



## Whipple, Diane (1968-2001)

by Linda Rapp

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A star athlete, Diane Whipple turned her love of sports into a career, becoming the popular and inspirational coach of the women's lacrosse team at Saint Mary's College in Moraga, California, near San Francisco. Just as she was beginning to enjoy success, however, she was killed in a vicious dog-mauling.

Her partner, Sharon Smith, not only cooperated with the prosecutor of the criminal case against the owners of the dangerous dogs but also took the unprecedented step of filing a civil suit against them, asserting the right of same-sex partners to be treated on an equal basis with heterosexuals. Her actions helped change California law.

Diane Alexis Whipple spent her youth in the eastern United States. She was born in Princeton, New Jersey on January 21, 1968 and grew up in her maternal grandparents' home in Manhasset, New York in a family that also consisted of her mother, two uncles, and two aunts.

Her grandfather encouraged the young people to play sports, and Whipple followed her uncles into lacrosse, becoming an outstanding player at Manhasset High School. She continued as a student-athlete at Pennsylvania State University, where she was a three-time All-American and a key player in Penn State's national championships in 1987 and 1989.

In her senior year the university honored her as its best woman athlete, and she also won the prestigious title of National Player of the Year from the National Collegiate Athletic Association.

In addition to her prowess at lacrosse, Whipple was a runner, and she moved to California to train for the Olympic Games in the 800-meter dash. She missed qualifying for the 1996 team by less than two seconds but continued her dedication to running.

Whipple was living in San Diego in February 1994 when a friend she had met through lacrosse invited her to an evening of dinner and dancing in Los Angeles. Among the other guests was Sharon Smith, a college friend of the hostess in town for training to become a manager at Charles Schwab. As soon as Whipple saw Smith, she told their friend, "*That* is going to be mine."

Smith moved to California a month later, and she and Whipple "did the commuting thing" for a few months before settling together in San Francisco.

The couple was well-matched. "They had the kind of love story sappy romance movies are made of," observed writer Aphrodite Jones. On a vacation in St. Thomas, they decided to have a commitment ceremony, writing their own vows and exchanging rings. Both hoped that their union would include children.

Whipple spent a year as a high school coach at the Menlo School in Atherton before moving to St. Mary's, which had just been admitted to NCAA Division I.

Her work was cut out for her. "The first time she saw us play [at St. Mary's], I thought she would fall over laughing," recalled team member Amy Harms at Whipple's memorial service. "Knowledge of the sport got Coach her job. But friendship made us love her."

Whipple was thoroughly professional yet unconventional in molding her inexperienced charges into a team. In addition to stressing the development of skills, she hosted team dinners and sent her athletes on scavenger hunts to build solidarity.

Against all odds, the Gaels of St. Mary's managed to finish with an 8-8 record, far better than expected.

"We were the Bad News Bears when she came here, but she made us a team," stated student-athlete Megan Bryan. "She helped us get so close. We were her creation."

Athletic director Carl Clapp recalled that "whenever [Whipple] talked about the women's lacrosse team, her eyes started watering. She was so passionate."

Those visions of success on the playing field, along with her intention to grow old together with Smith, were brought to a sudden end when she was fatally mauled by dogs belonging to her neighbors on January 26, 2001.

Whipple was still alive when paramedics arrived at the horrific scene and rushed her to the hospital. Doctors worked valiantly to save her, but she died approximately an hour after their two-hour surgery to repair the extensive injuries that she had suffered.

Smith, who had come home from work and found their street clogged with police and fire department vehicles and media trucks, was at the hospital when Whipple came out of surgery in "very critical condition."

"Sharon believed that her lover hung in there just so she could hold her hand one more time, so she could say good-bye in person," wrote Jones.

The requiem Mass for Whipple was held at the campus of St. Mary's. Over 450 family members and friends squeezed into the chapel, and some 200 more were accommodated in a nearby meeting room.

The fatal attack on Whipple made headlines across the nation, and public indignation grew as more facts about the incident came to light.

The two dogs that mauled Whipple were Perros de Presa Canarios, also known as Canary Dogs after the Canary Islands, where the breed was developed. Originally used for dog-fighting, these massive animals are not only extremely strong but also very territorial, a combination that has in recent years caused them to be sought after by drug lords and gang leaders looking for imposing guard dogs.

