with Commissioner Leary to discuss the department's harassment and entrapment practices.\footnote{Letter from Representative Edward Koch to Mayor John Lindsay and Police Commissioner Patrick Murphy (Oct. 16, 1972) (on file at the National Gay Task Force, New York).} Commissioner Leary issued an order in April instructing police officers to avoid entrapment and to 'make every effort' to secure witnesses whenever making an arrest for homosexual solicitation of a plainclothesman.\footnote{N.Y. Times, May 11, 1966 at 36, col. 2.} A Mattachine Society\footnote{See note 67 supra.} spokesman praised the Mayor and the Commissioner and said, 'We were taken aback when the big cleanup started in Greenwich Village and Times Square, but since then they've shown good faith. If things keep on this way, we'll vote 100 percent for Lindsay next time.'\footnote{N.Y. Times, May 11, 1966, at 36, col. 3.}

This dialogue in 1966 marked the first time in New York that gay people took a strong political position to assert their rights. They continued to do so. Members of the Mattachine Society challenged the rules that allegedly prohibited bartenders from serving gay people that same April.\footnote{N.Y. Times, April 22, 1966, at 43, col. 4.} Three openly gay men entered several bars, proclaimed their homosexuality, and ordered drinks. When they were refused service at Julius's, a bar in Greenwich Village, they filed a complaint with the State Liquor Authority. Although the SLA was unwilling to take any action against the bar,\footnote{N.Y. Times, April 26, 1966, at 35, col. 1.} William Booth, Chairman of the New York City Commission on Human Rights, said that the Commission would have jurisdiction over a complaint alleging discrimination based on sex.\footnote{Id.} Shortly thereafter, Julius's began serving patrons known to be homosexual.\footnote{Craig Rodwell, supra note 35.}

In the early years of the Lindsay administration, further steps were taken to reduce discrimination against gay people in many areas of local government. The City Civil Service Commission began hiring homosexual employees for most classifications of jobs and removed questions concerning sexuality from employment applications.\footnote{N.Y. Times, Jan. 7, 1967, at 1, col. 4.} A unanimous appellate decision of the New York Supreme Court held unlawful the State Liquor Authority practice of suspending the liquor licenses of bars based on single incidents of homosexual solicitation.\footnote{N.Y. Times, V. March 9, 1967, § 4, at 3, col. 1. The decision was affirmed by the Court of Appeals. Kermou Restaurant Corp. v. State Liquor Authority, 21 N.Y.2d 111, 286 N.Y.S.2d 822 (1967).}
Especially notable to members of the gay community was the decline in police harassment during this period. Police entrapment of homosexual men in the streets and subways decreased markedly. By mid-1967, Commissioner Leary changed the police policy regarding raided premises by sharply reducing the number of policemen assigned to patrol them. He also stated his intention to do away with the practice entirely in the near future. Gay bars once again were allowed to proliferate in New York. In addition, the New York police took an active role in protecting gay citizens through a crackdown on a nationwide homosexual extortion ring, the victims of which included a U.S. congressman, high ranking members of the armed services, two deans of eastern universities, businessmen, scientists, movie and television personalities, and many others.

Despite this progress, however, harassment continued during the second half of the decade. Although the bars were allowed to operate, police raided them frequently. In March, 1967, the State Liquor Authority revoked the liquor license of Tony Pastor's, a Greenwich Village bar, on the grounds that the management "permitted the licensed premises to become disorderly in that it permitted homosexuals, degenerates, and undesirables to be on the licensed premises and conduct themselves in an offensive and indecent manner." Soon after, the New York Court of Appeals upheld the revocation of the license of the Charade Bar, where men had been observed "fondling each other." The court distinguished between public kissing among males, which was held permissible, and "fondling," which was not.

After the courts prohibited the suspension of liquor licenses based on same sex kissing or single acts of solicitation, the police turned their attention toward unlicensed premises. The principal targets of police raids became the private clubs, most of which were run by organized crime. They were generally

78. Richard Greenbaum, supra note 45.
80. Id.
81. Richard Greenbaum, supra note 45. By the end of 1967, over seventy-three bars, restaurants and clubs in New York City catered predominately or exclusively to gay people. N.Y. Times, Nov. 30, 1967, at 50, col. 5.
82. N.Y. Times, May 17, 1967, at 1, col. 2.
84. N.Y. Times, Dec. 30, 1967, at 6, col. 3. The court said,
[A] line must be drawn somewhere between which sexual acts are to be permitted in public places and which are not. In our view the line must be drawn at public feeling of private parts. In this regard, we would not distinguish between the activities of homosexuals and that of heterosexuals. Fondling of the primary sexual organ in licensed premises on a public dance floor clearly constitutes disorder whether between heterosexuals or homosexuals under . . . the Alcoholic Beverage Control Law.
charged with the unlicensed sale of alcoholic beverages or permitting dancing without a cabaret license.\textsuperscript{86} While such police conduct was arguably justified because of the state’s interest in liquor licensing,\textsuperscript{87} the fact that most of the clubs closed by the police served a predominantly homosexual clientele suggests that the police misused their enforcement authority so as to harass homosexual patrons.\textsuperscript{88}

As the decade drew to a close, relations between the New York homosexual community and the police became more volatile. The permissive attitudes of the Sixties allowed gay people to begin to come out of the closet in significant numbers for the first time. Men wore the long hair, open shoes, and bright clothing which had previously been reserved for women. This change represented a nascent shift in societal views of acceptable sex role behavior.\textsuperscript{89} In addition, the political activism among youth struggling for racial equality and against the Vietnam War sparked a heightened awareness of homosexual oppression.\textsuperscript{90} These factors, coupled with relaxed police attitudes, resulted in the unprecedented visibility of gay people in large numbers, especially in certain communities such as Greenwich Village, traditionally a haven for social nonconformists.

This new political and social visibility was enhanced by media attention. In 1969 two major motion pictures centering around homosexual characters received heavy publicity. \textit{The Killing of Sister George} contained an explicit lesbian erotic scene that was censored in several states.\textsuperscript{91} \textit{The Boys in the Band} was a story about a homosexual birthday party.\textsuperscript{92} Although neither film offered a particu-

\textsuperscript{86} Two gay clubs were closed for these reasons the last weekend in November, 1967, by New York police. N.Y. Times, Nov. 26, 1967, at 69, col. 3.

