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S. HRG. 111–464

THE MATTHEW SHEPARD HATE CRIMES PREVENTION ACT OF 2009

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FRIST SESSION

JUNE 25, 2009

Serial No. J–111–33

Printed for the use of the Committee on the Judiciary

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THE MATTHEW SHEPARD HATE CRIMES PREVENTION ACT OF 2009

THURSDAY, JUNE 25, 2009

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC

The Committee met, pursuant to notice, at 10:10 a.m., Room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Feinstein, Schumer, Durbin, Cardin, Klobuchar, Kaufman, Sessions, Hatch, and Coburn.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Good morning. Today the Senate Judiciary Committee is going to address the serious and growing problems of hate crimes. I think the recent events we've seen in this country show that these vicious crimes are a continuing problem. The Senate has before it bipartisan legislation that would help law enforcement respond to this problem. The legislation has been stalled far too long and it's time to act.

The Matthew Shepard Hate Crimes Prevention Act has been pending in the Senate for more than a decade. We've held previous hearings on this bill, the House has held many hearings on it. Both the House and the Senate have voted for this bill, over and over again.

But when Senator Sessions requested a hearing on this legislation at last week's oversight hearing, I wanted to accommodate his request. The Attorney General, who just had been here and normally would not have been back for a number of months, agreed to return to the Committee. Attorney General Holder, I thank you for doing that. That, I appreciate very much.

Now, we know, 2 weeks ago, just blocks away from this hearing room, a man entered the National Holocaust Memorial Museum and he shot and killed Stephen Johns, a security guard. It was a cowardly action by a white supremacist, that resulted in the death of a 39-year-old husband and father of an 11-year-old son. This tragic murder is just the latest in an alarming string of hate crimes.

Now, no doubt the courageous actions of Officer Johns and his fellow guards saved dozens of lives. And I regret that as a private security guard protecting a Federal facility, he was without a bullet-proof vest, because from what I've read about this case it would have saved his life.

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The facts set out in several recent reports show hate crimes and hate groups are growing nationwide. The Leadership Conference for Civil Rights just released a report on hate crimes that found that the number of hate crimes reported has consistently ranged around 7,500 or more annually. That's one for every hour of the day, 24 hours a day.

A recent report from the Southern Poverty Law Center found that hate groups have increased by 50 percent since 2000, from 602 hate groups in 2000 to 926 in 2008. Last Saturday, 2,000 mourners filled the Ebenezer AME Church and they heard Reverend John McCoy say, "The hope of the Holocaust Museum was that the world would never again allow such crimes against humanity, yet Officer Johns is another victim."

As mourners of many faiths and backgrounds listened, Reverend Grainger Browning said, "The same hate that created slavery was the same hate that caused the Holocaust." I looked at the stray bullet holes that covered the door of the National Holocaust Museum, a jarring reminder. From the horrific slayings of Matthew Shepard and James Byrd during the 1990's, to the recent tragic murder of Luis Ramirez last year, its been clear that we have to do more to protect Americans from these crimes and I commend Senator Kennedy for his leadership in this effort over the years.

I'm proud to be a co-sponsor of the Matthew Shepard Hate Crimes Prevention Act of 2009. It's bipartisan. It allows for Federal prosecutors to move in, and it focuses the attention and resources of the Federal Government. We have worked closely with the Justice Department to ensure that we're advancing a bill that's fair and constitutional and effective in cracking down on brutal acts of hate-based violence.

The bill would strengthen Federal jurisdiction over hate crimes and support, but I'd add—this is very important to so many of us—not to substitute for State and local law enforcement, but strengthen State and local law enforcement. Receive strong support from State and local law enforcement organizations across the country. The legislation would combat acts of violence motivated by hatred and bigotry, but does not target pure speech, however offensive or disagreeable. It certainly does not target religious speech. We were very careful in crafting it. We wanted to respect constitutional limits, and also, in a country like ours, the differences of opinion. So I'm glad the Attorney General is here, and I thank him for rearranging his schedule to be here.

But I also see in the audience, and I welcome, Janet Langhart Cohen, a dear friend of both my wife and me. She's the wife of a former Secretary of Defense, a former Senator, a former member of this Committee, and I served with them in those capacities, William Cohen.

I mention this because her husband was at the Holocaust Museum at the time of the shooting. He knew Stephen Johns, the security guard who was killed. So, I look forward to hearing from her, Michael Lieberman of the Anti-Defamation League, and Dr. Mark Achtemeier, and other witnesses today.

I'm going to put my whole statement in the record. I know that we have health care and everything else going on, so it's a busy time.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

Chairman LEAHY. Senator Sessions, we tried to accommodate you by having this hearing, and here we are.

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you, Chairman Leahy. I look forward to the hearing. I am sorry that a number of our members will not be able to be here today because of the health care matter that's moving on and is of huge importance. I know Senator Hatch is going to have to leave, and Senator Kyl, likewise, is a leader in that, as is Senator Grassley, of course, and Cornyn. And Dr. Coburn is not a member of the committee, but is deeply involved in it. So I'm sorry that we probably won't have more people here today.

Let me just say that I believe deeply in the Federal legal system, that we need to get it right. I've had 15 years of practice in that system. The kind of crime we had at the Holocaust Museum is just heartbreaking and unacceptable and needs to be prosecuted to the absolute fullest extent of the law, as any of these kind of vicious crimes need to be prosecuted, and I believe they will.

I would note that a security guard at some other location who's murdered in the course of trying to do that duty and help others probably would not be caught and covered by this, probably would not get the benefit of additional Federal prosecution. Perhaps, I think, this legislation would appear to cover the Holocaust Museum case, and I would certainly admit that and concede that.

Let me just say the way I analyze it. The original Civil Rights Act that protected people in the carrying out of their civil rights duties and protected them from attack because of their race was based on a demonstrated need. There was, indeed, I am sad to say, a situation in significant parts of our country where African-Americans were not protected.

It was easy to demonstrate that there was a double standard of justice and they were not being protected, and often murders or attacks occurred and insufficient prosecutions occurred. Sometimes no prosecution. So there was a justification for that, and that law was passed. I have charged it as a U.S. Attorney, and I believe it was helpful in certain cases.

I would just say, therefore, that when we now carve out a different class of people that may also deserve that kind of protection, we need, and owe it to the American people and to our legal system, to explain why these cases are such, that they're not being adequately prosecuted by State courts, why they're not being adequately prosecuted throughout the system, and why we need to have the Federal Government take over prosecutions that they have not taken over before.

A lot of people don't know that a murder that occurs when someone picks up a rock and murders somebody with it within some State border, that is not a Federal crime and probably cannot be made a Federal crime. Maybe it can be; probably not, because there's not a nexus to interstate commerce or those kind of things. Murders occur all over America every day. Robberies, assaults,

rapes, burglaries occur every day, and those are handled by our State and local jurisdictions. Probably 90-plus percent of criminal prosecutions in America are done by our States and local governments. They do a pretty good job.

In fact, all of us who have been involved in prosecutions know that police and prosecutors and State governments are far more effective today than in the past. They are better trained, many of them have college degrees, the police officers do, and they have access to more technology and equipment. There's more sharing of expertise among agencies, and they're doing a much better job. I think the FBI statistics would show that hate crimes have declined over the last 10 years.

So one of the things that's important is to know, do we have a problem of significant numbers of cases—even less than significant, a noticeable number of cases—not being prosecuted in State and local governments relating to these kinds of issues that we're calling hate crimes? Senator Hatch has for years proposed a study to examine just that, and for years we never got it done. I think that would be a preliminary step in this process.

Also, people are concerned about how we are picking and choosing the people who receive the extra protection. Are we doing that wisely on a principled basis, one that can be defended?

So, Mr. Attorney General, we're glad you're here. It is an important hearing. We want to do this right. I would say, again, I believe people who commit these horrible crimes need to have the stiffest punishment imposed, and certainly support that and look forward to discussing these issues this morning.

Chairman LEAHY. Thank you.

Mr. Attorney General, the floor is yours.

STATEMENT OF HON. ERIC H. HOLDER, JR., ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Attorney General HOLDER. Thank you, Mr. Chairman. Chairman Leahy, Ranking Member Sessions, and members of the committee, thank you for the opportunity to appear before you today to discuss The Matthew Shepard Hate Crimes Prevention Act of 2009. This administration strongly supports this vital legislation, which will help protect all Americans from the scourge of the most heinous, bias-motivated violence.

Nearly 11 years ago—11 years ago—on July 8, 1998, I testified before this Committee as Deputy Attorney General to urge passage of an almost identical bill—11 years ago. While it is unfortunate that 11 years have come and gone without this bill becoming law, I am confident that we can now make the important protections that it offers a reality. Indeed, one of my highest personal priorities upon returning to the Justice Department is to do everything that I can to help ensure that this critical legislation finally becomes law.

As the recent tragedy at the Holocaust Museum demonstrates, our Nation continues to suffer from horrific acts of violence inflicted by individuals consumed with bigotry and prejudice. Today, just as when I first testified on this issue in 1998, bias-motivated acts of violence divide our communities, intimidate our most vulnerable citizens, and damage our collective spirit.

The FBI reported 7,624 hate crime incidents in 2007, which is the most current year for which the FBI has complete hate crime data. Recent numbers also suggest that hate crimes against certain groups are on the rise, such as individuals of Hispanic national origin. Between 1998 and 2007, more than 77,000 hate crime incidents were reported by the FBI. That is nearly one hate crime for every hour of every day over the span of a decade!

President Obama strongly supports this bill. As you know, he cosponsored similar legislation when he was in the Senate. On April 28th of this year, the President said, as he urged, "Members of both sides of the aisle act on this important civil rights issue by passing this legislation to protect all of our citizens from violent acts of intolerance."

The President and I seek swift passage of this legislation because hate crimes victimize not only individuals, but entire communities. Perpetrators of hate crimes seek to deny the humanity that we all share, regardless of the color of our skin, the god to whom we pray, or the person who we choose to love.

The time is now to provide our Federal, State, local, and tribal law enforcement officers with the tools that they need to effectively prosecute and deter these heinous crimes. The time is now to provide justice to victims of bias-motivated violence and to redouble our efforts to protect our communities from violence based on bigotry and prejudice.

For these reasons, I strongly urge passage of The Matthew Shepard Hate Crimes Prevention Act of 2009. I'm pleased to submit the full text of my prepared remarks for the record and I look forward to answering any of your questions. Thank you.

[The prepared statement of Attorney General Holder appears as a submission for the record.]

Chairman LEAHY. Thank you very much, Attorney General. We did pass the Federal hate crime legislation in 1968 in the wake of the assassination of civil rights icon Martin Luther King. That was 6 years before I came to the Senate. But when we see the shooting at the Holocaust Museum, the beating death of a Latino man in Shenandoah, Pennsylvania, the gang rape of a woman in San Francisco because of her sexual orientation last December, these are very, very serious things. I appreciate what you said about your testimony as Deputy Attorney General. I remember that very, very well.

Now, I remember you were asked at the time, but how do you respond? These are really basically local crimes. I mean, every State has laws against murder, every State has laws against assault. Why can't we just say, OK, let the States worry about it?

Attorney General HOLDER. Well, in some ways I don't disagree with that statement, in the sense that what we're looking for here is Federal jurisdiction that would come into play if there was a demonstrated need, if the States did not have the capacity, did not have the willingness, the desire to prosecute these kinds of cases.

In terms of the legislative expansion that we're looking for here, we're looking to have the Federal Government have tools to backstop the efforts that would be done by our State and local partners. There's no question that with regard to the vast majority of these crimes they would be handled by the State, but for those cases that

pose particular problems or expose an inability or unwillingness for the States to prosecute them, we think that there is the demonstrated need for the Federal Government to become involved.

Chairman LEAHY. Is there any violation of the double jeopardy clause of the Constitution in this legislation?

Attorney General HOLDER. No. We have looked at this. We've had the very bright people in the Justice Department's Office of Legal Counsel and other places, and we do not think that there is any problem in that regard.

Chairman LEAHY. I look at a couple of different issues: one is as a former State prosecutor, and also as the son of a printing family, owned a printing business. Could this be in any way used to infringe on people's First Amendment rights, either their First Amendment rights of speech or their First Amendment rights of religion?

Attorney General HOLDER. No. This is a bill that is designed to prosecute and hold people accountable for conduct, not for speech. This does not in any way infringe upon a person's right to say things that I would vehemently disagree with, even about the protected categories of people that we want to expand the bill to cover. This is all about preventing violence and not about inhibiting speech.

Chairman LEAHY. This bill adds crimes against people because of their gender, their disability, or sexual orientation, or gender identity. Is that an important issue today?

Attorney General HOLDER. I think it absolutely is. If one looks at the hate crimes statistics over the last decade, you will see that the third largest component of hate crimes involves sexual orientation. About 12,000 of those crimes over the last decade, 16 percent of all of the hate crimes that have been reported, deal with sexual orientation motivated. Then if you look at the other categories, gender, disability, gender identity, we believe that Federal law should cover those categories of hate-related crime.

Chairman LEAHY. Again, going back to the State law enforcement, because that will be an issue, in the hate crimes legislation we have now there is a certification procedure so you're not just coming in and telling a State to get out of the way. We have put similar, some would say more exacting, certification in this bill. Has that certification procedure worked well in the past on hate crimes?

Attorney General HOLDER. Yes, I think it has. I think that the legislation, wisely, has a certification provision in it. It assures that before the Federal Government would become involved in any hate crime prosecution, there would have to be sign-off at the highest levels of the Justice Department, either by the Attorney General or by the Attorney General's designee, which I think is appropriate.

Chairman LEAHY. I know in the House, our bill allows for prosecutions for you or your designee—and you said it would be the Deputy—in terms of, prosecution by the United States is in the public interest is necessary to secure substantial justice. The House bill has as a criteria where a State doesn't object or doesn't intend to exercise jurisdiction. Which version is better?

Attorney General HOLDER. We prefer the Senate provision. One of the things that we are concerned about is the possibility—at

least the possibility—that a State and local jurisdiction would be unwilling to pursue one of these matters and to put the Federal Government's ability to become involved in this in the hands of a jurisdiction that perhaps would not want to become involved or would not want the Federal Government to become involved, we think is inappropriate. We think there's a balance that is struck here by ensuring that the highest levels of the Justice Department make the determination that the Federal Government should be involved.

Chairman LEAHY. Thank you.

Senator Sessions.

Senator SESSIONS. Thank you, Mr. Chairman. I know Senator Hatch has to leave, and I would yield to him at this time.

Senator HATCH. Well, thank you for your courtesy, Senator Sessions. I appreciate it.

Mr. Attorney General, in the many years that I've been involved in this debate I've asked proponents of Federal hate crimes legislation for evidence that crimes motivated by prejudice and bias are not being punished at the State level, and you've been very hedging here too, because you know most all of them are. Certainly there are individual stories wherein a perpetrator received a sentence that may have been deemed too lenient, and there are, I'm sure, many accounts of crimes being punished as something other than a "hate crime".

Now, you cited a few of these cases in your written testimony, but I've seen little evidence that there is a trend among State law enforcement officials to ignore violent crimes motivated by prejudice, or that State court judges are more likely to give too lenient sentences in those cases than they are in others involving crimes.

Now, do you have any evidence that this is the case, that there is a trend that, specifically with regard to bias-motivated crimes, justice is not being served in this country?

Attorney General HOLDER. I'm not sure that I would say that I see a trend. I think that State and local prosecutors are partners and do a good job. But I also know, as I noted in my prepared remarks, that there are instances where there is the need for the Federal Government to come in where a State or local locality, for whatever reason, has decided not to pursue a case where I think it is clearly appropriate or does not have the ability to do that. One of the things that I think we should focus on here is that this would allow——

Senator HATCH. I don't mean to interrupt you, but I have to on that. Do you know of any instances where that's the case?

Attorney General HOLDER. Well, I have some in my prepared remarks.

Senator HATCH. OK.

Attorney General HOLDER. I think about the case, I think it was in California, involving threats that were made before an assault actually occurred and that matter was not pursued. I believe it involved people of South Asian origin. There are other provisions or other incidents, as I said, that I referenced in my——

Senator HATCH. Will you submit those to us so we can—I mean, we need to look at that.

Chairman LEAHY. They have been made part of the record.

Senator HATCH. Are they? Okay. Well, I'd like to see as many cases as you can come up with that would help us to understand that this is a major problem, because I haven't seen it as one.

Attorney General HOLDER. Well, one of the things I would say, is the bill also allows us, because it does away with those six protected activities, it gives the Federal Government a greater ability to help our State and local partners where perhaps they want to prosecute a case like this, but don't have the technical expertise, the technological capability of building such a case. This would allow the Federal Government to partner with our State and local counterparts.

Senator HATCH. All right. Well, I'm curious about your interpretation of some of the language in this bill. As you know, it would create two new Federal offenses. To paraphrase the bill, both of these provisions would punish those who cause bodily harm to a person "because of" the status, race, religion, sexual orientation, et cetera of "any person".

Now, this, I believe, poses two problems. First, instead of requiring that a defendant actually be motivated by animus or prejudice, the bill only requires that they be motivated by the status or group membership of a person. Now, this would appear to make all rapes, because they are motivated by a person's gender, punishable as hate crimes. Now, they're heinous crimes, no question about that. But even worse, robberies resulting in bodily injury could be classified as hate crimes if the victim was chosen because of his or her gender or disability.

Now, you said in your statement that Justice Department policy would prevent such prosecutions from taking place. But is there anything in this legislation that would prevent such prosecutions down the line? Also, the bill doesn't limit the applicability of crimes motivated by the identity or group membership of the victim. A defendant, therefore, could be punished if he was motivated by his own membership in a protected group, the victim's membership, or even that of an unrelated third party.

Now, with this legislative language, couldn't the bill conceivably be construed to cover almost any violent crime?

Attorney General HOLDER. No, I don't think so. If one looks at the bill, there are specific protected categories that have to be proven to be the motivating factor behind the violent act that the person engaged in. The mere membership of a defendant in a particular group would not be sufficient to trigger the jurisdiction of this statute. The focus really is on, what was the motivation of the defendant in perpetrating the violent act? I do not think that the statute, as drawn and as intended to be enforced, is overly broad, as I think you're suggesting.

Senator HATCH. My time is up. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much, Senator Hatch.

Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

As the Attorney General was testifying, I was thinking back to the 103d Congress, where I introduced The Hate Crimes Enhancement Act, and have tried to get the race, creed, color extended to gender, sexual orientation, disability, and we have always failed. So, this is really the opportunity to do this in this bill.

Second, I think this bill presents the caution to States, to counties, to look deeply to see if a crime of violence, in fact, is motivated by hate, not dismiss it. I think in our culture, and in my State in particular where minorities are becoming majorities of population in some areas—an Asian couple on a beach at Tahoe gets beaten up. Why? Look deeply into that. This law only applies to a felony and a crime of violence.

The backstop of the law is that the Federal Attorney General, if the State refuses to prosecute, can also look into the case and make a decision, well, this case, in fact, does deserve prosecution. The State has not done it, therefore the Federal Government will. These crimes happen. You know, the lesbian couple in a bar. They leave. One woman is tracked. She is raped. I've heard people say, oh, well, she deserved it. This would give the Federal Government the opportunity to look into that crime to see if it's motivated by hate.

There's one other point I want to make. Hate crimes are really the worst. They are scarring forever on the individual, they are brutal when they happen—the Matthew Shepard case is obviously a case in point—and they should have Federal oversight.

So if there is a country or if there is a State that refuses to prosecute, that ignores the element of hate in the commission of a felony, the Federal Government can stand up and say, we're going to prosecute. I think the time is long past for this. I really sincerely believe it's going to be helpful in diminishing these crimes. I come from a State where the immigration debate, some of it, has been a part of hate. People have been beaten up because they happened to be Hispanic, they happened to be standing on a street corner where somebody doesn't want them.

If the State ignores this, the Attorney General can look at it and say, we have decided to prosecute this case. So I have no questions, other than, I really believe 10 years is too long to wait for it. I really believe in 10 years these hate crimes are increasing, and I really believe that backstopping States with the ability of the Attorney General to take action is important. So, I'm very happy to be here this morning. Thank you, Mr. Chairman.

Chairman LEAHY. Senator Sessions.

Senator SESSIONS. Thank you, Mr. Chairman.

Mr. Attorney General, I think you are incorrect in referring to Senator Hatch's question about the need to prove animus or ill will. The statute, on page 10, says if you receive an injury to any person "because of the actual or perceived race, color, religion, or national origin of any person", and the same language is in the next provision—and I would note that the United States Commission on Civil Rights, which six of the eight members have written this body and this Senate Committee and the President to oppose this legislation, say that the legislation does not "require that the defendant be inspired by hatred or ill will in order to convict." It is sufficient if he acts "because of" someone's actual or perceived race, color, religion, national origin, gender, or sexual orientation.

They note that a robber might well steal only from women. Rapists seldom are indifferent to the gender of their victims. They note that the objective meaning of the language and considerable legal

scholarship would certainly include those kinds of offenses as being covered by the Act.

How do you respond to that?

Attorney General HOLDER. Well, I disagree with the interpretation.

Senator SESSIONS. Well, where in here does it say it has to have ill will and animus in the statute?

Attorney General HOLDER. Well, it talks about—it says, "because of". It seems to me that that is what defines the motivation of the person, the person who is the potential defendant, or is the defendant, has to have acted because of the victim's identity or inclusion in one of the protected groups. It does not simply say that—I don't read it nearly as broadly as you indicated. It seems to me that there has to be proof that the motivating factor was that the victim's inclusion in, and then the person's motivation for, getting at a person in one of those groups.

Senator SESSIONS. I would just say that Senator Hatch doesn't agree, and neither does the Civil Rights Commission of the United States, who opposes this legislation, stating, in effect, these are double prosecutions, are not technically violations of the double jeopardy clause. I think that's correct. I think you could technically argue that we have two separate sovereigns. But it is a violation of the double jeopardy spirit of the Constitution. And we can take this step, perhaps, lawfully, but should we, is the question.

Let me ask——

Attorney General HOLDER. One thing I would point out, Senator, is that the section "because of the actual or perceived race, religion, color, or national origin of any person" is the same as the current hate crimes law, 18 USC 245. So I don't see that. Although we expand the number of groups, we're not in any way changing what I think is the actionable language, and that's why I don't think that the concern about this being overly broad is necessarily justified.

Senator SESSIONS. I think it is overly broad. I'm pretty confident of that.

Let's take a situation. I don't know how else to think this thing through. A man speaks forcefully for gay rights at a town hall meeting, an argument ensues, and then he's attacked by an individual. They get in a fight and one assaults him and says hateful words to him when he does that. Would that be a hate crime?

Attorney General HOLDER. It would depend on—you know, the facts are the things that will define——

Senator SESSIONS. I mean, on the surface of it, that would meet the standard. Would it or would it not?

Attorney General HOLDER. Well, it would depend on what was the motivation of the defendant? Did the defendant hit the other person because they were just involved in a dispute, an argument, and the person just happened to—the defendant just happened to go off, or did the defendant strike the person because of his——

Senator SESSIONS. His gender?

Attorney General HOLDER.—sexual orientation.

Senator SESSIONS. So it wouldn't be the words, but it would be the actual sexual orientation, or gender, or race of the person that would make the decision?

Attorney General HOLDER. Well, you have to look at the totality of the circumstances in trying to decide, what was the motivation of the person who actually committed the crime? Was it a person who was just mad, and as we sometimes get mad, and therefore hit the person? Or was the person——

Senator SESSIONS. Well, he used racial slurs, say, hypothetically, before he attacked.

Attorney General HOLDER. Well, that would be an indication that there is the possibility that this——

Senator SESSIONS. All right. What about a minister who goes to the town hall meeting and quotes the Koran and Scripture and says homosexual activities are immoral, and he's attacked by a gay activist?

Attorney General HOLDER. Well, the statute would not necessarily cover that. On the other hand, I think that the concern that has been expressed has actually been the one that has been reversed, where——

Senator SESSIONS. So is that a reason for someone to think that this is odd? Does that strike you as odd, that one might be a crime and another one, not?

Attorney General HOLDER. No. The question—you're focusing on speech there, and the question really is not——

Senator SESSIONS. Well, I'm talking about assaults.

Attorney General HOLDER. Well, but you're talking about—if, in fact, the person—we're talking about crimes that have an historic basis, groups who have been targeted for violence as a result of the color of their skin, their sexual orientation. That is what this statute is designed to cover. The fact that somebody might strike somebody as a result of speech—again, somebody gets into an argument, and we don't have the indication that the attack was motivated by a person's desire to strike at somebody who was in one of these protected groups, that would not be covered by the statute.

Senator SESSIONS. Well, I think that's part of the problem. The elderly are not a protected group, security guards are not a protected group, soldiers are apparently not a protected group; some are protected groups and get special protection under this law.

Attorney General HOLDER. But one has to look at the history, the unfortunate history, of our Nation. There are groups who have been singled out, who have been the objects of violence simply because of their sexual orientation, the color of their skin, their ethnicity. We have to face and confront that reality: that which historically has been a problem for the Nation continues to be a problem for this Nation. In the absence of action by the Federal Government over the last 11 years, I think, turns our back on a reality that I think it is now time for us to confront.

Chairman LEAHY. Thank you. Senator Sessions had mentioned some members of the U.S. Commission on Civil Rights oppose, others support it. I would note that we have 300 civil rights professionals, civic, educational, and religious groups that endorse this; 26 State Attorneys General, former U.S. Attorney General Dick Thornburg, virtually every major national law enforcement organization, including the Federal Law Enforcement Officers Association, the Hispanic American Police Command Officers Association, the Hispanic National Law Enforcement Association, the Inter-

national Association of Chiefs of Police, the International Brotherhood of Police Officers, the Major Cities Chiefs Association, the National Asian Peace Officers Association, National Black Police Association, the National Center for Women and Policing, the National Coalition of Public Safety Officers, and the National District Attorneys Association. I'm particularly pleased to see that, having been vice president of that association. The National Latino Police Officers Association, the National Organization of Black Law Enforcement Executives, the Police Executive Research Forum, Police Foundation, 44 women's organizations, 64 disability rights organizations, and 47 religious faith organizations. We have in the audience representatives of the African-American Ministers in Action, the International Association of Chiefs of Police, the National District Attorneys Association, the National Center for Transgender Equality, Third Way, members of the U.S. Commission on Civil Rights, and the Human Rights Commission. I'll put their letters and statements in the record. I just wanted to note that there are a number who——

[The letters and statements appear as a submission for the record.]

Senator SESSIONS. Mr. Chairman, I would offer this one, too, from the U.S. Commission on Civil rights.

Chairman LEAHY. Of course.

Senator SESSIONS. The first letter of which says, "We urge you to vote against the proposed Matthew Shepard Hate Crimes Prevention Act. We believe the Act will do little good and a great deal of harm." Six of the eight members signed it, including Gerald Reynolds, the chairman, Abigail Thernstrom, the vice chair.

[The letters appear as a submission for the record.]

Chairman LEAHY. Thank you. I will also put in the record another letter from the U.S. Commission on Civil Rights from those members who do support it.

Senator Durbin.

Senator DURBIN. Thank you very much, Mr. Chairman.

Attorney General Holder, it is a legitimate inquiry by this Committee as to whether or not we should expand Federal crimes, whether there are adequate criminal statutes at the State and local level. I think we should ask that question, and you have addressed it from your point of view. When I considered this debate, I looked back in history to another debate on anti-lynching legislation.

Many of the same arguments—in fact, many of the same words—were being used in 1922 to argue against a Federal anti-lynching law, that of course was focused on the issue of race. This expands the concept beyond race to other elements, but it's a legitimate inquiry. I happen to come down on the side that Federal involvement in this is warranted, but I want to address two specific issues, if I can, in a very brief period of time.

The overwhelming correspondence I'm receiving in opposition to the hate crimes legislation comes from the religious community, primarily from Christian churches who believe that this would be an infringement on religious speech. Their argument goes along these lines: if a minister stands before his congregation and says that he believes that the Bible makes it clear that homosexuality is a sinful way of life, and he preaches that to his congregation and

urges them to not only tell their family, but to tell everyone what he believes is the revealed Word of God through the Bible, that homosexuality should be condemned and is in fact unacceptable, and then someone in that minister's congregation acts on that sermon, that motivation, either in speech or in conduct, then the minister could be held responsible as well under this statute.

So I'd like to ask you to be as explicit as you could be in that particular instance, where religious speech condemns homosexuality, urging all of the congregants to join him in that belief and to say, even to those homosexuals that they meet, that they are sinning in their lifestyle, could you be as explicit as you could about whether this statute would inhibit that kind of religious speech or hold that religious minister liable for conduct?

Attorney General HOLDER. Under the facts as you've laid them out, Senator Durbin, that minister would not be liable under the provisions of this bill. This bill seeks to protect people from conduct that is motivated by bias. It has nothing to do with regard to speech. The minister who says negative things about homosexuality, about gay people, this is a person I would not agree with but is not somebody who would be under the ambit of this statute.

The person who actually committed the physical act of violence would be the person—assuming that all the jurisdictional requirements were met, it is the person who commits the actual act of violence who would be the subject of this legislation, not the person who is simply expressing an opinion.

Senator DURBIN. Yesterday, the Department of Justice announced the arrest of a blogger who had called for judges in Chicago to be killed because of a recent ruling involving guns, and went so far as to publish maps as to how you could find their homes, and how they go to work, and that sort of thing.

So let me take it to the next step. What if that religious person I've just referred to, this minister, says it is not only against the Word of God, you have an obligation to go out and punish those who are guilty of this conduct? Now, has that crossed a line where religious speech has now become an incitement to violence? Can that minister be held responsible under this hate crime statute?

Attorney General HOLDER. No. Again, we're looking at people who actually commit physical acts of violence, however deplorable the speech that you have just described—again, speech with which I would vehemently disagree. That is not cognizable under the statute.

Senator DURBIN. Now, let me ask you about bodily injury, because that is an important element in this as well. What about those who are harassed? For instance, homosexuals who are harassed by people who believe that their lifestyle is contrary to the Word of God, people who would carry signs or call their homes? Now, would that conduct, that sort of harassment, be covered by this hate crime bill—could those people be prosecuted for harassing and creating mental intimidation of those who are guilty of what they consider immoral conduct?

Attorney General HOLDER. Again, we're looking for acts that result in bodily injury, and in the absence of bodily injury, that kind of conduct would not be cognizable under the statute.

Senator DURBIN. Thank you very much.

Senator FEINSTEIN. Thank you, Senator.

Senator Coburn, you're up next.

Senator COBURN. Mr. Attorney General, thank you for being here. Appreciate it.

I want to go back and touch on something that Senator Hatch asked. Do we actually have good statistics that tell us that we're not fulfilling and carrying out the intent of state laws that would require us to do this?

Attorney General HOLDER. I think that we have certainly good statistics that tell us that hate crimes are an ongoing problem for this Nation, about 80,000 or so in the past decade. The ability of the Federal Government to help State and local jurisdictions who want to prosecute these kinds of crimes is certainly impacted by the Federal activities requirement that the bill would do away with.

Senator COBURN. Actually, my question is a little different. Do we have statistics where the States are failing? You mentioned two anecdotal cases in your testimony that I heard over the TV before I got here.

Attorney General HOLDER. Right.

Senator COBURN. But do we have statistics that say we have these 80,000 crimes, and 5,000 of them, the States did a poor job on?

Attorney General HOLDER. No, I think we——

Senator COBURN. Do you have any statistics? In other words, I'm trying to find—I have a lot of questions about this bill, the least of which is how you determine what motivation is. But let me ask it a different way. Which States are regularly or systematically failing to enforce their laws punishing crimes of violence?

Attorney General HOLDER. Well, as I said, as I pointed out in my written testimony, there are instances that I think we can point to where a State or a local jurisdiction has failed to act in a way that I think we would all think that a State or locality should. But I don't think, as Senator Hatch asked—I don't think that I can say that there is a trend, that there is a trend among the States or local jurisdictions in failing to go after these kinds of crimes.

What we're looking for is an ability in those instances—those rare instances—where there is an inability or an unwillingness by State or local jurisdiction to proceed, that the Federal Government would be able to stop, would be able to fill that gap. That's why this legislation, we think, is so necessary. It would not put the Federal Government in the position to replace our State and local partners.

Senator COBURN. Okay. I'll try it a different direction. We don't have the statistics? We don't know what the relative level, lack of ability of the States? We're assuming that they need our help? You've noted anecdotally some of those instances, but we don't know. I think we have 45 States that have hate crime legislation. Are the States that don't have hate crime legislation worse in terms of the prosecution of these same similar events that the States that have them?

Attorney General HOLDER. I don't know. I'd have to look at the statistics, look at the evidence that we have. But what I do know is, as the law now exists, there are people who are the objects of

hate violence who the Federal Government does not have an ability to protect if a State decides not to prosecute the case. The way the bill is presently—the way the statute is now enforced, there's also an inability of the Federal Government to help a State or local jurisdiction where we might want to because of the requirement for Federal activity.

Senator COBURN. But we don't know the incidence of that. We don't know the incidence of that.

Attorney General HOLDER. Again, we can point to specific cases.

Senator COBURN. Yes.

Attorney General HOLDER. But I don't have an ability to give you——

Senator COBURN. But I can point to specific cases on lots of things that States don't do that we would like for them to do different that we don't come and make a special law that we can step across that boundary between States and the Federal Government to enforce them to do that.

Attorney General HOLDER. The difference, I think, though, is that there is the historic nature of the kinds of conduct that we're talking about, people who are singled out because of their race, their religion, under the new provision, their sexual orientation, where there is a history of these unfortunate kinds of conduct.

Senator COBURN. I understand that and I agree with that. That's why you have 45 States that have passed those laws.

Let me go back. I asked you during last week's hearing whether you viewed the June 1st murder of Army Private William Andrew Long, that was targeted by a Muslim because he was a U.S. soldier, as a hate crime, and you stated that it is potentially a hate crime. You said that DOJ had responsibility to prosecute those who killed Private Long.

Here's what the gentleman that killed Private Long said. He said, "This was an act of retaliation, an act for the sake of God, for the sake of Allah, the Lord of all the world, and also retaliation on the U.S. military." He remains unrepentant. He says, "I do feel I'm not guilty. I don't think it was murder because murder is when a person kills another person without justified reason." How can this not be considered a hate crime?

Attorney General HOLDER. Well, there's a certain element of hate, I suppose, in that. But I think what we're looking for here in terms of the expansion of the statute are instances where there is an historic basis to see groups of people who are singled out for violence perpetrated against them because of who they are. I don't know if we have the same historical record to say that members of our military have been targeted in the same way that people who are African-American, Hispanic, people who are Jewish, people who are gay have been targeted over the many years.

Senator COBURN. So what we're willing to do is elevate those crimes over the very intended hate crime that this man perpetrated upon this soldier, and we're saying they have an elevated status?

Attorney General HOLDER. No, it's not a question of elevating the crime, it is dealing with the reality that we confront: 80,000 crimes directed against people who this bill would cover. I don't know if we have the same kind of statistical information with regard to members of our military.

Senator COBURN. My time has expired.

Attorney General HOLDER. We can certainly say that over the course of the last decade there have been 80,000 crimes that have been directed against people because of their race, religion, national origin, or color.

Chairman LEAHY. Thank you.

Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman.

Thank you, Mr. Attorney General. I remember the first time I met you was actually at the introduction of this bill, with then-President Clinton. I remember it for a few reasons. One, because it was my first official event in Washington. I was a young prosecutor and was asked to introduce the President, because of cases we had had in our jurisdiction.

I remember standing out there with him on one side and the Attorney General on the other, huge room of people in the East Room for this historic announcement. They started playing "Hail to the Chief", I start walking, and I feel this big hand on my shoulder and this voice says, "I know you're going to do great out there, but when they play that song I usually go first."

[Laughter.]

Senator KLOBUCHAR. That's why I remember it. But I also remember it because I had the opportunity to meet the investigators in the Matthew Shepard case and to hear their stories about how this had changed their lives, investigating this case, and what they had thought about gay people before and what they thought about them later.

I thought about the cases that we had had in our own jurisdiction before, before the introduction of the bill and after, from the case of a young African-American boy who was shot by a guy who said he was going to go out and kill someone on Martin Luther King Day, and he almost did; the case of a man that was severely beaten and got brain damage for speaking Spanish because the foreman of that company didn't like that he was speaking Spanish; the cases we recently had with a Hindu temple that was severely vandalized by young kids, and the case of a Korean church that had all kinds of hateful graffiti written on it. Those were cases in Minnesota, a place where you might not think you'd see these kinds of cases, but we did.

My question—and I am a supporter of this legislation—is just, you talked about how this would be a backstop, that most of these cases would continue to be handled by State and local jurisdictions. What kind of process will the DOJ go through in deciding whether or not to take on a case, a hate crime case, as a Federal crime?

Attorney General HOLDER. Well, I think that we would do it in the typical way that we do now. Our Civil Rights Division would look at the matter. There would have to be a determination made by the Department at the highest levels that the involvement of the Federal Government, the Justice Department, would be appropriate. There is a certification requirement that the Attorney General, or the Attorney General's designee, make the decision that the Federal involvement is appropriate.

So we would be deferring, I think, in a vast majority of cases to our State and local partners, but in those instances where we

thought that Federal involvement was appropriate—and again, this would be done at the highest levels of the Department—we would like to have the ability to help our State and local partners or we would like to have the ability to become involved and bring cases on our own.

Senator KLOBUCHAR. I would also note, I was hearing some of my colleagues, that in many areas, gun cases, drug cases, State and local and Federal authorities work together and decide what's best for the prosecution of a case. So I don't think this is that different in that way.

