10-34

The Farmer case:

Prosecution attacks criticism that its stance was homophobic

The following letter, addressed to Michael Brady, president of The Dorian Group, outlines the response of the King County prosecutor's office to criticism of its handling of the Steven Farmer case (see June newsletter for background on the case). The letter was written by Michael T. Hogan, deputy prosecuting attorney.

The Farmer case has generated a lot of emotion within the community. Unfortunately, there has been much misinformation and misunderstanding over what actually occurred in the case. The Prosecutor's Office has been characterized as homophobic. It has been inaccurately reported that the State sought an exceptional sentence based *solely* on the fact that Farmer carries the HIV virus today. Additionally, some have claimed that the State's actions will discourage testing. These false perceptions should be answered. If believed, these misperceptions may do more to deter research than any actions of the prosecution. Now that all matters are of public record, the prosecution is ethically allowed to respond.

First, it has been widely claimed that the confidentiality of testing was destroyed in this case. This perception is absolutely untrue. It is a fundamental legal concept that the physician-patient privilege is waived if the patient reveals his or her confidential communications to third parties. Three witnesses were subpoened and testified under oath that Farmer told them about his positive HIV status and his participation in Harborview's AIDS study's program. No pre-exisiting doctor-patient privilege was invaded. Despite the evidence that Farmer was participating in Harborview's AIDS study program, the State did not subpoena Harborview's confidential records. The State instead chose the less intrusive method of proving Farmer's HIV status on the basis of his statements to others, corroborated by a court-ordered test after conviction. The alternative of subpoening Harborview's AIDS Project records was rejected in deference to the importance of fostering research at Harborview. Both past and future participants in these confidential research programs should be reassured by this choice made by the Prosecutor's Office.

Second, Farmer's attorneys claimed that it was impossible to determine a person's HIV status until 1985. This is untrue. Dr. Hunter Handsfield testified at sentencing that the currently used commercial test to detect the HIV virus became widely available in 1985. However, before 1985, a person's antibody status was monitored by a combination of blood testing to monitor the T-cell count, coupled with observations of objective symptons such as lymph node activity. The AIDS study used these methods to diagnose and treat AIDS and AIDS related diseases. This testimony of Dr. Handsfield was not rebutted by any contrary testimony, nor was it reported by the SGN or The Weekly. The witnesses never stated that Farmer told them *how* he had been diagnosed. They merely related that, as early as 1983, Farmer told them that he had tested positive for the presence of the virus and was participating in an AIDS study program at Harborview.

Third, it has been claimed that Mr. Farmer received an exceptionally long sentence solely because of his present HIV status. This is untrue. Mr. Farmer is not the first defendant known to be HIV positive. The State sought an exceptional sentence solely due to Farmer's knowing *actions*,made particularly dangerous by his health status.

Under the Sentencing Reform Act of Washington, convicted persons are to be sentenced within a presumed range of punishment for crimes unless "substantial and compelling circumstances" exist to justify a sentence which goes above or below this standard range. For crimes proven to be more serious than the average case, the mjudge may order an enhanced sen-

Please see next page...

Prosecution responds...

From previous page...

tence. Examples of these more serious cases include crimes with multiple victims or where there is deliberate cruelty to the victims, as often occurs in battered women and children cases. In Farmer's case, Judge Charles Johnson imposed an exceptional sentence on the grounds of deliberate cruelty to the juveniles: knowing that he carried the HIV virus, he proceeded to subject others to the risk of infection without taking steps to protect or warn his partners. The State's recommendation would have been the same if Mr. Farmer were heterosexual and knowingly exposed young women to the virus without taking safety precautions or warning them. A community should expect nothing less from its prosecutor.

Many have pointed out that the partners themselves should have ensured that safe practices occured. No one disagrees with this. Ultimately, each person must ensure their own safety and those who do not may pay a very high price. However, the lack of good judgment by these juveniles is no justification for knowingly expsoing others to the HIV virus without taking steps to be safe or warn the partner. The situation is similar to Russian Roulette. Everyone will agree that the person who gets shot in such a game behaves irresponsibly. Yet, their poor judgment would not be a defense to the person who pulled the trigger knowing that the weapon was loaded. As Dr. Hunter Handsfield testified at the Farmer sentencing, a person who knows he is HIV psoitive has a duty to be safe, or at a minimum, warn his partner.

Some people have minimized Mr. Farmer's actions since they occurred with prostitutes. "They're just prostitutes" or "that's not rape" has been their insensitive rationale. Lacking job skills and ocming from dysfunctional and/or abusive homes, many youth, gay and straight, find their bodies are a commodity in high demand. For years, "johns," gay and straight, have been prosecuted for exploiting juvenile prostitution. This is not a "gay rights" issue, but an issue of preventing the exploitation of the younger members of our own community. As our legislature recently stated in the preamble to the new Sexual Exploitation of Children chapter of the Revised Code of Washington:

9.68A.001 Legislative finding: The legislature finds that the prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance. The care of children is a sacred trust and should not be abused by those who seek commercial gain or personal gratification based on the exploitation of children.