\textsuperscript{87} [A liquor license] is a temporary permit or privilege, issued, in the exercise of the police power of the state, to engage in a specified liquor business which would otherwise be unlawful. . . . [The purpose of requiring a permit or license is to exclude diversion of intoxicating liquors from legal or authorized use.]

\textsuperscript{88} C.J.S. Intoxicating Liquors § 90 (1981).

\textsuperscript{89} Of the nine private clubs closed by police on one occasion, eight catered to gay patrons. P. FISHER, THE GAY MYSTIQUE 140 (1972).

\textsuperscript{90} The lyrics of a song from the hit Broadway musical Hair suggest this change in view:

\begin{quote}
I would just like to say that it is my conviction
That longer hair and other flamboyant affectations
Of appearance are nothing more than the male’s emergence
From his drab camouflage into the gaudy plumage
Which is the birthright of his sex.
There is a peculiar notion that elegant plumage
And fine feathers are not proper for the male,
When actually, that is the way things are in most species.
\end{quote}

\textsuperscript{91} J. RADO & G. RAGNI, Hair (1968).

\textsuperscript{92} One man’s experience in gay identification under such influence is recounted in A. KANTROWITZ, UNDER THE RAINBOW (1977).

\textsuperscript{91} N.Y. Times, March 26, 1969, at 37, col. 1; N.Y. Times, March 27, 1969, at 53, col. 1.

\textsuperscript{92} N.Y. Times, July 13, 1969, § 2, at 15, col. 1.
lately cheery picture of gay life, both acknowledged its existence as a non-trivial element of society for the first time.

On the political scene, the decriminalization of sodomy was again making front page news. West Germany legalized sodomy between consenting adults on May 9, 1969. and Canada did the same the following week. Earlier in the year, the Correctional Association of New York, an agency authorized by the state to examine and report on prisons, recommended the elimination of statutes criminalizing consensual adult sodomy to the state legislature. Meanwhile, a suit brought against the New York City Civil Service Commission forced clarification of their policies regarding the hiring of homosexual applicants. Gay people were, as a matter of stated policy, considered fit for most city jobs with the possible exceptions of prison guard, children's counselor, or playground attendant.

This publicity not only increased the visibility of homosexuality in New York, but also provoked an extreme reaction. As growing numbers of gay people began to fill the bars and streets of the city, the police began to crack down once again. On February 20, 1969, they raided the Continental Baths and arrested twenty-two people on various charges, most of which were dismissed for lack of evidence. By the middle of the summer of 1969, the tension between the police and gay people reached explosive dimensions.

On Saturday, June 28, 1969, the police staged a routine early morning raid on the Stonewall Inn, a private homosexual club in Greenwich Village. Pursuant to a search warrant authorizing investigation of alleged unlawful liquor sales, the police ejected about 200 men from the raided premises. The powder keg exploded. The crowd of men outside the bar shouted and threw bottles, coins, garbage, and other projectiles at the police. Passersby joined their ranks and as the mob swelled to twice its original size, the policemen were forced to retreat into the bar. Police reinforcements arrived and joined the melee. When the furor subsided almost an hour later, four policemen were injured and thirteen persons had been arrested. Many others had been beaten. For the first time in

93. The Killing of Sister George ends in violent death, while all of the characters in The Boys in the Band are self-destructive and lonely.
97. N.Y. Times, May 9, 1969, at 1, col. 2.
98. N.Y. Times, May 9, 1969, at 23, col. 5.
99. Craig Rodwell, supra note 35.
102. Id. In actuality, only soft drinks were being served. Id.
103. Id.
history, gay people fought back against the police, and rebutted the notion of gay male passivity.105

That night a large mob of men gathered again outside the Stonewall Inn to
demonstrate against police harassment. They read acrimonious condemnations of
the brutal and terrorist tactics used by the police.106 The local precinct was
unable to control the crowd and Tactical Patrol Force units were brought in from
the East Village.107 As an interlocking chain of police officers swept up and down
Christopher Street to disperse the mob, the demonstrators hurled bottles and
stones and set small fires. Those who were immobilized by the throng were
pushed and shoved by the police, and at least two men were clubbed to the
ground.108 The boards covering the facade of the Stonewall Inn were painted with
graffiti urging people to "Support Gay Power," and "Legalize Gay Bars."109
Several more people were arrested by the time the police withdrew at four a.m.
The demonstrations recurred the following week and the police returned to make
further arrests.110

The spontaneous Stonewall demonstrations marked the beginning of a con-
cereted effort by the local gay community to put an end to police harassment. In
the months following, homosexual activists mobilized to form the Gay Liberation
Front. More radical in its tactics than the Mattachine Society, the Gay Liberation
Front attracted a broader base of support. Among its constituents were socialists,
the Radicalesbians, revolutionary transvestites, third world people, and gay
youth.111

In 1970 the new movement began to test its power. When the police raided
the Snake Pit bar on March 8 because it was open after hours and arrested 167
people, the Gay Liberation Front took to the streets.112 Joined by a number of
women's liberation organizations, the protesters demonstrated in Sheridan
Square against police repression of homosexuality.113 One of the persons ar-
rested, a 23 year old immigrant fearing deportation,114 jumped from a second
story window in the Sixth Precinct stationhouse, impaling himself on a spike iron
fence below.115 The demonstrators conducted a "death vigil" outside of the
hospital where he lay in critical condition, before proceeding onward through the
West Village.