I also noted that the Chairman mentioned some of the organizations that are supporting this bill, including the Association of Chiefs of Police, the Major Cities Chiefs, the National District Attorneys Association. Does it surprise you that these law enforcement groups are supporting this bill?

Attorney General HOLDER. No. I think there is pretty widespread agreement that there is the need for this legislation, that there has been the need for this legislation for an extended period of time, that the problem of hate crimes is one that is a recurring one. The problem is not going away: the number of 80,000 over the course of the last decade, the increase in violence focused on people of Hispanic extraction. There are clear needs for this kind of legislation and that's why I think the support, the widespread support you see for this, is not surprising.

Senator KLOBUCHAR. The bill, as currently written, includes a 5-year statute of limitations on hate crime prosecutions. What is the Department view of that provision, of the 5-year statute of limitations?

Attorney General HOLDER. We actually think that—I think the House provision is actually a little better. These are cases that are not easily put together, and the House version that has a 7-year statute of limitations, except for those offenses involving death where there would be no statute of limitations, is a better way to proceed.

Senator KLOBUCHAR. So you'd prefer to have the 7-year over the 5-year?

Attorney General HOLDER. Yes, we would.

Senator KLOBUCHAR. All right. Thank you very much, Mr. Attorney General.

Chairman LEAHY. Thank you.

Senator Cardin.

Senator CARDIN. Thank you, Mr. Chairman.

Attorney General Holder, thank you very much for your leadership on this issue. I strongly support this legislation.

When a person has been victimized by a hate crime, it's not only the victim who suffers. The entire community is diminished. Recent trends are disturbing, and I think it's important for the Federal Government to speak to this issue as a priority, and the passage of this legislation would do exactly that.

I want to talk a little bit about the relationship between the Federal Government and the State, the issue that Senator Sessions has raised, and Senator Coburn, and others, and really talk about the philosophy of this bill because I think it complements the States.

First, as Senator Klobuchar has said, it is a backstop, so there's opportunity for the State to act. If the State acts and there's no need for Federal involvement, my expectation is there would be no Federal involvement. If the States had the capacity to deal with this issue, that's the preferred route.

The second part of this legislation is uniformity. There are States that do not have hate crime statutes. There are States that do not include hate generated by a person's sexual orientation. There's a need for uniformity, a uniform message in our Nation.

The third, that I don't know if we've talked enough about at this hearing, is the financial capacity issue. There are a lot of local jurisdictions that are really strapped for funds. They don't have the resources to investigate. We all understand the capacity of the Federal Government. It's not unlimited, but it certainly provides a stronger network for investigation and prosecution than a State can dedicate to one particular crime or to a situation that needs an extensive investigation.

In this legislation there is direct help to local government. There are programs that provide and authorize grants to help State, local, and tribal law enforcement officials to manage the high costs of investigating and prosecuting hate crimes, so we recognize that by providing direct resources. It authorizes the Office of Justice Programs to award grants to State, local, and tribal authorities for programs that combat hate crimes committed by juveniles, including programs to train local law enforcement.

So, I think we might be losing the focus of this legislation which is, yes, to go after those who perpetrate hate crimes, but to work with our local governments to backstop if they're unable, to have a uniform statute, and to provide the resources so that we can bring a coordinated law enforcement effort against those who perpetrate hate crimes.

I want to just give you an opportunity to respond to that, whether my reading of this law is correct, that this is not to be in conflict with local law enforcement, but to complement local law enforcement.

Attorney General HOLDER. No, Senator. I think you have it exactly right. We don't seek to replace our State and local partners. We want to complement them, we want to help them. I think that what you've indicated is a good way of looking at this. There is a component of this bill, a part of this bill that gives direct assistance to our State and local counterparts to help them be more effective in prosecuting, in dealing with these kinds of crimes.

This also gives the Federal Government the ability in those instances where a State or local jurisdiction doesn't have the technological wherewithal to prosecute one of these cases, to help us to help them in a way that is now difficult because of the requirement that, under the present law, there has to be involvement in one of these federally designated activities. The new bill would do away with that, those six federally designated activities, and would give the Federal Government a greater capacity to assist our State and local counterparts.

So I think that's one way that we should not lose focus. I think you're exactly right, we should not lose sight of the fact that in a

lot of ways this statute would help State and local jurisdictions who want to prosecute these kinds of cases.

Senator CARDIN. Well, I think that changing or broadening the ability of the Federal Government to respond makes this more of a seamless approach between the Federal authorities and local authorities, and I appreciate you bringing that to our attention. I just would point out, there is no State immune from the vulnerability of someone who would commit a hate crime, so we do need a national strategy. This is not a situation where it is concentrated in one State or one region of our country; every State in every region is vulnerable. I think we do need the presence of the Federal Government, and I thank you for your leadership on this issue.

Attorney General HOLDER. Thank you.

Chairman LEAHY. Thank you, Senator Cardin.

I know the Attorney General has a tight schedule, and he worked this in as an accommodation to Senator Sessions' request. But before I let him go, I understand that Senator Sessions needs a couple of more minutes.

Senator SESSIONS. Well, yes. Just a minute. I would just note that perhaps the authorization of funding to create tasks forces and studies of these kind of crimes would be an appropriate role for the Federal Government. But with regard to the soldier that Senator Coburn asked you about, he's not covered, Mr. Attorney General, by the Act. He's not one of these groups, unless he was a homosexual advocating that and that caused the attack. So he wouldn't be covered.

There are lots of other groups, people, decent people, that might need additional Federal protection if the Federal Government had all the money in the world and all the time to investigate this. The Matthew Shepard case, I would just note, the individual was prosecuted in Wyoming, two life sentences were obtained, and they didn't have a hate crimes act. It was the kind of crime that should have been vigorously prosecuted, and it was. Perhaps we could consider an option to allow more severe sentencing guidelines for people who do just mindless, hateful acts. Maybe you could word that in a way that would be sufficient.

I'll ask you again: cite me some cases of significance that have not been properly prosecuted in the last 5 years.

Attorney General HOLDER. Well, as I said, I think there are statutes—there are cases that are noted in my written testimony. But here's the way that I would view it.

Senator SESSIONS. Well, no, no, no. I think this is important. You cited a California case. I understand that defendant was convicted of an assault. But every day crimes are prosecuted in State court that may not result in a conviction which the prosecutor or I would like, but we don't pick that up in Federal court with double jeopardy principles and just prosecute them again in Federal court. But it doesn't seem to me—you say you mentioned three cases. I'll look at those and review those. But frankly, that's not a very big number.

And isn't it true that the vast majority of these crimes that you cite as hate crimes, which have dropped, according to the statistics, from 1998 to 2007, that the vast majority of those are defacement or vandalism, or those kind of crimes?

Attorney General HOLDER. The reality is that we have had, over the last decade, 80,000 crimes directed against people because of their race, color, religion, or national origin. That, it seems to me, is a serious problem. The vast majority of those cases will be handled by the States and by our local partners. What we're looking for is an ability to backstop their efforts and come up with a way in which we assist them.

It seems to me that this is a question, in a lot of ways, of conscience. What is it that we consider important? How are we going to use Federal resources, the limited Federal resources that we have? It seems to me that to protect groups of people who are the objects, the subjects of violence simply because of who they are, simply because of the color of their skin, simply because of their ethnicity, simply because of their sexual orientation, their gender, their disability, those kinds of crimes are worthy of consideration, examination by the Federal Government. We should have an ability to become involved in those cases. We don't seek to replace our State and local counterparts.

Senator SESSIONS. I would just ask you this: why don't we make all crimes Federal crimes then?

Attorney General HOLDER. There are a substantial number——

Senator SESSIONS. I mean, seriously?

Attorney General HOLDER. No. And seriously, there are substantial numbers of crimes that can be brought, as you know, you're a prosecutor, Federal prosecutor, in the Federal courts, as well as the State courts and it doesn't happen.

Senator SESSIONS. Well, I think you argued your case, and I'll listen to it. I'm not persuaded. I want to look at the numbers of prosecutions not occurring in an effective way. I think that's the fundamental test as to whether or not we should go forward with this legislation. In the past, I have not concluded it was. I find it odd that Senator's Hatch's proposal for years to do a study of this has not been accepted.

Chairman LEAHY. Thank you.

We're going to—whoops. I guess we did have one other Senator. I was about to release you. I would note, we talk about the recruiter who was killed. We have very, very specific Federal laws for crimes against members of the military and veterans and they can be prosecuted very fully. I think that most people in the military would much prefer we use those laws because they're very, very specific, and they can be used in the case of the recruiter who was murdered.

Senator Schumer.

Senator SESSIONS. But not a local police officer, not a sheriff, not a deputy.

Senator SCHUMER. Thank you, Mr. Chairman.

I'm not going to keep you long, Mr. Attorney General. I appreciate your being here. I appreciate the Chairman holding the hearing. I just wanted to add my voice to the many who have said that I hope we can move this legislation. I have a statement, Mr. Chairman, that I hope will be added into the record at this point, to save people time.

Chairman LEAHY. Without objection.

[The prepared statement of Senator Schumer appears as a submission for the record.]

Senator SCHUMER. Just one other point. It's hard for me to understand, in legislation, whatever your views are on the broader issues, legislation that says you cannot physically harm somebody because of their race, their religion, their ethnicity, or their sexual orientation, it's hard for me to understand how anybody can oppose that. To say it's OK—if we vote down this legislation, in a certain sense we are saying it is OK to physically harm people who you don't like because of who they are, and that's a bad thing and I hope we'll move this legislation.

I yield back my time.

Chairman LEAHY. Thank you.

Attorney General Holder, thank you very much.

Attorney General HOLDER. Thank you.

[Pause].

Senator SESSIONS. Mr. Chairman, as they are gathering, I think I'm going to need to run to the Armed Services Committee which is having its final markup of the Armed Services bill. I'll try to get right back as soon as I can. I apologize to the panelists if I miss some of your testimony. It's just one of those things. I have an amendment, in particular, that I need to be at. I've missed most of it already.

Chairman LEAHY. And I know how busy everybody is. That's why we've scheduled this during our normal markup time, and I appreciate the amount of time, Senator Sessions, you have spent here.

Senator SESSIONS. And Mr. Chairman, I would offer Senator Hatch's statement for the record.

Chairman LEAHY. Of course.

[The prepared statement of Senator Hatch appears as a submission for the record.]

Chairman LEAHY. We will keep the record open until the close of business this week for anybody's statement.

Our next witness is Janet Langhart Cohen.

Senator SESSIONS. Maybe she will forgive me if I go to Armed Services, since Senator Cohen was——

Chairman LEAHY. She's an accomplished journalist, author, playwright. She's on of our Nation's most thoughtful voices on race in America. As I indicated earlier, she's a dear friend of both my wife and me. She's the author of "From Rage to Reason: My Life in Two Americas" and the co-author of "Love in Black and White," which she wrote with her husband, former Republican Senator and Secretary of Defense, William Cohen, both books we have and treasure.

I understand that 2 weeks ago her play, "Anne and Emmett" was set to debut at the Holocaust Museum. Her husband was inside checking out where that was going to be when the shots rang out and killed security guard Stephen Johns.

Mrs. Cohen, we appreciate so much having you here. Please go ahead.

STATEMENT OF JANET LANGHART COHEN, CHEVY CHASE, MD

Mrs. COHEN. Thank you very much. I must also say, I am sorry my friend Senator Ted Kennedy is not here. He is sorely missed. He's been a great champion on social justice and civil rights.

I am also sorry that I've been asked to speak about hate today, hate in our society. It seems I know a lot about hate. I'm almost an expert on it. A trail of hate has followed me my entire life. I was born into hate. In 1941, my father, when I was an infant, was sent to Europe to fight the Nazis, to fight hate, only to return home to fight more hate among his fellow citizens: the clan and racism.

My mother told me, when I was 7 years old we had a cousin in our family who had been lynched. She also told me that there were people in this country who won't like me because of my color, but I must never measure or judge people because of something they can't help, and I have kept that promise.

At 14 years old, when I was deciding what high school I was going to go to, since the Supreme Court decision of 1954 said I was equal and that I could go to any school I wanted, word came up from Money, Mississippi that a young black boy, the same age as I, had been brutally murdered for whistling at a white woman. That scared our community and it told me what my country thought of me as a person of color, because the men who brutally murdered Emmett Till got away with it.

If that wasn't enough, when as an adult, a dear friend and mentor was assassinated. Dr. Martin Luther King, Jr. was my friend and mentor, and it was hate that murdered him. If you think these stories of hate are somewhere in our dark past or are a relic of our history, I only have to take you back 2 weeks ago, when at the Holocaust Museum we had a tragic shooting. A white racist went into the Jewish shrine and killed a black man, Officer Stephen Tyrone Johns. My husband, as Senator Leahy just said, was only 30 feet away from the murder.

The cruel irony is, my play, Anne and Emmett, a play about hate, was to debut in the museum just hours later. Anne and Emmett is a one-act play, an imaginary conversation between Anne Frank and Emmett Till, two tragic victims of hate whose societies allowed them to be murdered. In the play, Anne and Emmett explore the commonalities of their disparate oppressors, the tactics they used to murder them. These two teens lived in societies that allowed them to be murdered and there was no justice.

The cruel irony is that drama within a drama, that this white racist would come in, and with a single shot to the heart of Officer Johns, bring back memories of Adolph Hitler and Jim Crow, it was though they had come back to life.

I implore this Committee to pass this legislation for those who are vulnerable. I am one of them. Those of us who are vulnerable because of our race, our color, our national origin, our gender identity, our sexual orientation, our disability, and our physical challenges. We need to pass legislation that will empower our Attorney General, his prosecutors, their State and local partners to enforce a law that will take care of all of us.

We need this protection, we deserve this justice. My play is a call to action to ask society what I'm asking this morning, for us to not be silent bystanders or innocent victims watching on, but to do

something, to do something to act. I feel passing this legislation will protect those of us who need it and give us the justice we deserve.

Thank you very much.

Chairman LEAHY. Thank you very, very much. It's powerful testimony and it's testimony that should be heard. I appreciate especially the fact that when you say these were not things of the distant past, but something we all look at, things that we think about with our children and our grandchildren.

Mrs. COHEN. Thank you.

Attorney General HOLDER. Reverend Dr. Mark Achtemeier is an associate professor of Systematic Theology at the University of Dubuque in Iowa. He's co-authored two books on Christian faith and church renewal. He is a former pastor of the Windemere Presbyterian Church in Wilmington, North Carolina. Reverend Doctor, I'm going to turn the gavel over to Senator Cardin, and I'll be back as soon as I can. Thank you.

STATEMENT OF DR. MARK ACHTEMEIER, ASSOCIATE PROFESSOR OF SYSTEMATIC THEOLOGY, UNIVERSITY OF DUBUQUE THEOLOGICAL SEMINARY, DUBUQUE, IA

Dr. ACHTEMEIER. Thank you, Senator Leahy, honorable members of the Committee. I come before you as an evangelical Christian and an ordained minister in the Presbyterian Church USA to ask you to pass The Matthew Shepard Hate Crimes Prevention Act.

Christians affirm, along with many other faith traditions, that every single human being is created in the image of God. That means that each person is entitled to the fundamental rights and dignity that go with being an image of the Almighty, and a member of the one human family.

In this area, Christian teaching resonates with the dream that is America. Our Declaration of Independence states that "all men are created equal, endowed by their Creator with certain unalienable rights." Our forebears in this country understood what Christianity also affirms, that people's ability to live out their calling requires respect for their fundamental rights and freedoms. The protections of a lawful society provide us with the secure space necessary to develop our full human potential, to grow in love for our neighbors, and to offer our gifts for the good of all.

That space of freedom in which lives can flourish disappears when people are subjected to physical attack or live in constant fear for their safety. This is one area where the church needs the government's help in order to do its work. We need you to create for us, and all citizens, that safe space of freedom in which we can help people embrace the love and goodness that is their calling as children of God.

As the name on this bill testifies, that safe space has been tragically lacking for our lesbian, gay, bisexual, and transgendered brothers and sisters. In 2007 alone, 1,265 hate crime incidents based on sexual orientation were recorded by the FBI. Though we already have laws to protect people from violent assaults, the truth is that in areas where particular minority groups are widely disapproved, justice sometimes bends in response to local prejudices or has too few resources to make an effective stand.

In such cases we need the help of our Federal law enforcement system provided by this bill in order to make real that America promise of life, liberty, and the pursuit of happiness for all our citizens. This bill not only benefits the LGBT community, it also promotes religious liberty by expanding and updating Federal protection against violent crime committed because of a person's religion.

That is all the more reason why so many religious bodies have been eager to support the bill. I have attached to my testimony a letter of endorsement signed by my own church, and a host of others, representing a broad range of faith traditions.

Now, some have worried that this Act would function to outlaw the sincere religious beliefs of Americans who believe that homosexuality is contrary to God's will. Let me say that if I thought for 1 minute this bill would limit anyone's religious faith expression or observance, I wouldn't touch it with a 10-foot pole. But that is not what the bill does. Section 10 explicitly reaffirms that our religious freedoms are fully protected under the Constitution.

The Matthew Shepard Act targets not thought, not speech, but physical assault, and violent acts on another person are not a legitimate expression of anyone's religion, Christian or otherwise. There is nothing in this Act for law-abiding Christians to fear. In fact, we need this bill for the health of our churches, our mosques and our synagogues.

In my own church, good Bible-believing Presbyterians are split right down the middle on questions surrounding homosexuality, and like many religious bodies we are engaged in vigorous debate, working to find our way to God's truth together. But we cannot have the debate we need when some people fear being assaulted in a dark alley if they're honest about what they think and who they are in church. We need the protections that the Matthew Shepard Act provides.

So for the sake of my church's health, for the sake of this country's promise to all its citizens, I urge you to do the right thing and pass this legislation. Thank you very much.

Senator CARDIN. And thank you very much for your testimony.

We'll now hear from Gail Heriot, who is a professor of law at the University of San Diego, where she teaches torts and civil rights law. She is also one of several commissioners on the U.S. Commission on Civil Rights. Professor Heriot is also former counsel to Senator Hatch of this Committee.

STATEMENT OF GAIL HERIOT, COMMISSIONER, U.S. COMMISSION ON CIVIL RIGHTS, PROFESSOR OF LAW, UNIVERSITY OF CALIFORNIA AT SAN DIEGO, SAN DIEGO, CA

Ms. HERIOT. Thank you for the opportunity to appear before the Senate Committee on the Judiciary. I'm Gail Heriot, a member of the U.S. Commission on Civil Rights. Several weeks ago, the Commission voted to send a letter to members of the Senate leadership opposing Senate bill 909. I am here to elaborate on my reasons as an individual Commissioner for joining in that letter which was signed by six of the eight members of the Commission.

Americans were horrified by the brutal murders of James Byrd and Matthew Shepard a decade ago. More recently, the murders of Angie Zapata and Stephen Johns have shocked and saddened us

all. There ought to be a law, some people have said, preferably a Federal one.

Of course, there is a law. Murder is a serious crime everywhere, regardless of its motive, and it has been since the advent of our civilization. Indeed, all but a tiny number of States have additional special hate crime statutes. To my knowledge, no one has actual evidence that State and local authorities have been neglecting their duty to enforce the law. Matthew Shepard's tormenters are now serving life sentences; James Byrd's are on death row awaiting execution, a Colorado jury recently convicted Zapata's killer of murder, and the same will almost certainly happen to James von Braun, if he lives long enough to be prosecuted and is found competent to stand trial.

Unfortunately, tragedies like these bias-inspired murders quickly become an opportunity for political grand-standing. The proposed Federal hate crimes legislation, however, which is being touted as a response to these murders, should not be treated as a mere photo opportunity. It's real legislation with real-world consequences, and not all of them are good.

A close examination of its consequences, especially its consequences for federalism and double jeopardy protections, is therefore in order. All hate crimes, even those that have been adopted at the State level, raise significant issues. Why, for example, should Matthew Shepard's killers be treated differently from Jeffrey Dahmer or Ted Kaczynski? Hate crimes are surely horrible, but there are other horrible crimes as well.

What happens if hate crimes statutes are not enforced evenhandedly? Some crime statistics show that an African-American is more likely to commit a racially inspired murder of a white man or a white woman than the other way around. Should all be punished as hate crimes or just those that fit the skinhead stereotype?

Will hate crime statutes really make women and minorities feel that the laws take their safety seriously or might they have just the opposite effect? Sooner or later, a high-profile crime will occur in which some citizens strongly believe ought to be prosecuted as a hate crime. Rightly or wrongly, the prosecution will decline to prosecute it in that way, or the jury will fail to convict on that particular charge. As a result, citizens will wind up feeling cheated in some way when they might have felt completely vindicated had no hate crime statute ever existed.

Americans may disagree in good faith on whether such laws will in the end help or hurt harmony in the community. The proposed Federal hate crimes legislation, however, has special problems of over-reach, with implications for federalism and double jeopardy protections. These problems should cause even those who favor State hate crime statutes to question the desirability of a Federal statute.

We at the U.S. Commission on Civil Rights believe that this bill will do little good and a great deal of harm. Its most important effect will be to allow Federal authorities to re-prosecute a broad category of defendants who have already been acquitted by State juries, as in the Rodney King and Crown Heights cases more than a decade ago.

Due to the exception for prosecutions by dual sovereigns, such double prosecutions are technically not violations of the Double Jeopardy clause of the U.S. Constitution, but they are very much a violation of the spirit that drove the framers of the Bill of Rights, who never dreamed that Federal criminal jurisdiction would be expanded to the point where an astonishing proportion of crimes are now both State and Federal offenses.

We on the Commission regard the broad Federalization of crime as a menace to civil liberties. There is no better place to draw the line on that process than with a bill that purports to protect civil rights. While the title of The Matthew Shepard Hate Crimes Prevention Act suggests that it will apply only to hate crimes, the actual criminal prohibitions contained in it do not require that the defendant be inspired by hatred or ill will in order to convict. It is sufficient if he acts "because of" someone's actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability.

But consider: rapists are seldom indifferent to the gender of their victims. They are virtually always chosen because of their gender, among other things. A robber may well steal only from the disabled because, in general, the disabled are less able to defend themselves. Literally, they are chosen because of their disability.

Or suppose a burglar is surprised when the wife and husband return to the home earlier than expected. The burglar shoots the husband and kills him, but finding himself unable to shoot a woman, turns and runs. Again, literally, the husband was killed because of his gender.

No one can deny the horror of violent crimes inspired by hatred of any kind. This is something upon which all decent people can agree. But it is precisely in these situations where all decent people agree on the need to do something that mistakes are often made.

Passage of this vaguely worded prohibition would be a giant step toward the Federalization of all crime. Given the many civil liberties issues that it would raise, including the routine potential for double jeopardy prosecutions, it is a step that the members of the Senate should think twice before they take.

Senator CARDIN. Thank you for your testimony.

We will now hear from Brian Walsh. Brian Walsh is the senior legal research fellow at The Heritage Foundation's Center for Legal and Judicial Studies. He has worked with the Department of Homeland Security and is a former associate with the law firm of Kirkland & Ellis. It is a pleasure to have you here, Mr. Walsh.

STATEMENT OF BRIAN W. WALSH, SENIOR LEGAL RESEARCH FELLOW, CENTER FOR LEGAL AND JUDICIAL STUDIES, THE HERITAGE FOUNDATION, WASHINGTON, DC

Mr. WALSH. Thank you, Senator Cardin. I want to thank Chairman Leahy, Ranking Member Sessions, and members of the committee for this opportunity to address The Matthew Shepard Hate Crimes Prevention Act of 2009, and am focusing on the two main criminal provisions in Section 7.

Along with my Heritage Foundation colleague, former U.S. Attorney General Ed Meece, I direct our projects on criminal justice re-

form and over-criminalization, but I speak only on behalf of myself here today.

Over the past few years I have worked with dozens of Members of Congress, scores of advocacy organizations, and hundreds of individuals across the ideological and political spectrums to build support for principled, nonpartisan criminal law reform.

I have written extensively and testified in the House of Representatives about problems that are very similar to the problems with this bill: gang-crime legislation that over-federalized crime, ordinary street crime, and would have made much ordinary street crime a Federal crime if it had allegedly involved gang members.

Although I recognize that the Members of Congress who support the HCPA are well-intentioned and that much effort has gone into trying to make its criminal provisions acceptable to Federal law enforcement officials, among others, nevertheless, the so-called hate crimes provisions are precisely the type of criminal laws that we have been working to eliminate. They are flatly unconstitutional, almost wholly unwarranted, and highly prone to abuse and injustice. Compounding the problem, and as is typical of the dynamics that lead to over-criminalization, the legislation is wildly popular with the media.

The hate crimes provisions in Section 7 are unconstitutional because the Federal Government is a government of limited, ennumerated powers, and the American people never granted the Federal Government general or plenary police power it could use to control the type of violent crimes covered by the offenses.

The Supreme Court, in 1996 and again in 2000, struck down Federal laws governing remarkably similar crimes because Congress did not have the power to control them. The court made it plain that Congress does not have commerce power to control violent, non-economic crimes like those covered by the HCPA's two hate crimes offenses.

The HCPA also suggests that Congress might have a power under one of the Civil War Amendments to grant Federal law enforcement control over this violent non-economic crime. But the Supreme Court reaffirmed in the Morrison case in 2000 that the Fourteenth Amendment enforcement power applies only to State action, that is government action, whereas the HCPA's hate crimes offenses cover violent crime covered by individuals who do not act "under color of law."

The constitutional restrictions on Congress's power to criminalize are no mere theoretical niceties. Like most constitutional restrictions they protect individual rights. The case of NFL quarterback Michael Vick provides one recent illustration of this problem. For his dog-fighting offenses, Vick had to face prosecution by both the Justice Department, as well as a State prosecution in Virginia. The burden of defending double prosecutions makes it far less likely then an accused person will be able to exercise his constitutional right to trial by jury.

If I could quote from the Supreme Court in *Miller* v. *United States*, 1958, it says, "However much in a particular case insistence upon constitutional standards may appear as a technicality that inures to the benefit of a guilty person, the history of the criminal

law proves that tolerance of short-cut methods in law enforcement impairs its enduring effectiveness."

These offenses are prone to abuse and injustice because the language used to define them is overly broad and amorphous. First, the offenses do not require a person charged under them to have been motivated by hatred toward the victim or toward the racial-, gender-, or other group to which the victim belonged, or toward any other person.

These crimes do not require hate, and it is at best misleading to call them "hate crimes." I do not believe that this is an oversight, for I cite in my written statement leading scholars who talk about the elimination of the hate motivation from "bias crimes," and I'm happy to provide additional information about that scholarship.

Second, the two offenses attempt to transform ordinary acts of violence into Federal crimes if they are committed "because of" the actual or perceived race, color, sexual orientation, disability, religion, national origin, gender, or gender identity of any person. In other words, it would be a Federal offense even if the defendant acted because of his own, for example, gender or gender identity, or if the crime was somehow caused by the religion of a third person.

In sum, the best way I can put it is that the HCPA would make every violent crime a Federal crime if it was in some way related to someone else's membership in one of the favored groups. This is an exceedingly broad scope, and it would lead to selective enforcement of the HCPA. The Federal Government currently conducts only 1 percent of the arrests made each year throughout the Nation and has nowhere near the resources necessary to investigate and prosecute every violent crime that could be deemed a hate crime under the HCPA.

Selective enforcement of an exceedingly broad law is generally impossible to distinguish from a politically motivated prosecution. Such laws undermine our criminal justice system by undermining Americans' confidence in the fairness of our criminal justice system. The destructive effect is compounded, as is illustrated in the debate over this bill, when the overly broad law purports to grant greater protections against violent crime to some Americans than to others.

Finally, as has been noted, not only is it the States' job to control ordinary crime, the underlying conduct that the HCPA would make Federal "hate crimes" has always been criminalized in all of the 50 States. Further, forty-five States already have criminal statutes imposing harsher penalties for crimes that are motivated by bias. The benefits and problems resulting from those statutes remain to be proven, but the overwhelming trend in the States has been to increase the number and scope of hate crime statutes.

In sum, the constitutional flaws alone undermine the validity of HCPA's hate crimes offenses, but they are also invitations to abuse and unneeded by the States to fulfill their core responsibility of controlling local crime.

Thank you again, Mr. Chairman. I look forward to answering the members' questions.

Senator CARDIN. Thank you, Mr. Walsh.

Our final witness on this panel is Michael Lieberman. Michael Lieberman is the Washington counsel for the Anti-Defamation League, one of the Nation's premier civil rights and human rights organizations dedicated to combatting hate, anti-Semitism, and other forms of bigotry. He is also co-chair of the Leadership Conference on Civil Rights' Hate Crime Task Force that recently issued a report entitled "Confronting the New Face of Hate: Hate Crimes in America, 2009".

Mr. Lieberman.

STATEMENT OF MICHAEL LIEBERMAN, WASHINGTON COUNSEL, ANTI-DEFAMATION LEAGUE, AND CO-CHAIR, LEADERSHIP CONFERENCE ON CIVIL RIGHTS' HATE CRIME TASK FORCE WASHINGTON, DC

Mr. LIEBERMAN. Good morning, Mr. Chairman, Ranking Member Sessions. I am Michael Lieberman, the Washington Counsel for the Anti-Defamation League and co-chair of the Leadership Conference on Civil Rights' Hate Crime Task Force. We really appreciate the Committee's attention to this issue today. I am pleased to represent ADL and LCCR on this panel.

We support The Matthew Shepard Hate Crimes Prevention Act, and this is notable because it's rare for a coalition of civil rights, education, and religious organizations to support expanded Federal criminal authority. Groups like the LCCR, the NAACP, Human Rights First, and the American Association of University Women, all members of the Hate Crimes Coalition, do not usually come before you to advocate for expanded Federal police powers. It is even more extraordinary that we do so today hand in hand with the International Association of Chiefs of Police and the National District Attorneys Association, and virtually every other major law enforcement organization in the country.

Violent hate crimes have a special impact on the victim and their communities. They merit special attention and they receive it. For example, the FBI has been the Nation's repository for crime statistics since 1930. They publish an annual report called "Crime in the United States". Every year the FBI disaggregates that data and publishes two, exactly two, separate reports on crime issues that they believe impact Americans dramatically. One of those reports is about law enforcement officers killed in the line of duty, obviously a matter of great concern, and the other report is about hate crimes in America, recognizing their importance and their impact.

In 2007, the most recent data available, the FBI documented 7,624 hate crimes, as you heard, almost one hate crime every hour of every day. Hate crimes against Hispanics have increased in each of the past four years and the number of sexual orientation hate crimes rose to its highest level in five years. We support S. 909 because we see a disturbing prevalence of hate violence in America, an inadequate patchwork of State hate crime laws and deficiencies in existing Federal criminal civil rights laws.

State and local law enforcement authorities prosecute the overwhelming majority of hate crime cases and will continue to do so after this legislation is enacted. Federal authority has been used very rarely. But those cases are really important and demonstrate our Nation's commitment to confront the very worst violent hate

crimes, like the murder of Yankel Rosenbaum in the Crown Heights section of Brooklyn in 1991, and cases that involve organized hate groups and neo-Nazi skinheads, and the recent successful prosecution of Latino gang members in Los Angeles who had hunted African-Americans as a gang-initiation rite.

The legislation before you is narrow, measured, modest, and constitutionally sound. It complements and fills gaps in the patchwork of existing State laws. Yes, 45 States and the District of Columbia have hate crime laws, but only 30 States and the District include sexual orientation, only 26 States and the District include gender, only 12 States and the District include gender identity, and only 30 States and the District include disability.

We know that bigotry cannot be legislated out of existence. A new Federal law that finally addresses all victims of hate crimes will not eliminate them, but Federal involvement in select cases where State and local officials cannot, or will not act, and expanded Federal partnerships with State and local officials will result in more effective response to these crimes. A new LCCR Education Fund report, attached as Appendix A, describes a number of very disturbing trends and further underscores the need for this legislation.

The report documents increased hate group recruitment after the election of our first African-American President and an increase in demonizing, hateful rhetoric against Hispanics, immigrants, and those who look like immigrants. The shooting at the U.S. Holocaust Memorial Museum earlier this month reminds us, as the museum itself does every day, where the spread of hate can lead. We urge you to enact this essential legislation to equip Federal, State and local law enforcement officials with the very best tools to confront this national problem.

Thank you.

Senator CARDIN. Let me thank each of you for your testimony here today. I want to start with Ms. Heriot, if I might. You referred to the position of the Commission on Civil Rights, a letter sent to the Congress dated April 29, 2009, your letter. I'm going to ask that that be included in the record, without objection.

[The letter appears as a submission for the record.]

Senator CARDIN. And then as you've indicated, two members of the Commission dissented from that position. They sent us a letter dated June 17, 2009. I'm going to ask that that letter also be included in the record, without objection.

[The letter appears as a submission for the record.]

Senator CARDIN. And I want to give you a chance to respond to what the two dissenting Commissioners said, because I think their statements are pretty profound and I just want to make sure that you have a chance to respond to that.

They basically said that you reached your conclusions without any benefit of any research, "the opposition does not reflect a studied position backed by the agency's research." It goes on to say, "The Commission's national staff has done no fact finding into the extent or damage of hate crimes in recent years."

Do you care to respond? Was there research done? Did you have statistical information? Did you do any recent fact-finding before reaching your conclusions?

Ms. HERIOT. Quite a lot of research went into this. I'm not certain what caused Commissioner Melendez and Yaki to think otherwise, but in fact the members of the Commission have made a study of hate crimes.

Senator CARDIN. Could you make available to this Committee a copy of——

Ms. HERIOT. My testimony is based on some of the research that was done.

Senator CARDIN. No. But could you——

Ms. HERIOT. This was research done by me.

Senator CARDIN. Could you make available to the Committee the research done by the staff at the U.S. Commission on Civil Rights in background for making——

Ms. HERIOT. Yes. As a member of the Commission, I did that research. Also, other members of the Commission are quite knowledgeable about hate crimes.

Senator CARDIN. Is it documented? Do we have—is there material?

Ms. HERIOT. My testimony is the product of that research.

Senator CARDIN. Was your testimony made available to the Commission before it acted on——

Ms. HERIOT. It was made available to people who wanted to read it.

Senator CARDIN. Before the Commission took action?

Ms. HERIOT. I know that many members of the Commission were aware of what I had done, and already knew quite a bit about——

Senator CARDIN. Your testimony—your testimony is—I believe is—let me take a look at it here. If I understand your testimony, in preparation for today's hearing, that was prepared then last April—am I getting the dates right here?

Ms. HERIOT. I wrote it back—I wrote—the document that that's based on, it's gone through several different kinds of versions.

Senator CARDIN. My question to you——

Ms. HERIOT. It actually was written, I think, back in November and December, mostly.

Senator CARDIN. If there was a document made available to the Commission, if there was research done by the staff of the Commission, if you would make that available to the Committee we would certainly appreciate it, because it's our understanding that there was not staff research done. We appreciate your energy as a Commission member. That's important. We want to know whether the Commission staff did research into——

Ms. HERIOT. The Commission staff doesn't direct the Commission, of course. The Commission directs the staff. So when members of the Commission do their own research, there's nothing wrong with that, Senator. In fact, I would think it's a good thing.

Senator CARDIN. No, I understand that. I'd just point out that your testimony is dated June 25th, which is today's date.

Ms. HERIOT. Uh-huh. Uh-huh.

Senator CARDIN. We don't have the benefit of the documents that were made available by research by either the Commissioners or by the staff. But look, you might be unique. I do a little bit of my own research too, but I do rely upon our staff to get——

Ms. HERIOT. I do a lot of my own research.

Senator CARDIN. I appreciate that.

Ms. HERIOT. I'm a professor of law.

Senator CARDIN. You're a former staffer here.

Ms. HERIOT. Yes. Uh-huh.

Senator CARDIN. I understand that.

Let me ask you the second point that's made in this letter that is very disturbing. It says, "Unfortunately, the name of the U.S. Commission on Civil Rights, once renowned for its bipartisanship, scholarship, and presentation of hard facts, should be misused to oppose this critical legislation. We regret the Agency has come to operate in such a sharply ideological manner and look forward to a time when the Commission again speaks with a bipartisan voice to advance and protect civil rights."

Ms. HERIOT. And you're asking me to comment on that?

Senator CARDIN. Yes.

Ms. HERIOT. Six members of the Commission agreed on this. I think that when six members of the Commission believe that legislation pending before Congress is not a good idea, they should speak up. There has never been a time that the Commission insists on unanimous decisions.

Senator CARDIN. I'd point out that the——

Ms. HERIOT. And just like the Senate does not requite unanimity.

Senator CARDIN. I understand that.

Ms. HERIOT. There are times I wish that it did, but it doesn't.

Senator CARDIN. The Commission is supposed to be evenly divided politically, but instead, two of the independents, one was a former Republican, one turned Republican, that joined in the opinion. I just point that out because it appears to us that it was sharply divided along a partisan basis, which is something that we want to avoid with the U.S. Commission on Civil Rights. We expect you to try to do what sometimes we're unable to do in this Congress, to reach a bipartisan conclusion. It appears like——

Ms. HERIOT. And we make every effort to do so.

Senator CARDIN. It appears like you did not succeed in this case.

Ms. HERIOT. We did get six out of eight.

Senator CARDIN. Senator Sessions.

Senator SESSIONS. Thank you.

The chairman and vice chairman of the Commission also signed?

Ms. HERIOT. That's right.

Senator SESSIONS. Well, with regard to this research, this Commission has been dealing with these issues for many, many years. But I would ask, maybe Mr. Walsh, are you aware of any in-depth research, as Senator Hatch has referred to for years in the Senate, that has been done to justify a need to pass this legislation based on a failure of States to enforce these laws in any significant way?