Whipple was afraid of the Presa Canarios, as were many fellow tenants in her apartment building and other residents of the Pacific Heights neighborhood in San Francisco. One of the dogs had bitten Whipple on the wrist in December 2000. Her injuries at that time were minor, in part because her heavy sports watch had borne some of the brunt of the impact.

Following the fatal attack, more than forty people contacted the San Francisco Police Department to report previous incidents of aggression by the Presa Canarios against themselves, their children, or their dogs. None of them had spoken up before, in part because they felt intimidated by the dogs' owners, Robert Noel

and Marjorie Knoller, a married couple who were attorneys in joint practice.

Noel and Knoller took a special interest in representing convicted felons and filing lawsuits against the state of California on their behalf. Among their clients was Paul Schneider, a white supremacist and member of the Aryan Brotherhood. It was Schneider who, while behind bars, initiated and financed the project of acquiring and breeding Presa Canarios.

After Whipple's death, Noel and Knoller spoke to the press and appeared on television shows seemingly at every opportunity, with the apparent goal of exonerating themselves. On *Good Morning America* in February 2001, Knoller--incredibly--stated, "I wouldn't say it was an attack. Bane [the 120-pound male Presa Canario] was just overly interested in Ms. Whipple." Noel, appearing on *Prime Time Live*, insisted that Bane "was a really gentle dog." Such comments--so clearly at variance with the facts--combined with the couple's complete lack of expression of regret or remorse, shocked journalists and viewers alike.

Both Presa Canario dogs had been seized immediately following the mauling, and Bane, the animal who had inflicted the fatal wounds, was euthanized the same day. Hera, the slightly smaller female, was held by San Francisco Animal Care and Control (ACC), pending the outcome of a dangerous dog hearing.

There was public outcry both from people who wanted the second dog destroyed immediately and from others who called for her to be spared. Some in the latter category were well-meaning individuals who hoped to adopt and rehabilitate the dog, but others threatened to bomb the shelter if the animal was put down. In response, the ACC had to install new security systems. In January 2002, after the dangerous dog hearing, Hera was euthanized.

The case was rapidly turning into a media circus, but District Attorney Terence Hallinan and Assistant District Attorney Jim Hammer were determined to bring the people responsible for Whipple's death to justice.

After evaluating the evidence collected by the San Francisco Police Department, the California Department of Corrections, and investigators for the District Attorney's own office, Hallinan and Hammer reviewed case-law relating to instances of fatal dog-maulings. Murder convictions for such incidents had been obtained in Ohio and Kansas, but there had never been a charge of murder in a California case.

Nevertheless, Hallinan considered the precedents strong and the evidence in the Whipple case compelling, and so, in March 2001, he initiated grand jury proceedings to bring a charge of second-degree murder against Knoller, who was present during the attack, and an involuntary manslaughter charge against Noel.

Only days after the district attorney asked the grand jury to make a precedent-setting finding, Smith took a courageous step for equality for lesbian and gay couples: supported by the National Center for Lesbian Rights and private attorneys Michael Cardoza and Robert Lazo, she filed a civil suit for wrongful death against Knoller and Noel, as well as the owners and manager of the apartment building, to whom residents had complained about the aggressive behavior of the dogs and the potential danger that they represented.

At the time, no same-sex partner had sued for wrongful death in California, and there was no specific provision for such suits in the state law. Based on the latter point, the defendants entered a motion to strike the complaint.

In August 2001, however, Judge A. James Robertson II of the Superior Court ruled that "reading the wrongful death statute to exclude plaintiff would unduly punish her for her sexual orientation. Such a reading has no place in our system of government, which has as one of its basic tenets equal protection for all."

The civil suit thus proceeded, and both it and a companion suit brought by Whipple's mother were finally settled in December 2002. The settlement was sealed by the court, and none of the parties disclosed the terms, but Smith announced that she would donate what she received to a foundation established in Whipple's memory to provide scholarships for women lacrosse players.

Shortly after filing the lawsuit, Smith testified before the California Assembly Judiciary Committee in support of AB 25, a bill to give same-sex couples many of the same rights and responsibilities as heterosexual couples, including the ability to sue for wrongful death, as well as issues concerning inheritance, adoption, health care decisions, and employment benefits, among others.

The bill passed and was signed into law in October 2001, effective January 1 of the next year. Assemblywoman Carole Migden, who had introduced a version of the legislation annually since 1996, acknowledged Smith's contribution to its eventual passage: "Her presence [at the hearing] lent a real dignity to it. . . . Her case brought the issue home to legislators."