105. See note 7 supra.
108. Id.
109. Id.
113. Id.
After this incident, homosexual activists began to receive support on the police issue from some politically influential New Yorkers. U.S. Representative Edward Koch wrote to Police Commissioner Leary, accusing him of harassment through illegal arrests.\(^ {116}\) Virtually all of the charges against the people arrested at the Snake Pit were dismissed for insufficient evidence, and Koch called upon Leary to justify the police actions. Police officials weakly responded that the arrests were aimed at deterring the sale of liquor after hours, and not at harassing homosexual bar patrons. Whitman Knapp, chairman of the Commission on Police Corruption, told the press that laws regulating the private sexual conduct of consenting adults were a major cause of police corruption in New York.\(^ {117}\)

The protests continued. In August, 1970, hundreds of gay demonstrators converged on Times Square to protest police harassment there.\(^ {118}\) Carrying placards and shouting slogans, the protesters marched down to Greenwich Village, where they overturned automobiles and set trash fires.\(^ {119}\) The following week, Commissioner Leary resigned for undisclosed reasons.\(^ {120}\)

During the early seventies, the newly politicized homosexual community enlisted the support of numerous public officials and leadership in their struggle for civil rights. City Councilmen Carter Burden and Eldon Clingan introduced legislation in January, 1971, to extend the city’s Human Rights Law to prohibit discrimination based on sexual orientation.\(^ {121}\) City Investigation Commissioner Robert Ruskin testified about police officers who had blackmailed homosexual citizens by threatening to arrest or expose them, and urged the repeal of consensual adult sodomy statutes.\(^ {122}\) State Assemblymen Stephen Solarz and Antonio Olivieri also spoke out for the legalization of homosexual conduct and for legislation protecting the rights of gay people.\(^ {123}\) Other prominent supporters of the proposed gay rights legislation included City Councilmen Theodore Weiss and Leonard Scholnick, Commissioner of Human Rights Eleanor Holmes Norton, and Mayor Lindsay.\(^ {124}\)

Speaking on the issue, the mayor said, "It is appropriate that New York City—whose human rights law was one of the first to impose strong sanctions against bias in the nation—should broaden its safeguards for citizens against all forms of arbitrary victimization."\(^ {125}\) Early the following year, Lindsay announced a directive issued by the Department of Personnel and the City Civil Service Commission, instructing department and agency heads to discount sexual


\(^{119}\) Id.

\(^{120}\) N.Y. Times, Sept. 6, 1970, at 1, col. 7.

\(^{121}\) N.Y. Times, Jan. 7, 1971, at 43, col. 2. The legislation was not passed that decade. N.Y. Times, Nov. 30, 1978, § 2, at 1, col. 1.

\(^{122}\) N.Y. Times, Jan. 8, 1971, at 29, col. 6.

\(^{123}\) Id.


\(^{125}\) Id.
orientation in processing applications for government employment and promotion. Such influential support was not without effect.

As the political climate changed, so did the forms of police harassment. Organized police actions were no longer being directed at individuals, as they had been in the days of the widespread solicitation arrests. By the seventies, most police actions were directed at group activities. The two groups targeted by the police were organized criminals and gay political activists.

By 1970, the Mafia had moved aggressively into the business of operating unlicensed "private clubs." Estimates suggest that in 1970 over one hundred illegal after-hours bars were operating in the city, most of which were controlled by organized crime. The police believed that all homosexual after-hours bars were mob-run. In February of that year, the operator of Salvation, a popular gay after-hours discotheque in Greenwich Village, was murdered. Upon his death, his attorney turned over letters to the police detailing the takeover of his business by organized crime. Mob employees had made threats on his life and compelled him to pay them thousands of dollars in protection money and "salaries." This phenomenon was not unusual. According to a New York Times report, "any bar or club, especially after hours joints and the homosexual clubs, where profits are high and opportunities for blackmail abundant, is regarded as fair game for any gang. . . ."

These Mafia-run clubs were targeted by police for a variety of reasons. In addition to the problem of extortion, the clubs generally sold liquor without licenses and avoided the payment of federal taxes. While some patrons of gay bars regarded such raids as harassment, most homosexual activists protested the exploitation of gay bar patrons by the syndicate. Although the Stonewall Inn and the Snake Pit were also run illegally by organized crime, the raids on those bars had culminated in mass arrests of the bar patrons.

Later raids focused on arresting bar operators and employees, while leaving the patrons alone. In a spectacular series of raids in July, 1971, New York City police, working in concert with federal investigators, closed down nine illegal after hours clubs in one night, concluding a five month investigation into Mafia control. These raids were significant not only for their scope, but also for the moderated police treatment of the customers. A number of the patrons, antici-
pating arrests, dropped contraband to the floor. The New York Times reported "the police collected bottles of pills, stashes of marijuana and hashish, mysterious liquids and one automatic pistol."¹³⁴ Yet, "[T]he patrons generally seemed to accept the raids with good humor,"¹³⁵ and none of them was arrested. Instead the police arrested twenty-eight persons who worked for the clubs and continued a search for thirty-three others for whom warrants had been issued.¹³⁶ In this incident, unlike past raids, the targets of the police action were the exploitative bar operators, rather than the homosexual patrons, who had been the principal targets only a couple of years before.

The other major targets of police harassment during the early seventies were the gay political groups. The two groups which bore the brunt of the police attacks were the Daughters of Bilitis (DOB), a lesbian organization,¹³⁷ and the Gay Activists Alliance (GAA), a predominantly male group which grew out of the Gay Liberation Front.¹³⁸ On numerous occasions the police disrupted private social functions and business meetings of these groups, and threatened their members with arrests and violence.

In the fall of 1970 uniformed policemen interrupted a DOB planning session attended by about fifty women.¹³⁹ They asked to see the organization's charter after they were told that it was on file at the office of DOB's lawyer. They also refused to turn down their blaring walkie-talkies and threatened to make arrests. At one point they even threatened the women with physical harm. Finally, they served a summons for failure to display "occupancy signs," and left.¹⁴⁰

On May 1, 1971, the police raided two separate fund-raising dances held by DOB and GAA respectively.¹⁴¹ At 8:30 p.m., an officer entered DOB's crowded Lesbian Center and tried to explore the group's offices. When the women refused to grant him access, he responded with verbal abuse, threats of mass arrest, and threatening gestures, including the gripping of a revolver.¹⁴² He returned with reinforcements and three summonses for petty violations.¹⁴³ When asked whether the police paid such calls on the campaign headquarters of political

¹³⁴. Id. at 32, col. 6.
¹³⁵. Id. at col. 4.
¹³⁶. Id. at col. 2.
¹³⁷. Daughters of Bilitis was one of the earliest homosexual groups to form in the United States. Established in San Francisco in 1955, its focus became increasingly political as it moved into the 1970's. R. SIMPSON, FROM THE CLOSETS TO THE COURTS ix (1976).
¹⁴⁰. Id. at 123-25.
¹⁴². Id.
candidates, a police sergeant replied, "I would if I didn’t like them politically." About a half hour later the same police sergeant, accompanied by six patrol cars full of uniformed officers, crashed a GAA dance. They said that the gathering was illegal and asserted that they had the authority to use their billy clubs to break it up. They served three summonses charging failure to display public assembly permits and occupancy signs, and the existence of excessive noise.