Mr. WALSH. I am not. My experience is that most of the evidence is anecdotal, which, however, is not to discount the individual cases.

Senator SESSIONS. A lot of the cases they cite, isn't it a fact that the defendants were convicted, some given the death penalty, some given life without parole, and they're cited in a way that suggests that somehow justice didn't get done in those cases?

Mr. WALSH. I think that's correct, and often misleading. Even in the Holocaust Museum shooting, already the Justice Department

has filed a complaint in that case that includes—not necessarily an indictment, but a complaint in that case—and it indicates that murder in the first degree, under Federal law, 18 USC 1111, will be charged in that case. The mandatory minimum penalty for that is death or life imprisonment, and that is in addition to the other charge that has been put in the complaint.

Senator SESSIONS. Professor Heriot—is that?

Ms. HERIOT. Heriot. Yes.

Senator SESSIONS. I know you take these issues seriously, I know the Commission does.

Ms. HERIOT. I've been working on this issue back from 1998 when the first hearing was held here. That's when I first started——

Senator SESSIONS. Well, these are important things and they reflect somewhat how we think about the difficult questions of race and gender in America. We need to do the right thing about it. But you suggest, or I believe you state in your testimony that this bill is so vaguely worded that all rape cases could be covered by this statute, making a monumental change in Federal law. I would say if you made every rape case prosecutable under the Federal law, that may be more, except for drugs, than any other crime the Federal Government would have jurisdiction over, perhaps.

Ms. HERIOT. I'm not sure of that, but——

Senator SESSIONS. But anyway, so the question is, do you think that's a fair interpretation of the statute?

Ms. HERIOT. It's very interesting. That language, that "because of" language, is so very loose. The first time I saw it, which again, was back when I was working for the Committee on the Judiciary, I thought, well, a mistake has been made here. They probably didn't mean to word it quite that broadly.

We had a few representatives of the Department of Justice come by to talk to the staff, and I mentioned to them that I thought this was worded too broadly and it needed to be cleaned up a little. Much to my surprise, they were very much against changing the language. When I asked them, do you think this will cover all rape, I thought they would say no, but they didn't. They refused to disclaim the possibility that it would cover all rape. They evidently liked that broad interpretation—very much.

Senator SESSIONS. Well, let's talk about that. Mr. Walsh, the Heritage Foundation is a strong believer in the Constitution and the classical rights of individuals. Doesn't this give, therefore, the Attorney General breathtaking authority to pick and choose what crimes they want to prosecute, and in the scheme and in the history of the American legal experience, isn't it true that criminal statutes, we've always endeavored to see that they're clear and cover precisely the crime that we're talking about?

Mr. WALSH. That's correct. I think in many ways this is—I'll get to the core of the central problem with the statute, which is that it invites the selective prosecution. As was mentioned numerous times by the testimony by other witnesses, including the Attorney General, the Justice Department would not weigh in on every case that was a hate crime, it would select which cases it would get engaged in. That is the essence of an unfair criminal statute.

Senator SESSIONS. Well, isn't that contrary to the American heritage of law? Basically, I remember a robbery statute is the taking of a thing of value from the person of another through force, violence, or intimidation. You have to prove each one. That's all the robbery statute is, about this long. Now isn't this one of the most broad statutes you've ever heard of?

Mr. WALSH. It's a very broad statute. There are broad statutes throughout criminal law, but this one is exceedingly broad.

Senator SESSIONS. Well, it just gives the Attorney General the right to pick and choose his favorite groups of the day, maybe the group that supported the Attorney General or the President that appointed him. That's the kind of thing we get into when you have such a broad problem.

Mr. Chairman, I also would ask each of these panel members, if you can cite a specific case where injustice was done in the last half-dozen years, I'd like to see it, because I do think before we do this kind of unusual legal action, that we have a basis for it based in research and documentation. Thank you.

Senator CARDIN. Thank you, Senator Sessions.

I've just got to be perfectly open about this. As I listened to Mrs. Heriot's examples, it flashes back to the days when we were trying to pass the Fair Housing Act. I've been in a legislative body for a long time, back to the 1960s, and I heard the same arguments being made to try to block just about every civil rights bill with these examples.

This legislation is an effort to try to fill in the gaps, fill in the gaps at the national level. We have a hate crimes statute, but it is limited to where the crime can be committed and it doesn't cover those who are victims because of their sexual orientation or disability. I do think Federal crimes should be limited to matters of national importance. I don't know of a more important subject than the principles of our Nation and embracing diversity. The trends today are concerning.

So I do think this is a fundamental issue, but I have a question for each one of the panelists, and it's a pretty simple one, following on Senator Schumer's comments about trying to understand what happens when Congress votes on this issue. I guess my point is, what is the message to the American people if the U.S. Congress either passes this enhanced hate crimes statute or fails to pass this hate crimes statute? Mrs. Cohen.

Mrs. COHEN. Well, it's a very interesting question. Not being a lawyer but a lay person, I find that—having my husband serve on this Committee and in this body, I find that you need to deliberate and debate. And, of course when you do that, many times the weapon of delay comes, and that means denial. I have seen cases in my own life, growing up in a black ghetto, when we'd see the police it was a sign of being patrolled and not protected. But I also know that if you give this law to this Attorney General, it will be used wisely because of his brilliance and his integrity, and because of his history.

As you well know, Senator Sessions, we needed Federal laws and Federal troops to go in to have this Attorney General's sister-in-law integrate the University of Alabama. So when I think of police, I have mixed emotions. And I think of what you said, Michael Lie-

berman, about, it is rare for people of our sensibilities to ask for law enforcement, to have the Federal Government intervene. But you are charged to protect us and no other help do we know. We are trusting that you will make the laws of this land to govern all of the people equally and justly. I hope that answers your question.

Senator CARDIN. Thank you.

Dr. Achtemeier.

Dr. ACHTEMEIER. When I received the invitation to be here today, I naturally spoke with friends and family out in Iowa about the issue. These are people from across the political spectrum, conservatives and liberals, old and young. The universal response I got was: how could you not be for this legislation? There was a clear perception of a problem. No, we don't have statistical reports, but there's an awful lot in the headlines. Ordinary Iowans and relatives from around the country have a distinct sense that certain groups in our society are in more jeopardy than others and require particular protections.

So I think if the Senate failed to pass this, the attitudes back in Iowa, at least, would be mute astonishment, wondering how the government can abandon these most vulnerable members of our society. I think that would be seen as a failure of what the government is supposed to do.

Senator CARDIN. Mrs. Heriot.

Ms. HERIOT. I'm afraid that if this legislation is passed, the ultimate message is going to be that making a political statement is more important than passing well-drafted and well-thought out legislation. If the legislation is not passed, what the message will be will depend upon what members of the Senate make the message. That's what leadership is all about, explaining why a particular item of legislation should be rejected under the circumstances.

It's easy for people at home not really to know a lot about the legislation. They hear: "well, it's about hate crimes. I'm against hate crimes." Well, all decent people are against hate crimes. But if you tell them about the double jeopardy issue, about various other issues that are connected to this message, then they'll get a very different message and I think that is very much the responsibility of all members of the Senate, all members of the House, and of the President of the United States.

Now, Mrs. Cohen just pointed out a moment ago something very important, and that is our present Attorney General, she believes, is a very talented individual, and I have certainly no reason to disagree with that. But we don't know who the Attorney General is going to be next, or the next one after that, or the one 30 attorney generals down the road. That's why legislation is important. It has to be well-drafted, well-thought out, and this has not been.

Senator CARDIN. I was just trying to get your response to, whether it passes or not—we try not to do rebuttal, but I know sometimes it's difficult.

Ms. HERIOT. It was on point, I'm afraid.

Senator CARDIN. I'm tempted to ask you whether you would favor the repeal of our current hate crimes. I guess the answer would probably be yes, you don't think the Federal Government should have a law here.

Dr. Walsh? Mister.

Mr. WALSH. Mister, thank you. I think the—thanks for the promotion there.

[Laughter.]

Mr. WALSH. I think the message would be that the U.S. Congress takes the Constitution very seriously, and it uses the criminal law very wisely—the same way that we have criticized gang-crime legislation because it would over-criminalize in that context. I think the American people, if they read this bill and they understood the rule of law and they believe we should adhere to the rule of law, they would understand that this is a measure that undermines that.

I, too, believe that Attorney General Holder will probably apply this in a proper manner, however, he's not the one who makes the initial decision in individual cases. The people who make the decisions in individual cases are individual Federal prosecutors.

Second, is that we should not be trusting in Mr. Holder, we should be trusting in the rule of law. That's what a well-tailored, narrow law does for us, one that's constitutional. It gives us the ability to look to the law itself and not to an individual and rely on them to make sure that they apply it wisely. Again, coming back to the root concern, I think if Americans understood the law they'd be glad to know that prosecutors will not be given a broad mandate to Federalize crimes and decide that if they are unjustly accused of a crime of violence, that the Feds might jump in and decide to prosecute it as well.

Senator CARDIN. Mr. Lieberman, what is the message to the American people on this?

Mr. LIEBERMAN. Senator Cardin, I think the message when this bill is enacted into law is that these crimes matter very much to the U.S. Government, that every hate crime victim should be protected, every hate crime victim matters. These are selective prosecutions. They are bias-motivated crimes, they are violent conduct. They cause bodily injury. They're cases where State and locals can't, or won't. I think orders of magnitude are very important here.

Since 1991, there have been 129,000 hate crimes reported to the FBI and less than 170 indictments under the current statute, *18 USC 245*, the parallel to what will be *18 USC 249*. In no year since 1968 have there ever been more than 10 indictments under the existing statute. That is very selective, but as I mentioned in my testimony, very, very important cases that send a dramatic message to the victims and to the community that these crimes will be taken seriously by the U.S. Government.

Senator CARDIN. Thank you.

Senator Sessions.

Senator SESSIONS. Thank you.

Well, this is a good discussion. I think it's important. I've been giving a lot of thought recently to the great heritage of law that this Nation has been blessed to have. When you travel around the world like I have, six times to Iraq, six times to Afghanistan, the West Bank, Pakistan, places that—and even countries that do much better, still don't have anything like the magnificent rule of law that we have. It protects everybody. A poor person can expect, and must be given, their day in court.

But we are a Nation of laws and not of men. That's a fundamental principle of this Republic, and I think it's a good principle. I don't think that we've ever thought that it's wise to give power to the Attorney General to pick and choose crimes to an extraordinary degree. If they're not being prosecuted, if legitimate cases aren't being made, then I can understand that. So, it puts me in a difficult position.

I don't want to have—I thought I heard Senator Schumer say basically, if you don't vote for this bill you're for hate. I don't think he meant that. Hopefully he didn't. But it's kind of what our—so I don't think that's accurate. I'm not going to be put in that box. I'm not going to be intimidated. We're going to think this thing through.

If you can show that there is statistical research that indicates that a serious problem exists in this country, I'm willing to talk about it. It did exist, Ms. Cohen, in the South throughout much of our history and we have that Civil Rights Act that allowed that to happen. It was justified, as I said in my opening statement, because the facts justified that.

You know the discrimination; African-Americans couldn't go to certain schools, they couldn't use certain restrooms, there were other kinds of routine biases against them. Out of that was why this bill passed. But today I am not sure women or people with different sexual orientations face that kind of discrimination. I just don't see it. So I believe that if they are harassed or discriminated against unfairly, we probably have the laws—I believe we have the laws to fix it. So what the question would be, is this one necessary? I'm not sure that it is. Matter of fact, I don't think that it is, based on what I know.

If you take these examples of crimes that I asked the Attorney General about, I thought about one. Let me ask you, Ms. Heriot. An individual, perhaps, let's say hypothetically, is angry that the husband left his sister alone with a bunch of children and he takes up a homosexual lifestyle which he thinks is bad and he attacks this former brother-in-law. Would that——

Ms. HERIOT. I'm getting confused over the theory of relativity here.

Senator SESSIONS. Well, the question would be, would that cover the circumstances?

Ms. HERIOT. You're going to have to run the facts by me again there.

Senator SESSIONS. Okay. The facts would be that, let's say that a man left his wife and children.

Ms. HERIOT. Okay.

Senator SESSIONS. And adopted a homosexual lifestyle.

Ms. HERIOT. Okay.

Senator SESSIONS. And the brother of the wife, former wife, doesn't like this and attacks the man and states that he didn't like his lifestyle when he attacked him. Would that meet the basic standards of this case?

Ms. HERIOT. That's actually a good, good hypothetical. I like that hypothetical. The answer is, I think probably a Federal prosecutor could look at that case and say, yes, it's covered.

Senator SESSIONS. Now, if the man ran off with another woman and he had the same anger in his system and he has a confrontation and attacks him, would that cover it?

Ms. HERIOT. Run it by me again.

Senator SESSIONS. If the husband ran off with another woman, leaving his wife and children, and his brother, to avenge this, attacks him, would that meet the same standards? Would that be a Federal crime, potentially, also?

Ms. HERIOT. If you really, really wanted to make an argument for it, yes, you can.

Senator SESSIONS. Mr. Walsh, I see you nodding. Do you agree with that?

Mr. WALSH. Yes, I think it would. I think it's broad enough to encompass anything that is "because of" somebody's gender or sexual orientation.

Ms. HERIOT. Yes. He wouldn't have gone after him had he not been a man. That's the trouble with this whole issue of causation, this "because of". I mean, causation issues have been giving philosophers problems since Aristotle. It's hard. What do we mean when we say something happens because of something else? Well, usually things have lots of causes. Almost always, every event has a lot of causes.

Crimes are often motivated by very complex emotions and very complex needs and such. It's not very often that you run across the case of the absolutely pure hate crime, someone decides to pick someone else at random from the population for absolutely no reason other than that person's race, or sex, or handicap. It's very difficult to come up with real cases that are really motivated that way.

What happens is, race and sex and disability and sexual orientation get put into the mix. The question is, how much of the result has to be connected or how closely must that motivation be connected to race, sex, et cetera? Is this part of it or does it have to be the primary motivation? One thing that could be done here that might be useful is amending this bill so that it requires that the motivation be the primary motivation. Now, that's something that the Department of Justice, back when I was working for the Judiciary Committee, didn't want, but I think it would improve the bill.

Mr. WALSH. Can I mention another amendment? This bill would be much different if it was limited to those acts of bodily injury that were under color of law, and really we've been talking about de jure, legalized discrimination, racial hatred, et cetera. That is really what the Fourteenth Amendment, Thirteenth Amendment, Fifteenth Amendment were put in place to address. So we have a very clear response when there has been an official act of racial segregation in this Nation, it was the Civil War amendments.

If this statute clearly flowed out of the Civil War amendments, in other words, it derived its power from them, if it was under law where if it was shown that there was a widespread, systematic disregard of a State's own laws on hate crimes or a State's own law on violence, if they weren't being enforced against when the acts were committed against gays or committed against any individual, anything that shows that there's a de jure, tacit approval, then this would be a different law altogether and I think that that would

make a lot more sense because that type of discrimination is something that we've made clear in the Civil War amendments, and since then in the Civil Rights Acts as well, that that is entirely off the board and something that the Federal Government can get involved in.

Senator SESSIONS. Thank you, Mr. Chairman. This is a good discussion, a good panel. I appreciate it very much. I think I understand the feelings that are here and we'll have to wrestle with them. I've got a number of statements from other members that I'd offer for the record, Mr. Chairman, and I appreciate the opportunity.

[The prepared statements appear as a submission for the record.]

Senator CARDIN. I would just make an observation. I couldn't disagree more with Professor Heriot's observations of what's happening in the real world. I think Mr. Lieberman's number of, I think it was 80,000 episodes in the last decade reported indicates that we have a significant problem of people being targeted in America for violence solely because of their race, their religion, their national origin, their sexual orientation, their disability. This is a growing problem.

Look, the message—I'm going to answer my own question. The message when we pass this—and I certainly hope that we will pass this—is that America has made a priority protecting people from violence because of diversity, that diversity is embraced in America as our strength. I really do look forward to the day—look, the number of prosecutions are going to be small. Mr. Lieberman's point is well taken. We don't expect there to be 80,000 prosecutions at the Federal level, we expect it to be a very small number.

But it's going to be meaningful and it's going to have a major impact on the attitude in America. We've seen attitude change in this country. We've seen when it used to be acceptable to accept racial slurs in cocktail conversations. That's no longer the case, I hope, in America today. Attitudes change. The Federal Government can play a critical role in bringing about that change, and this is one more chapter in achieving that goal.

I really do hope that after we pass this statute, that there will come a time where we say, you know, this really isn't needed anymore in America, that we really have achieved a circumstance where violence is not targeted against a person because of their diversity. I hope we all live long enough to see that day. We're not there today. We need help. That's why many of us believe this is a fundamental civil rights act that needs to be passed, and we'll do everything we can to see it happen. I certainly appreciate Senator Sessions' points, and I'm sure we will continue this dialog.

If there is nothing further, here today is a statement for the record representing the International Association of Chiefs of Police, from Sergeant Kip Malcolm, Officer Brian Bennett, Lieutenant Crystal Nosil. If not, the record will remain open for additional questions that may be presented to our witnesses, and the hearing will stand adjourned.

[Whereupon, at 12:20 p.m. the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Gail Heriot
Member, U.S. Commission on Civil Rights
July 15, 2009
Answers to Senator Sessions questions:

ANSWER TO QUESTION 1. S. 909 is simply the latest version of a bill that has been pending in Congress for more than a decade. I have followed it for a long time and would be surprised to find a large number of persons who are more knowledgeable about the issues it raises than I am.

My Background on the Hate Crimes Bill: I first began to study the bill back in 1998, when I took a leave from my position as a professor of law at the University of San Diego to work for the Senate Committee on the Judiciary, which was then chaired by Senator Orrin Hatch. In that capacity, I was instrumental in putting together what, if memory serves me correctly, was the first Senate hearing on the bill. I also was responsible for conferring and negotiating with Department of Justice officials and members of the then-minority Committee staff over the language of the bill. Those negotiations were unsuccessful, since supporters of the bill strongly opposed any effort to require that a defendant act out of actual hatred before he or she could be charged with a federal hate crime. The negotiations were, however, certainly a learning experience.

During this period in 1998, I undertook extensive legal research into the double jeopardy aspects of the bill and found that it is undisputed and indisputable that the hate crimes bill will authorize federal prosecutors to re-prosecute individuals who have already been acquitted by state juries for the same underlying conduct.[1] Some of that research was reflected in my testimony before the Committee this past June.

I also researched during this period the overall incidence of hate crimes (for which FBI statistics were invaluable) as well as the tendency for the incidence to be overstated.[2] Two other areas of interest for me were the unusual number of reported hate crimes that turn out to be hoaxes or to be ordinary non-hate crimes when the facts are more closely scrutinized and the level of public pressure on prosecutors to bring hate crimes prosecutions. I have continued to research these issues over the years.[3]

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[1] Then-Attorney General Janet Reno put the matter a bit more delicately on CNN in 1998. She said that the hate crimes bill would "give people the opportunity to have a forum in which justice can be done if it is not done in the state court."

[2] See James B. Jacobs & Kimberly Potter, Hate Crimes: Criminal Law & Identity Politics 59 (1998)(arguing that in comparison with earlier periods of racial violence in American history, "it is preposterous to claim that the country is now experiencing unprecedented levels of [this kind of] violence").

[3] See, e.g., Girl Admits She Faked Gay Bashing Incidents, Los Angeles Times (May 9, 2005); Wendy Thermos, Teacher Gets Prison in Hate Crime Hoax, Los Angeles Times (December 16, 2004); Nora Zamichow and Stuart Silverstein, As Hate Crimes Concerns Rise, So Does Threat of Hoaxes, Los Angeles Times (April 20, 2004); Lisa Black, Police Say Hate Crimes Faked: NU

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As a result of the research I undertook in 1998 as well as later research, I published an op-ed in the San Diego Union-Tribune entitled *Problems with Hate Crimes Laws* on July 5, 2000. I also debated Department of Justice officials at the San Diego County Hate Crimes Conference on October 5, 2000. The following year, I helped plan and attended a two-day conference on hate crimes legislation sponsored by the University of San Diego Law and Philosophy Institute.

More recently, I debated the bill in a program sponsored by the Heritage Foundation entitled, "Hate Crimes: What is the Proper Federal Role?" on May 8, 2008. At the end of the year, I wrote an article, entitled, *Lights!, Camera! Legislation!: Grandstanding Congress Set to Adopt Hate Crimes Bill that May Put Double Jeopardy Protections in Jeopardy,* which was based in part on further research and which was published in Engage in February 2009. My testimony was based in large part on that article. I had hoped to finish up a law review version of that article in June, but unfortunately, this and other Congressional testimony ended up coming first. I also debated the bill on April 14, 2009 at Temple University and spoke on the bill at a program entitled "Civil Rights in the Age of Obama," at the Heritage Foundation on May 13, 2009.

Background on the Commission's Letter to the Senate: I believe it was about a week after the Temple University debate that members of the Commission learned that the House of Representatives would soon be voting on the House counterpart to S. 909. Since there would be no regularly-scheduled meeting of the Commission before that vote would take place, four members of the Commission, all of whom were already familiar with the bill, decided to send a letter recommending against the legislation in our individual commissioner capacities. Since I had the most extensive experience with it, I was the obvious choice to draft the letter, although all the signatories to the letter had a hand in it and were fully qualified to do so. In drafting the letter, I drew on the research I had already undertaken over the years as well as new research. The letter was sent out to members of the House leadership on April 29, 2009, the very day the House vote took place.

At our regularly scheduled Commission meeting on May 15, 2009, a motion was made to send a similar letter to members of the Senate leadership. The vote was 5-2 with one member abstaining. As a non-lawyer, Vice Chair Abigail Thernstrom felt that she had not yet had an opportunity to study the issue adequately. She later had that opportunity and wished to sign the letter. Six (five of them lawyers) of the Commission's eight members thus signed the Senate version of the letter. It was sent on June 16, 2009.

Freshman Reported Knife Attack, Graffiti, Chicago Tribune (November 19, 2003); Caitlin Francke, Jail Sentence Given in Faked Racial Attack, Baltimore Sun (August 30, 1997); Investigators Say "Hate Crime" Was Hoax, Chattanooga Free Press (November 5, 1995); 3 in Anti-Gay Hoax Agree to Pay for House Damage, Seattle Post-Intelligencer (January 23, 1995); Mary B.W. Tabor, Police Say Brooklyn Man Faked Bias Attack Story for Attention, New York Times (January 18, 1992); Peter Applebome, Woman's Claim of Racial Crime Called a Hoax, New York Times (June 1, 1990). See also Victim Being Gay Not Motivation in Slaying, Investigator Says, Greenville News (S.C.) (December 1, 2007); Thousands Protest Hate Crimes, CNN Newsroom Transcript (November 16, 2007)(available on Lexis/Nexis).

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ANSWER TO QUESTION 2. On June 17, 2009, Commissions Yaki and Melendez sent a letter to Senator Edward Kennedy complaining that the six members who signed the June 16th letter "did so without examination ... of the bill." This is simply nonsense. Indeed, a cursory look at the June 16th letter's footnotes would have been enough to demonstrate the falsity of the claim. Legal footnotes do not write themselves.

Insofar as their argument is that members of the Commission should rely not on their own expertise and research, but on the work of Commission employees, it is doubly nonsense. Congress charged the Commission itself–which it defines as consisting of eight members–with the responsibility for advising Congress and the President on civil rights issues. The notion that appointed Commission members should defer to junior attorneys and interns about the legal and policy issues presented by the bill is not just puzzling, it is insulting.[4] Most Americans would see it the other way around–that public officials rely entirely too much on the work of subordinates.

Curiously, it does not appear to be the case that Commissioners Yaki and Melendez disagree with the main legal conclusion drawn in the letter. Instead they ignore it. The double jeopardy issue is not even mentioned in their letter. To my knowledge, no one disagrees that the dual sovereignty rule is an exception to the general prohibition on double jeopardy. See United States v. Lanza, 260 U.S. 377 (1922). Put differently, no one disputes that this bill will enable federal prosecutors to re-prosecute defendants who have been acquitted by state juries based on the same underlying facts. It is not clear what further research Commissioners Yaki and Melendez have in mind.[5]

The real dispute is whether this potential "two bites at the apple" is a good thing or a bad thing. To put it in the jargon of modern technology: Is it a bug or a feature? Former Attorney General Janet Reno seems to have regarded it as the latter. (See footnote 1.) This is a matter for the sound judgment of the Commission members, not the employees of the Commission, in making its recommendation. Members of Congress are, of course, free to take or not take the Commission's advice as they see fit. Our responsibility is simply to make sure that members of Congress are informed, and in fact many members of Congress were in fact unaware of the double jeopardy implications of this bill before our letter.

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[4] It is also oddly inconsistent with the "enthusiastic support" for the bill that Commissioners Yaki and Melendez declare in their June 17th letter. If members of the majority should have deferred to Commission employees before recommending against the bill, it is difficult to understand why Commissioners Yaki and Melendez were not similarly obligated to defer to those employees.

[5] Similarly, it is undisputed and indisputable that S. 909 does not prohibit any conduct that is not already illegal under state law. And to my knowledge, no one disputes that S. 909 is broadly worded. See The Hate Crimes Prevention Act of 1998: Hearing on S. 1529 Before the Senate Comm. on the Judiciary, 105th Cong. 30 (1998)(statement of Richard J. Arcara, on behalf of the Judicial Conference of the United States, that the proposed legislation "unquestionably creates the potential for the federalization of a significant number of state crimes").

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One particular aspect of the Yaki-Melendez letter that requires a response is the statement that in the past, "the Commission has spoken with one voice against all manner of hate crimes." Let me be clear: The Commission still speaks with one voice against all manner of hate crimes. All decent Americans do. The issue before Congress, however, is not whether hate crimes are abhorrent. The issue is whether S. 909 is the appropriate way to deal with them.

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July 10, 2009

The Honorable Patrick Leahy
Chairman
Senate Judiciary Committee
United States Senate
Washington, DC 20510-6275

Dear Mr. Chairman:

On behalf of the Anti-Defamation League and the Leadership Conference on Civil Rights, I am pleased to respond to your July 1st follow up questions from the Committee's June 25th hearing on S. 909, the Matthew Shepard Hate Crimes Prevention Act.

Question 1. Critics of the *Matthew Shepard Hate Crimes Prevention Act* of 2009 ("MSHCPA") have objected to the bill on the grounds that its language is overly broad. For example, at the recent Judiciary Committee hearing on this legislation, the Ranking Member of the Committee pointed to a June 16, 2009 letter the Committee received from a majority of the United States Commission on Civil Rights opposing the bill. According to the letter, the MSHCPA's current language which prohibits acts "because of" an individual's actual or perceived race, color, national origin, gender, sexual orientation, gender identity or disability is over-inclusive. Indeed, the majority Commissioners argue that the legislation's "because of" language would apply not only to hate crimes, but also to acts that do not "require that the defendant be inspired by hatred or ill will in order to convict," including rapes and robberies already covered under state law.

> A. At the hearing, the Attorney General of the United States expressed his views on the MSHCPA. Attorney General Eric Holder commented that he does not believe that "the concern about this [legislation] being overly broad is necessarily justified." Specifically, the Attorney General noted that the MSHCPA's current "because of" language tracks the current hate crimes law, 18 U.S.C. 245, and does not "in any way chang[e] what I think is the actionable language" of current hate crimes law. Do you agree with the Attorney General? If so, please explain why.

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B. As an expert in hate crimes laws, how do you respond to the concerns from some Civil Rights Commissioners that the MSHCPA may be overly broad?

Answer: We share the view of Attorney General Holder that the proposed legislation is not overbroad. Far from vague or uncertain, the "because of" triggering causation language used in S. 909, the Matthew Shepard Hate Crimes Prevention Act (HCPA) is commonly used, universally understood, and guided by longstanding precedent.

- It is the language of many of the most important and most frequently used federal anti-discrimination laws – including Title VII of the 1964 Civil Rights Act, the heart of the federal workplace discrimination law. "Because of" is also the language of choice for more than 40 state anti-discrimination laws, more than 30 state fair housing laws, and dozens of other municipal anti-discrimination ordinances.

- In addition, the "because of" formulation has a 40-year track record of effective use as the centerpiece of federal criminal civil rights laws, 18 U.S.C. § 245, and is also the operative causation trigger language employed in other federal criminal civil rights laws and the vast majority of state hate crime statutes – some of which have been on the books for 25 years.

- Importantly, the precise question of whether "because of" language was overly broad or vague was specifically addressed – and flatly, unanimously rejected – in the 1993 landmark United States Supreme Court case *Wisconsin v. Mitchell, which upheld* a challenge to the Wisconsin hate crime statute *Wisconsin v. Mitchell*, 508 U.S. 476 (1993)

I. Federal and State Civil Rights Laws

We do not agree with the claim that the HCPA's "because of" language would apply not only to hate crimes, but also to any act that does not "require that the defendant be inspired by hatred or ill will in order to convict." This contention is not supported by either a plain reading of the HCPA or by the largest body of law interpreting the phrase "because of," the federal civil rights case law.

The term "because of" has a long and unbroken history of being interpreted as requiring "actual motivation," a "determinative influence," or, in some cases, "the sole cause."[1] More importantly, "because of" has never been interpreted by any

[1] A recent Supreme Court decision also found that "because of" means "but for." *See Gross v. FBL*, No. 8-441 (S.Ct. June 18, 2009), (In an age discrimination case brought under the Age Discrimination Employment Act of 1967, the Court held that in a claim for disparate treatment under the ADEA, "because of" means "but for").

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federal court to permit a plaintiff to make out a cause of action for discrimination merely because he or she is a member of a particular group.

The plain language of the HCPA is in line with this longstanding precedent. Section 7 of S. 909 (at proposed 18 USC § 249(A)(1) and (2)), reads:

> Whoever . . . willfully causes bodily injury to any person . . . **because of** the actual or perceived religion, national origin, gender, sexual orientation, gender identity or disability of any person.

Under longstanding interpretation of "because of" by federal courts, this section will be interpreted by courts to require actual motivation, not mere membership in a particular group. This construction is amplified by a plain reading of the text of Section 10 of S. 909, which clearly adopts this traditional interpretation by saying that:

> (2) Violent Acts. – This Act applies to violent acts motivated by actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity or disability of a victim.

Even if there was some doubt about whether "because of" means "motivated by," the plain language of Section 10 eliminates that concern. A robbery or rape could not be prosecuted under the HCPA unless the crime was actually motivated by the race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of the victim.

II. The Use of "Because of" in Federal Civil Rights Laws

As noted above, there is a great deal of support for the proposition that "because of" is defined by federal courts as "actual motivation," a "determinative influence," or, in some cases, "the sole cause." Four key examples, the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Fair Housing Act support this interpretation.

Notably, and as discussed in greater detail below, the United States Supreme Court has relied on these federal civil rights statutes as the touchstone for its determination that the "because of" causation formulation in state hate crimes laws is constitutional. *Wisconsin v. Mitchell*, 508 U.S. 476, 487 (1993). Like workplace and housing civil rights laws, the prohibited conduct under the HCPA and other hate crime laws is the intentional selection of the victim for targeted, discriminatory criminal behavior because of the victim's personal characteristics.

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A. **Civil Rights Act of 1964.** Title VII of the Civil Rights Act of 1964 makes it an "unlawful employment practice for an employer to ... discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, **because of** such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1) [emphasis added].

Indeed, a significant body of law has developed around proving that discrimination happened *because of* race, color, religion, sex, or national origin. A claim of intentional disparate treatment based on race, color, religion, sex, or national origin can survive summary judgment only when the plaintiff has presented sufficient evidence to show that there is a genuine issue of material fact that the plaintiff's race, color, religion, sex, or national origin actually motivated the allegedly discriminatory conduct. *See Reeves v. Sanderson Plumbing Prods., Inc.,* 530 U.S. 133, 141, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000) (quoting *Hazen Paper Co. v. Biggins,* 507 U.S. 604, 610, 113 S.Ct. 1701, 123 L.Ed.2d 338 (1993) ("[L]iability depends on whether the protected trait ... actually motivated the employer's decision."). A plaintiff alleging discrimination may prove intentional discrimination through (1) presenting direct evidence of discrimination, *see Price Waterhouse v. Hopkins,* 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989), or (2) presenting indirect evidence of discrimination that satisfies the familiar three-step framework of *McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). The *McDonnell Douglas* framework is a burden shifting framework which requires an employee to first make out a prima facie case, then requires the employer to articulate a non-discriminatory reason for the challenged employment decision, then shifts the burden back to the plaintiff to show that the nondiscriminatory reason proffered by the defendant is a pretext. The *McDonnell Douglas* standard tests to see whether some adverse employment action happened because of animus.

B. Age Discrimination in Employment Act. To prevail on a claim of age discrimination under the federal Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.* ("ADEA") ("it shall be unlawful for an employer . . . to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual .... because of such individual's age"), a plaintiff must prove that his or her age "actually motivated" and "had a determinative influence" on the employer's termination decision. *Reeves,* 530 U.S. at 141.

As recently as this term, the Supreme Court offered a fairly restrictive interpretation of ADEA's "because of" provision, saying that "...the ordinary meaning of the ADEA's requirement that an employer took adverse action 'because of' age is that age was the 'reason' that the employer decided to act . . . To establish a disparate-treatment claim under the plain language of the ADEA, therefore, a plaintiff must

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prove that age was the 'but-for' cause of the employer's adverse decision." *Gross v. FBL Financial Services*, -- US – (June 18, 2009). This narrow interpretation lends further support to the proposition that "because of" is treated very carefully by the courts and that the courts will use an equally restrictive interpretation in the HCPA.

C. Americans with Disabilities Act. The Americans with Disabilities Act (ADA) also contains the "because of" language and also treats it as causal. The ADA prohibits employers from "discriminat[ing] against a qualified individual with a disability **because of** th[at] disability ... in regard to ... terms, conditions, and privileges of employment," 42 U.S.C. § 12112(a); see *Board of Trustees of University of Alabama v. Garrett*, 531 U.S. 356 (2001)(emphasis supplied). Similar to Title VII, the ADA uses the *McDonnell Douglas* framework to force the question of causation. *See e.g., Kosmicki v. Burlington Northern & Santa Fe R. Co.*, 545 F.3d 649, 651 (8th Cir 2008)("Under this framework, [plaintiff] was first required to make out a *prima facie* case by proving that he was disabled within the meaning of the ADA, that he was qualified to perform the essential functions of his job, and that he suffered an adverse employment action because of his disability.").

A review of the Fifth Circuit's holdings regarding the definition of "because of" is instructive. The Fifth Circuit's description of a circuit split on how to define "because of" shows how restrictive "because of" is treated in ADA cases, as the split is between "a motivating factor" or being a "sole cause:"

> The causation question under the ADA is really a question of whether "the ADA's use of the causal language 'because of, 'by reason of,' and 'because' means that discriminatory and retaliatory conduct is proscribed only if it was solely because of, solely by reason of, or solely because an employee was disabled or requested an accommodation. The answer to this question is unsettled in the Fifth Circuit. Some circuit decisions in the 1990s endorsed, without explaining the reasons, the "sole causation" standard. Other circuit decisions have approved the "motivating factor" causation test for ADA claims .... Seven of our sister circuits have reached the conclusion that the ADA causation standard does not require a showing of sole cause. *Pinkerton v. Spellings*, 529 F.3d 513, 517 -518 (5th Cir 2008)(endorsing motivating factor).

However one views this split, the Courts uniformly give a very parsimonious and restrictive meaning to "because of."

D. Fair Housing Act. The Fair Housing Act (FHA) provides that it is unlawful "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental

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of a dwelling, or in the provision of services or facilities in connection therewith, **because of** race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(b). The Fair Housing Amendments Act of 1988 (FHAA) amended the FHA by adding a new subsection (f) that also prohibits housing discrimination "because of" a disability. Because the FHA and FHAA – like Title VII – require a plaintiff to show that he or she was denied his right to fair housing *because of* his status as a member of a protected class rather than for some valid reason, similar standards of causation and motive are used. Given that the problem of distinguishing racially-motivated from legitimately-motivated conduct arises just as it does under Title VII, the standards enumerated in *McDonnell Douglas* are applicable in nonclass suits alleging Fair Housing Act violations and are routinely used in FHA and FHAA cases. *See, e.g., Mitchell v. Shane,* 350 F.3d 39, 47 (2d Cir. 2003); *East-Miller v. Lake County Highway Dept.*, 421 F.3d 558, (7th Cir 2005); *Miller v. Poretsky,* 595 F.2d 780, 792, 193 (D.C. Cir 1978). Of course, evidence of direct discrimination (such as a facially discriminatory policy) forecloses the need for *McDonnell Douglas* analysis. In short, the FHA and FHAA generally require a searching inquiry under *McDonnell Douglas* to determine whether the allegedly discriminatory conduct occurred "because of" membership in a protected group, or merely was coincidental to that membership.

Like workplace and housing civil rights laws, the prohibited conduct under the HCPA and other hate crime laws is the intentional selection of the victim for targeted, discriminatory criminal behavior on the basis of the victim's personal characteristics.

III. Federal Criminal Civil Rights Statutes.

As Attorney General Holder noted, the language of the HCPA mirrors the text of current hate crimes law in 18 USC §245. With over 40 years of effective use, the "because of" causation trigger language has been well understood and has withstood constitutional challenge.

