



## Prosecuting the Gay Teen Murder

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Lawrence King, an eighth grader who identified as gay and wore makeup and nail polish, was 15 when he was declared brain dead on Feb. 13. The day before, he had been shot in the head in an Oxnard, Calif., classroom full of students. Police have charged a sweet-faced boy called Brandon McInerney, 14, with first-degree murder and with a hate crime. According to the Los Angeles [Times and KTLA](#), McInerney and some other boys accosted King about his sexuality on Feb. 11. Students apparently often taunted King, who didn't even have a safe home to return to after school: he was living in a shelter for abused and troubled children.

The crime, a chilling execution carried out in a typical suburban school — allegedly by a boy who probably hasn't started shaving — has shocked Oxnard and captured the attention of gay and transgender activists around the country. **On Friday, the National Gay and Lesbian Task Force released a statement saying, in part, "Our hearts go out to Lawrence's family — and to all young lesbian, gay, bisexual and transgender kids who are — right now, right this minute — being bullied and beaten in school while adults look the other way."** Another group, the Gay, Lesbian and Straight Education Network (GLSEN) called for passage of the Matthew Shepard Act, which would dramatically increase the power of the federal government to prosecute hate crimes.

But while King's short life and violent death are surpassingly sad, it's not clear that officials at E.O. Green Junior High, his school, "looked the other way." What's more, the task force is exaggerating the frequency of assaults on gay kids, the vast majority of whom make it through school safe and happy.

GLSEN itself has published a great deal of survey data showing that most gay kids aren't suffering the way King did. Though the organization paints a still overall grim picture for young gays, fully 78% of gay and transgender kids say they feel safe at school, [according to a 2005 GLSEN report](#). According to [another GLSEN survey released in 2006](#), only 18% of gay and transgender students said they had been assaulted in 2005 because of their sexual orientation (only 12% — probably many of the same kids — said they had been assaulted because of the way they express their gender). By comparison, according to a 2007 Centers for Disease Control report, 18.2% of male students and 8.8% of female students reported being in a physical fight at school in the last year. Of those in the GLSEN report who had been harassed or assaulted, more than one-tenth — 13% — said the incident wasn't serious enough to report. When they did report the incidents, the response from school staffs was positive about 70% of the time. That's not enough — it should be 100% — but it belies the dire picture painted by gay groups in the wake of King's killing.

True, 66% of gay and transgender kids said they had heard homophobic remarks. But roughly the same proportion — 62% — had heard sexist remarks. Some 16% of gay and transgender kids said they had been harassed because of their sexual orientation, but 18% said they had been harassed because of "the way you look or your body size." (Teachers reported they heard sexist comments more often than homophobic ones, and they also saw more harassment based on

appearance and weight than on sexual orientation.) It's difficult to imagine the teenager who has never been painfully teased about something. We forget sometimes that to be a teenager — any teenager — is to learn to cope with the turbid, inchoate bigotries of still-developing minds.

Of course, King wasn't just teased — he was put to death. But GLSEN has found that the frequency of anti-gay harassment and assault at schools has dropped steady through this decade. Fully 57% of gay and transgender students now say they are comfortable raising gay and transgender issues in class, and 71% have discussed those issues with a teacher at least once. Perhaps the most encouraging statistic: 57% of all students in public schools now say they know a kid who is gay; 20% have "a close personal friend" who is gay. Those numbers were unimaginable even 20 years ago. As I have [pointed out more fully before](#), research from Cornell's Ritch Savin-Williams has shown that most gay teenagers are thriving and happy most of the time. They are periodically confused and depressed, but what teen isn't?

Still, it's hard to look at the photo of King's fragile little face and not want to *do something*. Expanding federal power to prosecute hate crimes sounds like a good idea, unless you are (as I am) opposed to the whole enterprise of criminalizing people's thoughts. Others have made this argument at greater length ([here's one example](#)), but in reading about the King tragedy I was reminded of Robert Kolker's [fascinating New York magazine piece last fall](#) about the case of Anthony Fortunato, who was sentenced to seven to 21 years in prison for his role in the death of Michael Sandy, a 29-year-old gay New Yorker. Fortunato and three friends lured Sandy from a gay chatroom to their neighborhood with the promise of sex. Instead they wanted to rob him, and they beat him up and chased him onto a parkway where he was hit by a car.

Fortunato, who was 20 at the time of the crime, was charged with a hate crime, but in court a wrinkle emerged: he said he is bisexual and had visited gay chatrooms for sex many times. As a bisexual who had regular sex with men, did Fortunato really hate gay men? So much so that he would target one for robbery and beating? Possibly. As Kolker wrote, "Lots of gay hate crimes are committed by confused, self-loathing gay people." Or was it more likely that Fortunato picked Sandy for robbery merely because he knew a convenient place on the internet where he could find guys with pot and a willingness to meet a stranger? The law is not capable of reliably discerning what Fortunato was thinking at the time (on the stand, Fortunato himself was still struggling with his feelings about sexuality, including his own). That's why we should punish crimes, not the vaporous intentions that lead to them.

We may never know the real motivations for King's murder. McInerney, the alleged killer, is being charged as an adult and, if convicted, will likely spend the rest of his childhood, and most of his adulthood, behind bars. He deserves harsh judgment. But his victim's heartbreaking life and death should be occasions for mourning, not legislation.

*The original version of this story has been amended. It now makes clear that the conclusions of the two cited GLSEN reports are at variance with the writer's own conclusions from studying the same statistics. Also, the story originally described the second GLSEN report as "released the same year," that is, in 2005, but GLSEN says it was released in 2006. Lastly, the story originally reported that 22% of gay and transgender students who claimed that they had been assaulted because of their sexual orientation said the incident wasn't serious enough to report; the actual figure is 13%.*