The police returned in force to harass DOB members during the fall of 1971. A former president of the organization recalled the incident:

That night at DOB the police dumped large containers holding ice cubes, soft drinks, and beer all over the floor; generally messed up DOB’s quarters, destroying property; and arrested two women, taking them into the precinct and holding them for about four hours. The charge was "selling beer without a license." It should be explained that DOB as a nonprofit educational organization was legally authorized to give beers and sodas to members and friends for small donations. The cops knew that this was a fraudulent charge, since the issue of the beer and soda, and the fact that we were not profiting from its sale, had come up repeatedly during their previous "visits," as well as during telephone calls I had made to precincts, to commanding officers of precincts, and to the mayor’s office.

This charge and all other charges against DOB were ultimately dropped, but only after the usual number of court appearances, the wasted time of many, the expense to DOB, and arrest records for the women involved.

It should be noted that a relatively short while after this last case of harassment, DOB stopped functioning as an organization.

When the members of these groups turned to the mayor's office for help, the reception was less than warm. David Lebenstein, a member of Mayor Lindsay's staff, responded to one complaint saying, "Actually, the mayor knows that his office has lost control of the police department at [the] precinct level." Another mayoral staff member, Barry Goddeter, was asked what could be done to end police raids on DOB and GAA. He replied, "Oh well, maybe it isn't so

144. Id. at 128.
146. Id. at 22. "All of these charges fall in the category of laws selectively employed for harassment purposes. They are never enforced, for example, against churches, functions of the Democratic or Republican parties, or similar organizations. They are used as a means of hassling nationalist, radical and gay organizations." Id.
147. R. SIMPSON, FROM THE CLOSETS TO THE COURTS 129 (1976). Simpson concludes, "That there is a connection between police harassment and the disintegration of minority group organizations cannot be seriously doubted." Id.
148. Id. at 125.
bad—maybe they just came around for a payoff." 149 When GAA members staged protest demonstrations at Lindsay's campaign headquarters, seventeen people were arrested. 150 The charges against them were later dismissed. 151 Although most police harassment in the early seventies was directed at organized crime and gay political groups, sporadic harassment of homosexual individuals continued. One incident, which received a great deal of attention from the press, 152 did not involve direct police action as such, but rather police failure to act. On April 15, 1972, GAA members, while handing out leaflets at a private dinner gathering of political journalists, were attacked by several of the men attending the dinner. 153 One of the assailants was Michael Maye, president of the Uniformed Firefighters Association and former national golden gloves heavyweight champion. 154 Three of the victims, including Morty Mansford, a Columbia University undergraduate, required hospitalization. 155 Maye, who was not arrested by the policemen at the scene, commended "the intelligence and restraint shown by the New York City police." 156 He denied all of the assault accusations. 157 After the GAA members filed charges with the police, the Manhattan District Attorney's office began an investigation. 158 An eyewitness gave the following account:

I was right near the down escalator and I saw a struggle at the top of it. I don't know who was involved, but the result was that a young man was lying on the down escalator and it was carrying him down. He seemed to be semiconscious.

Now a policeman in a black leather jacket was right behind him, escorting another man down the escalator. Then all of a sudden, a man came running down the escalator; he leaped down it and he hit the kid who was being held by the cop and then he started to grind his heel into the groin of the young man who was lying halfway down the escalator now. That man was Mr. Maye. 159

The witness said that he saw Maye "grind his heel" into Manford's groin "four or five times." 160 Another witness saw Maye lift and shake one of the

149. Id. at 135.
150. N.Y. Times, Jan. 27, 1972, at 50, col. 5.
151. N.Y. Times, March 17, 1972, at 47, col. 1.
152. The New York Times ran at least eleven separate articles on the incident and its consequences.
154. Id. at col. 3.
155. Id. at col. 2.
156. N.Y. Times, April 20, 1972, at 38, col. 4.
158. Id.
159. Statement of John P. Scanlon, former editor and assistant to the City's Economic Development Administration. Id.
160. Id.
victims. The New York Times reported that witness's reaction. "He said he was 'shocked' that the police had 'adamantly refused to take any action whatsoever, loudly proclaiming their protective feelings for Mr. Maye' and exercising 'an arbitrary judgment as to whom they would consider arresting and whom they would not.'" Despite the many eyewitness accounts, the District Attorney refused to prosecute Maye at the outset; a grand jury refused to indict him, but charged him with "harassment," a violation not unlike a speeding ticket; and he was ultimately acquitted. No sanctions were imposed against the police who stood by and watched the brutality.