Indeed, courts have described the "because of" trigger language as a separate element of charges under §245. For example, because the statute proscribes willfully injuring "any person *because of* his race," 18 U.S.C. § 245(b), the Government was required to prove not only that the defendant killed his victim, but that he did so because of the victim's race. *U.S. v. Woodlee*, 136 F.3d 1399, 1410 (10th Cir 1998) (emphasis in original); *United States v. Makowski,* 120 F.3d 1078, 1081 (9th Cir 1997) (Section 245 prohibits the assault of an individual where the violence is motivated by racial animus and prevents the victim from enjoying a federally protected right); *United States v. Price,* 464 F.2d 1217, 1218 (8th Cir. 1972) (separately identifying racial bias and intent to interfere with a victim's use of a public facility in a case involving § 245(b)(2)(B)). As the Second Circuit noted in regard to section 245(b)(2)(B):

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> Section 245(b)(2)(B) properly understood, therefore stops well short of creating a general, undifferentiated federal law of criminal assault and instead restricts its attention to acts of force or threat of force that involve two distinct kinds of discriminatory relationships with the victim-- first, an animus against the victim on account of her race, religion, etc., that is, her membership in the *categories* the statute protects; and, second, an intent to act against the victim on account of her using public facilities, etc., that is, because she was engaging in an *activity* the statute protects. *U.S. v. Nelson, 277 F.3d 164, 189* (2nd Cir 2002).

In addition, the "because of" causation language has also been employed in several other key federal criminal civil rights laws, none of which has been found vague or overbroad and each of which is an element of the various offenses.

For example, Criminal Interference with Right to Fair Housing, 42 U.S.C. § 3631(a), prevents intimidation of "any person because of his race, color, religion, sex" from exercising rights to fair housing. 42 U.S.C. §3631(a). To establish a violation of section 3631(a), the government must prove beyond a reasonable doubt that the defendant acted with the specific intent to injure, intimidate, or interfere with the victim's rights because of his or her race and because of the victim's occupation of his or her home. *U.S. v. Magleby*, 241 F.3d 1306 (10th Cir. 2001)(" § 3631(a) requires that the government prove beyond a reasonable doubt that the defendant targeted the victims because of their race") See also *U.S. v. Craft*, 484 F.3d 922, 926 (7th Cir. 2007)(race must be shown to be at least a motivating factor) . *See also* discussion of Sentencing Guidelines § 3A1.1(a)(hate crime enhancements), *infra*.

Similarly, 18 U.S.C. § 247(a)(1), Damage to Religious Property and Obstruction of Persons in the Free Exercise of Religious Beliefs, provides that whoever "intentionally defaces, damages, or destroys any religious real property, because of the religious character of that property, or attempts to do so" is guilty of a federal crime. And 18 U.S.C. § 247(c) provides that whoever "intentionally defaces, damages, or destroys any religious real property because of the race, color, or ethnic characteristics of any individual associated with that religious property, or attempts to do so" is also guilty of a crime.

Finally, the United States Sentencing Guidelines, as required by Section 280003 of Pub. L. 103-322, provide that if the district court determines beyond a reasonable doubt that the defendant intentionally selected a victim "because of" the victim's race, then the offense level is to be increased by three levels. U.S.S.G. § 3A1.1(a). See "Sentencing Guidelines" 38 Geo. L.J. Ann. Rev. Crim. Proc. 681, 699 - 751 (2009),citing cases as follows: *U.S. v. Johnson*, 152 F.3d 553, 554-55, 557 (6th Cir. 1998) ("Because the jury found beyond a reasonable doubt that Weems and

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Mitchell selected the victim because of his race, the district court should have applied the three-level enhancement when calculating the correct guidelines range."); *U.S. v. Weems*, 517 F.3d 1027,1029-30 (8th Cir. 2008) (hate crime enhancement applied because defendants conspired to injure, oppress, threaten, and intimidate man based on race); *U.S. v. Woodlee*, 136 F.3d 1399, 1414 (10th Cir. 1998) (sentence was properly enhanced under § 3A1.1(a), where defendant knew the racial motivation for his co-defendants' taunting, chasing and shooting at the victims and chose to join their conspiracy); *United States v. Sheldon,* 107 F.3d 868 (4th Cir. 1997) (conviction under 42 U.S.C. § 3631 required enhancement under section 3A1.1 as defendant selected victims based on race and isolated location of victims' home); *U.S. v. Boylan*, 5 F. Supp. 2d 274, 283 (D.N.J. 1998)(Application of subsection (a) not appropriate where defendant generally chose "single, poor, Hispanic or light-skinned black females" as his victims because "it does not appear beyond a reasonable doubt that the primary motivation for the offense was a hatred of [the victims]").

In summary, decades of experience clearly show that use of the "because of" causation language in various federal criminal civil rights statutes and in § 3A1.1(a) of the Sentencing Guidelines has never served as an occasion for the realization of generalized fears about this language. Our nation's courts have uniformly, carefully, and judiciously applied this language without overreaching, without any successful constitutional challenge and without unlawfully "creating a general, undifferentiated federal law" to replace traditional state criminal law.

IV. State Hate Crime Laws.

The laws in 34 of the 45 states with hate crime statutes contain "because of " language as the operative causation trigger. And five other states use a very similar formulation -- "based on" or "by reason of" – as their causation trigger language. A table outlining the causation trigger language of the nation's state hate crime laws is attached.

There is no evidence that the "because of" language is confusing or vague to either police officials or prosecutors. In fact, the International Association of Chiefs of Police, the world's most influential law enforcement organization, uses "because of" causation language in the definition section of its "Investigation of Hate Crimes" Model Policy. This Model Policy, which was updated in February, 2008, includes all of the categories of crime victims covered by the HCPA -- race, color, religion, national origin, sexual orientation, gender, gender identity, and disability.

In addition, most state courts have interpreted their various state hate crime statutes as requiring a causal connection between the protected characteristics enumerated in the statute and the criminal conduct . . . courts generally have stated that what is required

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is a causal or "but for" connection between the victim's protected status . . . and the criminal conduct. Lu-in Wang, *Hate Crimes Law,* § 10:14.

For example, see *In re M.S.*, 10 Cal. 4th 698, 42 Cal. Rptr. 2d 355, 896 P.2d 1365, 1377 (1995) ("'because of' means the conduct must have been *caused by* the prohibited bias. A cause is a condition that logically must exist for a given result or consequence to occur.").

We are not familiar with a single case of confusion, abuse, or misuse of either federal or state statutes that employ "because of" triggering causation language. Indeed, the complete lack of prosecutorial misuse or abuse of discretion is a fundamental reason why such a broad coalition of civil rights, religious, education, civic, and professional organizations has come together in support of hate crime laws in general – and this legislation in particular. It is also noteworthy that the policy opponents of the bill who served as witnesses at the June 25 hearing did not reference any specific cases that would illustrate their vagueness or misapplication concerns.

V. Wisconsin v. Mitchell

The United States Supreme Court addressed the constitutionality of hate crime statutes squarely in 1993 in *Wisconsin v. Mitchell.* Like the HCPA, the Wisconsin hate crime statute challenged in that case employs "because of" as triggering causation language. The relevant section of the Wisconsin hate crime statute at issue in *Wisconsin v. Mitchell* reads:

Wis. Stat. §939.645

§939.645. *Penalty; crimes committed against certain people or property*

- If a person does all of the following, the penalties for the underlying crime are increased as provided in sub. (2):

  (a) Commits a crime under chs. 939 to 948.

  (b) Intentionally selects the person against whom the crime under par. (a) is committed or selects the property that is damaged or otherwise affected by the crime under par. (a) in whole or in part **because of** the actor's belief or perception regarding the race, religion, color, disability, sexual orientation, national origin or ancestry of that person or the owner or occupant of that property, whether or not the actor's belief or perception was correct. [emphasis added]

Wisconsin v. Mitchell involved a vicious racial assault by a group of young black men against a white boy. The Supreme Court summarized the facts as follows:

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> On the evening of October 7, 1989, a group of young black men and boys, including Mitchell, gathered at an apartment complex in Kenosha, Wisconsin. Several members of the group discussed a scene from the motion picture "Mississippi Burning," in which a white man beat a young black boy who was praying. The group moved outside and Mitchell asked them: "Do you all feel hyped up to move on some white people?" Shortly thereafter, a young boy approached the group on the opposite side of the street where they were standing. As the boy walked by, Mitchell said: "You all want to fuck somebody up? There goes a white boy; go get him. Mitchell counted to three and pointed in the boy's direction. The group ran toward the boy, beat him severely, and stole his tennis shoes. The boy was rendered unconscious and remained in a coma for four days.

A jury convicted Mitchell of aggravated battery, and also found that he had intentionally selected the victim because of his race. Under Wisconsin's hate crime law, the maximum sentence for a felony such as aggravated battery is enhanced by five years (in this case, from two to seven years) when the defendant "intentionally selects" the victim "because of the race, religion, color, disability, sexual orientation, national origin or ancestry of that person." Mitchell was sentenced to four years in prison.

Appealing his conviction and sentence, Mitchell challenged the constitutionality of the Wisconsin law, contending that it violated his First Amendment rights. The Wisconsin Court of Appeals upheld his sentence, but the Wisconsin Supreme Court overturned it, finding that the penalty-enhancement statute punished his offensive thoughts. The state of Wisconsin appealed this ruling, and the Supreme Court granted *certiorari.*

In June 1993, the U.S. Supreme Court issued its decision – unanimously reversing the Wisconsin Supreme Court and finding Wisconsin's hate crimes law constitutionally sound. Writing for the Court, Chief Justice William Rehnquist distinguished the Wisconsin law from the ordinance at issue in an earlier case, *R A V. v. City of St. Paul*, 505 U.S. 377 (1992), observing that the Wisconsin law was aimed at and punished criminal conduct, and "a physical assault is not by any stretch of the imagination expressive conduct protected by the First Amendment."

Chief Justice Rehnquist addressed the "because of" causation formulation very directly:

> Mitchell argues that the Wisconsin penalty enhancement statute is invalid because it punishes the defendant's discriminatory motive, or reason, for

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> acting. But motive plays the same role under the Wisconsin statute as it does under federal and state antidiscrimination laws, which we have previously upheld against constitutional challenge. See *Roberts* v. *Jaycees*, 468 U. S., at 628; *Hishon* v. *King & Spalding*, 467 U.S. 69, 78 (1984); *Runyon* v. *McCrary*,427 U.S. 160, 176 (1976). Title VII, for example, makes it unlawful for an employer to discriminate against an employee "*because of* such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e 2(a)(1) (emphasis added). In *Hishon*, we rejected the argument that Title VII infringed employers' First Amendment rights. And more recently, in *R. A. V.* v. *St. Paul*, 505 U. S., at ---- (slip op., at 11), we cited Title VII (as well as 18 U.S.C. § 242 and 42 U.S.C. §§ 1981 and 1982) as an example of a permissible content neutral regulation of conduct. *Wisconsin v. Mitchell*, 508 U.S. 476, 487 (1993).

The Court's resounding endorsement of hate crimes laws in *Mitchell* reflected a reaffirmation of several key concepts behind these laws. First and foremost, it stood for the proposition that "the punishment should fit the crime," and legislatures are justified in prescribing harsher sentences for crimes where the impact transcends individual victims. Second, it reaffirmed that – as in the case of different degrees of homicide – intent is relevant in addressing bias-motivated crimes, and legislatures can mandate tougher sentences for perpetrators who target their victims because of an immutable characteristic such as race or ethnicity. Finally, the Court determined that hate crimes laws, like anti-discrimination laws, do not violate a perpetrator's free speech rights, because even if bias is present, absent the prohibited conduct there would be no legal sanction.

Thus, just as federal anti-discrimination civil rights law does not allow claims for discrimination merely given the fact that the victim is in a protected category, neither will this statute permit prosecutions merely because the victim is in a protected category. Consequently, the rape and robbery examples fail. To obtain a conviction under the HCPA, a prosecutor would have to prove, beyond a reasonable doubt, that the perpetrator was motivated by membership of the victim in a protected category. It is that motivation, and not merely the fact that the victim was *in* the protected category, that establishes this requirement. The HCPA thus requires in the establishment of the motivation of the perpetrator, a requirement well-articulated and well understood in both federal and state civil rights laws and federal and state hate crime laws.

Question 2. During the hearing, some Republican Senators expressed concerns about whether empirical data shows that hate crimes are an ongoing and serious

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problem for the Nation. Can you identify what data or empirical studies support the need for passage of the *Matthew Shepard Hate Crimes Prevention Act of 2009*? Are you concerned that in available empirical evidence, some hate crimes may be underrepresented due to gaps in data collection or the lack of voluntary compliance by the states? If so, please explain why.

Answer:

The Prevalence of a National Hate Crime Problem in America

The FBI has been collecting hate crime statistics and publishing an annual report on their findings since 1991, under the Hate Crime Statistics Act (HCSA) 28 U.S.C. §534. As stated in our testimony, the HCSA now provides the best national picture of the magnitude of the hate violence problem in America – though still clearly incomplete.

Enacted in 1990, the HCSA requires the Justice Department to acquire data on crimes which "manifest prejudice based on race, religion, sexual orientation, or ethnicity" from law enforcement agencies across the country and to publish an annual summary of the findings. In the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322 September 13, 1994), Congress expanded coverage of the HCSA to require FBI reporting on crimes based on "disability."

Existing Data is Incomplete – and Certainly Understates the True Number of Hate Crimes

There is very substantial evidence to demonstrate that the FBI HCSA data undercounts the actual number of hate crimes in America. There are at least three factors which combine to limit comprehensive, complete hate crime reporting.

First, the entire FBI crime data collection program is voluntary. Federal, state, and local police officials are generally under no obligation to report their crime data to the FBI. As noted in our testimony, in 2007, the most recent HCSA data available, only 13,241 of the 17,000 law enforcement agencies in the United States participated in this data collection effort. And of those participating agencies, only 15.3% reported even a single hate crime – every other jurisdiction affirmatively reported zero hate crimes to the FBI.

According to the FBI, among the almost 4,000 police agencies across the nation that did not participate in this HCSA data collection effort at all, were at least four agencies located in cities of over 250,000 population and at least twenty-one agencies in cities between 100,000 and 250,000. Further, in 2007, two of the 50 largest cities in America did not participate in the HCSA program at all – Indianapolis and

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Honolulu. And four other cities among the largest in America affirmatively reported to the FBI that they had zero hate crimes in 2007. A chart which compiles the FBI HCSA reporting for the years 1997-2007, a state-by-state comparison of HCSA reporting, and a chart which compiles the HCSA reporting from the largest 50 cities in America from 1992 to 2007 are attached.

Second, there are significant gaps in data collection caused by the patchwork of state hate crime laws. While forty-five states and the District of Columbia have hate crime penalty-enhancement laws, many do not include all the categories included in the HCPA. Currently, only thirty states and the District of Columbia include sexual orientation-based crimes in their hate crimes statutes; only twenty-six states and the District of Columbia include coverage of gender-based crimes; only twelve states and the District of Columbia include coverage of gender-identity based crimes, and only thirty states and the District of Columbia include coverage for disability-based crimes. And five states – Arkansas, Georgia, Indiana, South Carolina, and Wyoming – have no hate crime statute at all. A chart of state hate crimes statutory provisions was attached as part of our testimony.

The fact that five states do not have hate crime laws, coupled with the fact that many states do not include all the categories of the HCPA in their laws, certainly has resulted in an undercounting of hate crimes in those states. Law enforcement officials must be trained to identify, report, and respond to bias-motivated criminal acts. Further, those states that lack a statutory basis for investigating and prosecuting hate violence – or certain categories of hate crime victims – would underreport those hate crimes to the FBI.

Third, the FBI itself, under the HCSA, only collects and reports data on crimes directed at individuals because of their race, religion, sexual orientation, national origin, and disability. The FBI does not currently collect and report data on gender-based crimes or crimes directed at individuals because of their gender identity. We have no national data on these crimes at all. Only five states currently collect gender-based hate crime data and only one state, California, currently collects data on gender identity-based hate crimes. The result is an obvious undercounting of gender-based and gender identity-based hate crimes. The HCPA addresses this deficiency by adding gender and gender identity to the FBI's HCSA reporting mandate. The FBI's effective implementation of the HCSA demonstrates that data collection efforts can also spark increased public awareness of the problem and improvements in the local response of police and the criminal justice system to these crimes.

For example, although not currently counted in FBI statistics, hate crimes directed against the transgender community are prevalent. As the examples below graphically

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illustrate, hate crimes against transgender people are a national problem that must be addressed.

- In July of 2008, in Greeley, Colorado, Angie Zapata, a 20 year-old transgender woman, was fatally beaten after her date discovered she was transgender. Her attacker beat Zapata with a fire extinguisher and admitted to police that he hit Zapata twice in the head thinking he had "killed it."

- In November of 2008, in Memphis, Tennessee, Duanna Johnson, a transgender woman, was found shot to death in North Memphis. No one has been charged with the crime. In February of 2008, she had been arrested on charges of prostitution. She was sitting in a chair in a holding area at the Shelby County Jail when an officer walked up and punched her several times. A surveillance camera shows the officer punching Johnson several times, apparently holding handcuffs in the hand that was hitting her.

- In the hate crime on which the film "Boys Don't Cry" was based, 21 year-old Brandon Teena was raped and later killed by two friends after they discovered he was biologically female. After the rape and assault, Teena reported the crime to the police, but Richardson County Sheriff, Richard Laux, who referred to Teena as "it," did not allow his deputies to arrest the two men responsible. Five days later, those two men shot and stabbed Teena to death in front of two witnesses, Lisa Lambert and Philip DeVine, who were then also murdered. JoAnn Brandon, Teena's mother, filed a civil suit against Sheriff Laux, claiming that he was negligent in failing to arrest the men immediately after the rape. The court found that the county was at least partially responsible for Teena's death and characterized Sheriff Laux's behavior as "extreme and outrageous." Had the HCPA been in effect, federal authorities could have investigated and prosecuted the offenders when the local authorities refused to do so.

In 2005, the Bureau of Justice Statistics (BJS) prepared a report, *Hate Crime Reported by Victims and the Police*, http://www.ojp.usdoj.gov/bjs/pub/pdf/hcrvp.pdf, based on estimates derived from victim reports from BJS's National Crime Victimization Survey. That report estimated an annual average of 191,000 hate crime incidents over the period July 2000 to December 2003 – more than 15 times the number of incidents documented in FBI HCSA reports. Victims also indicated that only 92,000 of these hate crime victimizations had been reported to police.

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Research has demonstrated that victims are more likely to report a hate crime if they know a special reporting system is in place. Yet, studies by the National Organization of Black Law Enforcement Executives (NOBLE) and others have revealed that some of the *most* likely targets of hate violence are the *least* likely to report these crimes to the police. In addition to cultural and language barriers, some immigrant victims, for example, fear reprisals or deportation if incidents are reported. Many new Americans come from countries in which residents would never call the police -- especially if they were in trouble. Gay, lesbian, bisexual, and transgender victims, facing hostility, discrimination, and, possibly, family pressures, may also be reluctant to come forward to report these crimes.

Notwithstanding this substantial discussion of evidence of undercounting of hate crimes in America, the numbers positively documented by the FBI are very disturbing. The devastating effects of hate crimes extend far beyond their numbers. A parallel example is the FBI's annual report focused on law enforcement officers feloniously killed in the line of duty. In 2008, the FBI reported 41 such deaths. In 2007, the number was 58. These numbers are fortunately very small, but the dramatic impact of each and every one of these police deaths justifies the attention devoted to these crimes – and our nation's best efforts to prevent and respond to them.

The same is true for hate crimes. It is crucial to keep in mind the impact of bias crimes on victims and on communities. These crimes are designed to intimidate the victim and members of the victim's community, leaving them feeling fearful, isolated, vulnerable, and unprotected by the law. Failure to address this unique type of crime could cause an isolated incident to explode into widespread community tension.

As highlighted at the June 25, 2009 hearing, in 2007 there were 7,624 reported bias-motivated criminal incidents – almost one hate crime every hour of every day. Of the 7,624 total incidents, 3,870 were motivated by racial bias; 1,265 by sexual orientation bias; 1,007 by ethnicity/national origin bias; and 79 were reported to have occurred against disabled individuals. 1,400 (18.3%) of all reported crimes were motivated by religious bias. Of the incidents motivated by religious bias in 2007, 969 (69.2%) were directed against Jews and Jewish institutions. They accounted for 12.7% of the total number of reported hate crimes in 2007.

Of special concern is the fact that reported crimes directed against Hispanics increased markedly – in a report year in which virtually every other category of crime decreased. In fact, as previously mentioned, 2007 was the fourth straight year the FBI documented increased reported hate crimes against Hispanics. The number of sexual orientation hate crimes rose to its highest level in five years, as well.

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These numbers do not tell the whole story. Behind each and every one of these statistics is an individual or a community targeted for violence for no other reason than race, religion, sexual orientation, disability, or national origin. Hate crimes tear at the fabric of our communities. They deserve the serious attention, and the enhanced protection, that this legislation provides.

Thank you for the opportunity to respond to these questions. We very much appreciate your leadership in holding the June 25 hearing for this important legislation and we hope this has adequately addressed your questions.

Sincerely,

Michael Lieberman
Washington Counsel

cc: Jess N. Hordes, ADL Washington Director

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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find responses to questions posed to Attorney General Eric H. Holder, Jr., following the Attorney General's appearance before the Committee on June 25, 2009, regarding "The Matthew Shepard Hate Crimes Prevention Act of 2009." We hope this information is helpful to the Committee.

The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to the submission of these responses. If we may be of additional assistance in connection with this or any other matter, we trust that you will not hesitate to call upon us.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Jeff Sessions
Ranking Minority Member

Attorney General Eric H. Holder, Jr.
Responses to Questions for the Record
Following Testimony on the Matthew Shepard Hate Crimes Prevention Act
Before the United States Senate Committee on the Judiciary
June 25, 2009

Coburn

1. **At the recent DOJ oversight hearing, you said that you didn't think the murder of Army Private Long killing "would be cognizable under the [current] hate crime statute" and that you "would want to look and see what the statistics show, what the facts show" before we offered this protection to member of the military. You added, "I think we can certain show that there are substantial numbers of crimes that happen" within the bill's protected classes.**

   - **Can you point to *specific statistics* which justify the inclusion of "perceived gender identity" as a protected status in this bill?**

Answer: The murder of Army Private Long and the wounding of Private Quinton I. Ezeagwula at a Little Rock Armed Forces recruiting center is clearly a reprehensible crime of violence. The Department recognizes that this tragic shooting would not be criminalized by proposed 18 U.S.C. § 249. This, however, does not mean that there is no federal jurisdiction over the murder. 18 U.S.C. § 111(a)(1) prohibits forcible assault of military personnel while performing his or her duty, and 18 U.S.C. § 1114 prohibits the killing or attempted killing of such personnel.

The Department believes that, just as the federal government has an interest in protecting military personnel, it also has an interest in preventing hate crimes, which victimize not only individuals, but entire communities. According to 2007 statistics published by the Federal Bureau of Investigation's Uniform Crime Reporting Program, 16.6 percent of hate crimes were motivated by sexual-orientation bias. Solid statistics on the prevalence of gender identity-based crimes are especially difficult to find, given the problem of underreporting due to "fear of law enforcement, language barriers, [and] lack of outreach and services." National Coalition of Anti-Violence Programs (NCAVP), Hate Violence Against Lesbian, Gay, Bisexual, and Transgender People in the United States: 2008, at 50. The NCAVP recently reported a 2% increase in the total number of victims reporting anti-LGBT violence (2,424) from 2007 to 2008 and known anti-LGBT murders rose 28% from 2007 to 2008 alone. Specific data on gender identity-based crimes showed that anti-transgender bias comprised 12% (206) of the total incidents reported in 2008. Although the NCAVP's statistics are based on data from member organizations and exclude certain regions of the country, their figures "consistently exceed those of national FBI statistics and those of local law enforcement," *id.* at 16, which suggests that such crimes often go unreported.

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With respect to "perceived" as opposed to "actual" gender identity, there are no statistics breaking down the number of crimes based upon perception versus actual status for any covered class. However, including the phrase "actual or perceived" — as under current federal hate crimes law — will ensure that a defendant cannot succeed in a "mistake of fact" defense, claiming that he is not guilty of a hate crime because his victim did not in fact have the characteristic that the defendant believed he had.

2. Precisely how many hate crimes is the Justice Department aware of that have gone unprosecuted at the state and local level?

Answer: The Department believes that our partners at all levels of law enforcement share our commitment to effective hate crimes enforcement. The Department does not have access to precise statistics of hate crimes that have gone unprosecuted at the state and local level, and we are unaware of any source for such comprehensive information of unprosecuted offenses generally. Federal jurisdiction over the violent bias-motivated offenses covered under S. 909 is needed as a backstop for state and local law enforcement, to ensure that justice is done in every case.

Some cases may involve attacks in more than one jurisdiction, for which the federal government may be in a better position to investigate or prosecute. In other cases, a state, local, or tribal jurisdiction may want to draw on the resources and expertise of the federal government, or even request that the matter be prosecuted by the federal government. Finally, on those rare occasions when a state is unable or unwilling to investigate or prosecute a hate crime, or the verdict or sentence in a state proceeding is inadequate to vindicate the interests of justice, the federal government needs jurisdiction to act.

One example of the need for an effective federal backstop in this area is the case of Sean Kennedy, which the Attorney General discussed in his written testimony before the Committee. On May 16, 2007, Kennedy, twenty years old, was killed as he left a local bar in Greenville, South Carolina. His eighteen-year-old assailant, Stephen A. Moller, approached Kennedy from the rear and called him a "faggot" as he punched him in the head, causing Kennedy to fall and hit his head on the pavement. He suffered a massive brain injury and died in the hospital. Moller later turned himself in to authorities and local law enforcement asked that the case be prosecuted as a hate crime; however, South Carolina does not currently have hate crime legislation. Moller was originally charged with murder, but in October 2007, the charge was reduced to involuntary manslaughter — the Greenville Country Solicitor's Office found there was no "malicious intent" on the part of the accused. Moller pled guilty and was ultimately sentenced to five years in prison, suspended to three years. However, he was released from prison on July 1, 2009.

In special cases like this one, the public is served when, after consultation with state, local, or tribal authorities, federal prosecutors have the tools necessary to investigate and potentially bring charges to punish and deter bias-motivated violence if the circumstances warrant federal involvement.

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3. Wouldn't this bill encourage police to treat victims differently, depending on whether they fit into a special status created by Congress? No state or locality wants the federal government announcing that they have failed in their duties. Doesn't this inevitably lead to a reallocation of resources and disproportionate attention being given to crimes covered by this bill, in order to avoid federal intervention?

Answer: The Department believes that state, local, and tribal law enforcement agencies work tirelessly to hold all individuals who commit violent crimes accountable for their actions. The Department does not believe that this bill would cause state, local, or tribal law enforcement agencies to treat victims differently depending on whether they fell into one of the classes covered by the legislation, nor does the Department believe that such agencies would pay disproportionate attention to bias-motivated violence as a result of this legislation. Indeed, this bill aims to assist state, local, and tribal jurisdictions with resources and other assistance to combat bias-motivated violence.

4. Some have characterized federal hate crimes legislation as a "thought crime." Do you agree? Isn't the criminal's motivation, (i.e., his thoughts) an element of the crime itself? In other words, absent the thought, there can be no hate crime, correct?

Answer: This bill does not criminalize thought or speech, no matter how offensive. Rather, it criminalizes violent acts motivated by a bias based on race, color, religion, national origin, gender, sexual orientation, gender identity, or disability. Specifically, the bill criminalizes only violent conduct resulting in "bodily injury," or the attempt to commit such "bodily injury," through the use of fire, a firearm, dangerous weapon, or explosive or incendiary device. The bill would not criminalize the disapproval, dislike, or condemnation of any protected group.

Although the Department believes that the U.S. Constitution, the Federal Rules of Evidence, and existing caselaw already provide adequate protection for expressive conduct and association, the bill provides a Rule of Construction that explicitly states that nothing in the legislation shall be construed "to prohibit any constitutionally protected speech, expressive conduct or activities" or "to allow prosecution based solely upon an individual's expression of racial, religious, political, or other beliefs or solely upon an individual's membership in a group advocating or espousing such beliefs." S. 909, § 10(3) and (4). In short, the bill could not be any clearer that it does not impact an individual's exercise of First Amendment rights.

5. In your written testimony, you said that because people with disabilities enjoy federal civil rights protections, they should also be protected by the hate crimes bill. Is the reverse also true? Do you believe the classes protected by this bill should also receive full civil rights protections?

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Answer: All citizens, not just those classes specified in this bill, are entitled to full civil rights protections afforded them by the U.S. Constitution and applicable federal law. This bill provides for federal criminal jurisdiction over bias-motivated acts of violence against classes of individuals who have historically been subject to violence because of their actual or perceived class membership.

6. **Are you aware of the charges against the Holocaust Museum shooter? My understanding is that the Justice Department alleged two counts – Murder in the First Degree (18 U.S.C. 1111) and Killing in the Course of Possession of a Firearm in a Federal Facility (18 U.S.C. 930(b) and 930(c)), correct?**

Answer: This question accurately sets forth the charges contained in the complaint currently pending against James Wenneker Von Brunn. The investigation has not concluded; thus, it remains possible that prosecutors will seek to file additional or different charges, depending upon any additional evidence uncovered.

- **The mandatory minimum sentence for Murder in the First Degree is either death or life imprisonment, correct? (18 U.S.C. 1111)**

Answer: Section 1111(b) punishes first degree murder with either life imprisonment or death; it punishes second degree murder by any term of years or life.

- **There is no greater punishment available in the American criminal justice system than death or life imprisonment, correct?**

Answer: Correct.

- **Therefore, is it accurate to say that the hate crimes bill could add nothing to the punishment that the Holocaust Museum shooter now faces for his crimes?**

Answer: If the defendant is convicted of First Degree Murder under 18 U.S.C. § 1111(b), under the terms of the statute he will be sentenced to life imprisonment or death; a separate prosecution under proposed § 249 would not increase his term of imprisonment. This result, however, is due to the fact that the crime took place inside a national museum in Washington D.C. and could thus be prosecuted as a federal murder. *See* 18 U.S.C. § 1111(b) (providing federal jurisdiction for murders occurring "within the special maritime and territorial jurisdiction of the United States . . .").

Hatch

1. **During the hearing, you were asked whether the provisions establishing federal offenses for causing bodily injury "because of" the race, gender, religion, sexual orientation, etc. of "any person" were too broad. You seemed to argue that punishing acts committed "because of" one's membership in a protected group is basically the same as punishing acts specifically motivated by hatred or animus toward a protected group. In response, some members**

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of the committee and witnesses on the second panel argued that the current language was so broad as to cover all rapes because they are committed "because of" one's gender or crimes committed against disabled persons, not because of prejudice, but because they are less able to defend themselves. I gather from your testimony in the hearing that you don't believe this legislation is written in such a way to make all such crimes punishable at the federal level. In your opinion, is there a difference between crimes motivated simply "because of" one's membership in a certain group and those motivated specifically by animus or bias toward particular groups? If not, do you believe that the interpretation of the language to be so broad as to cover crimes not specifically motivated by hate or animus is unreasonable? Please explain.

Answer: The Department believes that criminalizing violent offenses committed "because of" the race, gender, sexual orientation, or other protected characteristic of any person is not overly broad.

The term "because of" is already an integral part of two other federal hate crimes statutes. *See* 18 U.S.C. § 245(b)(2) (prohibiting using force or threat of force to injure, intimidate or interfere with a person "*because of* his race, color, religion or national origin and *because* he is or has been [engaged in an enumerated federally protected activity]") and 42 U.S.C. § 3631(a) (prohibiting using force or threat of force to willfully injure, intimidate, or interfere with any person "*because of* his race, color, religion, sex, handicap . . . familial status . . . or national origin and *because* he is or has been[enjoying enumerated housing rights].").

The term is also used in federal statutes that do not relate to civil rights enforcement in order to define the *mens rea* the government must prove to obtain a conviction. *See, e.g.*, 18 U.S.C. §§ 201 (the federal bribery statute, prohibiting giving, offering, promising anything of value to public officials "*because of* any official act performed or to be performed" by such official); 244 (statute prohibiting discrimination against members of the Armed Forces, prohibiting certain individuals from causing a person wearing a United States uniform to be discriminated against "*because of* that uniform"); and 1121 (criminalizing intentionally killing a state or local law enforcement officer involved in a federal investigation whenever the officer is killed, among other reasons, "*because of*" the performance of the victim's official duties or "*because of*" the victim's status as a public servant).

The Department believes that in order to prove the "because of" element of the statute, the government will have to prove discriminatory motivation. Because the phrase "because of" is currently used to define the *mens rea* element in many federal statutes, including the existing federal hate crimes statutes, the Department strongly supports its use in the instant legislation. The Department opposes adding language requiring a showing that the defendant was "motivated specifically by animus or bias" toward a particular group as unnecessary and novel. The term "because of" has been interpreted by courts and applied by juries in a variety of cases, including other federal hate crime cases. It adequately describes the requisite statutory intent element.

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2. **Following up on the previous question, you stated a handful of times at the hearing that this legislation would be limited to cover crimes motivated by the identity or status of the victims. Yet, that's not what the bill says. The bill explicitly does not limit itself to cover crimes motivated by the group membership of the victim, but includes crimes committed "because of" the identity or group membership of "any person." Presumably, this would include crimes motivated by the status or identity of the victim, the perpetrator, or any number of unnamed third parties. When you throw in the fact that it covers the "actual or perceived" traits of "any person," it seems as though the bill would cover numerous crimes not traditionally thought to be hate crimes and not addressed in your testimony before the committee. At the very least, shouldn't a federal hate crimes law be limited to cover only those crimes in which the perpetrator was motivated by the identity or group membership of the *victim*? And, is the interpretation that the inclusion of the language covering the status of "any person" makes the legislation broader than advertised unreasonable in your view? Please explain.**

Answer: The statutory use of the term "any person" does not render proposed 18 U.S.C. § 249 overly broad. The use of the term would, for example, allow prosecution of a white supremacist who violently assaulted a white man who had married an African-American woman. Section 245(b)(4) contains a similar provision. Furthermore, such a provision has been read into 42 U.S.C. § 3631. *See, e.g.*, *United States v. Hayward*, 6 F.3d 1241 (7th Cir. 1993); *United States v. Wood*, 780 F.2d 955, 961 (11th Cir. 1986). Again, the provision is not novel or untested in the courts.

Similarly, use of the term "perceived" will not broaden federal jurisdiction to non-hate-motivated crimes. Including the term "perceived" will ensure that a defendant cannot succeed in a "mistake of fact" defense, claiming that he is not guilty of a hate crime because his victim did not in fact have the characteristic the defendant believed she had.

3. **One of the more heralded aspects of this legislation for its proponents is that it would, for the first time, include crimes motivated "sexual orientation" and "gender identity." Yet, neither of these terms is defined in the bill, nor are they defined by current law. While its reasonably clear what the authors of this legislation had in mind when including these terms, I believe we need to be cautious to ensure the bill doesn't have unintended consequences. In your opinion, should these terms be defined so as to limit broad and unintended interpretations somewhere down the line? Please explain. How would you define these terms?**

Answer: The term "gender identity" is in fact defined in the pending legislation. *See* S. 909, § 7(a), at proposed 18 U.S.C. § 249(c)(4). The Department believes that "sexual orientation" is a commonly understood term that does not need statutory definition in order to limit overbroad interpretation in the future.

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4. **In response to concerns that this legislation could interfere with the investigations and prosecutions already going on at the state level, much has been made of the certification requirements included in Section 249(b) of the bill. That section reads as follows:**

> ***(1) IN GENERAL- No prosecution of any offense described in this subsection may be undertaken by the United States, except under the certification in writing of the Attorney General, or his designee, that–***
> ***`(A) the State does not have jurisdiction;***
> ***`(B) the State has requested that the Federal Government assume jurisdiction;***
> ***`(C) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence; or***
> ***`(D) a prosecution by the United States is in the public interest and necessary to secure substantial justice.***
> ***(2) RULE OF CONSTRUCTION- Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.***

Yet, even a cursory reading of this section would lead one to conclude that the Attorney General would have unlimited authority to certify prosecutions under this legislation. Indeed, the Rule of the Construction included in this Section explicitly states that this will be the case. If, as you stated several times during the hearing, that the states are, for the most part, doing a good job prosecuting these cases, shouldn't the Justice Department's discretion be limited to the small number of cases in which justice is truly not served at the state level? Shouldn't the bar for allowing federal prosecution be higher? Please explain.

Answer: The certification provision in proposed 18 U.S.C. § 249(b) will not provide the Attorney General with unlimited authority and it will not interfere with the prosecution of crimes that can be handled effectively at the local level.

The certification provision in the current federal hate crimes statute, 18 U.S.C. § 245, provides:

> *No prosecution of any offense described in this section shall be undertaken by the United States except upon the certification in writing of the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General specially designated by the Attorney General that in his judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice, which function of certification may not be delegated.*

18 U.S.C. § 245(a)(1). Proposed § 249(b)(1)(D) is a modified version of the existing certification provision, quoted above, which has served the Department well for many

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years. (A similar provision exists in 18 U.S.C. § 247, the federal church arson statute.) Together, proposed § 249(b)(1)(A) through (D) will guide the Attorney General or his designee in the exercise of discretion.

This certification requirement currently acts as a backstop to state and local prosecutions. The Department regularly confers with state and local colleagues in criminal cases, and it would continue to do so under this bill. State and local law enforcement do in fact investigate and prosecute the majority of hate crimes; therefore, the bar for allowing federal prosecution is already higher since the Department's discretion is limited to cases in which justice is not adequately served at the state level.

Finally, we are aware of no significant complaints from state prosecutors or police alleging that this certification provision is inadequate or defective. In fact, as demonstrated by the endorsement of the National District Attorneys Association and the International Association of Chiefs of Police, the state prosecutors most affected by federal assumption of jurisdiction actively support this bill.