Meanwhile, the criminal case was proceeding. In August 2001 the court had granted the defendants' motion for a change of venue, and the trial began in Los Angeles in February 2002.

At that point, Noel and Knoller were indigent. Noel was represented by court-appointed attorney Bruce Hotchkiss. Noel proved to be a difficult client, constantly challenging Hotchkiss's advice and attempting to frame the trial as the result of a conspiracy against him and his wife by the California Department of Corrections.

Knoller's parents provided funds for her legal defense. After hiring and firing several lawyers, she settled on Nedra Ruiz, who, in the course of her opening statement, shocked those present by dropping to her hands and knees and crawling around the courtroom floor in a re-enactment of Knoller's version (or, at least, one of them) of what she had done to try to save Whipple during the mauling.

Like Noel and Knoller, Ruiz sought to shift blame for the attack to anyone except the dog-owners, including, of all people, Smith. During her examination of the bereaved partner, Ruiz elicited the fact that Smith had not reported the December 2000 biting of Whipple to law enforcement, and suggested that but for that omission Whipple might still be alive.

At another point, Ruiz referred to Smith's "gay posse," alluding both to friends attending the trial to lend emotional and moral support and to Assistant District Attorney Hammer, who is openly gay. Ruiz charged that the motivation behind the trial was a political one to further the cause of gay and lesbian rights.

The state offered evidence of the gruesome nature of Whipple's injuries, brought in more than thirty witnesses who had been threatened by the Presa Canarios, and detailed the association of Noel and Knoller with Aryan Brotherhood members Schneider and fellow prisoner Dale Bretches, as well as the attorneys' role in the inmates' scheme to breed Presa Canarios and sell them as aggressive guard dogs. Jurors learned that only days after the attack on Whipple, Noel and Knoller adopted Schneider, who was only six years younger than Knoller, as their son.

For Hammer, "the scariest part of the trial, by far, was when Marjorie [Knoller] testified" in her own behalf. He realized that it was "completely high-risk" for him--"this big, tall, young" man--to cross-examine a middle-aged female defendant with a propensity for crying on the stand since if even one juror considered that he was bullying Knoller and therefore felt sympathy for her, a conviction might be in doubt.

Hammer handled the questioning deftly, however, establishing the crucial element of intent in Knoller's actions. Nevertheless, he "told [Smith] to find her own peace. . . . because if the jury came back with manslaughter, it was manslaughter."

On March 21, 2002, the jurors found the defendants guilty of all charges--Knoller of second-degree murder, involuntary manslaughter, and having a mischievous animal that killed a person; Noel of the last two offenses.

Three months later, Noel was sentenced to four years in prison, but with time served, he was released in September 2003. He was disbarred by California in February 2007.

At Knoller's sentencing hearing in June 2002, Hammer asked her to apologize to Smith, but Knoller remained silent.

Judge James Warren called Noel and Knoller "the most hated people in San Francisco" and described Knoller as "a liar" and "despicable." He went on, however, to shock those in court--and, indeed, the millions across the nation who had been following the case--by throwing out the second-degree murder conviction on the grounds that Knoller "did not know, with absolute certainty" that her dog would kill a person when and where it did.

With the charges reduced, Knoller was also sentenced to four years imprisonment. Upon her release in January 2004, she moved to Florida to stay with her parents. She resigned from the California Bar in January 2007.

After a long series of appeals by both Knoller and the District Attorney's office, the matter went before the California Supreme Court, which ruled unanimously on May 31, 2007 that the case should be sent back to Superior Court for consideration of restoring the jury's verdict of guilty on the charge on second-degree murder.

Judge Warren having retired, a different judge, Charlotte Woolard, was appointed to decide whether or not to reinstate the murder conviction, which carries a penalty of fifteen years to life in prison.

On August 22, 2008, Judge Woolard reinstated the second-degree murder conviction. A month later she sentenced Knoller to the maximum sentence of fifteen years to life in prison, and also fined her \$10,000 and ordered her to pay \$6,800 out of her prison earnings in restitution to Smith.

In rejecting a defense lawyer's request for probation, Judge Woolard remarked that the horrific circumstances of the crime far outweighed Knoller's previous crime-free record.

Knoller will be credited with the nearly three years she was imprisoned for manslaughter. She will be eligible for parole in about 10 years.

After the sentencing hearing, Sharon Smith declared that more than seven years after "the worst day of my life and the last day of Diane's life, finally there is some justice."

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