Another incident which, though fairly typical, received attention only because of the notoriety of the victim, occurred on October 4, 1972. Arthur Bell, a writer for the Village Voice, wrote up the details in his column as follows:

I went for a snack at Phebe's with three friends: Chuck Ortble who writes for Michael's Thing, a woman film reviewer, and a film student studying with Andrew Sarris at Columbia. We were in great spirits; the play was good, the company fine. After eating, Chuck and I said goodbye to our friends and left Phebe's, holding hands, as we do. As we crossed 4th Street, a police car spotted us holding hands and spewed out a barrage of hatred: fairy cocksuckers, cunts, fucking faggots, mimicking, mocking, attitudes and language that I naively thought went out with the repeal of Prohibition because it's never happened to me directly in my lifestyle-and-life-as-one world. I jotted down the police car license number, Ninth Precinct, and went closer to the car to get badge numbers. The driver said, "I'll give you my name, faggot, it's Joe Gambino." At that point, both officers got out of the car, clutching their billy clubs, continuing a barrage of verbal abuse. Their breath stank of liquor. The younger-looking officer shoved me to the rear edge of the car and demanded Identification. When he discovered I write for this paper, he said, "We've got a beat, hey, we've got a beat, we're gonna throw the book at you, loitering, resisting arrest, you name it." While attention was on me, Chuck slipped across the street and faded back to Phebe's. He told our friends about the arrest, then found a phone and dialed 911. Realizing the incongruity of what he was doing, he hung up. He decided to come

162. Id.
163. Eyewitnesses testifying against Maye at trial, in addition to Scanlon, supra note 160, and Geto, supra note 162, included Leonard Cohen, deputy borough president of Manhattan, Mark Steinberg, a former aide to Mayor Lindsay, and Jerome Kretchmer, the city's environmental protection administrator. N.Y. Times, July 6, 1972, at 38, col. 6.
166. Id.
outside again to see what he could do. Meanwhile, the younger officer took my notebook, tearing out the pages with the play notes, and confiscating the page with his car and badge identification [sic] numbers. "Write this up in your paper, cunt," he said. "Call the mayor's office. It won't do any fucking good. We're always on top, and you're always on the bottom."

Then they started on Chuck. "You had to be a smartass and make a phone call, faggot." They wouldn't accept Chuck's voter registration and threatened to hold him until he had other proof of this [sic] identity. Our two friends came out. The film student was told to "beat it" by the young cop, "or we'll give you a pile of summonses eight feet high and shove them up your ass." The reviewer was called cunt, and told to "take a walk sister, or we'll drag you in too." Chuck and I were given summonses. Thirty minutes after the first "fuckin' faggot," the cops got in their car and drove away. We returned to Phoebe's. The summonses are for jaywalking. We sat for awhile, then, holding hands, headed home.\(^{167}\)

A third example of individual harassment, not reported in the mass media, was publicized by GAA.\(^{168}\) On October 22, 1972, Luis Mercado, a twenty-two year old Vietnam veteran, stopped on the street to chat with several young men in his neighborhood. One of them proposed to have sexual relations with him. Mercado agreed, and they proceeded to a nearby park where they engaged in a sexual act. When the others asked Mercado to have sex with them as well, he refused, and they attempted to force him to do so. Mercado tried to escape, but his assailants knocked him to the ground, then beat, kicked and clubbed him, and took several of his possessions. Bleeding and in severe pain, he made his way to a hospital where he was treated for multiple wounds of the back, chest, and face. Four days later, Mercado returned to the hospital seeking treatment for severe vomiting and infection of his wounds. The hospital staff called the police, and he gave the name of one of his assailants to them. A few days later, Mercado was arrested and charged with sodomy. None of his assailants was charged with sodomy, though three of them told the police that they had engaged in sexual relations with him. The District Attorney agreed to drop the sodomy charges on the condition that Mercado drop his robbery and assault complaints.\(^{169}\)

This travesty was followed by immediate GAA action. On November 11, about one hundred rain-soaked gay activists staged a demonstration at Police Headquarters to protest the recent police actions\(^{170}\) and to demand a meeting between Mayor Lindsay and GAA representatives to discuss police harassment.


\(^{168}\) Memorandum from the Gay Activist Alliance News and Media Relations Committee (October 1972) (on file at the National Gay Task Force, New York).

\(^{169}\) Id.

\(^{170}\) N.Y. Times, Nov. 12, 1972, at 48, col. 3.
Speakers at the demonstration sharply criticized police actions regarding the beatings of Morty Mansford and Luis Mercado. Arthur Bell spoke of his own experience. The allegations of the demonstrators did not go unnoticed by the police. Captain William Kelly of the heavily gay Sixth Precinct, which includes Greenwich Village, said that the police department was receptive to citizen complaints and that it was taking steps to improve relations with the gay community.  

These three incidents of harassment are not notable merely because they occurred. As the discussion above suggests, such police practices had been common throughout the 1960's. These episodes are notable because, unlike earlier incidents of individual harassment, they were meticulously documented. In each case the victims were willing to identify themselves and seek relief through publicity. Never before had the New York Times devoted eleven separate news stories to a follow-up discussion of a homosexual assault. Never before had a prominent public figure stood up to the police without fear of damaging his professional reputation. Never before had a police official stated his intention to meet with homosexual citizens to discuss grievances. The new homosexual movement was making its presence felt.  

Another tactic employed by the activists was enlisting the aid of community officials. A number of local officials testified in the Michael Maye prosecution, and their presence brought considerable attention to the case. The fact that these community leaders were able to "come out" as supporters of the gay struggle against harassment may well have made it easier for others to do so.  

Representative Edward Koch wrote to Mayor Lindsay and Police Commissioner Patrick Murphy shortly after Arthur Bell's confrontation with the police, asking them to call a meeting to discuss police attitudes and how to change them. He pointed out that the attitudes of the patrolmen who accosted Bell and his companion were "apparently not limited to the two particular police officers involved." Koch reminded the mayor of the 1966 meeting with then-Commissioner Leary, suggesting that even though the Police Department's policies regarding entrapment had been changed, the vestigial attitudes of individual officers still resulted in harassment. The following month, Don Goodwin, president of the Mattachine Society, repeated Koch's request.

171. Id.
172. A letter to the mayor from the Mattachine Society indicates that by November, 1972, Mattachine members had already begun meeting with police officers of the Sixth Precinct "in an effort to establish mutual understanding and respect." Letter from Don Goodwin, Mattachine Society president to Mayor John Lindsay (Nov. 17, 1972) (on file at the National Gay Task Force, New York).
173. See note 164 supra.
175. Id.
176. Id.
177. Letters from Don Goodwin, Mattachine Society president, to Mayor John Lindsay and Commissioner Patrick Murphy (Nov. 17, 1972) (on file at the National Gay Task Force, New York).
Three months later, in February of 1973, representatives of the gay community met with Murphy’s successor, Commissioner Donald Cawley, Deputy Mayor Hamilton, representing the mayor’s office, and Human Rights Commissioner Eleanor Holmes Norton. At that meeting Commissioner Cawley promised to issue an order prohibiting police use of derogatory language offensive to gay people, and invited the GAA representatives to bring to his attention any serious conflicts between the police and the homosexual community. Around the same time, Commissioner Cawley appointed Lt. Louis DeVito liaison officer from Police Headquarters to the gay community.