5. **According to the Department of Justice's own numbers, hate crimes constitute less than 1 percent of all crimes reported in the U.S. The majority of those are property-related offenses, bearing no real relationship to this legislation. All told, less than one-half of 1 percent of all the crimes in the United States will be reached by this legislation. I don't want to suggest these crimes are insignificant, because most of them involve truly tragic situations for the victims and their families. But how do these numbers justify an unprecedented expansion of the federal government's law-enforcement powers, particularly when, according to your own statements, there is no trend indicating that states are not adequately dealing with these crimes?**

Answer: Far from constituting "an unprecedented expansion of the federal government's law-enforcement powers," this legislation would simply provide a meaningful federal backstop for state, local, and tribal hate crimes enforcement efforts. State, local, and tribal local law enforcement will continue to investigate and prosecute the vast majority of these crimes. Consistent with our current practice under existing federal hate crimes laws, we would continue to consult closely with our state, local, and tribal colleagues in all cases. Moreover, this legislation would require the Attorney General or his designee to certify that one of four grounds is met before a federal prosecution can be brought. S. 909, § 7 (proposed 18 U.S.C. § 249(b)(1)). This certification requirement further ensures that federal law enforcement's role will not be unduly expanded in this area.

The Department's Dual and Successive Prosecution Policy (also known as the "Petite Policy"), which is included in the U.S. Attorneys' Manual, places strict limits on any dual or subsequent federal prosecutions. In all cases, not just hate crimes, the Department would not bring a federal prosecution following a state prosecution arising from the same incident unless the matter involves a "substantial federal interest" that the state prosecution has left "demonstrably unvindicated," and the prosecution is approved

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by the designated Assistant Attorney General. *See* United States Attorneys' Manual § 9-2.031.

The Department judiciously exercises its discretion and authority to prosecute cases under the Petite Policy. For example, the Civil Rights Division has prosecuted only 31 hate crime cases under this policy since 1981.

We respectfully disagree with the statement that that the majority of hate crimes are property related. According to the FBI's statistics, from 1997 to 2007, there were 66,431 hate crimes against persons reported, in contrast to 35,774 hate crimes against property. *See* Federal Bureau of Investigation, Uniform Crime Report, Hate Crime Statistics, 1997-2007 (reports available at: http://www.fbi.gov/hq/cid/civilrights/hate.htm and (http://www.fbi.gov/ucr/ucr.htm#hate).

6. **It seems as though the proponents of this legislation have yet to answer what should have been the threshold question: Is it necessary? By your own admission, there is no statistical evidence indicating that hate crimes are not being prosecuted at the state level. Furthermore, in most of the anecdotal evidence cited by proponents of this legislation, the perpetrators have not gone unpunished. Indeed, in the California example you mentioned several times during the hearing, news reports indicated that the husband and wife defendants in that case received prison sentences of one year and six months, respectively, for what was a weaponless assault. Some could reasonably argue that they should have received stiffer penalties, but that's not an uncommon of occurrence with *any* crime under our legal system and you stated yourself that there is no evidence demonstrating that such perceived miscarriages of justice happen more often in hate crimes cases. In the past, I have introduced legislation that would commission studies to gather data on state efforts in prosecuting hate crimes and determine whether they are adequately addressing these terrible acts. My legislation would also compare the prosecution rates and sentences in states that have hate crimes laws with those that do not. It seems that my approach would answer many of the questions raised by members of this committee regarding the necessity of this legislation. At the very least, shouldn't Congress make this initial inquiry before moving forward with such sweeping legislation as the Matthew Shepard Hate Crimes Prevention Act? Please explain.**

Answer: The Department is not opposed to additional statistical study of bias-motivated acts of violence. The Department believes that this legislation is necessary now, however, to enable federal prosecution in those rare cases where the state, local, or tribal response to a hate crime is inadequate to vindicate the interests of the federal government. The Department's strong support of this legislation is not premised on a belief that other levels of law enforcement are not taking appropriate action to combat these serious crimes. Rather, our support for this legislation is based on our firm belief that a federal prosecution should be available to backstop state, local, or tribal action.

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Sessions

1. **Our nation, no doubt, has a history that many of us are not proud of. We have made great strides however, rooting out the violence and intimidation associated with voting and other rights for minorities. When the Congress passed Section 245 of the Civil Rights Act, there was direct evidence that state and local law enforcement officers were not enforcing criminal laws and were passively allowing the denial of fundamental rights to many African-Americans. The evidence was absolutely clear. We had a real problem. I am not sure we have that same problem here. There are no water fountains prohibiting homosexuals from drinking from them. We don't require homosexuals to sit in the back of the bus or to stand on the metro. I would like for you to explain to the Committee where the rampant evidence is demonstrating that hate crimes against homosexuals or other groups are not being prosecuted at the level witnessed when Section 245 of the Civil Rights Act was passed.**

Answer: The purpose of S. 909 is to prevent and punish bias-motivated violence, including violence prompted by an individual's sexual orientation. Statistical evidence clearly indicates that bias-motivated violence is a significant problem in this country that is worthy of attention. As the Attorney General noted in his written testimony, there have been nearly 80,000 hate crime incidents reported to the FBI since the Attorney General first testified before this Committee eleven years ago. This amounts to nearly one incident every hour of every day for the past decade. According to 2007 statistics published by the Federal Bureau of Investigation's Uniform Crime Reporting Program, 16.6 percent of hate crime incidents were motivated by sexual-orientation bias. The FBI indicates that in 2007, the last year for which statistics are available, approximately 1,265 hate crime incidents were motivated solely by sexual orientation. Moreover, these statistics do not even reflect the actual numbers, as hate crimes are underreported. In November 2005, the Bureau of Justice Statistics estimated that, while an average of 191,000 hate crimes had occurred annually between July 2000 and December 31, 2003, an average of only 92,000 crimes hate crimes per year had been reported to police.

2. **I think we need to be careful not to classify which crimes are committed out of hate. It is difficult enough to prove the underlying elements of a crime without putting in to play what someone was thinking at the time they decided to rob an elderly person. In this area though, as I understand that hate crimes legislation, if we look at the Mexican Drug Cartels that are fighting each other, those battles would not be covered. These drug wars are not limited to the Mexican border. Just last year in Alabama, police found five men with slit throats who had apparently been tortured with electric shocks before being killed over a drug debt. Is it the position of this Department of Justice that these crimes should receive less attention than some crime involving someone being called a bad name because of his sexual preference?**

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Answer: The Department believes that all violent crimes should be investigated and prosecuted to the fullest extent of the law. This legislation would criminalize only acts causing bodily injury (or attempts to cause bodily injury) motivated by a bias based on race, color, religion, national origin, gender, sexual orientation, gender identity, or disability. In the Department's experience, hate crimes statutes, by covering certain bias-motivated violent crimes, have not resulted in victims of other types of violent crimes being considered any less important or deserving of attention.

3. **Congressman Hastings from Florida introduced an amendment to the House version of the Defense Authorization Act which would allow the Attorney General to determine whether certain groups are of a violent or extreme nature and to basically determine which groups would normally be involved in hate style crimes. Regardless of whether you have had an opportunity to look at the amendment, do you have any groups you believe should be automatically classified as violent or hate styled organizations? Please list the groups and explain in detail why they would meet the criteria.**

Answer: The Department does not have a list of automatically classified hate groups. Moreover, a defendant's mere membership in a hate group would not be sufficient to establish that he or she committed, or attempted to commit, a bias-motivated crime causing bodily injury. Although the Department believes that the U.S. Constitution, the Federal Rules of Evidence, and existing caselaw already provide adequate protection for free speech, expressive conduct, and association, the bill provides a Rule of Construction that explicitly states that nothing in the legislation shall be construed "to prohibit any constitutionally protected speech, expressive conduct or activities" or "to allow prosecution based solely upon an individual's expression of racial, religious, political, or other beliefs or solely upon an individual's membership in a group advocating or espousing such beliefs." *See* S. 909, § 10(3) and (4).

4. **During the Proposition 8 debate in California, Jose Nunez a supporter of Proposition 8 was bruised and bloodied by an opponent of Proposition 8. (See http://www.catholicnewsagency.com/new.php?n=14069). In a church in Lansing Michigan, a group of gay activists called "Bash Back" disrupted the Sunday Morning service because the Church was viewed as characterizing homosexuality as a sin. (See http://www.lansingcitypulse.com/lansing/article-2302-gay-anarchist-action-hits-church.html). If we assume the first attack resulted from direct opposition to a gender identity or sexual orientation issue and the second resulted from hating the specific beliefs of the church, can you explain in detail why or why not these crimes would qualify under S. 909.**

Answer: The disruption of the Lansing Church by members of Bash Back would not be prosecutable under S. 909's proposed 18 U.S.C. § 249 because it did not involve bodily injury or an attempt to cause bodily injury with a dangerous weapon. According to the linked article, members of Bash Back passed out pamphlets, stood on church property, chanted slogans offensive to parishioners, infiltrated the church during services, and

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loudly disrupted religious services. Regardless of the motivation of any member of Bash Back, these actions would simply not qualify as prosecutable hate crimes under proposed 18 U.S.C. § 249.

The question regarding the assault of a Proposition 8 supporter assumes that the assault was motivated by gender identity or sexual orientation. The information provided, however, is insufficient to determine whether, in fact, the Department could prove such motivation beyond a reasonable doubt. If evidence were developed that a gay, lesbian, or transgendered individual committed a violent act against a heterosexual because the assailant had a bias against heterosexuals, that assault could indeed be prosecuted under this statute. In other words, the bill would protect heterosexuals as well as members of the LGBT community, just as the bill would protect people of all races, not merely groups traditionally viewed as minorities. Thus, given the question's assumption, the conduct would appear to be prosecutable under proposed 18 U.S.C. § 249.

5. The protected classes in this bill are defined. What groups would be protected under this bill? Please list every possible group this legislation would cover and explain whether the Department of Justice believes any group should be excluded from coverage. For instance, an amendment was offered during debate in the House to exclude pedophiles, if you believe pedophiles are covered list them and explain whether are not you believe an amendment should be drafted to exclude them.

Answer: Proposed 18 U.S.C. § 249(a)(1) would cover violent crimes motivated by bias against the "actual or perceived race, color, religion, or national origin of any person." Proposed 18 U.S.C. § 249(a)(2) would cover violent crimes motivated by bias against the "actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person." This legislation would only cover groups falling under these categories. The Department does not believe that any group falling under these categories should be excluded.

The Department does not believe that any of the listed categories could possibly be read to include pedophiles, and therefore we do not believe an amendment to exclude pedophiles is necessary.

6. Motivation is rarely if ever a necessary element to obtain a conviction. Would this legislation add motivation as a fundamental element? Do not prosecutors primarily focus on intent and the consequences that result from that intent in prosecuting crimes? How is motivation beyond a reasonable doubt?

Answer: While it is true that most crimes require the government to prove beyond a reasonable doubt that the defendant acted with criminal intent, most crimes do not involve bias motivation as an element of the offense. In contrast, existing hate crimes laws, such as 18 U.S.C. § 245, require the government to prove not only that the offender

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used force to willfully harm someone, but also to prove that the offender did so because of bias.

As in any case where a finder of fact has to make a determination as to the defendant's state of mind, evidence establishing bias motivation can prove that element of the offense beyond a reasonable doubt.

7. **Senator Hatch in the past has offered a complete substitute to similar legislation, which would require that a study be conducted to prove that there is an actual problem with hate crimes not being prosecuted. Do not give me a general response that there are some problems out there. I would like for you to provide the Committee with an exact and precise number of hate crimes the Justice Department is aware of which have gone unprosecuted at the state and local level. Please detail every example you or anyone in the Department of Justice is aware of, where no prosecutorial effort took place.**

Answer: The Department is unable to provide an exact number of cases in which state, local, or tribal jurisdictions have failed to prosecute hate crimes, because we are not aware of any such compilation of data. When the Department receives complaints about incidents it clearly lacks jurisdiction to prosecute, these matters generally are never opened as investigations and state prosecution—or lack of prosecution—is not tracked.

Moreover, the law is designed to act as a backstop not only when a state, local, or tribal jurisdiction completely refuses to prosecute, but also when such prosecution is inadequate, such as when a murder or serious assault is prosecuted as disorderly conduct or disturbing the peace. In such cases, federal action may be warranted in order to vindicate the interests of justice.

What the existing FBI hate-crime statistics do make clear is that hate crimes are a significant, ongoing problem in our nation. As the Attorney General emphasized in his testimony, statistics indicate that nearly one hate crime has occurred every hour of every day over a decade. The FBI reports that 7,624 occurred in 2007 alone. The Department believes that redress of this serious problem should not be put on hold pending further study.[1] As the Attorney General stressed in his testimony, versions of this bill have been pending for more than eleven years. The time is now to provide justice to victims of bias-motivated violence and to redouble our efforts to protect our communities from violence based upon bigotry and prejudice.

By providing funding and other forms of federal assistance, this bill would actually bolster the ability of state, local, and tribal jurisdictions to address these crimes. By creating a federal hate crimes law that would fill in gaps in enforcement, it would also provide a backstop in situations in which states cannot or will not prosecute. This would

[1] The Department has no objection to simultaneously studying the problem of hate crimes and fully supports Section 8 of the bill, which would expand the categories of hate crimes for which statistics are kept.

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increase deterrence as anyone contemplating committing such a crime would know that they could be subject to felony time under federal law, regardless of state law or punishment. Significantly, state law enforcement officials do not object to this law or see it as an imposition on their authority. In fact, both the National District Attorneys Association and the International Association of Chiefs of Police support this legislation.

8. In written testimony to the Committee submitted by Robert Knight, a senior writer/correspondent for Coral Ridge Ministries and a Senior Fellow at the American Civil Rights Union, Mr. Knights makes a number of important observations. I would like to get your initial reaction to some of those.

a. **"A grandma using an ATM machine should have at least as much protection under the law as a man walking out of a "gay" bar. But under S. 909, an assailant of a man who is a cross-dresser or is perceived as homosexual would face greater penalties than grandma's mugger." Is that a true observation? Please explain your answer in detail.**

Answer: Crimes against the elderly are reprehensible and should be punished. We must hold accountable those who commit violent crimes against our elders. There is no indication that crimes against the elderly have historically been motivated by hatred for the aged as opposed to simple crimes of opportunity. There is, on the other hand, a long history of social and legal mistreatment of individuals based on race, color, religion, national origin, gender, disability, gender identity, and sexual orientation. A clear record of bias-motivated violence and years of FBI statistics document the prevalence of hate crimes against the categories of victims covered by this bill.

Furthermore, under federal sentencing law, a defendant convicted of assaulting a gay man under S. 909 would not necessarily receive a higher penalty than would a defendant convicted of assaulting an elderly citizen using an ATM. In the federal system, penalties depend upon the individual characteristics of the crime, including: the injuries sustained by the victim, whether a weapon was used, and the manner in which the attack was carried out. If both of these hypothetical defendants were federally prosecuted, their sentences would depend upon such factors. Although there are factual scenarios in which the perpetrator of the hate crime would receive a more severe sentence, there are also factual scenarios in which the robber would be subject to a higher sentence.

Finally, S. 909 would not automatically apply to an assailant of a gay man. Rather, it would apply only if the assailant attacked him because of his sexual orientation.

b. **"During the Supreme Court hearings on the Boy Scouts case (*Boy Scouts of America vs. Dale*, 2000[2]), the Rev. Rob Schenck of the National Clergy Council was sitting next to the White House liaison**

[2] *Boy Scouts of America v. Dale* (99-699) 530 U.S. 640 (2000).
160 N. J. 562, 734 A. 2d 1196, reversed and remanded, at: http://www.law.cornell.edu/supct/html/99-699.ZO.html.

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on gay and lesbian issues. Thinking he was of like mind, she whispered to him:

'We're not going to win this case, but that's okay. Once we get 'hate crime' laws on the books, we're going to go after the Scouts and all the other bigots.'
"Why would she say that? The point is that the proposed federal "hate crime" law is less about righting unaddressed wrongs than in elevating sexual preferences – all of them – to civil rights status so they can be used as a battering ram against people and groups with traditional values." Is there any truth to his statement that groups like the Boy Scouts might be in danger for refusing to modify their oath or admit homosexuals into leadership? Please explain your answer in detail.

Answer: The Department cannot comment on the meaning of words stated in a private conversation that reportedly occurred nine years ago. The Department is certain that nothing in this legislation will affect the Boy Scout Oath or the Boy Scouts' criteria for establishing leadership positions.

c. **S. 909 adds "sexual orientation" and "gender identity" to a list of specially protected classes such as race, ethnicity, sex and religion. Congress would thus be officially creating a new civil rights category based on sexual confusion. Like "sexual orientation," "gender identity" is infinitely flexible, and includes transvestitism (cross-dressing) and transsexualism (believing that one is in the wrong sex's body and sometimes surgically changing one's sex organs). It is notable that former homosexuals, or "ex-gays," perhaps the most victimized group based on "sexual orientation" perceptions, have not been mentioned as being covered by this bill." Would you read this bill to protect ex-gays or would the text have to be modified to do that? If modification is necessary, please explain why you believe it should or should not be modified.**

Answer: The bill does not create a "new civil rights category based on sexual confusion." Rather, it uses well-defined and understood terms to protect groups that FBI statistics show have been the target of escalating violence. As the Attorney General noted in his written testimony, according to 2007 statistics published by the Federal Bureau of Investigation's Uniform Crime Reporting Program, 16.6 percent of hate crime incidents were motivated by sexual-orientation bias.

The terms used in the bill are not unclear. The bill defines "gender identity" to mean "actual or perceived gender-related characteristics." The term "sexual orientation" is not defined in the bill because it is now a commonly-understood term.

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As to the question about crimes against ex-gays, the bill would protect everyone from assaults based upon their sexual orientation. Thus, if an individual who formerly identified himself as gay were attacked because he now identified himself as heterosexual, or because he was incorrectly perceived as still being homosexual, he would be protected under proposed 18 U.S.C. § 249.

d. **"At the end of the bill, two paragraphs were inserted to mollify such concerns:**
(3) CONSTITUTIONAL PROTECTIONS- Nothing in this Act shall be construed to prohibit any constitutionally protected speech, expressive conduct or activities (regardless of whether compelled by, or central to, a system of religious belief), including the exercise of religion protected by the First Amendment and peaceful picketing or demonstration. The Constitution does not protect speech, conduct or activities consisting of planning for, conspiring to commit, or committing an act of violence.
(4) "FREE EXPRESSION- Nothing in this Act shall be construed to allow prosecution based solely upon an individual's expression of racial, religious, political, or other beliefs or solely upon an individual's membership in a group advocating or espousing such beliefs."
Ken Klukowski, an American Civil Rights Union senior legal analyst, explains [that two paragraphs added at the end of the legislation to protect religious speech actually] would not provide any more legal protection against abuses under this bill:
"Paragraph (3) is only a statement of the obvious, so it has no legal effect. No statute can abridge constitutionally-protected speech. If any speech is burdened, and the speaker files suit, then the process and the result is the same regardless of whether there is any paragraph such as (3). The court then looks to the speech in question, the nature of the burden on that speech, and what protection the First Amendment extends to that particular speech. The court does not look to language such as (3) in deciding the case. If the burden in the specific case is unconstitutional, then it's impermissible whether the statute acknowledges the fact or not. So (3) is just there to help pass the bill by giving people a talking point to say 'this law does nothing to violate anyone's free speech rights.' It makes no difference in court whatsoever."
Another problem is that "intimidation" is considered an act of violence under federal law, and "intimidation" is in the mind of the beholder. Also note the word "solely" in paragraph (4). This implies that expressions, beliefs or membership in a group *can* be used as factors in prosecution – just not as the *only* factors." Do you agree with this analysis and if not, can you explain why it is incorrect?

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Answer: As the Attorney General explained in his testimony, it is the position of the Department that the Rule of Construction is unnecessary because First Amendment jurisprudence and the Federal Rules of Evidence already provide ample protection to ensure that no person is prosecuted based upon his or her abstract political beliefs. The statute will not allow prosecution for "intimidation." The Rule of Construction must be read in conjunction with the bill itself, which would prohibit only "causing" bodily injury or attempting to do so with firearms, fire, or dangerous weapons. Such conduct will not reach verbal intimidation.

9. **During the recent oversight hearing, Senator Coburn asked you whether you viewed the June 1st murder of Army Private William Andrew Long who was targeted by a Muslim because he was a U.S. soldier as a hate crime. You stated that "it is potentially a hate crime" and admitted that DOJ has the responsibility to prosecute those who killed Private Long. You also admitted that you didn't think this killing "would be cognizable under the [current] hate crime statute" and that you "would want to look and see what the statistics show, what the facts show" before we offered this protection to member of the military. I think that is the appropriate basis to determine whether or not this legislation is necessary, and based on the numbers I've pointed out, I don't think it is.**

   - **Can you point to statistics which justify inclusion of "perceived gender identity" as a protected status in this bill? Can you explain to the committee what that term means?**

   - **The man who killed Private Long said *"this was an act of retaliation...[an] act, for the sake of God, for the sake of Allah, the Lord of all the world, and also a retaliation on U.S. military."* Muhammed remains unrepentant, saying: *"I do feel I'm not guilty...I don't think it was murder, because murder is when a person kills another person without justified reason."* How can this not be considered a hate crime?**

   - **Doesn't the "hate crimes" framework lead to a perverse result—namely that one murder is elevated in importance and tragedy over others? It implies that the victim — here, a U.S. soldier — is not good enough for a special designation?**

Answer: The murder of Army Private Long and the wounding of Private Quinton I. Ezeagwula at a Little Rock Armed Forces recruiting center is clearly a reprehensible crime of violence. The Department recognizes that this tragic shooting would not be criminalized by proposed 18 U.S.C. § 249. This, however, does not mean that there is no federal jurisdiction over the murder. 18 U.S.C. § 111(a)(1) prohibits forcible assault of military personnel while performing his or her duty, and 18 U.S.C. § 1114 prohibits the killing or attempted killing of such personnel.

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In the quoted statement, the shooter explains that his motive was to retaliate against an American soldier. This is the very conduct prohibited by § 1114 ("Whoever kills . . . any officer . . .while such officer . . . is engaged in or *on account of the performance of official duties* . . ."). Such retaliation against a member of our armed services is a serious crime that the federal government has a strong interest in preventing and punishing. Congress has protected our men and women in uniform by enacting the cited statutes. The Department believes that, just as the federal government has an interest in protecting military personnel, it also has an interest in preventing and punishing hate crimes, which victimize not only individuals, but entire communities.

According to 2007 statistics published by the Federal Bureau of Investigation's Uniform Crime Reporting Program, 16.6 percent of hate crimes were motivated by sexual-orientation bias. Solid statistics on the prevalence of gender identity-based crimes are especially difficult to find, given the problem underreporting due to "fear of law enforcement, language barriers, lack of outreach and services." National Coalition of Anti-Violence Programs (NCAVP), Hate Violence Against Lesbian, Gay, Bisexual, and Transgender People in the United States 50 (2008). However, the NCAVP has worked with 35 LGBT anti-violence programs in 25 states to publish comprehensive annual reports on hate violence against LGBT individuals in the U.S. Most recently, the group reported a 2% increase in the total number of victims reporting anti-LGBT violence (2,424) from 2007 to 2008 and known anti-LGBT murders rose 28% from 2007 to 2008 alone. Specific data on gender identity-based crimes showed that anti-transgender bias comprised 12% (206) of the total incidents reported in 2008.

With respect to "perceived" as opposed to "actual" gender identity, there are no statistics breaking down the number of crimes based upon perception versus actual status for any covered class. However, including the phrase "actual or perceived" — as under current federal hate crimes law — will ensure that a defendant cannot succeed in a "mistake of fact" defense, claiming that he is not guilty of a hate crime because his victim did not in fact have the characteristic that the defendant believed she had.

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SUBMISSIONS FOR THE RECORD

AAUW

Support the Matthew Shepard Hate Crimes Prevention Act (S.909)

May 14, 2009

Dear Senator:

On behalf of the more than 100,000 bipartisan members of the American Association of University Women (AAUW), I **urge you to cosponsor the Matthew Shepard Hate Crimes Prevention Act (S.909),** which was introduced by Sen. Kennedy (D-MA). Passed in both the House and Senate during the 110th Congress, this critical piece of legislation will provide much-needed protections and tools to combat – and help eliminate – hate and bias crimes. Hate crimes are serious, well-documented problems that remain inadequately prosecuted and recognized. Through this legislation, AAUW urges Congress to send a clear signal that hate-motivated violence carried out against any individual will not be tolerated.

Existing federal hate crimes laws authorize federal involvement in the prosecution of non-federal hate crimes only when the victim was targeted because of race, color, religion, or national origin. The Matthew Shepard Hate Crimes Prevention Act would fill a gap in current law by allowing the Department of Justice to also investigate and prosecute certain crimes motivated by the victim's actual or perceived sexual orientation, gender, gender identity, or disability. These protections are necessary for women who are not currently protected by the justice system. While local law enforcement has made progress in responding to crimes such as domestic violence, rape, and sexual assault, state and local prosecutors and judges may not be able to adequately prosecute gender-motivated hate crimes. In these cases, an unacceptable response by police or prosecutors can leave survivors of sexual and domestic violence vulnerable. By strengthening protections against bias-motivated crimes and removing some restrictions on when the federal government can assist local authorities in the prosecution of hate crimes, fewer of these disturbing cases will slip through the cracks.

AAUW believes that while states should continue to play the primary role in the prosecution of hate crime violence, the federal government must be able to address cases that local authorities are either unable or unwilling to investigate and prosecute. Under the Matthew Shepard Hate Crimes Prevention Act, local law enforcement officials would continue to prosecute most gender-motivated hate crimes, but the bill will make sure there is a better response in the cases of gender-based hate crimes when local authorities either cannot act or fail to do so. This legislation does not make every violent crime against women a bias crime, just as not every crime against an African-American is based on racial prejudice. Federal courts already routinely assess the question of gender motivation in the context of workplace discrimination claims and under other civil rights laws. Prosecutors and judges can rely on the same type of analysis that would pertain to the other protected groups – considering the language, nature and severity of the attack, motive, patterns of behavior, and common sense – to determine whether a violent crime was motivated by gender bias.

Once again, AAUW **urges you to cosponsor the Matthew Shepard Hate Crimes Prevention Act (S.909).** Cosponsorship and votes associated with these issues may be included in the AAUW Congressional Voting Record for the 111th Congress. If you have any questions, please contact me at 202/785-7793, or Tracy Sherman, government relations manager, at 202/785-7730.

Sincerely,

Lisa M. Maatz
Director, Public Policy and Government Relations

1111 SIXTEENTH STREET, NW WASHINGTON, DC 20036 202/785-7793 Fax: 202/872-1425 E-mail: VoterEd@aauw.org http://www.aauw.org

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Written Statement of
Dr. Mark Achtemeier
Associate Professor of Systematic Theology and Ethics
University of Dubuque Theological Seminary

To the

Committee on Judiciary
U.S. Senate
Room 226
Dirksen Senate Office Building
June 25, 2009

Honorable members of the Judiciary Committee:

I come before you as an Evangelical Christian, and an ordained minister of the Presbyterian Church (USA), seeking your support for the S. 909, the Matthew Shepard Hate Crimes Prevention Act of 2009.

Christians affirm, along with many other faith traditions, that every single human being is created in the image of God. That means every human being is entitled, as a divinely-given birthright, to the fundamental rights and dignity that go along with being an image of the Almighty and a fellow member of the one human family.

In this area, Christian teaching resonates with the dream that is America. Our forbearers wrote into the founding document of this republic the declaration that "All men are created equal [and] are endowed by their Creator with certain unalienable Rights."

Here our Declaration of Independence recognizes what Christians also affirm, that the ability for any of us to live out our calling as children of God requires respect for fundamental rights and freedoms which provide human beings with the space and the peace necessary for us to choose the good and reject evil, to develop our full human potential for the benefit of society as a whole, and to grow in love and our capacity to serve.

That space of freedom within which human life may flourish is taken away when people are subject to physical attacks and abuse, and when they are forced to live constantly under the shadow of fear and intimidation that are their counterpart. This is one of the areas where the church needs the government's help in order to do its work. We need you to create for us and for all citizens that safe space of freedom within which we can help people to embrace the good that is their destiny and calling as children of God.

As the name on this bill so eloquently testifies, that safe space has been tragically lacking for our lesbian, gay, bisexual and transgender ("LGBT") brothers and sisters. In 2007 alone, 1,265 hate crime incidents based on sexual orientation were recorded by the FBI. Though we obviously

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have laws already on the books designed to protect people from violent assaults, the plain truth is that in areas where particular minority groups are widely disapproved, justice sometimes bends in response to local prejudices, or simply has too few resources to stand against the prevailing tides of public opinion. We saw it historically when black Americans sought equal protection under the law. And we see it today in attacks against people who are LGBT.These are the circumstances where we need the assistance of the federal government if the better angels of our collective conscience are to prevail. We need the resources and the resolve of our federal law enforcement system in order to make real that American promise of life, liberty and the pursuit of happiness for all our citizens, gay and straight alike.

The importance of this bill is not limited to the LGBT community. This bill also expands and updates federal jurisdiction over violent, bias-motivated crimes based on religion, race, color and national origin. The bill therefore protects religious liberty by addressing violence against individuals based on their religion. Current federal law addresses hate crimes based on religion in extremely limited circumstances. This bill would allow our federal government a greater capacity to assist state and local authorities in their efforts to combat religious violence. Such hate is all too common. Violence based on religion is second only to race as the most prevalent category of hate crimes, and many religious groups, such as mine. support this bill all the more strongly *because* it addresses violent acts motivated by religious bigotry. We have felt called to speak out on behalf of this legislation. Our letter of endorsement, signed by religious groups representing the broad range of faith traditions, is attached to my testimony.

Now some have worried that in passing this legislation we would be declaring illegal the considered religious opinions of many Americans who believe that homosexual behavior is contrary to the will of God. I will say to you that my own Presbyterian Church is passionately committed to preserving the right of all people to believe and follow their religious convictions freely without the interference of the Federal Government. If I believed for one minute that the effect of this bill was to curtail legitimate religious expression or observance, I would not touch it with a ten-foot pole.

But that is not the effect of this bill! Section 10 contains explicit language stating that "nothing in this Act shall be construed to prohibit any constitutionally protected speech, expressive conduct or activities." Those constitutional protections are effective. We have had federal hate-crime legislation on the books for forty years in this country, nearly my whole lifetime. And in the course of that time, I myself have heard vicious, hateful, awful racist speech spewed forth from certain dark corners of our social fabric. I do everything I can to shield my children from this poisonous filth. But not once in all of these forty years while we've had hate-crime laws on the books have I ever seen someone brought up on charges solely because of something they said.

The Matthew Shepard Act targets not speech or thought or religious expression, but violent crime. We are talking here about physical assault on the person of another solely because of who they are. Violent attacks on another person are not a legitimate expression of anyone's

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religious belief, Christian or otherwise. There is nothing in this legislation for law-abiding Christians to fear.

In fact, we need this bill for the health of our churches, our mosques, and our synagogues. I myself am a biblically-committed Presbyterian who has come to believe that we grievously misinterpret the Bible if we use it to condemn people solely on the basis of a sexual orientation they did not choose. A great many of our people have been coming around to that point of view, but many others aren't there yet, and so the Presbyterian Church is split right down the middle on this question. Like many religious bodies, we are engaged in active, vigorous debate with one another, working to find our way to God's truth together. Everybody needs to be able to speak their mind freely for that kind of debate to be productive. And that can't happen if people are worried that they are liable to get beaten up in a dark alley somewhere if they speak freely about who they are and what they believe. We need the protections that the Matthew Shepard Act provides.

So for the sake of my church's health, and for the sake of this country's promise to all its citizens, I urge you to do the right thing and pass this legislation.

Thank you for your time and attention.

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African American Ministers in Action • American-Arab Anti-Discrimination Committee • American Conference of Cantors • Alliance of Baptists • American Islamic Congress • American Jewish Committee • Anti-Defamation League • B'nai Brith International • Buddhist Peace Fellowship • Central Conference of American Rabbis • Disciples Justice Action Network • The Episcopal Church • Equal Partners in Faith • FaithTrust Institute • Friends Committee on National Legislation • Hadassah, the Women's Zionist Organization of America • Hindu American Foundation • Interfaith Alliance • Islamic Society of North America • Jewish Council for Public Affairs • Jewish Labor Committee • Jewish Reconstructionist Federation • Jewish Women International • Muslim Advocates • Muslim Public Affairs Council • Methodist Federation for Social Action • Metropolitan Community Churches • NA'AMAT • National Advocacy Center of the Sisters of the Good Shepherd • National Alliance of Faith and Justice • National Council of Jewish Women • NETWORK: A National Catholic Social Justice Lobby • North American Federation of Temple Youth • Presbyterian Church (USA), Washington Office • Rabbinical Assembly • Religious Institute on Sexual Morality, Justice, and Healing • Sikh American Legal Defense and Education Fund • Sikh Coalition • Sikh Council on Religion and Education (SCORE) • Union for Reform Judaism • Unitarian Universalist Association of Congregations • United Church of Christ, Justice and Witness Ministries • United Methodist Church, General Board of Church and Society • United Methodist Church, General Commission on Religion and Race • UNITED SIKHS • United Synagogue of Conservative Judaism • Women of Reform Judaism

June 15, 2009

Dear Senator,

As representatives of a diverse array of religious communities, we write to urge you to co-sponsor and vote in support of the Matthew Shepard Hate Crimes Prevention Act—S. 909. In the 110th Congress sixty Senators voted in support of adding the hate crime provisions as an amendment to the Department of Defense Authorization measure. Last month, on April 29th, we were pleased to see the House of Representatives pass the Local Law Enforcement Hate Crimes Prevention Act (H.R. 1913) with a bipartisan vote of 249-175, and would like to see swift passage in the Senate.

Hate is neither a religious nor American value. The sacred scriptures of many different faith traditions speak with dramatic unanimity on the subject of hate. Crimes motivated by hatred or bigotry are an assault not only upon individual victims' freedoms, but also upon a belief that lies at the core of our diverse faith traditions – that every human has inherent value and that every life is sacred. While we recognize that legislation alone cannot remove hatred from the hearts and minds of individuals, this legislation will serve as a crucial step in building a society where hate-motivated crimes are deemed intolerable.

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In 2007, the FBI documented 7,624 hate crimes directed against institutions and individuals because of their race, religion, sexual orientation, national origin, or disability. But these troubling statistics do not speak for themselves – because behind each and every one of these incidents are individuals, families, and communities deeply impacted by these crimes. The Matthew Shepard Hate Crimes Prevention Act will stream-line the process for the Department of Justice to assist local authorities to investigate and prosecute these cases – and permit federal involvement in cases that occur because of a victim's gender, disability, gender identity or sexual orientation.

Existing federal law is inadequate to address the significant national problem of hate crimes. Not only does current law contain obstacles to effective enforcement, but it also does not provide authority to investigate and prosecute bias crimes based on disability, gender, gender identity or sexual orientation. We are morally obligated to call for laws to protect all Americans from hate-motivated violence.

S. 909 does not in any way violate First Amendment protections. Hate crime laws do not restrict speech. Rather, they target only criminal conduct prompted by prejudice. Some critics of the bill have erroneously asserted that enactment of the measure would prohibit the lawful expression of one's deeply held religious beliefs. These fears are unfounded. **The Matthew Shepard Hate Crimes Prevention Act does not punish, nor prohibit in any way, preaching or other expressions of religious belief, name-calling, or even expressions of hatred toward any group. It covers only violent actions that result in death or bodily injury or attempts to cause bodily injury by using fire, a gun, other dangerous weapons, or an explosive device.**

Although we believe that state and local governments should continue to have the primary responsibility for investigating and prosecuting hate crimes, an expanded federal role is necessary to ensure adequate and equitable response to these divisive crimes. The federal government must have authority to address those important cases in which local authorities are either unable or unwilling to investigate and prosecute.

Now is the time for Congress to publicly reaffirm its commitment to protect all Americans from such flagrant bias-motivated violence. As people of faith and leaders in the religious community, we are committed to eradicating the egregious hatred and violence which divides our society. We believe that the Matthew Shepard Hate Crimes Prevention Act is vital to this struggle, and we ask you to support its passage.

Respectfully,

African American Ministers in Action
American-Arab Anti-Discrimination Committee
American Conference of Cantors
Alliance of Baptists
American Islamic Congress
American Jewish Committee
Anti-Defamation League

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B'nai Brith International
Buddhist Peace Fellowship
Central Conference of American Rabbis
Disciples Justice Action Network
The Episcopal Church
Equal Partners in Faith
FaithTrust Institute
Friends Committee on National Legislation
Hadassah, the Women's Zionist Organization of America
Hindu American Foundation
Interfaith Alliance
Islamic Society of North America
Jewish Council for Public Affairs
Jewish Labor Committee
Jewish Reconstructionist Federation
Jewish Women International
Muslim Advocates
Muslim Public Affairs Council
Methodist Federation for Social Action
Metropolitan Community Churches
NA'AMAT
National Advocacy Center of the Sisters of the Good Shepherd
National Alliance of Faith and Justice
National Council of Jewish Women
NETWORK: A National Catholic Social Justice Lobby
North American Federation of Temple Youth
Presbyterian Church (USA) Washington Office
Rabbinical Assembly
Religious Institute on Sexual Morality, Justice, and Healing
Sikh American Legal Defense and Education Fund
Sikh Coalition
Sikh Council on Religion and Education (SCORE)
Union for Reform Judaism
Unitarian Universalist Association of Congregations
United Church of Christ, Justice and Witness Ministries
United Methodist Church, General Board of Church and Society
United Methodist Church, General Commission on Religion and Race
UNITED SIKHS
United Synagogue of Conservative Judaism
Women of Reform Judaism

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June 25, 2009

The Honorable Patrick Leahy, Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

On behalf of thousands of clergy members, pastors, and African American community leaders within the African American Ministers In Action (AAMIA) network of People For the American Way, I write in strong support of the Matthew Shepard Hate Crimes Prevention Act of 2009 (S. 909).