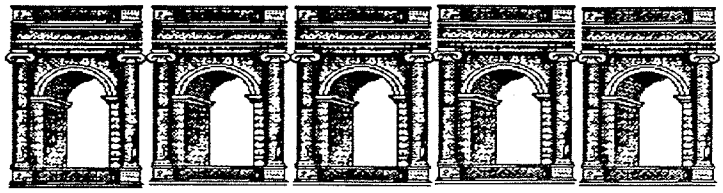
The criminal code defines children as persons under 18 years of age. The law does not prescribe the same responsibility level to minors as it does to adults. Some may disagree with this legislative philosophy, but it is the law which we are mandated to enforce. Historically, opponents of gay rights have often equated homosexuality with pedophilia. It is understandable how our community is sensitive to such false notions. Perhaps some members of our community have viewed this prosecution as just another exmaple of "homosexual-pedophilia paranoia." We have grown accustomed to rallying against attempts to curtail our legal protections by groups who want to "save the children from homosexuals." A careful review of all the facts in this case shows that this prosecution was not part of an anti-gay rights campaign. It was quite simply another case in a long history of combatting juvenile exploitation by adults.

Some have claimed that Farmer wasn't convicted of having sexual intercourse. This is also untrue. At Farmer's trial, the jury found unanimously and beyond a reasonable doubt that Farmer offered, agreed and engaged in sexual contact for a fee. The uncontroverted testimony at trial was that Farmer had unsafe sexual intercourse with the juvenile victims. When Mr. Farmer was arrested, the plice seized over 100 Polaroid-style photographys of nude boys. The photos were suppressed due to the lack of a search warrant. The fact that Farmer was successful in suppressing the photos at trial indicates that he received the same protectiosn of law as any other citizen of King County. The jury unanimously convicted Mr. Farmer without hearing the suppressed evidence.

The motives of the Prosecutor's Office shouldn't be evaluated merely on the basis of this case, but on the basis of its history in the commu-

Please see next page...

Farmer case...



From previous page...

nity. Former Chief Criminal Prosecutor Mary Kay Barbieri was instrumental in authoring the Rape Shield Law, which protects a victim of sexual assault from being put on trial on the basis of their sexual history. The King County Prosecutor's Office recently filed an amicus brief, together with the Northwest Women's Law Center, National Organization for Women, Idaho-Washington Sexual Assault Coalition, and Alternatives to Violence in *State v. Gonzales,* 100 Wn. 2d 738. That case dealt with a rape victim's right to privacy regarding his or her sexual history during pre-trial discovery.

Currently, the King County Prosecutor's Office has a case pending on appeal which involves the privacy of an adult male rape victim. In that case, the victim agreed to a casual safe sex encounter, but was beaten up and raped. He immediately reported the assault and came forward to prosecute what proved to be a difficult case. The Public Defenders sought to ask the victim the names and phone numbers of every man the victim had *ever* had sex with to refute the victim's testimony that he agreed only to safe sexual practices the night he was raped. The defendant was convicted of forcible rape, and was again convicted of assault with the intentto commit rape of another male victim, occurring three weeks after the first rape. The State argued at trial and on appeal that a person, gay or straight, hasn't waived the protections of the Rape Shield Law by following safe sex guidelines. The State's position in this case has received favorable national attention. We look forward to setting a precedent which will protect the rights of all victims of sexual assault, regardless of their sexual orientation.

The Farmer case is not the only case involving AIDS testing in King County. Recently, a straight man was charged with robbing three convenience stores. He drew his blood into a syringe, displayed it, and told two store clerks, "I have AIDS. Give me all the money or I'll kill you." The standard sentencing range for these crimes is enhanced by two years if a robber uses a deadly weapon as opposed to what merely appeared to be a deadly weapon (e.g. a loaded gun versus a toy gun). The State asked to compel a blood test to detemrine if the syringe was a deadline weapon (AIDS-tainted blood). The matter was resolved when the defendant produced test results that he was HIV negative. The State did not seek this information because it was heterophobic. These are issues of community safety, not orientation.

Many people have expressed concern and support for Mr. Farmer. It is appropriate that Mr. Farmer's friends support him personally in a difficult time. It is always tragic seeing a young person sentenced to prison for his criminal behavior. However, as Judge Charles Johnson stated at the sentencing, many of Mr. Farmer's supporters brought their own political agendas into the case, which had nothing to do with the facts, and in so doing they performed a disservice to the community. A person who benefits from the suppression of evidence and the protections of confidential testing programs should not seek to justify or disguise juvenile exploitation under the guise of gay rights or health issues.

Sexual abuse and juvenile exploitation within our community is not new, and will unfortunately continue after this case. The King County Prosecutor's Office encourages all victims to report sexual abuse and domestic violence, and is committed to the vigorous and conscientious prosecution of such crimes. We should be assured that we can successfully seek redress in our courts without regard to our sexual orientation.