On August 9, 1973, Commissioner Cawley issued the promised order to all commands. It advised police officers that the ability to regard citizens as individuals, rather than as stereotypes, was essential to police professionalism. It went on to proscribe the use of language demeaning to gay people.

Over the past decade there has been a significant improvement in the area of human relations involving various ethnic groups. Especially noteworthy is the awareness, both on the part of the police and the general public of the importance of refraining from the use of slurs or derogatory phrases when referring to different groups, including the homosexual community. Therefore, in the course of Department business, i.e., daily contacts, crime reports, communications, radio messages, missing persons, etc., the terms “homosexual” or “gay” shall be used whenever they are relevant. Other expressions, which are often viewed as derogatory, are not to be used.

The order was praised highly by the members of the GAA and by Human Rights Commissioner Norton, who said, “[T]he new regulation should serve to improve relations between the gay community and the police, just as such regulations improved the relationship between the police and deprived ghetto communities."

By this time, gay activists and their supporters had come a long way toward solving the problem of police harassment. They were meeting regularly with representatives of the Sixth Precinct, which contained the most dense homosex-

180. Letter from Bruce Voeller, supra note 179.
181. Id.
183. Id.
185. See note 173 supra. These meetings developed into weekly “rap sessions” at the Sixth precinct. N.Y. Times, Aug. 28, 1973, at 70. col. 4. Within a year, relations between the gay
usual population in the city, and they had established strong connections with the highest ranking officials in the police hierarchy. Still, sporadic incidents of harassment continued through the end of the Lindsay administration. But in sharp contrast to the situation a decade before, each successive incident mobilized the gay community to renew the vigor of its protest. In many cases, the activists were able to persuade the police the time had come for an attitudinal change. Police officer Frank Toscano, a veteran of the incidents at the Stonewall Inn, commented on the riots and their effect. He “knew right then, or the day after, that there had to be a better way.”

The 1973 confrontations with the police of the Tenth Precinct in Chelsea further illustrate police responsiveness to organized resistance. On June 25, a group of gay activists met at a private club to discuss police inaction after a wave of violence against gay people. Three uniformed police officers burst into the meeting without a warrant and demanded to see identification, permits and charters. One of them pushed people around and spoke with a derisive lisp. Then he arrested one of the men, John Howard, and took him to the Tenth Precinct. After having his hair pulled, being forced to walk with his head bowed in submission, and repeatedly being called a “fag,” Howard was released.

The following month officers from the Tenth Precinct distributed parking tickets to taxi drivers waiting to pick up passengers at three a.m. outside of the Eagle’s Nest, a popular gay bar in Chelsea. When Jack Modica, one of the bar owners, went outside to investigate, the police attacked him. One of them jammed a knee into Modica’s groin, forced him to his knees, and stomped on his leg. Then the policeman banged Modica’s head against the sidewalk before cuffing his hands and taking him to the stationhouse; he sat there for hours in a cell before he was released.

Shortly after these two incidents, members of GAA protested this harassment at the Tenth Precinct stationhouse. Approximately 250 people chanted and shouted slogans while GAA president Bruce Voeller met with the precinct captain. The captain promised to make efforts to ease the acknowledged friction between certain officers and the gay community. In addition, he promised to remove the traffic signs used for harassment near the Eagle’s Nest and to send his

community and the Sixth Precinct had improved tremendously. A softball game between the Mattachine Society and the police team raised over one thousand dollars for a fund to help retarded children.

186. Id.
188. Id.
190. Id.
staff to attend the "rap sessions" held with homosexual activists at the Sixth
Precinct.\footnote{Village Voice, Aug. 16, 1973, at 52, col. 2.}

By the end of 1973, the situation for all gay people in New York had
improved considerably. Shortly before the end of the Lindsay administration, one
of its members, Howard Brown, Lindsay’s former Health Commissioner, acknow-
ledged his own homosexuality in an interview with the New York Times.\footnote{N.Y.
Times, Oct. 3, 1973, at 1, col. 5.} Two weeks later, Brown announced the formation of the National Gay Task Force, a
new broad based civil rights organization for homosexual men and women.\footnote{N.Y.
Times, Oct. 16, 1973, at 37, col. 3.} This announcement was somewhat ironic. A mayoral administration that had
begun by harassing "promenading perverts" ended up watching one of its own
distinguished members proudly "promenading" his "perversion" across the
front pages of the city’s newspapers.

III

The progress in combatting harassment begun during the Lindsay adminis-
tration continued through the end of the decade. The late seventies saw little of
the entrapment, arrests, violence, or contemptuous conduct that had permeated
police relations with homosexual citizens in the past. Conflicts between the two
groups coalesced around two issues: employment protection for homosexual po-
lice officers and protecting gay victims of crime.

The employment issue arose in the context of discussions of a proposed city
ordinance which would have outlawed discrimination in employment based on
sexual orientation. Although the measure was first introduced during the Lindsay
administration,\footnote{See text accompanying note 122 supra.} it was not voted out of committee until 1974.\footnote{The City Council’s General Welfare Committee approved the bill on April 18, 1974 by a
vote of seven to one. N.Y. Times, April 19, 1974, at 1, col. 1.} The legislation
would have prohibited the police and fire departments from discriminating
against homosexual employees or applicants for employment. Apparently, the
anti-discrimination regulations of the Civil Service Commission,\footnote{See text accompanying notes 98 & 127 supra.} were inappli-
cable to those departments. The Patrolmen’s Association took a strong stand
against the legislation. They argued that state laws prohibiting sodomy rendered
homosexual activity criminal and that the police department should not be forced
to hire self-proclaimed criminals.\footnote{N.Y. Times, April 19, 1974, at 44, col. 1.}