As people of color, we are well aware of the hideous nature of race-based violence, and understand the importance of legislation that protects Americans who are victims of hate crimes. We also are not blind to the fact that violent hate crimes are motivated not just by racism. Knowing this, as clergy members and pastors who affirm the humanity of every person, we fully understand and embrace the call to advocate for an inclusive federal law that will extend protection to victims of hate crimes based on disability, sexual orientation, gender, or gender identity. S. 909 is the bill that will make equal protection under the law for victims of hate crimes a reality and not just an American dream.

Unfortunately, propaganda and lies have prevented the protections that S. 909 proposes from becoming law. One such falsehood is that this bill will eliminate churches' first amendment rights; that this legislation will "muzzle our pulpits" or dictate what we as clergy or religious communities can or cannot say. This is not true. In fact, S. 909 protects freedom of speech and freedom of religion. It only punishes violent acts like assault and murder, not religious beliefs. The law makes clear that it cannot be used to prohibit any "constitutionally protected speech" or "expressive conduct."

The AAMIA network is passionate about protecting the civil rights of all Americans, especially those that protect people who are discriminated against because of who they are. Victims of violent hate crimes often come to our churches in search of a safe haven from enduring assaults, and they are in need of federal protections. Thus from our houses of worship to your house of policy, we trust that we can count on your support for the protection of American citizens from violent hate crimes. AAMIA strongly supports S. 909.

Sincerely,

Timothy McDonald

Rev. Timothy McDonald
Founder and Chair, African American Ministers In Action

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PEOPLE FOR THE AMERICAN WAY

AAMIA
AFRICAN AMERICAN MINISTERS IN ACTION
A Project of People For the American Way

Hate Crimes Fact Sheet

The **African American Ministers in Action** (AAMIA) network has joined those urging Congress to expand current federal law to protect victims of hate crimes based on disability, sexual orientation, gender, or gender identity. As believers who are called to love our neighbors as ourselves, we do not support **VIOLENCE** against any human being.

About the Matthew Shepard Hate Crimes Prevention Act of 2009

We support the Matthew Shepard Hate Crimes Prevention Act of 2009 (S. 909) because it does in fact protect individuals against the incidence of **VIOLENCE** motivated by the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of the victim. The legislation also provides strong First Amendment protections ensuring that the religious liberty and free speech rights of pastors, such as ourselves, and others are protected.

S. 909 is crucial to protecting the rights of all Americans. This can be accomplished by strengthening law enforcement and closing loopholes in the current law, and is overwhelmingly supported by the civil rights community, law enforcement, and many religious organizations. As we work to secure the rights of women and minorities worldwide, we must also act to secure the rights of all Americans here at home.

Incidence of hate crimes

Crimes against people based upon their disability, sexual orientation, gender, or gender identity are all too common. According to the most recent hate crimes statistics from the FBI (available at http://www.fbi.gov/ucr/hc2007/index.html), there were 9,535 victims (defined as persons, businesses, institutions, or society as a whole) of hate crimes in 2007. Of these, 1,512 were victims of hate crimes based on sexual orientation, and 84 were victims of hate crimes based on disability. Hate crimes legislation seeks to extend federal hate crimes protections to these and other (gender and gender identity) groups of people.

Religious liberty

S. 909 protects free speech and religious liberty. The First Amendment of the Constitution will always protect preaching or other expressions of religious belief—even name-calling or expressions of hatred toward a group. This legislation punishes only **VIOLENT** actions that result in death or bodily injury.

There is strong language in the legislation that explicitly says that evidence of expression or associations that are **not specifically related** to a **VIOLENT hate crime** may not be used as evidence.

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Hate Crimes Myths of the Right

MYTH: Hate crimes legislation is a threat to religious liberty and will "criminalize Christianity" by restricting what pastors and other religious leaders are able to preach. Pastors will be arrested for preaching against homosexuality.

FACT: S. 909 protects freedom of speech and freedom of religion. It **only punishes VIOLENT** acts like assault and murder, not religious beliefs. The law makes clear that it cannot be used to prohibit any "constitutionally protected speech" or "expressive conduct."

MYTH: Hate crimes legislation will lead to prosecution for "thought crimes."

FACT: This legislation does not restrict anybody's First Amendment rights. The law doesn't create something called a "thought" crime for a particular group of people. S. 909 strengthens law enforcement's ability to fight violent crime – not vigorous debate, not sermons against homosexuality, not hateful speech, not the spreading of misinformation that thrives on constitutionally protected right-wing television, radio, and blogosphere, not even the infamous "God hates fags" protesters.

MYTH: Hate crimes legislation gives "special rights" to some people.

FACT: Freedom from violence isn't a "special right." It's a human right. No one should be assaulted or killed because of who he or she is.

S. 909 **punishes only VIOLENT** crimes and the hateful motivation directly related to such crimes. Distinctions like this are common place in our criminal justice system. For example, the intent of a suspected killer determines the difference between a first and second-degree murder charge.

What Can You Do to Help End Violent Hate Crimes?

Contact your Representative and Senators and tell them that you want all Americans, regardless of their race, religion, national origin, age, disability, sexual orientation, gender, or gender identity, to enjoy freedom from violence. Urge them to support hate crimes legislation, such as S. 909, so that no American is treated as a second-class citizen. Sign up for People For the American Way action alerts, and we will keep you updated on new developments concerning this issue.

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June 25, 2009

The Honorable Patrick Leahy, Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

I write today as a concerned clergy member and as a member of African American Ministers in Action (AAMIA), a program of People For the American Way. I applaud your efforts to pass the Matthew Shepard Hate Crimes Prevention Act of 2009 (S. 909), and thank you for holding this hearing today. I hope that this bill moves swiftly through the committee process and through the Senate. As you know, the House has passed similar legislation, and it is my hope that the Senate will follow suit. It would be a great achievement if the President is able to sign this bill into law this session. I have attached materials for the record of your hearing that should also be of use as this debate moves forward.

All of our brothers and sisters should have equal protection from violence and discrimination under the law. Yet, I am particularly concerned with the outrageous claims of those who choose to portray the hate crimes legislation as a "threat to religious liberty." They spread the lie that the churches will be silenced, and that church leaders and their supporters will be jailed for speaking out against homosexuality. The bottom line: This is all completely false. I draw your attention to the materials I've submitted, especially the myths and facts from AAMIA.

The hallmark of my Christian faith is not in how many people we can set ourselves against, nor in how many people we can exclude based upon our particular notions of theology or church dogma. What distinguishes us as people of God is our ability and willingness to love one another – no matter what. When the world sees how we treat the gay and lesbian members of our congregations and communities, will they know us by our love? Will they see Christ reflected in our actions?

AAMIA fully respects the principle of separation of church and state, which helps preserve the constitutional values of life, liberty, and the pursuit of happiness. Thank you again for your tireless efforts in support of the Matthew Shepard Hate Crimes Prevention Act of 2009 (S. 909). Please consider me a resource in the future.

Sincerely,

Rev. Dr. Kenneth Lee Samuel
Pastor and founder of Victory for the World Church
Stone Mountain, GA

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Rev. Dr. Kenneth Lee Samuel is pastor and founder of Victory for the World Church in Stone Mountain, Ga. Rev. Samuel is vice-chair of PFAW Foundation's African American Ministers Leadership Council, a Senior Fellow at People For the American Way, Dr. Samuel is an outspoken advocate for Human Rights issues, and is the immediate pass president of the DeKalb County Branch of the NAACP. In addition, in his individual capacity, Dr. Samuel has been elected as a Georgia delegate to the last four Democratic National Conventions. Dr. Samuel's comments on equal justice for all people, especially LGBT brothers and sisters, have appeared in national and local publications including a recent *New York Times* story on reactions to the Jeremiah Wright controversy, as well as *The Washington Post*, and *The Atlanta Journal-Constitution*. Dr. Samuel's book entitled, Solomon's Success: Four Essential Keys to Leadership, has recently appeared as the #1 best seller under Pilgrim Press in the Christian Century.

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June 25, 2009

The Honorable Patrick Leahy, Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

I write today as a concerned clergy member and as a participant in the African American Ministers in Action (AAMIA) network of People For the American Way. I applaud your efforts to pass the Matthew Shepard Hate Crimes Prevention Act of 2009 (S. 909), and thank you for holding this hearing today. Passage of S. 909 is a critical priority for your Committee and the Congress, and it is one that the President should sign into law this session. I have attached materials for the record of your hearing that should also be of use as this debate moves forward.

As a pastor and community leader in the city of Philadelphia I stand firmly against violence of any kind. I support S. 909 because the Lord has called for us to love our neighbor and to set at liberty them that are bruised. The religious right has dug up some dark and ugly tactics to prevent the passage of this bill, much of which are bold faced lies. I draw your attention to the materials I've submitted, especially the myths and facts from AAMIA.

Thank you again for your tireless efforts in support of the Matthew Shepard Hate Crimes Prevention Act of 2009 (S. 909). Please consider me a resource in the future.

Sincerely,

Rev. Dr. Robert P. Shine
Pastor and founder of Berachah Baptist Church
Philadelphia, PA

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AAMIA
AFRICAN AMERICAN MINISTERS IN ACTION
A Project of People For the American Way

June 25, 2009

The Honorable Patrick Leahy, Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

I write today as a concerned clergy member and as a member of African American Ministers in Action (AAMIA), a program of People For the American Way. I applaud your efforts to pass the Matthew Shepard Hate Crimes Prevention Act of 2009 (S. 909), and thank you for holding this hearing today. Passage of S. 909 is a critical priority for your Committee and the Congress, and it is one that the President should sign into law this session. I have attached materials for the record of your hearing that should also be of use as this debate moves forward.

This is of particular interest to all of us who are concerned about equality. Equality for all should mean equality for *all*. Laws should protect everyone against discrimination: black or white, straight or gay. None of our brothers and sisters should be forced to live in fear of retribution because of their race, religion, sexual orientation, gender or gender identity, or disability. But the reality is each year thousands of innocent Americans are victims of violent crimes merely because of who they are. In this regard, I feel the church must fill the role of speaking out for those that others have turned their backs on.

I am also concerned with the false claims being made by political opponents of the legislation that the bill would silence pastors. In fact, the hate crimes legislation honors the prophetic voice of church leaders to preach the gospel as their faith compels them. The First Amendment will always protect the right of every person to speak out against homosexuality if they wish. This legislation does nothing to change that. I draw your attention to the materials that I've submitted with this letter, particularly the myths and facts document from AAMIA.

Thank you again for your tireless efforts in support of the Matthew Shepard Hate Crimes Prevention Act of 2009 (S. 909). Please consider me a resource in the future.

Sincerely,

Rev. Byron Williams
Pastor, Resurrection Community Church
Oakland, CA

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Rev. Byron Williams has been pastor of the Resurrection Community Church since 2002 and is an active member of the African American Ministers in Action. Additionally, Williams writes twice weekly syndicated social and political column for the Oakland Tribune, and is the host of radio-blog talk show entitled "*The Public Morality*." In 2005, he was voted by CityFlight magazine as one of the "30 Most Influential African Americans in the San Francisco Bay Area." Princeton professor Cornel West considers Byron's work "groundbreaking and historic." The Rev. Dr. J. Alfred Smith, Sr. of Allen Temple Baptist Church calls Byron "the Reinhold Niebuhr of his day." Williams has spoken throughout the country, including presenting the 2006 keynote address at the University of California African American graduation ceremony. He has appeared on numerous television and radio news programs, including CNN, ABC Radio, Fox News, and National Public Radio. He is also a featured writer on The Huffington Post.

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June 25, 2009

The Honorable Patrick Leahy, Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

I write today as a concerned clergy member and as a participant in the African American Ministers in Action (AAMIA) network of People For the American Way. I applaud your efforts to pass the Matthew Shepard Hate Crimes Prevention Act of 2009 (S. 909), and thank you for holding this hearing today

As a pastor and community activist in the city of Milwaukee I always stand for justice. Hateful violence has brought this country too much bloodshed and pain throughout our history. I support S. 909 because I have zero tolerance for acts of violence against a class of people because of who they are. Our opposition will flood you with lies and scare tactics to prevent the passage of this bill that just are not true. I draw your attention to the materials I've submitted, especially the myths and facts from AAMIA.

Passage of S. 909 is a critical priority for your Committee and the Congress, and it is one that the President should sign into law this session. I have attached materials for the record of your hearing that should also be of use as this debate moves forward.

Thank you again for your tireless efforts in support of the Matthew Shepard Hate Crimes Prevention Act of 2009 (S. 909). Please consider me a resource in the future.

Sincerely,

Rev. Dr. Rolen Lewis Womack, Jr.
Pastor and founder of Progressive Baptist Church
Milwaukee, WI

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ALLIANCE DEFENSE FUND
Defending Our First Liberty

MEMORANDUM

To: **Craig Parshall, NRB**

From: **Gary S. McCaleb, Sr. Counsel**
Erik Stanley, Sr. Legal Counsel

Date: **April 23, 2009**

Re: **Need for a Broad-Based Religious Exemption from any "Hate" Crimes Law**

I. Introduction

"Hate" crimes bills have been proposed in both houses of the federal legislature for many years, and have been attached as amendments to defense spending bills, habeas corpus reforms and child safety legislation. To date, no such bill has been enacted into law for various reasons. This legislative session, at least one "hate" crimes bill, H.R. 256, has been introduced in the House, thus setting the stage for another debate regarding the necessity and wisdom of such laws. Given President Obama's express commitment to work toward the passage of a "hate" crimes law,[1] and Democratic control of both the House and the Senate, it is reasonable to assume that a "hate" crimes law will be passed in the near future.

ADF believes that a "hate" crimes law will undercut constitutional protections for individual liberty, particularly for Christians.[2] Opposition to "hate" crimes laws is grounded in valid and persuasive reasons.[3] If, despite that reasoned opposition a "hate" crime bill passes, it is vital that any such bill contain a broad-based religious exemption. Such an exemption can mitigate the effect of a "hate" crimes law on religion and religiously motivated speech.

II. Reasons for a Broad-Based Religious Exemption from "Hate" Crimes

1. The Possibility of the United States Supreme Court Declaring a "Hate"

[1] President Obama's agenda states, "Expand Hate Crimes Statutes: President Obama and Vice President Biden will strengthen federal hate crimes legislation, expand hate crimes protection by passing the Matthew Shepard Act, and reinvigorate enforcement at the Department of Justice's Criminal Section." President Barack Obama's Civil Rights Agenda, *available at* http://www.whitehouse.gov/agenda/civil_rights/.

[2] *See* ADF attorney submits white paper to Congress refuting ACLU's assertions on "hate crimes" law, *available at* http://www.alliancedefensefund.org/news/pressrelease.aspx?cid=4078.

[3] Many of the reasons why hate crimes laws are ill-advised and damaging to religious freedom are contained in ADF's White Paper to Congress in 2007. *See* Memo to Members of Congress from Glen Lavy, ADF Senior Counsel, dated April 20, 2007, *available at* www.telladf.org/UserDocs/HateCrimesReport.pdf.

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Crimes Law Unconstitutional is Remote.

Those who oppose a "hate" crimes law should not rely upon the United States Supreme Court to declare such a law unconstitutional after it is enacted. This is seen in *Wisconsin v. Mitchell*, 508 U.S. 476 (1993), where the Court upheld the constitutionality of a Wisconsin "hate" crimes law. In a unanimous opinion, authored by Chief Justice Rehnquist, the Court rejected the argument that Wisconsin's "hate" crimes law punishes thought instead of just conduct. The Court stated that, "the Constitution does not erect a *per se* barrier to the admission of evidence concerning one's beliefs and associations at sentencing simply because those beliefs and associations are protected by the First Amendment." *Id.* at 486 (quoting *Dawson v. Delaware*, 503 U.S. 159, 165 (1992)). The Court also summarily rejected the contention that a "hate" crimes law unconstitutionally chills free speech, stating that such an argument was "simply too speculative a hypothesis...." *Id.* at 489. The Court added that "The First Amendment, moreover, does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent." *Id.* In short, given the Court's rejection of a constitutional challenge to a "hate" crimes law in *Mitchell*, a constitutional challenge to a federal "hate" crimes statute would be exceedingly difficult, if not impossible. This reality makes a broad-based religious exemption in the law vital.

The Court has also hinted in the past that evidence of a "special crime problem" may justify a restriction on expression. In *Watchtower Bible and Tract Society v. Village of Stratton*, 536 U.S. 150 (2002), the Court struck down an ordinance that regulated the activities of solicitors and canvassers that went door to door in the Village. The Village attempted to justify its regulation on the basis that it prevented crime. The Court rejected this argument stating that "there is an absence of any evidence of a special crime problem related to door-to-door solicitation in the record before us." *Id.* at 169. While there was no explanation of this statement, the Court left the door open for a different result (or at least an argument for a different result) if the record does demonstrate a "special crime problem." For instance, if the Village had been able to demonstrate the existence of a "special crime problem" with door-to-door solicitors, it could have had a better chance of justifying the effect of its ordinance on free speech activities.

In *Watchtower*, the Court judged the restriction under intermediate scrutiny which required the Village to demonstrate a significant interest that is appropriately balanced against the affected speech. *Id.* at 165. This balancing test leaves open the possibility that the government can demonstrate an important-enough interest to justify a speech restriction. Even if the Court had judged the ordinance under strict scrutiny, however, the strict scrutiny test is also a balancing test where speech restrictions can be justified by a compelling governmental interest. In short, the Court's statement in *Watchtower* points to the problem with a "hate" crimes law. H.R. 256 contains language that, "Congress finds that - the incidence of violence motivated by the actual or perceived race, color, national origin, religion, sexual orientation, gender, or disability of the victim poses a serious national problem." H.R. 256, §2(1). Given Congress' findings in the bill and the statistical evidence on "hate" crimes compiled over the last nineteen years,[4] it is quite possible that the Court could find a significant or a compelling interest in "hate"

[4] Despite the so-called "evidence" that hate crimes are a serious national problem, there is sufficient reason to believe that hate crimes are not such a serious problem as to justify a federal criminal prohibition. As ADF pointed out in its Memo to Congress,

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crimes law sufficient to override the incidental effect of such a law on free speech.[5]

The Supreme Court's opinion in *Hill v. Colorado*, 530 U.S. 703 (2000), is another instance where the Court found a governmental interest sufficient to override pure speech. In *Hill*, the Court upheld a restriction on protests and speech near abortion clinics in order to protect those seeking abortions from "unwanted advice" and "unwanted communications." *Id.* at 708. In doing so the Court placed great emphasis on "the vulnerable physical and emotional conditions" of the women seeking abortions. *Id.* at 729. It is conceivable that the Court could find that the "vulnerable physical and emotional conditions" of victims of "hate" crimes could justify a restriction on religious expression.

Those who oppose "hate" crimes laws will likely find no refuge at the Supreme Court. However, the real and definite impact of a "hate" crimes law on religious speech, as discussed more fully below, mandates the inclusion of a religious exemption.

2. The Elements of a "Hate" Crime are Overly Broad and Can Reach Conduct Protected by the First Amendment.

As typically drafted, and as proposed in H.R. 256, the elements of "hate" crimes laws are broad and have the potential to reach expression that others simply disagree with or find distasteful. A typical "hate" crimes law, including the current one pending before Congress, reads as follows:

> (A) IN GENERAL—Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B), willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity or disability of any person--

---

> State attorneys general are not clamoring for "hate" crime legislation. The proponents of "hate" crime legislation have not identified any crimes covered by H.R. 1592 that are not already subject to prosecution. Criminal civil rights violations based on race are already subject to federal prosecution. The alleged "persistent problem" of "hate" crimes is minuscule in proportion to violent crimes in general. And the reality is that the number of reported "hate" crimes is decreasing rather than increasing. The small proportion of violent crimes in America that are motivated by "hate" does not justify federal intervention, or the criminalizing of thoughts, beliefs, or speech.
>
> . . .
>
> One or two of every 3,500 violent crimes in America does not justify federal intervention.

See Memo to Members of Congress from Glen Lavy, ADF Senior Counsel, dated April 20, 2007, *available at* www.telladf.org/UserDocs/HateCrimesReport.pdf, pages 9-11.

[5] This is even more true given the fact that a factual record now exists on the incidents of hate crimes the Court could use to justify upholding the law. In 1990, Congress enacted the Hate Crimes Statistics Act which required the Attorney General to gather data on hate crimes. 28 U.S.C. §534 (1990).

The Department of Justice now publishes a report on its website of hate crimes as reported by victims and the police. *See* http://www.ojp.gov/bjs/abstract/hcrvp.htm.

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> (i) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and
> (ii) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if--
> (I) death results from the offense; or
> (II) the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

H.R. 256 (111th Congress). "Bodily injury" is not defined in H.R. 256, but federal courts use this common definition when the term appears in federal statutes:

> "bodily injury" means—(A) a cut, abrasion, bruise, burn, or disfigurement; (B) physical pain; (C) illness; (D) impairment of a function of a bodily member, organ, or mental faculty; or (E) any other injury to the body, no matter how temporary.

U.S. v. Myers, 972 F.2d 1566, 1572-1573 (11th Cir. 1992). In short, H.R. 256 appears to turn simple assault into a federal "hate" crime. Even temporary impairment of a mental faculty can constitute bodily injury. It is conceivable that an active "street preacher" could be prosecuted when someone disagrees with their message and suffers a transitory impairment of their mental faculties. The ambiguous structure of H.R. 256 thus inherently chills religious expression.[6]

"Hate" crimes laws, as commonly drafted, present expansive prohibitions that can conceivably reach expression that is disfavored. While proponents of "hate" crimes laws may discount such an analysis, the plain language of the bill, coupled with accepted definitions of bodily injury, demonstrate that the fear that "hate" crimes laws will chill free speech is not illusory. The very fact that a valid argument can be made that "hate" crimes laws will chill free speech points to the need for a broad-based religious exemption to a "hate" crimes law in order to protect religious speech. Religious citizens should not fear that they must censor their religiously-motivated expression as a result of a vaguely-worded "hate" crimes law. An exemption must be added to the law to broadly protect religious speech and exercise.

3. The Potential for Conspiracy Prosecutions of Religious Citizens Have a Chilling Effect on Religious Speech.

If "hate" crimes legislation is adopted, the immediate impact could prove disastrous for religious ministers and organizations who advocate peacefully against the homosexual lifestyle. Currently, every State has conspiracy laws that prohibit conspiracy to commit crimes. It is conceivable that preaching or teaching against homosexual conduct could be prosecuted as conspiracy to commit a "hate" crime. For instance, a minister could preach a sermon that urges those listening to "actively oppose the promotion or acceptance of the homosexual lifestyle in their community." An individual who hears this message and applies it in a way prohibited by a "hate" crimes law could be prosecuted under the law and the minister could also be prosecuted

[6] The ambiguous language in "hate" crimes laws leave open the possibility that such laws can be challenged on their face as unconstitutionally vague. When a person of ordinary intelligence does not know what conduct is prohibited by the law, then the law is unconstitutionally vague. *See e.g., Grayned v. Rockford*, 408 U.S. 104 (9172).

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for conspiracy.

One frightening example is the "Philadelphia 11" case. Eleven Christians were arrested in Philadelphia for singing and preaching in a public park at a homosexual street festival. Five of them were held and charged with crimes that were based upon Pennsylvania's "hate" crimes law and could have totaled a possible 47 years in prison. The charges hung over these individuals for months until a judge finally dismissed them. "Hate" crimes laws can and will be used to silence those who are peacefully opposed to the homosexual lifestyle.

It is not far-fetched or unreasonable to assume that the law will be taken to the greatest extent possible. Those organizations and even governmental entities who believe that religious speech advocating changes in the lifestyle of those who practice homosexual behavior is directly linked with "hate" crimes will take whatever opportunity they can to silence that religious speech, even if that includes a prosecution for conspiracy to commit a "hate" crime.

The possibility for a conspiracy prosecution is even more possible in states with expansive definitions of conspiracy that only require agreement to pursue an objective that may be lawful (i.e. opposition to the homosexual lifestyle) in an "unlawful" manner and that the crime committed was a natural and foreseeable consequence of the agreement. It is conceivable that a minister who preaches a strong sermon against the homosexual lifestyle and urges his or her congregation to do whatever necessary to oppose the lifestyle could be prosecuted for conspiracy if a member of the congregation who hears the sermon misinterprets it and commits an offense covered by a "hate" crimes law. This could occur even though the minister never intended or even dreamed that violence would be used as a result of his or her sermon on the issue but had merely chosen his or her words carelessly or in a way that could have been misinterpreted.

Certainly, the situation described above should be distinguished from the minister who actively advocates and urges his or her congregation to commit bodily harm against homosexuals. Such an advocate would certainly and rightfully be held accountable. However, a minister who perhaps carelessly chooses his words but has the purest of motives could be prosecuted. Such an outcome should not be left to the discretion of a prosecutor or judge who may have a personal agenda to promote or to a jury inflamed by public opinion.

The possibility of prosecution, even remote, could have a chilling effect on lawful free speech by ministers or religious organizations. Organizations and ministers would be forced, in an abundance of caution, to so water down their message, or to refuse to give it altogether to prevent an individual from misapplying or misconstruing their call to action. This chilling effect on lawful free speech should be avoided at all costs and, at a minimum counsels for a broad-based religious exemption in any "hate" crimes law.

III. Any Religious Exemption Must Sufficiently Protect Religious Speech.

Given the above reasons, it is important that any "hate" crimes law contain a broad-based exemption sufficient to protect religious speech and any concomitant chill on religious speech. One exemption was proposed by Senator Specter in the 110th Congress, as an amendment to

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H.R. 2585. The amendment stated:

> (j) CONSTRUCTION AND APPLICATION – Nothing in this section or an amendment made by this section shall be construed or applied in a manner that substantially burdens any exercise of religion (regardless of whether compelled by, or central to, a system of religious belief), speech, expression, or association, if such exercise of religion, speech, expression, or association was not intended to-
>
> (1) plan or prepare for an act of physical violence; or
>
> (2) incite an imminent act of physical violence against another.

This language, or language similar to it,[7] should provide a sufficiently broad exemption to protect religious expression. This language adopts the framework of RFRA and RLUIPA which have proven successful in protecting the exercise of religion from governmental interference and also makes it clear that speech that is not protected by the Constitution is outside the reach of the exemption.

One slight modification might be considered out of an abundance of caution in the foregoing exemption would be to insert "unlawful" before "physical violence." As written, the exemption could allow a "hate" crime prosecution against a Pastor who authorized church security personnel to use force in defense of the congregation during a pro-homosexual protest. Inserting "unlawful" would broaden the exception and eliminate the possibility that justified violence would be collaterally attacked under this federal statute.

The problem with a "hate" crimes law is its effect on valid religious speech. The existence of the law itself can chill religious expression out of fear that such expression will violate the law and lead to criminal prosecution. A RFRA/RLUIPA-type exception, such as the one above, sufficiently addresses this concern by removing from the reach of a "hate" crimes law, religious speech, expression, or association. If such religious exercise, speech, expression, or association is substantially burdened, then the law would be inapplicable.

The definition of "substantial burden" in any exemption should be clearly and expansively defined to avoid some of the conflict in the federal courts over that term.[8] The Eleventh Circuit Court of Appeals follows an expansive definition of the term "substantial

---

[7] Updated, more precise language for an exemption is being currently proposed by religious liberty groups as follows: "CONSTRUCTION AND APPLICATION - Nothing in this section or an amendment made by this section shall be construed or applied in a manner that infringes any rights under the First Amendment to the U. S. Constitution, or substantially burdens any exercise of religion (regardless of whether compelled by, or central to, a system of religious belief), speech, expression, or association, if such exercise of religion, speech, expression, or association was not intended to - (1) plan or prepare for an act of physical violence; or (2) incite an imminent act of physical violence against another."

[8] Federal Courts have disagreed over the meaning of the term "substantial burden" and the Supreme Court's definition of that term has varied over time. *See Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1226-27 11th Cir. 2004) (noting disagreement over meaning of term and citing cases).

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burden" that,

> [A] "substantial burden" is akin to significant pressure which directly coerces the religious adherent to conform his or her behavior accordingly. Thus, a substantial burden can result from pressure that tends to force adherents to forego religious precepts or from pressure that mandates religious conduct.

Konikov v. Orange County, Fla., 410 F.3d 1317, 1323 (11th Cir. 2005). This definition protects against the effect on religious expression of a "hate" crimes law. A "hate" crimes law would cause an adherent to forego or self-censor their expression or associations. Thus, under an expansive definition of "substantial burden," a "hate" crimes law would exempt valid religious expression from criminal prohibition.

The exemption language, similar to that proposed by Senator Specter, also does not utilize the compelling interest test and thus avoids any balancing by the courts. Balancing the government's interest in regulation against the effect on speech can lead to outcomes like *Hill v. Colorado*, where the Court found a sufficient government interest to justify a restriction on speech.

IV. Conclusion

"Hate" crimes laws present a serious negative impact on religious speech and have the effect of chilling valid religious expression. Given these concerns, and the Supreme Court's precedent that seems to argue in favor of the constitutionality of a "hate" crimes law, a broad-based religious exemption is vital and necessary. An exemption modeled after the successfully-applied language in RFRA and RLUIPA is sufficiently broad to protect the effect of a "hate" crimes law on religious speech and expression.

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In Memoriam
Hala Salaam Maksoud, PhD
(1943-2002)
Alex Odeh
(1944-1985)

June 24, 2009

The Honorable Patrick Leahy
Chairman, Senate Committee on the Judiciary
United States Senate- 433 Russell Senate Office Building
Washington, DC 20510-4502

Dear Chairman Leahy:

On behalf of the American-Arab Anti-Discrimination Committee (ADC), the largest grassroots organization dedicated to advancing and defending the civil rights and civil liberties of Arab-Americans, we write to you to thank you for holding "The Matthew Shepard Hate Crimes Prevention Act of 2009" hearing on Thursday June 25, 2009.

Mr. Chairman, the Arab-American community has been the target of violent hate crimes since the terrorist attacks of 9/11. In the first nine weeks after 9/11, ADC documented over 700 violent incidents directed towards Arab-Americans or those perceived to be Arab-Americans. Though hate crimes against our community have decreased since the immediate aftermath after 9/11, they remain substantially high. Many of these hate crimes occur in places where local law enforcement officials lack the adequate resources to investigate and prosecute. The Matthew Shepard Hate Crimes Prevention Act will provide much-needed support to investigate and prosecute these crimes, and is crucial in strengthening existing federal hate crime laws.

Please find enclosed the following documents, which ADC would like to submit for the record with regard to the above-mentioned hearing:

1. The Executive Summary and Recommendations of ADC's *"2003-2007 Report on Hate Crime and Discrimination Against Arab-Americans."*
2. Case Studies of violent hate crimes committed against Arab-Americans between 2003 and 2007. These cases are listed in ADC's "2003-2007 Report on Hate Crimes."
3. Case Studies of violent hate crimes committed against Arab-Americans between 2008 and 2009.

Please do not hesitate to contact us should you have any questions, or if the ADC can provide the Committee with information deemed helpful for the hearing.

Sincerely,

Mary Rose Oakar

Hon. Mary Rose Oakar (ret.)
President

Kareem Shora

Kareem Shora, J.D., LL.M.
National Executive Director

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Executive Summary

During the period covered in this report, ADC makes the following findings regarding the overall situation facing Arab-Americans with regard to hate crimes and discrimination, civil rights and liberties, and defamation in our popular and political culture.

• The rate of violent hate crimes against Arab Americans continued decline from the immediate post 9/11 surge, to a level somewhat but not dramatically increased, over that seen in the five years leading up to the 2001 attacks.

• The same essential pattern applies to other major forms of hate crimes and discrimination.

• Despite significant pressure from some politicians and commentators, the government has not employed formal, systematic policies of ethnic or religious profiling in airport security.

• The "no fly" lists that are unworkably large, contain common names, and are not reconciled or harmonized between agencies continue to cause significant problems for many Arab and Arab-American passengers.

• Discrimination at airports based on stereotyping, over-zelousness or prejudice by airline personnel or even other passengers is now one of the main sources of discrimination facing Arab-American air travelers.

• Arab-American travelers face serious issues with border crossing detentions and delays, especially on the U.S.-Canada border.

• Preventative detention by pretext remains a concern, although there has been no repeat of the mass round-up of thousands of Arab or Muslim immigration suspects following the 9/11 attacks. 2003-2007 saw the increased use of misapplied material witness detentions as a pretext for preventative detention, but following greater public scrutiny prosecutors have employed it more sparingly.

• The discriminatory "special registration" program (NSEERS), while a complete counter-terrorism and immigration law enforcement failure and although currently suspended, has created serious hardships for numerous law-abiding individuals.

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• Detainee abuse, and misconduct by federal, state and local law enforcement officers remain a serious concern.

• Thousands of Arabs have faced serious delays in naturalization and status adjustment.

• Arab-Americans continue to face higher rates of employment discrimination than in the pre-9/11 period, in both public and private sectors.

• Civil liberties concerns remain serious, including the some aspects of the discourse on a homegrown terrorist threat, the reauthorization of the PATRIOT Act, aspects of the REAL ID Act, secret evidence provisions, warrantless wiretapping and elements of immigration reform, among other issues.

• Arab-American students continue to face significant problems with discrimination and harassment in schools around the country.

• Arab-American students and faculty have faced increased levels of discrimination and political harassment campaigns, especially involving the Israeli-Palestinian conflict and efforts by right-wing groups to stifle debate on U.S. foreign policy in academia.

• Defamation in popular culture and the media remains a serious problem facing the Arab-American community.

• In spite of a far better record from the film and television industry in 2003-2007, defamation spread wildly in the non-fiction world of television, magazines, radio, newspapers and websites. A campaign of relentless vilification against Muslims and Islam has been the single biggest contributor to the collapse in American public opinion of Islam during this period, even though polling suggested no such antipathy in the immediate aftermath of 9/11.

• Arab Americans are more visible in the area of cultural affairs such as films, music, arts, entertainment to name but a few.

• Both the government and Arab-American groups such as ADC have explored and developed important new tools of communication and cooperation in 2003-2007.

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Section I
Hate Crimes and Discrimination

In the period covered by this Report, 2003-2007, Arab Americans faced significant problems with hate crimes and discrimination, especially with regard to airline travel and border and customs issues, as well as employment discrimination in both the public and private sectors. This section of the Report demonstrates that while, for the most part, these figures are lower during the period it covers than in the immediate aftermath of the 9/11 attacks, serious incidents are occurring at much too high a rate and a greater frequency than during the late 1990s and 2000.

Serious violent hate crimes and threats of violence remained a significant problem for Arab Americans, in spite of considerable efforts by law enforcement at every level to prosecute offenders. Both ordinary citizens and prominent community figures remain the target of serious threats and hate speech from other citizens, including employees of the federal government in relatively senior positions, although it must be noted that the government has prosecuted several important instances of such abuse.

Airline discrimination, especially by officials of private airlines, remains a concern for almost everyone in our community, with several high-profile instances demonstrating that unfounded fears and baseless stereotypes continue to inform the perceptions of airline employees if not Transportation Security Administration (TSA) officials. While the government itself does not engage in any systematic profiling or stereotyping in airport security, as this Report demonstrates precisely because of the need to provide effective security, officials of airlines and others continue to engage in stereotyping and discrimination causing serious difficulties for Arab-American passengers and those perceived to be Arab Americans. TSA and the other watch lists, however, do provide an ongoing source of government-generated anxiety and discrimination against Arab-American passengers and others caught up in the vague, unsubstantiated and improperly vetted lists, some of which have grown to unmanageable and irrational proportions.

Immigration discrimination, particularly unreasonable and unlawful delays in immigration procedures, especially naturalization processes, has affected thousands of people in this community. Negative consequences arising from the special registration process continue to haunt large numbers of Arab Americans and others who sought only to comply with an ill-conceived and badly managed immigration policy. During the period covered by this Report, the government has engaged in a number of immigration-related policies that are plainly discriminatory on the basis of national origin and, in effect, use national origin as a proxy for ethnicity and religious affiliation. It is worth noting that all immigration and immigration law enforcement policies based on stereotyping or simple ethnic, religious or national identities have proven absolutely useless as counter-terrorism measures, while creating damaging and unnecessary divisions between the government and the Arab-American and American Muslim communities. As David Cole and Jules Lobel, point out in

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their excellent book *Less Safe, Less Free* (The New Press, 2007), "The bipartisan September 11 Commission's staff concluded that all the administration's immigration initiatives targeted Arabs and Muslims that it reviewed were a complete failure in identifying terrorists. In addition to the programs identified above, it found that a blanket 20-day hold place shortly after September 11 on visas issued to males aged 16 to 45 from 26 countries in the Middle East and North Africa, plus Bangladesh, Malaysia, and Indonesia, 'yielded no anti-terrorist information and led to no visa denials.' Similarly, it reported that the Visa Condor program, which required additional screening of these applications from 26 predominantly Muslim countries, had identified no terrorists, and that the CIA had withdrawn from the program because it had uncovered no significant information. And it found that the Absconder Apprehension Initiative, a program that selectively targeted foreign nationals from predominantly Muslim countries who had outstanding deportation orders, had identified no terrorists."