The police were joined by the Uniformed Fire Officers Association\footnote{N.Y.
Times, April 24, 1974, at 45, col. 4.} and the
Uniformed Firefighters Association,\footnote{N.Y.
Times, April 30, 1974, at 81, col. 7.} formerly headed by Michael Maye.\footnote{See text accompanying notes 154-67 supra.
fire department argued that because firefighters work and sleep in close quarters, the employment of openly gay firemen would damage morale and impair the efficiency of the fire department.\textsuperscript{203} One fireman said, "All members of the team have to be a man’s man."\textsuperscript{204} The New York Archdiocese of the Roman Catholic Church also opposed the bill.\textsuperscript{205} The City Council defeated the bill in May 1974.\textsuperscript{206}

At that time, it was clear that the police department would not tolerate homosexual police officers. The month that the bill was defeated, a twenty-six year old Staten Island woman was fired from her job as a probationary police officer on charges of lesbianism.\textsuperscript{207} The issue resurfaced a few years later after the San Francisco Police Commission approved an equal opportunity hiring plan that called for the recruitment of homosexual police officers in 1977,\textsuperscript{208} and Edward Koch was elected mayor in the same year.\textsuperscript{209}

The day Mayor Koch assumed office in 1978, he promised to issue an executive order prohibiting discrimination in municipal employment based on sexual orientation.\textsuperscript{210} His promise caused a flurry of protest, especially from Patrolmen’s Benevolent Association President Samuel DeMilia.\textsuperscript{211} DeMilia reiterated the argument that the practice of homosexuality was criminal and therefore inconsistent with service on the police force.\textsuperscript{212} He also argued that gay police officers would be unable to command the respect of the public and would ruin the morale of fellow policemen.\textsuperscript{213}

But Koch had support as well as opposition. In addition to the approval of the gay activists,\textsuperscript{214} a number of anonymous policemen showed their support for Koch by making their homosexuality known to the media.\textsuperscript{215} The new Police

\textsuperscript{203} N.Y. Times, April 19, 1974, at 44, col. 2.
\textsuperscript{204} Id.
\textsuperscript{205} N.Y. Times, April 30, 1974, at 81, col. 8.
\textsuperscript{206} N.Y. Times, May 24, 1974, at 1, col. 5. Although it has been introduced a number of times since, the anti-discrimination legislation still has not passed the City Council. N.Y. Times, Nov. 30, 1978, § 2, at 1, col. 1.
\textsuperscript{207} N.Y. Post, Aug. 5, 1974, at 11.
\textsuperscript{208} N.Y. Times, Aug. 26, 1977, at 14, col. 5.
\textsuperscript{209} N.Y. Times, Nov. 9, 1977, at 1, col. 6.
\textsuperscript{210} N.Y. Times, Jan. 24, 1978, at 1, col. 1.
\textsuperscript{211} N.Y. Times, Jan. 4, 1978, at 16, col. 3.
\textsuperscript{212} Id.
\textsuperscript{213} N.Y. Times, Feb. 10, 1978, at 25, col. 3.
\textsuperscript{215} The Village Voice published an interview with an anonymous homosexual policeman who made over two hundred arrests and received two commendations for bravery during his ten years on the police force. The policeman lives with his lover, a real estate broker, in New Jersey, and would not come out of the closet on the job. Daly, Interview With a Gay Cop, Village Voice, Jan. 16, 1978, at 11-12. A few weeks later, the New York Times published an anonymous letter from a gay policeman, who estimated that about ten percent of the police force was gay. He was also afraid to come out on the job, despite Mayor Koch’s executive order. N.Y. Times, Feb. 10, 1978, at 25, col. 2.
Commissioner, Robert McGuire, said that he would uphold the law and that he was prepared to hire homosexual police officers as soon as the mayor signed the order. 218 On January 23, 1978, Mayor Koch issued the order, which prohibited discrimination based on sexual orientation in all agencies under mayoral control, including the police and fire departments. 217 The order did not require affirmative efforts to hire homosexual police officers. 218

The following September, Commissioner McGuire issued an order to all commands establishing an Office of Equal Employment Opportunity within the department, under the direction of the Assistant Commission for Equal Opportunity. 219 The Assistant Commissioner was empowered "to investigate all complaints or allegations of employment discrimination based on sex, race, creed, color, national origin, sexual preference, religion or handicap." 220 In addition, the Assistant Commissioner was vested with the authority "to initiate and/or recommend charges and specifications against any member(s) of the department, including supervisory officers, who violate the department's policy providing for equal employment opportunity." 221 Finally, employment protection was accorded to homosexual police officers.

The other major issue of importance to gay activists in the late seventies was the problem of police protection for gay victims of crime. Although gay men had always been favorite victims of criminal violence, 222 the problem escalated as gay people became increasingly visible. 223 In some precincts the police were willing to protect homosexual crime victims, but were hampered by their reluctance to report the crimes. In the West Village, gay men often rendezvoused for anonymous nocturnal sex in the abandoned trucks and piers along the Hudson River. These places were also frequented by muggers and murderers who preyed on their victims' desires for anonymity and physical contact. 224 But the muggings were rarely reported for fear of reprisal. One official at the Sixth Precinct said that if crimes were reported, the department would move in, "not to harass the gays, believe me . . . but in a sense to protect the gays who are a part of our Village fabric." 225

In other precincts however, the police attitudes were less protective. An illustrative incident occurred the night of July 16, 1977, in Carl Schurz Park on

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218. Id. at 24, col. 1.
220. Id. (emphasis added).
221. Id.
222. See note 17 supra.
223. See text accompanying note 100 supra.
225. Id.
the Upper East Side. Two gay men were walking through the park when they passed a gang of youths. The gang began insulting them and then surrounded the two men. One of the two was knocked to the ground, kicked, and pummelled. The other managed to escape, and he ran to the Gracie Mansion guardhouse for help. When the police officer on guard heard that the gang was beating a man, he responded, "I cannot leave my post unguarded." Later he said to a fellow officer, "I heard their screams for help, but I couldn't leave the post unguarded. I had to wait for [unheard name] to get back." One of the victims, who was severely bruised and bloodied by the youths, believed that heterosexual crime victims would have been accorded better treatment.