Detainee and prisoner abuse also remains a serious concern, especially in private facilities outsourced by ICE to house immigration detainees. Arab Americans also face ongoing problems with misconduct by federal, state, and local law enforcement personnel, especially in relation to the deputizing of local officers in Joint Terrorism Task Forces (JTTFs) around the country without sufficient training. The period covered by this Report also saw a rise and fall in a new form of disturbing preventative detention by pretext, involving misused material witness orders against persons the government wished to detain without probable cause, as in the notorious case of Brandon Mayfield.

The problems outlined in this section of this Report are illustrated by a selection of "case studies," which are intended to demonstrate the nature and range of experiences attendant upon these challenges facing Arab Americans. The case studies are by no means exhaustive, and are selected in order to explain the nature of their impact on the Arab-American community. In many instances, names have been withheld in order to protect the privacy and legal privilege of those who have turned to ADC for legal assistance. Some cases are drawn from the media, and in some instances case studies reflect a combination of ADC's research and legal work, as well as journalistic accounts of the same event. A very small number of case studies in this section of the Report, for example the material witness detention of Brandon Mayfield, involve American Muslims rather than Arab Americans as such. These cases have been held to a minimum and are included because, as in the Mayfield case, they are invaluable illustrations of the problems associated with the various forms of hate crimes and discrimination outlined in this section of the Report.

There seems no doubt that the Arab-American community has made significant progress in addressing its concerns since the period covered by the last ADC *Report on Hate Crimes and Discrimination Against Arab Americans*, and almost all areas of concern are somewhat less onerous than during the 13 months immediately following the terrorist attacks on our country. However, this section of the Report demonstrates that these concerns remain noteworthy challenges facing both Arab Americans and our fellow citizens in the quest for a more equal, just and tolerant society.

1. VIOLENT HATE CRIMES

Violent hate crimes are defined for purposes of this Report as acts of violence or specific and credible threats of violence. In the aftermath of the 9/11 terrorist attacks, Arab Americans, and those perceived to be of Middle Eastern descent, were subjected to a wave of violent hate crimes and vigilante attacks. ADC documented over 700 violent incidents directed towards Arab American in the first weeks following the attacks, as outlined in the ADC's *Report on Hate Crimes and Discrimination Against Arab Americans: The Post September 11 Backlash*. Though the violence dramatically declined by January 2002, the remaining months of 2002 witnessed incidents coming into the organization at a somewhat higher rate than that seen in the years of the late 1990s.

During the late 1990s, hate crime reports received by ADC numbered between 80 to 90 per year. In the period covered by this Report, the rate has been between 120 to 130 per year, a significant increase from the pre-9/11 period. Therefore, during the period 2003-2007, the rate of violent hate crimes continued to decline from the immediate post 9/11 surge, still remaining a higher rate than that seen in the five years leading up to the 2001 attacks.

Two clear and noteworthy patterns have emerged during this period.

First, the hate crimes did not always begin with a clear motivation of bias. Rather, they would develop in that direction as the altercation intensified. In numerous instances, racial,

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religious or ethnic slurs would be employed not at the outset but after a dispute leading to violence or threats of violence had already begun.

Second, a surge in reports of hate crimes has been linked to certain events in the Middle East or the Islamic world involving both United States interests and citizens. When the first beheading atrocities committed by terrorists under the leadership of the late terrorist leader Abu Mussab Al-Zarqawi were committed, ADC noticed an increase in the incidence of reports of hate crimes. Similar increases were linked to the July 7, 2005 London bombings and other instances of violence and terrorism that produced a direct sense of fear and outrage among many Americans. Hate crimes and vigilante violence seems, therefore, to be clearly linked to a sense of collective guilt and a spirit of vengeance, as seen in the wake of the 9/11 terrorist attacks.

As documented by ADC, the Council on American-Islamic Relations (CAIR) and others, over the period covered by this Report, hate crimes, especially vandalism and the destruction of property, has been increasingly targeted at mosques and Islamic centers around the country.

Hate crimes have for the most part been thoroughly investigated by law enforcement authorities, particularly the civil rights division of the Department of Justice (DOJ). ADC commends local, state and federal law enforcement for their efforts to ensure that Arab Americans and those perceived to be Arab Americans are protected from such abuses and hate crimes.

CASE STUDIES

Woman pleads guilty to death threats against Arab-American family, Pennsylvania, 2007

In October 2007, Kia Reid, who was charged with a federal hate crime against her Arab-American supervisor, was sentenced to two years probation and eight months of incarceration. She was also sentenced to 200 hours of community service which must be completed at a mosque. Additionally, she was mandated to take anger management and diversity training classes. In handing down the sentence, Judge Gene Pratter said, "Our society cannot afford to dismiss this type of conduct."

The charges alleged that Ried sent a violent and threatening letter to her supervisor, Nina Timani, at their workplace, a Sheraton hotel. The DOJ and FBI investigated the incident as a civil rights violation because the threatening letter was an attempt to interfere with the supervisor's federally protected employment activity, contained the threat of force, and was indicative of apparent bias involving race, religion, and ethnicity.

According to the DOJ, on October 2, 2006, Kia Reid, left an ominous and threatening letter in her supervisor's office at a Philadelphia hotel. The letter included the phrases "Remember 9/11," "you and your kids will die like dogs," "tie onto the fence," "death," and other references to death and hanging. The victim was fearful for her safety and the safety of her children. This case is particularly noteworthy since FBI statistics indicate that more than 30 percent of all reported hate crime offenses involve intimidation similar to this case.

Family Continues to be Repeat Target for Vandalism and Tire Slashing, Maryland, 2007

On the sixth anniversary of the 9/11 attacks, six tires on two vehicles belonging to the family of Samira Hussein in Gaithersburg, MD, were slashed. Ms. Hussein is a family service worker for Montgomery County schools, and has been an activist on combating stereotyping of Arab and Muslim Americans. She has frequently been a speaker at libraries and schools about Islam, the Arab world and Arab-American history. She also runs cultural sensitivity training programs for new teachers entering the Montgomery County school system.

The family has a history of being targeted in this neighborhood, dating back to the 1990s. *The Washington Post* reported that, "In 1994, someone put glue on the hubcaps, door handles and locks of their Chevy Impala. Three years later, the car's leather seats and tires were slashed, a swastika was scratched onto the hood and the word "pig" was etched on a window. At the same time, someone scratched "Go home" onto the trunk of their Chevy Caprice and slashed the seats, she said. During the same period, the Husseins often found garbage thrown over their back fence, and someone threw eggs at, and later smashed in, their glass back door, Hussein said. They found dead birds near their home and notes with ethnic slurs taped to their door. A former neighbor was ordered to serve five days in jail and two years of probation in 1998 after being convicted of vandalizing the Husseins' cars, according to news accounts." Police said that the neighbor was not a suspect in the 2007 attacks.

Arab-American Customer Shot, Alabama, 2006

The ADC Legal Department is working with the FBI in a case

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where an Arab-American man was shot by another man who had been yelling racial slurs outside a Middle Eastern take-out restaurant in Alabama. Apparently, the suspect was inside the restaurant causing problems and acting in such a hostile manner that he had to be physically removed. He threatened to return and did so within an hour with a .22-caliber rifle. He then fired into the Arab-American customer's van that was parked outside the Middle Eastern restaurant. The victim, waiting with his family for their order, was shot in the head. The suspect, a 23 year old white male, was later arrested by police and both local and federal law enforcement are now involved in the investigation. ADC filed an administrative complaint with the U.S. DOJ Civil Rights Division and provided additional information to FBI Headquarters.

Forceful Eviction and Beating (New Jersey, 2005)
An Arab-American man in New Jersey had been renting a room although he had allegedly faced tensions with the landlord in the past. One rainy night, the man was locked out of his room and the landlord refused to let him in. He stayed out in the rain until 7am when a hooded man walked up to him and began to kick and beat him. He was dragged to the porch and the attacker yelled a number of insults including, "You ——- Arab, what the —— do you think you are? This is my house! No Arabs allowed here." On the porch, the landlord got involved as well, as it turned out the attacker was his son. He later pulled out a knife and threatened the Arab-American man, and said he would kill him if he did not move out of "his house" within an hour. While local police did not seem to react, the ADC Legal Department contacted the FBI that looked into the matter but did not opened an investigation.

Arab-American Pregnant Woman Wearing Hijab with Baby Physically Assaulted (Massachusetts, 2004)
An Arab-American Muslim woman, two months pregnant, who wears the hijab (Muslim headscarf) was walking with her ten-month old baby from a relative's house to her home in Massachusetts when a man and his dog approached them. When the woman asked the man to restrain his dog, he allegedly proceeded to curse at her and verbally harass her, calling her a terrorist. He allegedly continued to yell, followed her, and then pulled off her hijab and beat her until she was unconscious. The police found her attacker but allegedly did not arrest him. ADC filed a complaint with the FBI on behalf of the woman and her family and the FBI followed up with local law enforcement authorities in their investigation of the attacks.

Arab-American Student Bullied in School (Texas, 2006)
A mother reported that her son was subjected to verbal abuse and assaults as a result of a required reading selection that discussed a young boy being sodomized by another teenager named Assef. The mother reported that she informed the principal of the incidents of abuse but that no action was taken to address the issue. ADC worked with the family and the U.S. Department of Education Civil Rights Office on this case. As a result, a volunteer attorney with the ADC-Austin Chapter assisted the family locally in Texas and worked with the ADC nationally to remedy the situation.

Arab-American Man Assaulted by His Neighbors (Michigan, 2006)
A resident of Detroit was allegedly singled out and beaten by his neighbors due to his religious and ethnic background in front of his wife and children. He suffered a broken leg and seven stitches to his forehead after being beaten with a golf club, pieces of glass and a stick. No action has been taken by the police, even after the perpetrators were identified. After the brutal attack by the neighbors, the police only identified the case as a "neighborhood dispute." He and his family are still facing attacks and discrimination from the neighbors.

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Section VII
Recommendations

TO THE GOVERNMENT

• It is imperative that the government continues to resist calls for racial or religious profiling, and recognize that counter-terrorism policies based on stigmatizing broad identity groups have failed, and will not provide reliable security in the future.

• Terrorism watch and "no fly" lists should be consolidated and rationalized between all agencies and kept to a manageable size. Effective mechanisms for challenging inclusion or distinguishing between persons supposed to be included as opposed to those with similar names, as well as processes allowing persons routinely falsely caught up with these lists, should be instituted to avoid unnecessary problems.

• The Customs and Border Protection (CBT) agency should create a civil rights division or a similar wing to deal with complaints and concerns, and the government should make every effort to explain customs and border procedures to the public whenever appropriate.

• The government should avoid any form of preventative detention, which has no place in the American legal system.

• All relevant agencies need to take steps to ensure that unnecessary naturalization and immigration status adjustment petitions are not unnecessarily delayed.

• In considering any potential homegrown terrorist threat, Congress and executive branch agencies should take every effort to avoid stigmatizing entire communities.

• Congress should also act to preserve civil liberties by repealing sections of the PATRIOT Act, curbing executive branch excesses such as warrantless wiretapping, and by ensuring that measures such as comprehensive immigration reform and immigration law enforcement generally do not violate the fundamental rights of any individual.

• The leaders of both parties in Congress should ensure that members of the House and Senate do not make bigoted or stereotyping remarks without censure or disciplinary action, whether formal or informal.

• Since this would be the single most positive step that the United States could take in promoting better relations with the Arab world and reversing the alienation between Arab and American societies, American foreign policy should prioritize resolving the conflict in the Middle East by at long last ending the Israeli occupation and establishing a Palestinian state to live alongside Israel in peace.

TO SCHOOLS AND UNIVERSITIES

• Secondary and primary schools around the country should ensure that Arab-American students are not subject to any discrimination, abuse or harassment based on their ethnicity and that Arab culture or Islam is not the subject of dis-

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paraging or biased characterizations by faculty or in the curricula.

• Universities should protect faculty, especially untenured professors, from politically motivated campaigns of harassment and should resist outside efforts to interfere with tenure and promotion processes plainly designed to enforce political orthodoxy and stifle academic freedom and dissent.

TO THE MEDIA

• The entertainment industry should make every effort to continue the pattern of more balanced representations of Arabs and Muslims in American popular culture since the 9/11 terrorist attacks took place, and not revert to the unbalanced ethnic stereotyping that characterized earlier decades. As this Report goes to press, and at a time not covered by the scope of this Report, two major motion pictures released in May 2008, Iron Man and Nim's Secret suggested the possibility of a new trend reverting to older forms of ethnic stereotyping in American films. Such a regression in our popular culture would be extremely dangerous and damaging to all Americans.

• The news media and publishers should employ a single standard of basic respect for all identity groups and communities regarding commentary that promotes racism, ethnic or religious intolerance and stereotyping. Censorship is unacceptable, but respectable news outlets properly draw limits on the kind of expression they deliberately invite for inclusion in public debates and quite appropriately maintain standards regarding fundamental propriety. Arab Americans and American Muslims should be treated with the same level of respect and decency as all other communities, within the context of a society that properly chooses to maximize the range of free speech. Needless to say, government should play no role in defining these standards and practices.

TO THE ARAB-AMERICAN COMMUNITY

• Arab-American organizations and government agencies should continue to explore all available mechanisms for dialogue and cooperation whenever appropriate.

• Arab Americans should redouble their efforts to organize themselves as a community and engage the political system of our country at every level, both individually and as a collective.

• Arab Americans should expand their efforts at building coalitions with like-minded communities and organizations on all major issues of concern.

• Arab Americans, while vigilant in fighting stereotyping and discrimination, should be sensitive to and vehemently reject any extremism that may emerge from fringe elements within the community.

• Arab American parents should encourage their children to pursue professions in government service and the media if they are so inclined.

• Arab Americans should passionately promote patriotism and public service within the community, and emphasize that they are proud and enthusiastic Americans when communicating with our fellow citizens.

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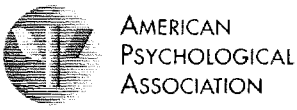

May 13, 2009

Dear Senator:

On behalf of the 150,000 members and affiliates of the American Psychological Association (APA), I am writing to urge you to co-sponsor the *Matthew Shepard Hate Crimes Prevention Act* (S. 909).

Hate crime is a serious societal problem that remains inadequately recognized and prosecuted. Current federal law authorizes federal involvement in the prosecution of non-federal hate crimes only when the victim is targeted because of race, color, religion, or national origin. The *Matthew Shepard Hate Crimes Prevention Act* would take several important steps toward improving our nation's response to hate crime, including expanding current federal law to recognize crimes motivated by actual or perceived sexual orientation, gender, gender identity, or disability; enabling the federal government to address those cases that other jurisdictions are either unable or unwilling to investigate and prosecute; and expanding the scope of data collection and reporting guidelines regarding hate crime.

APA members are actively engaged in a variety of research and clinical efforts focused on both the targets and perpetrators of prejudice, discrimination, and bias-motivated crime. Evidence suggests that hate crimes can have serious consequences for the mental health and well being of victims and communities. These negative effects are more prevalent among survivors of bias-motivated crimes than other crimes, and may be longer-lasting.

We urge you to help in combating bias-motivated crime by supporting the *Matthew Shepard Hate Crimes Prevention Act*. If we can be of further assistance, please feel free to contact Diane Elmore, PhD, MPH, in our Government Relations Office at (202) 336-6104 or delmore@apa.org.

Sincerely,

Gwendolyn Puryear Keita, Ph.D.
Executive Director
Public Interest Directorate

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AMERICAN
PSYCHOLOGICAL
ASSOCIATION

The Psychology of Hate Crimes

Many issues impacted by hate crimes can be informed by psychological research. For example, are hate crimes more harmful than other kinds of crime? Why do people commit hate crimes? What can be done to prevent or lessen the impact of hate and bias-motivated crimes? This briefing paper is designed to inform the public policy debate on hate crime with knowledge gained from psychological research. Social scientific research is beginning to yield information on the nature of crimes committed because of real or perceived differences in race, religion, ethnicity or national origin, sexual orientation, disability, or gender.

What is a hate crime?
Current federal law defines hate crimes as any felony or crime of violence that manifests prejudice based on "race, color, religion, or national origin" (18 U.S.C. §245). Hate crimes can be understood as criminal conduct motivated in whole or in part by a negative opinion or attitude toward a group of persons. Hate crimes involve a specific aspect of the victim's identity (e.g., race). Hate crimes are not simply biases, they are dangerous actions motivated by biases (e.g., cross burnings, physical assault).

Who is currently protected under federal hate crime law?
Presently, hate or bias-motivated crimes targeting victims because of race, color, religion, or national origin are punishable under federal law. Many states have laws which prohibit violent crimes against individuals based on these and/or other characteristics. In 1990, with the passage of the *Hate Crimes Statistics Act*, the federal government began to collect data about select categories of hate crimes. At present, no federal law exists that criminalizes bias-motivated crimes perpetrated against a person, property, or society that are motivated by the offender's bias against a gender, disability, sexual orientation, or gender identity.

Are hate crimes different from other violent crimes?
Yes. Hate crimes have an effect on both the immediate target and the communities of which the individuals are a member, which differentiate them from other crimes.

What effects can hate crimes have on victims?
While violent crime victimization carries risk for psychological distress, victims of violent *hate* crimes may suffer from more psychological distress (e.g., depression, stress, anxiety, anger) than victims of other comparable violent crimes (Herek, Gillis, & Cogan, 1999; McDevitt, Balboni, Garcia, & Gu, 2001). Survivors of violent crimes, including hate crimes, are also at risk for developing a variety of mental health problems including depression, anxiety and posttraumatic stress disorder (PTSD). PTSD emerges in response to an event that involves death, injury, or a threat of harm to a person. Symptoms of PTSD may include intrusive thoughts or recurring dreams, refusal or inability to discuss the event, pulling away emotionally from others, irritability, difficulty concentrating, and disturbed sleep.

For more information, please contact Diane Elmore, PhD, MPH, in the APA Public Interest Government Relations Office at delmore@apa.org or (202) 336-6104.

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Depression, anxiety, and PTSD may interfere with an individual's ability to work or to maintain healthy relationships, can lead to other problems such as substance abuse or violent behavior, and may be associated with other health problems such as severe headaches, gastrointestinal problems, and insomnia. Similar to other victims of traumatic stress, hate crime victims may enjoy better outcomes when appropriate support and resources are made available soon after the trauma.

What effect can hate crimes have on communities?
Hate crimes are different from other crimes in that the offender—whether purposefully or not—is sending a message to members of a given group that they are unwelcome and unsafe in a particular neighborhood, community, school, workplace, or other environment. Thus, the crime simultaneously victimizes a specific individual and members of the group at large. Hate crimes are often intended to threaten entire communities and do so. For example, a hate crime that targeted children in a religious day care center and an ethnic minority postal worker was intended to instill fear in members of these minority communities (Sullaway, 2004). Being part of a community that is targeted because of immutable characteristics can decrease feelings of safety and security (Boeckmann & Turpin-Petrosino, 2002). Being a member of a victimized group may also lead to mental health problems. Research suggests that witnessing discrimination against one's group can lead to depressed emotion and lower self-esteem (McCoy & Major, 2003). More research is necessary to document the impact of hate crimes on those who share the victim's identity.

Who is at risk?
In 2007, law enforcement agencies in 49 states and the District of Columbia reported 7,624 bias-motivated incidents to the Federal Bureau of Investigation (FBI), the federal government agency mandated by Congress to gather these statistics. However, the FBI points out that these data must be approached with caution. Victims do not always report hate crimes committed against them to law enforcement. In fact, a victim of a hate crime is far less likely than a victim of a similar (but not bias-motivated) crime to report the crime to the police, even when the individual knows the perpetrator (Dunbar, 2006; Herek, Cogan, & Gillis, 2002). This reluctance often derives from trauma the victim experiences, a fear of retaliation, or belief that law enforcement is biased and will not support them.

In addition to race, color, national origin, and religion, individuals are targeted because of other aspects of their identity as well; including, disability status, sexual orientation, gender, and gender identity. Hate crime laws are designed to protect all individuals. While minority group members may be at greater risk for hate crimes, anyone can become a victim of a hate crime. For example, in 2007, the FBI reported that 18.4 percent of hate crimes based on race stemmed from anti-white bias.

Race/Ethnicity. Many reported hate crimes are motivated by racial bias. In 2007, more than half of the 7,621 single-bias crimes reported to the FBI (50.8 percent) were racially motivated. Of 1,256 hate crimes in 2007 motivated by bias based on ethnicity or national origin, the FBI found that 61.7 percent were anti-Hispanic.

Religion. Bias and violence against Arab and Muslim Americans reached its height after the tragic events of September 11, 2001. It is estimated that there were more than 700 violent incidents targeting Arab and/or Muslim Americans or those perceived to be Arab or Muslim Americans in the first nine weeks following September 11th. Due to a lack of understanding of religious differences, Sikhs have been mistakenly targeted as Muslims. Since hate crimes are defined as based on real *or* perceived group membership, these incidents are considered hate crimes. Most religiously motivated hate crimes are acts of vandalism, although personal attacks are also common. In 2007, the FBI reported that the

For more information, please contact Diane Elmore, PhD, MPH, in the APA Public Interest Government Relations Office at delmore@apa.org or (202) 336-6104.

great majority of these crimes were directed against Jews (68.4 percent), followed by anti-other religion (9.5 percent) and anti-Islamic (9.0 percent) hate crimes.

Disability. In 2007, 62 hate crimes against individuals with mental disabilities and 20 hate crimes that targeted those with physical disabilities were reported to the FBI. However, other research suggests that persons with disabilities are four to 10 times more likely to be a victim of a crime than persons without disabilities. There is also evidence that persons with disabilities are at risk of being abused by those whose job it is to serve or protect them. Studies have shown that in cases of sexual abuse of persons with disabilities, 48 percent of the perpetrators were employed in the disability services field and gained access to their victims through the work setting.

Sexual Orientation. In 2007, there were 1,460 hate crimes based upon sexual orientation reported to the FBI, of which 59.2 percent were classified as anti-male homosexual bias. In a study of lesbian, gay, and bisexual persons, researchers found that roughly one-fifth of the women and one-fourth of the men had been the victim of a hate crime since age 16 (Herek et al., 2007). One in eight women and one in six men had been victimized within the last five years.

Gender Identity. Currently, the FBI does not track statistics of hate crimes committed against individuals because of real or perceived gender identity and expression. However, research suggests that transgender and gender-nonconforming individuals (people who dress or look differently than the normative presentation of their biological sex) are at high risk of victimization (D'Augelli, Pilkington, & Hershberger, 2002). It has been suggested that if the FBI did track hate crimes based on gender identity, it would represent the second-largest category of all hate crimes (Gender Public Advocacy Coalition, 2006).

Who are the perpetrators of hate crime?
While hate groups can pose a serious threat to communities, research suggests that the vast majority of offenders are not members of organized hate groups. Additionally, recent data suggest that over 50 percent of perpetrators of hate crimes are under age 25. According to the U.S. Department of Justice (2001), 31 percent of hate-based violent offenders and 46 percent of hate-based property offenders from 1997-1999 were under age 18.

What can be done to address hate crimes?
Law enforcement officials, community leaders, educators, researchers, clinicians, and policymakers must work together to stop hate crimes. The American Psychological Association strongly recommends the following:

- Support federal anti-discrimination laws, statutes, and regulations that ensure full legal protection from discrimination and bias-motivated crimes, including:
    1. The Local Law Enforcement Hate Crimes Prevention Act of 2009 (H.R. 1913, 111th Congress)
    2. The Matthew Shepard Hate Crimes Prevention Act (S. 909, 111th Congress)

- Support legislation on standardized procedures for identifying and collecting data related to hate crimes to ensure more accurate statistics, including:
    1. The Hate Crime Statistics Improvement Act of 2009 (H.R. 823, 111th Congress)

For more information, please contact Diane Elmore, PhD, MPH, in the APA Public Interest Government Relations Office at delmore@apa.org or (202) 336-6104.

2. The Hate Crimes Against the Homeless Statistics Act of 2007 (H.R. 2216, 110th Congress)

- Support research assessing the prevalence, incidence, predictors, and outcomes of hate crimes, as well as the psychological impact of hate crimes on victims, their families, and the community.
- Support interventions to address the mental health needs of survivors of hate crime.
- Support educational efforts aimed at dispelling stereotypes, reducing intergroup conflict, and encouraging broader understanding and appreciation of intercultural issues.
- Support development and dissemination of empirically based hate crime prevention and intervention programs.
- Support training of law enforcement, health care providers, and victim-assistance professionals regarding how they can assist individuals and communities that have been victimized by hate crime.
- Encourage collaborations between community members, local advocacy organizations, and law enforcement agencies to promote healthy and safe environments.

APA Links of Interest

For more information on APA's work on hate crimes, please visit the following websites:

Public Interest Government Relations Office
http://www.apa.org/ppo/pi

APA Office of Ethnic Minority Affairs
http://www.apa.org/pi/oema/homepage

APA Office on Lesbian, Gay, Bisexual, and Transgender Concerns
http://www.apa.org/pi/lgbc/homepage

APA Division of Trauma Psychology
http://www.apatraumadivision.org

The American Psychological Association (APA) is the largest scientific and professional organization representing psychology in the United States and is the world's largest association of psychologists. APA's membership includes more than 150,000 researchers, educators, clinicians, consultants and students. Through its divisions in 54 subfields of psychology and affiliations with 60 state, territorial and Canadian provincial associations, APA works to advance psychology as a science, as a profession and as a means of promoting health, education and human welfare.

For more information, please contact Diane Elmore, PhD, MPH, in the APA Public Interest Government Relations Office at delmore@apa.org or (202) 336-6104.

OFFICE OF GOVERNMENT & NATIONAL AFFAIRS, WASHINGTON, DC

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GLEN S. LEWY

National Director
ABRAHAM H. FOXMAN

Deputy National Director
KENNETH JACOBSON

June 15, 2009

Dear Senator:

On behalf of the Anti-Defamation League, we are writing to urge you to support S. 909, the Matthew Shepard Hate Crimes Prevention Act of 2009. This legislation, a top priority for the Anti-Defamation League in the 111th Congress, would strengthen existing federal hate crime laws by authorizing the Department of Justice to assist local authorities in investigating and prosecuting certain bias-motivated crimes. The bill would also provide authority for the federal government to prosecute some violent bias-motivated crimes directed against individuals on the basis of their sexual orientation, gender, gender identity, or disability. Current federal law does not provide sufficient authority for involvement in these cases.

This measure has repeatedly attracted majority, bipartisan support in both the Senate and the House. On April 29, 2009, the House of Representatives approved this legislation, HR 1913, by a vote of 249-175. The companion Senate measure, S. 909, is currently pending with 41 cosponsors.

The bill has been endorsed by over 275 national civil rights, professional, civic, education, and religious groups, twenty-six state Attorneys General, and a number of the most important national law enforcement organizations in America – including the International Association of Chiefs of Police, the Major Cities Chiefs Association, the National District Attorneys Association, the National Organization of Black Law Enforcement Executives, and the Police Executive Research Forum.

Forty-five states and the District of Columbia now have enacted hate crime laws – many based on a model drafted by the Anti-Defamation League. But a significant number of states do not include coverage of crimes based on sexual orientation, gender, gender identity, or disability in their statutes. State and local authorities will continue to investigate and prosecute the overwhelming majority of hate crime cases. But this essential legislation will provide a necessary backstop to state and local enforcement by permitting federal authorities to provide assistance in these hate crime investigations – and by allowing federal prosecutions when state and local authorities are unable or unwilling to act.

We urge you to support S. 909, the Matthew Shepard Hate Crimes Prevention Act of 2009. Please do not hesitate to contact our office if you have questions about this legislation or if we can be helpful in any way.

Sincerely,

Michael Lieberman
Washington Counsel

Jess N. Hordes
Washington Director

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(202) 452-8320 FAX (202) 296-2371 E-mail: natlgov@adl.org Web site: www.adl.org

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ADVANCING EQUALITY

May 15, 2009

Dear Senator:

On behalf of the Asian American Justice Center (AAJC), we are writing to urge you to support the Local Law Enforcement Hate Crimes Prevention Act of 2009 (LLEHCPA) (S. 909). This legislation will strengthen existing federal hate crime laws. Under current law, the government must prove that the crime occurred because of a person's membership in a designated group and *because* (not simply while) the victim was engaged in specific federally-protected activities- such as serving on a jury, voting or attending public school. This provision would eliminate these overly restrictive jurisdictional limitations, which have prevented federal involvement in a number of cases in which individuals kill or injure others because of a racial or religious hatred.

In addition, this provision would authorize the Department of Justice to assist local prosecutions, and, where appropriate, investigate and prosecute cases in which the bias violence occurs because of the victim's sexual orientation, gender, gender identity or disability. Current federal law does not provide authority for involvement in these cases at all.

Both the House and Senate have demonstrated strong support of the bill in recent years. In 2007, the LLEHCPA was successfully attached as an amendment to the Senate version of the Department of Defense Authorization bill. On September 14, 2005, the House passed this legislation by an overwhelming 223 to 199 bipartisan vote, taking a historic step toward giving law enforcement the tools they need to enforce and prosecute hate crimes against gay, lesbian, bisexual and transgender persons. The measure was passed as an amendment to H.R. 3132, the "Children's Safety Act." Currently, the LLEHCPA has the support of more than 300 organizations including law enforcement, civil rights, civic and religious organizations.

State and local authorities investigate and prosecute the overwhelming majority of hate crime cases -- and will continue to do so after the LLEHCPA is enacted. The LLEHCPA, however, would provide a necessary backstop to state and local enforcement by permitting federal authorities to provide assistance in these investigations – and by allowing federal prosecutions when state and local authorities are unable or unwilling to act.

All too often, Asian Americans find themselves victimized by hate crimes. It is important that the federal government be able to address cases that state and local authorities either cannot or will not investigate or prosecute such crimes accordingly. All hate crimes need to be taken seriously because they have a crippling effect on not only the victim, but on entire communities.

Please contact Aimee Baldillo, Director of Programs, at 202.296.2300 ext. 112 with any questions. Thank you in advance for your support.

Sincerely,

Karen K. Narasaki
President and Executive Director

1140 Connecticut Ave. NW, Suite 1200, Washington, D.C. 20036 • T 202.296.2300 • F 202.296.2318 • www.advancingequality.org

AFFILIATES: Asian Pacific American Legal Center in Los Angeles • Asian Law Caucus in San Francisco • Asian American Institute in Chicago

STATE ATTORNEYS GENERAL
A Communication From the Chief Legal Officers
Of the Following States:

Arizona - Arkansas - Connecticut - District of Columbia - Georgia - Hawaii - Illinois - Iowa
Kentucky - Louisiana - Maine - Maryland - Massachusetts - Minnesota - Missouri - Montana
Nevada - New Mexico - New York - Ohio - Oregon - Rhode Island - Utah - Vermont
Virgin Islands - Washington

April 16, 2007

Via Facsimile

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
H-232, The Capitol
Washington, D.C. 20515

The Honorable John Boehner
Minority Leader
U.S. House of Representatives
H-204, The Capitol
Washington, D.C. 20515

The Honorable Harry Reid
Majority Leader
United States Senate
S-221, The Capitol
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
S-230, The Capitol
Washington, D.C. 20510

We, the undersigned Attorneys General, are writing to express our strong support of Congressional efforts towards the immediate passage of federal hate crimes legislation. As the chief legal officers in our respective jurisdictions, State Attorneys General are on the front lines in the fight to protect our citizens' civil rights. Although state and local governments continue to have the primary responsibility for enforcing criminal law, we believe that federal assistance is critical in fighting the invidious effects of hate crimes.

This much needed legislation would remove unnecessary jurisdictional barriers to permit the U.S. Department of Justice to prosecute violent acts motivated by bias and hate and complement existing federal law by providing new authority for crimes where the victim is intentionally selected because of his or her gender, gender identity, sexual orientation, or disability. Under current law, the Justice Department can only prosecute crimes motivated by the victim's race, religion, or national origin when that person is engaged in a federally protected activity, such as voting. Legislative proposals, such as the Local Law Enforcement Hate Crime Prevention Act of 2007 (LLEHCPA) and others, however, would permit federal prosecution of hate crimes irrespective of whether they were committed while the victim was engaged in protected activity.

Removing this outmoded jurisdictional barrier to federal prosecution of hate crimes is critical to protecting our citizens' fundamental civil rights. In 2005, the most recent

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figures available, the FBI documented 7,163 crimes reported from 12,417 law enforcement agencies across the country. Yet, it is not the frequency or number of hate crimes, alone, that distinguish these acts of violence from other crimes. Rather, our experiences as prosecutors have shown us, that these crimes can have a special impact on victims, their families, their communities and, in some instances, the nation. Indeed, in *Wisconsin v. Mitchell*, 508 U.S. 47 (1993), Chief Justice William Rehnquist wrote for a unanimous Supreme Court in upholding the constitutionality of enhanced penalties for crimes motivated by bias or hate against a person because of race, religion, color, disability, sexual orientation, national origin or ancestry. In so ruling, the Court recognized that "bias-motivated crimes are more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest." Hate crimes have lead to the polarization of communities, increases in security needs at schools and churches, declines in property values and the creation of an overall atmosphere of fear and distrust. All too often that climate has hindered the efforts of local law enforcement and placed the lives of police officers and civilians in jeopardy.

As the chief legal and law enforcement officers of our respective states, we are mindful that the overwhelming majority of criminal cases should be brought by local police and prosecutors at the state level. However, in those rare situations in which local authorities are unable to act, measures such as the LLEHCPA and others provide a backstop to state and local law enforcement by allowing federal involvement if it is necessary to provide a just result. These measures would provide invaluable tools to federal law enforcement to help state authorities in their fight against hate crimes. Therefore, we strongly urge the passage of important hate crimes legislation by the 110th Congress.

Sincerely,

Lisa Madigan
Attorney General of Illinois

Mark Shurtleff
Attorney General of Utah

56684.080

Terry Goddard
Attorney General of Arizona

Richard Blumenthal
Attorney General of Connecticut

Thurbert E. Baker
Attorney General of Georgia

Tom Miller
Attorney General of Iowa

Charles C. Foti, Jr.
Attorney General of Louisiana

Douglas Gansler
Attorney General of Maryland

Lori Swanson
Attorney General of Minnesota

Mike McGrath
Attorney General of Montana

Gary King
Attorney General of New Mexico

Dustin McDaniel
Attorney General of Arkansas

Linda Singer
Attorney General of District of Columbia

Mark J. Bennett
Attorney General of Hawaii

Gregory D. Stumbo
Attorney General of Kentucky

G. Steven Rowe
Attorney General of Maine

Martha Coakley
Attorney General of Massachusetts

Jeremiah W. Nixon
Attorney General of Missouri

Catherine Cortez Masto
Attorney General of Nevada

Andrew Cuomo
Attorney General of New York

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Marc Dann
Attorney General of Ohio

Patrick Lynch
Attorney General of Rhode Island

Vincent Frazier
Attorney General of Virgin Islands

Hardy Myers
Attorney General of Oregon

William H. Sorrell
Attorney General of Vermont

Rob McKenna
Attorney General of Washington

CC:

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives

The Honorable Bobby Scott
Chairman
House Judiciary Subcommittee on Crime,
Terrorism, and Homeland Security
U.S. House of Representatives

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
U.S. Senate

The Honorable Edward M. Kennedy
U.S. Senate

The Honorable Lamar S. Smith
Ranking Member
Committee on the Judiciary
U.S. House of Representatives

The Honorable Randy Forbes
Ranking Member
House Judiciary Subcommittee on Crime,
Terrorism, and Homeland Security
U.S. House of Representatives

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
U.S. Senate

The Honorable Gordon Smith
U.S. Senate

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FROM : FAX NO. : Feb. 04 2008 11:10AM P1

Committee Clerk Sara G. please include this statement in the record. Thank you.

TO U.S. Senate Judiciary Committee

Hearing on Federal Hate Crimes Legislation

Statement For The Record

Sean Bennett
734-239-3541
July 2, 09
(2 pages)

I Support the purposes of Federal Hate Crimes legislation, however, the proposed federal offense (18USC 249) Sec. 7, should be revised, reworked and rewritten. Additionally, the DOJ's Civil Rights Division, Criminal Section's enforcement of 18USC 241 and 242 is greatly in need of much improvement. 241, 242 offenses are often hate/bias crimes, but 241, 242 offenses are rarely ever enforced.

There should not be two different standards for differing protected groups in the law. The Bill's (2)(B) Circumstances described (A)(i)-(iv) restrictive criteria permits more crimes, reduces deterrence and is not Constitutionally necessary. Because proposed 18USC 249 is to be a backstop law to be used only when state and local governments fail to investigate, arrest, prosecute or convict those guilty of certain hate crimes the Constitutional power is found in the 14th Amendment and Equal Protection Clause. The law does not and should not supplant state Hate Crimes enforcement. The law will probably be rarely used and then only to backstop the Equal Protection Clause where states fail to protect a person belonging to those more vulnerable groups of persons. The Interstate Commerce Clause is an additional source of Constitutional power, but the result of the law being written so as to undermine its utility should be avoided.

The effort to combat Hate crimes in America should include transforming the ability and the will of the DOJ's Civil Rights Division, Criminal Section to enforce 18USC 241, 242. Despite the fact that the protection of citizen's Constitutional and civil rights against abuses of power, misconduct in office, and conspiracies should be among the U.S. government's most important functions, these laws are aptly described as the United States most underenforced laws. This section of the DOJ needs more funding, more loyal and competent personnel.

07/02/2009 11:30AM

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changes in policies, procedures and in leadership. A victim of this sort of crime should not, but usually does, have to suffer the additional indignity of unwillingness of those employed to enforce these laws to prosecute the offense, even when state and local law enforcement will not act. DOJ lack of enforcement disserves not only the victim, but betrays the most important of democratic values and principles, the rule of law and liberty and justice for all. I urge fundamental reforms of DOJ 241, 242 enforcement to better protect the victims of Hate crimes and to better protect the rights and liberties of all Americans.