A number of citizens have also complained about the attitudes of the Central Park police toward homosexual crime victims. During the summer of 1978, a series of violent attacks on gay men in the Ramble, a heavily wooded section of the park, prompted a flurry of criticism. A physician who lives near the park said, "The cops in the park have seldom given gays anything but harassment. Go to them and you, the victim, are made to feel like a criminal." A young executive recounted the following incident: "I was attacked by two kids while walking alone in the Ramble last month. Miraculously, I found a patrolman and told him what had happened, as blood streamed down my cheek from a cut over my left eye. You know what he said? 'Serves you right, faggot.'"

Sporadic harassment continued in other forms as well, but in most cases, it was notably less malicious than it had been in the past. In April, 1976, New York police officers arrested five men after answering ads for prostitution that the men placed in a homosexual newspaper. The New York Civil Liberties Union charged that the police had entrapped the five. The police responded, "It's not entrapment. They're advertising, it's for sale." They said that they weren't interested in consensual homosexuality as such, but in prostitution. The police warned that such advertisements often lure unwary victims into extortion, blackmail, and crimes of violence. To the extent that the police intended to deter crimes involving the public safety, these arrests were not really "harassment" within the meaning of the definition above.

The second half of the decade also witnessed a decline in police actions against illegal after-hours clubs which, the New York Times reported, by 1977 had become "a permanent fixture of New York's hidden nightlife." The

227. Id.
229. Id. at 42.
231. Id.
232. Id.
upsurge in such clubs was attributed partly to a decline in police raids.234 A police official explained why: "They're not a high priority, per se, to us . . . Knocking out a club means nothing. They're back in business the next day."235

By the end of the decade, serious police harassment of gay people had become uncommon in New York City. When it did occur, the reaction was swift and strong. In September, 1977, police from the Sixth Precinct tried to disperse a noisy predominantly homosexual crowd that was blocking pedestrian traffic on Christopher Street. In the ensuing ruckus, the words "'pig' and 'faggot' were hurled about, and the crowd accused the police of harassment.236 Shortly thereafter, the precinct police re-established237 the program of weekly community dialogues with representatives of the gay community.238 Captain Aaron Rosenthal, the precinct's commanding officer, ordered all of the officers under his command to participate in at least one of the sessions.239 He also circulated a memorandum among the officers telling them that their job was not to pass judgment on civilian lifestyles, and he indicated that he wanted gay people to serve on the precinct's auxiliary police force.240

Rosenthal's successor at the Sixth Precinct, Captain Thomas Ryan, continued the trend of improving police relations with gay people. In a 1979 interview with a homosexual news magazine, Ryan discussed his progressive views.241

I'm sure there are some gay people who would make excellent police officers. I'm sure that we have gay people in the police department now, as is frequently indicated, who are not known to be gay people. But I feel each person should be viewed as an individual who either has or has not the motivation and the competence and the capability for being a police officer . . . An individual, whether he is gay or not, who is an outstanding police officer would have acceptance from the general community, because people are more concerned . . . with individuals as functioning persons rather than in terms of stereotypical views that have existed in the past. So I think that a person, regardless of his sexual orientation, who is doing a good job as a police officer would have to be accepted.

... I think that as gay people and police officers get to know each other better, I can only see an improvement in their relationships. I regard the

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234. Id. at 29, col. 1.
235. Id.
236. Interview with David Rothenberg, member of advisory panel to the New York Police Department Chief of Operations, in New York City (Dec. 10, 1980).
237. See note 186 supra.
239. Id. at col. 3.
240. Id.
gay community as a very important part of my precinct. I have an open

door in terms of any problems that they face. I hope that they will let
me know when they need assistance or when they feel we can help them
in any way. I want and I intend to see that relationships between the gay
community and the police in this precinct are excellent, and we're going
to work toward that goal.242

By the end of 1980, two final occurrences heralded the promise for a further
reduction in homosexual harassment by the New York police. The first involved a
new addition to the curriculum of the New York Police Academy. In December,
1980, fifteen classes of cadets at the academy viewed a forty minute videotape
designed to equip them to deal with lesbians and gay men during their law
enforcement careers.243 The tape records a dialogue between representatives of
the New York Gay Teachers Association and police officers from the Sixth
Precinct, on the subject of anti-homosexual prejudice in the police force. After
the tape was shown, the cadets were invited to raise questions with gay activists
who attended the class. The response to the lesbian and gay videotape has
generally been favorable, and it is expected to become a regular part of the
academy curriculum.244 The inclusion of this material in police training pro-
grams may well help to change the individual attitudes of future police officers.

The other significant occurrence of 1980, and perhaps the single most
significant event in the history of the New York homosexual community, was the
decision of the New York Court of Appeals in People v. Onofre.244 In that case,
the court held unconstitutional the New York statute prohibiting non-commercial
consensual adult sodomy. The sodomy statutes had been used throughout the
sixties to harass gay men, and although fewer sodomy prosecutions were brought
in the seventies, the spectre of arbitrary enforcement, in itself, impinged on
individual freedom. Now that the statute has been invalidated, unscrupulous
police officers will never again be able to enforce it or threaten to enforce it in
order to harass homosexual citizens.

Homosexual harassment by the police has declined substantially since 1960.
The use of physical and political resistance by homosexual activists has prodded
the police to redefine their relationship with the gay community. Yet some
questions about the future of harassment remain unanswered. It is not yet clear
whether the physical and political resistance to harassment by the homosexual
community will prove sufficient to bring about major attitudinal changes among
individual police officers. The experience of other groups that have used similar

242. Id
244. Id. at 6.
techniques suggests that old attitudes die slowly. Police harassment of Blacks, Latinos, and other racial and ethnic minorities is still common in many American cities. Will the legalization of adult consensual sodomy give rise to a higher level of politicization in the gay community? Will the political climate of the eighties bring on an anti-homosexual backlash? Whatever the future holds, all groups victimized by police harassment should reexamine their successes and failures. Perhaps through critical analysis, groups that suffer repression at the hands of law enforcement officials will discover a final solution to the problem of police harassment.