The National Council on Disability in its Report On Persons Labeled With Psychiatric Disabilities (2000) made these findings: "People labeled with psychiatric disabilities are frequently victimized both by criminals and by the criminal justice system that is supposed to protect them." "When they are victims of crime... they cannot rely on law enforcement agencies to protect them." Special protection in the laws for persons with disabilities is justified by a long history of abuse and marginalization by both Society and State and local governments. Also in the National Council's Report: "discriminatory law enforcement effectively denies basic security to people who are extremely vulnerable to crimes of violence, including violence that is called "treatment"." (Ch. 4)

Additionally the maximum penalty of 10 years should probably be increased for greater deterrance.

Sean Bond

07/02/2009 11:30AM

Statement of

The Honorable Benjamin L. Cardin

United States Senator
Maryland
June 25, 2009

We are seeing a troubling trend in America and Congress must act. Violence against people based on who they are, based on hate, is on the rise and it isn't bound to any certain location or region of our country. We saw it earlier this month at the U.S. Holocaust Memorial Museum when officer Stephen Johns lost his life to a man driven by anti-Semitism and racial hate. In February 2008, Lawrence King, a 15-year-old student, was murdered in his high school because he was gay. In July 2008, four teenagers brutally beat and killed a Mexican immigrant while yelling racial epithets. On election night 2008, two men went on an assault spree to find African Americans, because then-Senator Obama won the presidential election. Regrettably, hate is thriving in America.

The Mathew Shepard Hate Crimes Prevention Act is necessary and appropriate legislation to combat a very real threat in America that is increasing against certain groups, including Latinos, Jews, and lesbian, gay, bisexual, and transgendered individuals who saw a five-year high in victimization rates in 2007. According to recent FBI data, there were over 7600 reported hate crimes in 2007, that's nearly one every hour of every day. Over 150 of those incidents occurred in my home state of Maryland. Any hate crime is unacceptable but these numbers are truly disturbing.

I support The Matthew Shepard Hate Crimes Prevention Act because it fully protects First Amendment Rights but it expands the federal definitions to cover individuals and groups increasingly targeted. Current federal hate crime laws are based only on race, color, national origin and religion. We must include gender, disability, gender identity, and sexual orientation to make sure all Americans are equally protected against hate crimes. Importantly, it also allows for the prosecution of hate crimes wherever they take place. Those who commit hate crimes are not bound to certain jurisdictions and neither should the people who prosecute them.

Hate crimes are intended to intimidate and frighten our communities and they affect all of us, not just the victims. We cannot allow them to continue unchallenged."

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National Gay and Lesbian Task Force Action Fund testimony submitted to the United States Senate Committee on the Judiciary hearing on "The Matthew Shepard Hate Crimes Prevention Act of 2009"

June 25, 2009

Statement by Rea Carey, Executive Director
National Gay and Lesbian Task Force Action Fund

Mr. Chairman and Members of the Committee,

I thank Chairman Leahy and the committee for holding this hearing on the Matthew Shepard Hate Crimes Prevention Act of 2009, and I thank Attorney General Holder for his testimony in support of this bill. On behalf of the National Gay and Lesbian Task Force Action Fund — the oldest national advocacy organization for the rights of lesbian, gay, bisexual and transgender (LGBT) people — I urge the committee to support this important legislation. It is long overdue.

The Matthew Shepard Hate Crimes Prevention Act is a carefully measured response to the enduring problem of hate crimes based on race, religion, sexual orientation, gender, gender identity and disability. Though racial violence continues to account for more than half of all hate crimes, the LGBT community is victimized at an alarming rate. For more than a decade, crimes against LGBT victims have been the third highest category of hate crime, trailing only race and religion. According to the FBI, 16 percent of the hate crimes documented in 2007 were motivated by sexual orientation bias, and the National Coalition of Anti-Violence Programs counted 29 anti-LGBT murders in 2008 — the highest such number in a decade. While these statistics are startling, it is important to remember that even they fail to accurately reflect the scope of the problem: law enforcement participation in the collection of statistics is voluntary, and each year many incidents go unreported for fear of persecution or embarrassment. In addition, the FBI does not collect data on crimes motivated by gender identity bias. A recent survey conducted by the Task Force and the National Center for Transgender Equality indicates that transgender individuals are often the victims of bias-motivated violence.

Hate violence has been a focus of the Task Force for decades. We began our work on hate crimes in the early-1980's, and our own Anti-Violence Project was instrumental in the enactment of the Hate Crimes Statistics Act of 1990. Sadly, there has been little progress made since then.

Now, finally, our country is on the cusp of recognizing and responding to the reality of hate violence against LGBT people. The first federal hate crimes law was passed in 1968. It is a national embarrassment that bigotry and ignorance have prevented the expansion of that law until now.

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Laws embody the values of our nation. By passing this legislation, the Senate has an opportunity to clearly and unequivocally state that America rejects and condemns hate violence against its people. The importance of this statement cannot be overemphasized, particularly in light of the toxic misinformation campaign that has been waged against the bill by its opponents.

Those opponents argue that hate crimes laws punish repugnant but constitutionally protected thought and speech. But this legislation is not about speech; it is about violence. Some also argue that every crime is a hate crime, but this fails to account for one of hate crimes' most vicious aspects: hate crimes send a message of terror to an entire group, pitting community against community, and are therefore unlike most violent acts. For example, the brutal murder of James Byrd, who was chained to the bumper of a truck and dragged down a street in Texas, sent a chilling message to African Americans and strained racial ties across the state. Likewise, LGBT people wonder whether they will be the next Matthew Shepard, the young man for whom this bill is named. In the decade since his death, countless LGBT people have fallen victims to hate violence.

This legislation would strengthen existing federal hate crime laws in two ways. First, the bill would eliminate a serious limitation on federal involvement under existing law — the requirement that a victim of a bias-motivated crime was attacked because he or she was engaged in a specified federally-protected activity, such as serving on a jury or attending public school. Second, the bill would expand the categories included in existing law. Current law, 18 U.S.C. Sec. 245, authorizes federal involvement only in those cases in which the victim was targeted because of race, color, religion or national origin. The Matthew Shepard Hate Crimes Prevention Act would also authorize the Department of Justice to investigate and prosecute certain bias-motivated crimes based on the victim's actual or perceived sexual orientation, gender, gender identity or disability. Current federal law does not provide authority for involvement in these four categories of cases at all.

Those who murder police officers face stiffer penalties than those who murder civilians, and terrorists who target federal buildings face higher penalties than those who do not. In 1999, Congress passed a law that created harsher sanctions for countries that persecute religious freedoms. Such laws do not value some lives more than others. Instead, they send a message that certain crimes fundamentally at odds with this country's core values, such as the freedom to live without persecution, will be punished and deterred by both enhanced penalties and federal involvement in the investigation and prosecution of the crime.

That is the message sent by the Matthew Shepard Hate Crimes Prevention Act, and those are its major effects. The protections provided by this legislation are long overdue. We thank the committee for its consideration of this bill, and we respectfully urge its support.

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CENTERLIN
THE COMMUNITY OF LGBT CEN

May 2009

Dear Senator:

On behalf of CenterLink and the 170 community centers we represent across the country, I urge you to support the Matthew Shepard Hate Crimes Prevention Act (S. 909) when it comes to the Senate floor for a vote.

This legislation has strong bipartisan support and was passed by the House of Representatives on April 29, 2009 with a vote of 249-175. The Senate has previously supported substantially similar legislation on three separate occasions by wide bipartisan margins. In addition to public opinion polling that consistently finds an overwhelming majority of Americans in support of such legislation, this Act has the support of more than 300 law enforcement, civil rights, civic and religious organizations.

CenterLink was founded in 1994 as a member-based coalition to support the development of strong, sustainable lesbian, gay, bisexual and transgender (LGBT) community centers. Over 40,000 individuals visit these centers each week and they serve over 650,000 individuals throughout the year. Centers are often the only staffed non-profit LGBT presence in the local area and the first point of contact for people seeking information or assistance. Centers regularly act as the support network for individuals who are the victims of biased motivated crimes based on sexual orientation and gender identity.

The FBI's 2007 Uniform Crime Reports – the most recent year we have statistics – showed that reported violent crimes based on sexual orientation constituted 16.6 percent of all hate crimes in 2007, with 1,265 reported for the year. The Matthew Shepard Hate Crimes Prevention Act is of the utmost importance to LGBT individuals across the country. The time has come for Congress to expand and strengthen existing hate crimes law. Please show your support for this vital legislation.

Sincerely,

Terry Stone
Executive Director

1325 Massachusetts Avenue, NW
Suite 700, Washington, DC 20005

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lgbtcenters.org

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Commentary: Why hate crimes are different

- Story Highlights
- Levin, McDevitt: Senate to vote on Matthew Shepard hate crime bill
- They say loopholes in existing laws require new legislation
- They say bill would provide federal help to localities fighting hate crime
- Levin, McDevitt: Hate crimes target pluralistic societies along with victims

By Brian Levin and Jack McDevitt
Special to CNN

Editor's note: Brian Levin is director of the at California State University, San Bernardino. Jack McDevitt is the director of the Institute on Race and Justice and Associate Dean in the College of Criminal Justice at Northeastern University. Both have testified before Congress in support of federal hate crime legislation and are co-authors of a book on hate in America, due to be published next year.

SAN BERNARDINO, California (CNN) -- America needs a coordinated and multifaceted response to combat the continuing scourge of violent hate crime like the crime committed at the United States Holocaust Memorial Museum on June 10.

The Matthew Shepard Hate Crimes Prevention Act, originally introduced by Sen. Edward Kennedy a decade ago and nearly passed during the most recent legislative session, is expected to go before the Senate for a vote soon. U.S. Attorney General Eric Holder testified on its behalf Thursday before the Senate Judiciary Committee.

It is a crucial step in the nation's evolving response to hate crime. A hate crime occurs when an individual intentionally targets a victim or their property because of his or her actual or perceived race, color, religion, national origin, ethnicity, gender, gender identity, disability or sexual orientation.

While some have argued that these kind of laws criminalize free speech, the U.S. Supreme Court unanimously ruled in the 1993 case, Wisconsin v. Mitchell, that well-drafted hate crime laws are constitutional and do not punish speech. Rather they enhance the penalties only for acts that are already considered crimes.

The act is named for Matthew Shepard, a 21-year-old gay college student who was kidnapped, robbed, tortured and left to die, tied to a fence in a remote area outside of Laramie, Wyoming in October 1998. His mother Judy has been a tireless advocate for hate crime laws and victims.

The Shepard Act remedies legal loopholes in federal and state criminal law that fail to protect against bias-motivated attacks based on such characteristics as sexual orientation, gender, gender identity and disability.

It also removes antiquated "Klan era" language that forces federal prosecutors to tie violent racial attacks to a small number of activities such as participating in a jury, voting or using hotels. As recent events have indicated, today's violent hate offenders, unlike their predecessors, will often swing into brutal action on their own initiative without waiting for a victim to exercise a specific activity covered by old 1960s laws.

However, much of the act's potency lies not in what it punishes, but rather in its recognition of the primary role local authorities now play in combating hate crime. Nearly all hate crime investigations and prosecutions in the United States are handled by state and local authorities, such as the Boston Police or Washington, D.C., Metropolitan Police.

Gone are the days where masses of federal agents and soldiers had to swoop into states to protect new students and freedom riders from thugs in Klan-dominated municipalities. The act has a clear bias in favor of local prosecution and has restrictions that require federal prosecution only in limited cases where the leadership of the DJ approves.

However, reporting data indicates that some states apparently provide limited assistance to hate crime victims. These jurisdictions report either zero hate crimes or a handful of crime to the FBI, year after year, while neighboring states with similar demographics and crime profiles report far more.

A 2005 Bureau of Justice Statistics victimization study found that only a small fraction of hate crimes nationally are actually reported. Thus, there appear to be various instances where federal help or prosecution are still necessary.

Today, in the midst of our economic downturn, federal authorities are needed much more to assist cash-strapped local departments, not as an unwelcome occupying force, but as a desperately needed partner to assist with forensics, technical assistance and investigations.

Even in police departments with model hate crime investigative units, such as the Boston Police Department's Community Disorders Unit, modern cases increasingly involve interstate travel or Internet hate networks, and require sophisticated ballistic and DNA testing or computer forensics.

These measures may be beyond the capacity of many local police agencies, particularly in difficult economic times. The act also provides greater access to local communities for federal training programs and mediation services that can prevent hate crimes before they boil over into violence.

Our research has established that hate crimes are a qualitatively unique category of offenses. Compared to non-bias motivated crimes these crimes are more likely to involve violence, injury, hospitalization, psychological trauma and a greater risk of retaliatory attacks, which can often spill across municipal borders. And while we cannot say whether hate crimes overall are actually increasing, there does appear to be an increase in the most violent hate crimes.

In 2007, hate-motivated homicides claimed nine lives, up from three in 2006, and the last year has seen a steady stream of violent plots and attacks against symbolic targets by hardened hate-mongers.

Since the beginning of the year we have seen many examples of extremist crimes. Here are a few:

Brockton, Massachusetts: January 21 -- White supremacist Keith Luke 22, allegedly kills two, rapes one, and shoots another while en route to a synagogue to kill Jews.

Miramar Beach, Florida: February 26 -- Dannie Baker, 60, a man known for anti-immigrant rantings, allegedly shoots 5, killing two Chilean immigrants.

Pittsburgh, Pennsylvania: April 5 -- Neo-Nazi Richard Poplawski, 22, agitated over the belief that President Obama would ban guns, allegedly kills three police officers during a domestic violence call.

New York: May 20 -- Four Muslim converts are arrested on federal charges relating to a plot to bomb Jewish and military targets.

Pima County, Arizona: May 30 -- Leaders of the Minuteman American Defense group allegedly kill a 29-year-old Latino man and his nine-year-old daughter in an attempt to steal drugs and money to finance their civilian border patrol group.

Washington: June 10 -- Holocaust denier James von Brunn, 88, allegedly kills a security guard at the U.S. Holocaust Memorial Museum.

Two national research reports released last week document a disturbing level of supremacist activities and overall violence against a broad range of groups. Another report from the Southern Poverty Law Center counted a record number of 926 hate groups in the United States last year.

But there is something more to hate crime's harms that cannot be completely captured by statistics or criminological studies. As the Holocaust Museum attack demonstrates, hate crimes threaten pluralistic democracies in a way that other crimes do not.

Unlike many other crimes, they are at once discriminatory and terroristic. As law professor James Weinstein observed: "The effect of

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Kristallnacht on German Jews was greater than the sum of the damage to buildings and assaults on individual victims."

Violence and threats that destabilize the bonds between citizens and the democratic institutions that they share are worthy of additional punishment and federal assistance. Moreover, victims of hate-motivated violence are entitled to legal protection no matter where they reside. That is why over two-thirds of the American public favor hate crime laws, and why the Senate should heed their call to pass the Shepard Act.

The opinions expressed in this commentary are solely those of Brian Levin and Jack McDevitt.

All About Racism and Bigotry • Federal Bureau of Investigation

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Statement of
Janet Langhart Cohen
Playwright/Producer, The Anne & Emmett Project
President and CEO, Langhart Communications, LLC
Before The Committee on the Judiciary
United States Senate

Hearing: "The Matthew Shepard Hate Crimes Prevention Act of 2009"

Presented
Thursday, June 25, 2009

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Thank you Chairman Leahy and Ranking Member Sessions for asking me to speak before this distinguished Committee this morning.

I regret that my dear friend Senator Ted Kennedy isn't present today, for he is dearly missed. He and his family have been stalwart leaders in the struggle for justice and civil rights.

I also regret that we are having to speak this morning about Hate in this society.

Sadly, it is a subject I know only too well. I know that hate kills individuals, leaves families hurt with wounds that never heal, and afflicts communities with no sense of security leaving them wondering if and when they will become the next victim.

I had a cousin lynched long before I was born. The story of that lynching has been told so often, I feel as though I was there. Those who spoke of the story are now long gone, yet it is still very much a part of me, because I remember it.

In the Summer of 1955, I was 14 years old pondering what high school to attend, when word came up from Money, Mississippi that a young Black boy, the same age as I, by the name of Emmett Till was murdered for whistling at a White woman.

That hatred personally jolted my sense of security and my sense of self, as a young person. When we learned that the men got away with such brutality, it told me what my country thought of me as a person of color.

I watched my Mother be overly protective of my younger brother for fear he would be next.

As an adult, I felt the result of Hate again when my dear friend and mentor, Dr. Martin Luther King, Jr. was assassinated.

If anyone of you thought Hate was a relic of the past, we were once again reminded of its devastation just a little more than two weeks ago when a White supremacist killed a Black man at a Jewish Shrine, the Holocaust Museum. It were as if the Hate of Adolf Hitler and Jim Crow had come to life with a single bullet, piercing the heart of Officer Stephen Tyrone Johns.

The cruel irony was that this murder happened just hours before my play about hate was to debut there at the Museum.

My play, "Anne & Emmett" is an imaginary conversation between two tragic victims of hate, Anne Frank and Emmett Till.

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I was in route to the Museum for the final rehearsal when my husband Bill Cohen called me to say that there had been a shooting and that he was just 30 feet away from the shots, Hate was way too close that day.

It was all too surreal for me, going from opening night jitters, to murderous Hate at the Museum.

"Anne & Emmett" tells of the parallels and commonalities of Hate that each of these two historic teenagers experienced. They lived in societies that allowed Hate to murder them.

My play is a call to action, to have our society not be silent witnesses and bystanders, but to act.

I call on you today to act! To pass this hate crimes legislation that is expanded to include those of us who are the most vulnerable.

Those vulnerable because of our race, religion, national origin, sexual orientation, gender identification...those of us who are disabled and physically challenged.

And while you may not find yourself representing any of those groups, you're not safe either when Hate decides to strike.

Please give our Attorney General, his prosecutors, and their state and local partners laws that empower them to protect all who are vulnerable and bring justice on our behalf.

Thank you.

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Statement of Janet Langhart Cohen

Matthew Shepard Hate Crimes Prevention Act of 2009

U.S. Senate Committee on the Judiciary, June 25, 2009

Chairman Leahy, Senator Sessions, and distinguished members of the Senate Judiciary Committee,

Thank you for inviting me to share some thoughts with you this morning. I don't profess to be an expert in hate crime legislation, but I do know a great deal about hate.

I was born in 1941 in Indianapolis, Indiana, the regional headquarters of the Ku Klux Klan, whose members played an important political role in civic affairs in Indianapolis, and throughout the region. I was born a "colored" girl, and I was born hated-- for the simple reason that my skin was not white.

My older cousin, Jimmy, was lynched because he wanted to remain the owner of his land and white people wanted what was his. When Jimmy wouldn't sell, they murdered him.

When growing up, I lived in a segregated government project with my mother and brother, James. We were not allowed to: eat in public restaurants; try on clothes in department stores; play in a public amusement park but one day a year; sit anywhere in a movie theater except high up in the back rows of the balconies located on the second floor that we called the "crow's nest."

When my father came home from fighting Hitler's Nazis, and liberating Jewish people from those unspeakable concentration camps, he was not allowed to wear his uniform while visiting his family in Kentucky for fear of being beaten or lynched. It was not until 1954 that the U.S. Supreme Court decided that I was entitled to an education equal to that enjoyed by white people.

In 1955, as I considered entering an integrated school, I saw what two racists had done to Emmett Till, a young fourteen year old black boy from Chicago, while he was visiting his relatives in Money, Mississippi. The men ripped out his eyes with an ax, tortured, mutilated and finally shot him in the head and tossed his body into the Tallahatchie River. Emmett's crime? He playfully whistled at a white woman. When I saw the photograph of what he looked like after they had "taught him a lesson," I decided that I needed to study where I could get an education—and be safe.

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In 1959, when I toured the country as a model for the Ebony Fashion Fair, I was denied access to public restaurants, hotel rooms, and rest room facilities in the South.

In 1967, I saw my mentor and friend, Dr. Martin Luther King, Jr. stoned with rocks while leading a rally in Chicago; saw Nazi-trained, German Shepherd dogs unleashed at black people who were asking to be treated as full American citizens and not counted as only three-fifths a human being.

When Dr. King was assassinated in 1968, I wasn't unable to attend his funeral because on my way to his service, I learned that while my beautiful young niece, Myrna, was in church practicing with her choir, a man filled with hate entered the church, shot and killed her. While selecting her casket at a local mortuary, I heard over the radio the voice of Mahalia Jackson singing at the funeral that I wanted so desperately to attend—that of Dr. King.

After Dr. King's assassination, white people were so ashamed of what they had allowed to happen to blacks that they began to open opportunities to us and allow us to compete for jobs that historically had been denied to us for no reason other than racial hatred and discrimination. That shame, in fact, enabled me to enter the world of television as a talk show host.

Now there is a clamor to proclaim that racial hatred and discrimination have been relegated to the past and it's unbecoming, unpatriotic or even un-American to insist upon talking about our history. We blacks have had to bear three hundred years of hatred and enjoy but little more than thirty years of affirmative action. Apparently, America's white majority has determined that we're all equal now. Racism is a thing of the past. Ant-Semitism is to be forgotten. The Constitution is color blind and so is society. Really?

How many white men have been accidentally shot by the police while reaching for their wallets? Or shot accidentally with an automatic weapon instead of a tazer gun? Or had a toilet plunger jammed into their rectums by police during the course of an interrogation?

Perhaps those who claim that America has reached a color blind society can explain why Barrack Obama was granted Secret Service protection from the day he announced his candidacy for the presidency?

Would it be important (or just impertinent) to know the level of death threats he's received compared to all past presidents? Or would that be irrelevant as an evidentiary factor in determining whether we are, indeed, a "post racial" society?

Why was a lottery established in a small Maine town to pick the date of President Barack Obama's entry into the halls of martyrdom? Why not the date when our military forces

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would be out of Iraq or Afghanistan? Or that of the passage of a comprehensive health care bill?

For those who think that hate crimes don't exist, they should have been at the United States Holocaust Memorial Museum on June 10, 2009. An eighty-eight year old, white racist walked into the hallowed ground of the Museum and murdered Officer Stephen Tyrone Johns, an innocent black security guard.

The so-called "writings" of his murderer revealed that he was filled with hate for Jews, and Blacks, and that he wanted, as his last act on this planet, the killing of anyone he could find inside that building. He hated the Museum and all that it represented, and in an act of cruel irony, he killed a black man who had just opened the door for him in a gesture of kindness.

James Von Brunn has been dismissed as just a lone wolf, a crazy old man who doesn't reflect the thoughts or actions of a larger segment of society. But Von Brunn is the same kind of man who was one of the "Night Riders" who terrorized me as a child when I visited my family in Kentucky. He is part of those who live on the underbelly of society and stir a witch's brew of poisonous venom and violent hatred. He is part of those who wrap themselves in the American Flag while saluting Hitler's Nazi flag and the Klan's burning cross.

The First Amendment is a sacred right under our Constitution. I treasure it because it allows me to speak out against the crimes and injustices that have been perpetrated against blacks, Latinos, gays and other minorities in this great nation of ours. But Free speech is not unlimited. My husband, who is a lawyer, and who once served on this distinguished committee, is quick to point out that one cannot falsely shout "fire" in a crowded theater. Similarly, we are not free to joke about putting a bomb on a plane while standing in line at any of our airports.

The free expression of ideas, however vile and hateful those ideas may be, is protected. But when speech becomes advocacy and urges others to take violent action or incites others to give form to their words, than I think it is important that elected officials determine whether such hate can be allowed to wear the mask of freedom.

The reason I wrote the play, *Anne & Emmett*, was to touch the consciences of young people; to show the commonalities that existed between a young Jewish girl who perished during Hitler's Holocaust and a young black boy who was brutally murdered because he dared to whistle at a white woman.

The tactics of the haters in our lives are quite identifiable. They begin with hateful speech, the dehumanization of any and all who are different, followed by their degradation, domination or destruction. The language of the haters may change, but their message is

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always the same. They don't have to wear arm bands or white hoods to signal their membership in the ranks of sociopaths. They can cover their true identities with business or casual suits, use coded language and vigorously denounce any who dare to look behind their words and see the villainy that lurks there.

Think about Officer Stephen Johns and then wade through the swamp of Von Brunn's "writings" and decide whether there continues to be a social interest in the need for a special rule in our criminal justice system for those who perpetrate hate crimes.

Thank you.

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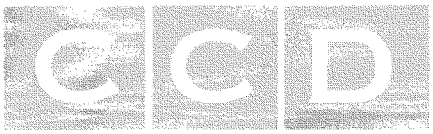

CONSORTIUM FOR CITIZENS WITH DISABILITIES

June 1, 2009

Dear Senator:

The undersigned member organizations of the Consortium for Citizens with Disabilities (CCD) are writing to urge your support for S. 909, the Matthew Shepard Hate Crimes Prevention Act, reintroduced April 28, 2009. This legislation would grant agencies the authority to investigate and prosecute federal crimes based on the victim's disability, whether actual or perceived, and would authorize funding to states to help with the prosecution of Hate Crimes. On April 29th, we were pleased to see the House of Representatives pass the Local Law Enforcement Hate Crimes Prevention Act (H.R. 1913) with a bipartisan vote of 249-175, and hope for swift passage in the Senate.

Through much of our country's history and well into the twentieth century, people with disabilities -- including those with developmental delays, epilepsy, cerebral palsy and other physical and mental impairments -- were seen as useless and dependent, hidden and excluded from society, either in their own homes or in institutions. Now, this history of isolation is gradually giving way to inclusion in all aspects of society, and people with disabilities everywhere are living and working in communities alongside family and friends. But this has not been a painless process. People with disabilities often seem "different" to people without disabilities. They may look different or talk differently. They may require the assistance of a wheel-chair, a cane, or other assistive technologies. They may have seizures or have difficulty understanding seemingly simple directions.

These perceived differences evoke a range of emotions in others, from misunderstanding and apprehension to feelings of superiority and hatred. Bias against people with disabilities takes many forms, often resulting in discriminatory actions in employment, housing, and public accommodations. Laws like the Fair Housing Amendments Act, the Americans with Disabilities Act, and the Rehabilitation Act are designed to protect people with disabilities from prejudice.

Perhaps most unfortunately, disability bias can also manifest itself in the form of violence — and it is imperative that a message be sent to our country that these acts of bias-motivated hatred are not acceptable in our society.

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Info@c-c-d.org • www.c-c-d.org

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The federal government still has very limited authority to investigate and prosecute disability-bias **federal** crimes. In 1994, Congress enacted a penalty-enhancement law for **federal crimes** in which the defendant intentionally selects a victim because of the person's "actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person" [28 USC 994 Note]. Also in 1994, Congress extended the Hate Crime Statistics Act of 1990, a law requiring the FBI to collect hate crime statistics from state and local law enforcement authorities, to include disability-based hate crimes. Still, hate crimes against those with disabilities remain vastly under-reported.

The Matthew Shepard Hate Crimes Prevention Act would broaden the definition of hate crimes to include disability, sexual orientation, gender and gender identity. It also makes grants available to state and local communities to combat violent crimes committed by juveniles, train law enforcement officers or to assist in state and local investigations and prosecutions of bias-motivated crimes. Thirty-one states and the District of Columbia have already recognized the importance of this issue and have included people with disabilities as a protected class under their hate crimes statutes. However, protection is neither uniform nor comprehensive, and this has important practical and symbolic results. It is vital for the federal government to send the message that hate crimes committed because of disability bias are as intolerable as those motivated by race, ethnicity, national origin, or religion. The crucial resources provided to local law enforcement in this legislation would give meaning and substance to this important message. It is critical that people with disabilities share in the protection of the federal hate crimes statute.

Contrary to some critics of this legislation, S. 909 does not in any way violate First Amendment protections. Hate crime laws do not restrict speech. Rather, they target only criminal conduct prompted by prejudice. Some critics of the bill have inaccurately claimed that this bill, if enacted, would prohibit the lawful expression of religious beliefs. These fears are unfounded. **The Matthew Shepard Hate Crimes Prevention Act does not punish, nor prohibit in any way, preaching or other expressions of religious belief, name-calling, or even expressions of hatred toward any group. It covers only violent actions that result in death or bodily injury.**

Too frequently, bias-motivated crimes against those with disabilities have gone unreported and unprosecuted. The special problems associated with investigating and prosecuting hate violence against someone with a disability makes the availability of federal resources for state and local authorities all that much more important to ensure that justice prevails.

We urge you to support the Matthew Shepard Hate Crimes Prevention Act. This legislation is vitally important for the vulnerable population of individuals with disabilities, and must be enacted in order to bring the full protection of the law to those targeted for violent, bias-motivated crimes simply because they have a disability.

Sincerely,

Alexander Graham Bell Association for the Deaf and Hard or Hearing (AG Bell)
American Association on Health and Disability
American Association on Intellectual and Developmental Disabilities (AAIDD)
American Association of People with Disabilities (AAPD)
American Council of the Blind
American Counseling Association
American Diabetes Association
American Dance Therapy Association
American Medical Rehabilitation Providers Association (AMRPA)
American Music Therapy Association
American Network of Community Options and Resources (ANCOR)
American Occupational Therapy Association (AOTA)
American Psychological Association
American Therapeutic Recreation Association
American Rehabilitation Association
Amputee Coalition of America
Association of Assistive Technology Act Programs (ATAP)
Association of University Centers on Disabilities (AUCD)
Autistic Self Advocacy Network
Autism Society of America
Bazelon Center for Mental Health Law
Brain Injury Association of America
Council for Learning Disabilities
Council of Parent Attorneys and Advocates (COPAA)
Council of State Administrators of Vocational Rehabilitation
Disability Policy Collaboration
Disability Rights Education and Defense Fund
Disabled Action Committee
Easter Seals

Epilepsy Foundation
Helen Keller National Center
Higher Education Consortium for Special Education
Learning Disabilities Association of America
Mental Health America
National Alliance on Mental Illness (NAMI)
National Association of Councils on Developmental Disabilities (NACDD)
National Association of County Behavioral Health and Developmental Disability Directors
National Association of the Deaf
National Association of School Psychologists
National Association of Social Workers
National Association of State Head Injury Administrators
National Center for Learning Disabilities
National Coalition on Deaf-Blindness
National Council on Independent Living
National Disability Rights Network (NDRN)
National Down Syndrome Congress
National Down Syndrome Society (NDSS)
National Fragile X Foundation
National Rehabilitation Association
National Organization of Social Security Claimants' Representatives
National Respite Coalition (NRC)
National Structured Settlement Trade Association (NSSTA)
NISH
Paralyzed Veterans of America (PVA)
Research Institute for Independent Living
School Social Work Association of America
Spina Bifida Association
TASH
The Arc of the United States
United Cerebral Palsy

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United Spinal Association

United Spinal Association

World Institute on Disability (WID)

The Consortium for Citizens with Disabilities is a Coalition of national consumer, advocacy, provider and professional organizations headquartered in Washington, D.C. (A list of members is available at www.c-c-d.org.) Since 1973, the CCD has advocated on behalf of people of all ages with physical and mental disabilities and their families. CCD has worked to achieve federal legislation and regulations that assure that America's 54 million children and adults with disabilities are fully integrated into the mainstream of society

June 24, 2009

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

The Honorable Jeff Sessions, Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Dear Chairman Leahy, Ranking Member Sessions, and Committee Members:

On behalf of the thousands of Eagle Forum members nationwide, I urge you to oppose any hate crimes legislation that comes before the Senate Judiciary Committee.

Sponsored by Sen. Ted Kennedy (D-MA), the Matthew Shepard Hate Crimes Prevention Act of 2009 (S. 909) makes a hate crime—a crime in which the victim is intentionally selected based on his or her race, religion, ethnicity, gender, etc.—a federal offense. The bill seeks to accomplish this end by mandating *federal* criminal prosecution for *state* offenses, with the possibility of life imprisonment, for crimes motivated by the "*actual or perceived* race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of any person." S. 909 will also establish homosexual and transgender persons as a protected class of victims by adding the words "sexual orientation" and "gender identity" to Title 18 of the U.S. criminal code

S. 909 is a dangerous and unprecedented proposal which will transform the criminal justice system and threaten religious liberty. It violates both the First and Fourteenth Amendments by infringing upon the constitutional guarantees of religious expression, freedom of speech, and equal protection under the law. S. 909 aims to silence and punish all opposing viewpoints, to target those who hold traditional beliefs on homosexuality, and to grant more government protection to certain classes of people.

The proposed legislation is both unconstitutional and unnecessary. The underlying offense, whether it is murder, assault, or any other crime, is already fully and aggressively prosecuted in all 50 states. FBI statistics show that the incidence of hate crimes has actually *decreased* over the last ten years. In 2005, less than 17% of all law enforcement agencies reported a single hate crime. In 2007, the FBI reported 1,521 incidents of sexual orientation bias, with 242 of those incidents resulting in bodily harm. This means that roughly 85% of those cases were non-violent incidents of "intimidation," shouting or name-calling, or "simple assault," pushing or shoving without physical injury. We do not need a new federal law; rather, we need strict enforcement of *existing* laws.

Liberals in Congress have voted routinely to deny these added protections to certain groups who are more frequently violently targeted than members of the Lesbian, Gay, Bisexual, and Transgender (LGBT) community. The U.S. House of Representatives passed their version of hate crimes legislation this year, H.R. 1913, on April 29, 2009 by a vote of 249 to 175. During the bill's consideration in committee, Rep. Steve King (R-IA) offered an amendment that would have made violent crimes committed by illegal aliens against American citizens a "hate crime," but it was defeated by a party-line vote of 14 to 12.

Rep. King also offered an amendment simply to clarify that pedophiles would not be awarded special protected status under this bill, but that, too, was defeated by a party-line vote of 13 to 10. Because the liberal House Majority considered the bill under a closed rule, allowing no amendments on the floor, the Republicans offered a Motion to Recommit, which would have extended protection under this bill to senior citizens, children, both current and former members of the military, as well as law enforcement officers, including border patrol agents, but the motion failed by a vote of 185 to 241.

All violent crimes are hate crimes and all violent criminals should be severely punished. As we would all like to see an end to bigotry and hate in our society, elevating particular groups of victims above others and awarding them a special status is not the answer to decreasing crime in America.

Eagle Forum urges you to oppose S. 909.

Faithfully,

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FAMILY EQUALITY COUNCIL

May 15, 2009

RE: Support for the "Matthew Shepard Hate Crimes Prevention Act"

Dear Senator,

On behalf of the thousands of supporters of Family Equality Council, the national organization working to ensure equality for lesbian, gay, bisexual, and transgender (LGBT) families by building community, changing hearts and minds, and advancing social justice for all families, I urge you to support S. 909, the "Matthew Shepard Hate Crimes Prevention Act."

Foundational to Family Equality Council's mission of creating happy, healthy families is the ability of all families to feel safe in their communities. S. 909 updates existing hate crime prevention laws to include actual or perceived sexual orientation, gender, disability and gender identity to the list of currently covered categories. The enactment of this bill will send a powerful message from the federal government that violence against LGBT people is unacceptable. It would also offer LGBT families the support of law enforcement when violence does occur by allowing the federal government to assist local law enforcement in the investigation and prosecution of hate crimes or to become involved when local law enforcement is either unable or unwilling.

This legislation is necessary. According to the Federal Bureau of Investigation (FBI), reported bias motivated crimes based on sexual orientation have more than tripled since 1991. In 2007, the FBI Uniform Crime Reports show that violent crimes based on sexual orientation constituted 16.6% of all hate crimes during that year—with 1,265 such crimes reported. Passage of H.R. 1913 with the inclusion of sexual orientation and gender identity in particular will improve the ability of existing law to achieve its purpose of preventing hate crimes against targeted communities.

Earlier versions of S. 909 have enjoyed strong bipartisan support in both chambers of prior Congresses and the current version is supported by the overwhelming majority of Americans and more than 300 law enforcement, civil rights, civic and religious organizations.

On behalf of LGBT parents and our children, I urge you to show your support for keeping LGBT families safe by signing on as a cosponsor of S. 909 and urging your colleagues to do the same.

Sincerely,

Jennifer Chrisler

Jennifer Chrisler
Executive Director

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Public Policy Office

May 29, 2009

Dear Member of Congress:

GLSEN – the Gay, Lesbian and Straight Education Network – urges you to support current efforts to pass S. 909, the Matthew Shepard Hate Crimes Prevention Act (MSHCPA) of 2009, and to cosponsor S. 909. This important legislation, which was introduced April 28, 2009 by Senator Edward Kennedy, would substantially broaden federal hate crimes law. It would expand current hate crimes coverage beyond race, religion and national origin, to include gender, sexual orientation, gender identity and disability.

GLSEN is particularly hopeful that this legislation will pass because we know that students are not immune from these kinds of hateful attacks. A study conducted by Harris Interactive on behalf of GLSEN entitled "From Teasing to Torment" documented that at some point three percent of all students nationwide have experienced physical assault because of their gender, three percent because of their sexual orientation, three percent because of their gender expression, and three percent because of their disability - the four categories that the MSHCPA would protect. Research shows that lesbian, gay, bisexual and transgender (LGBT) students may be at even greater risk. In a subsequent 2007 national survey of self-identified LGBT students, 9.2% percent reported being physically assaulted during the past academic year because of their gender, 22.1% because of their sexual orientation, 14.2% because of their gender expression, and 4.5% because of their disability.

Since 1968, the federal government has had very limited jurisdiction to prosecute cases when state and local law enforcement officials cannot or will not. The MSHCPA will not only strengthen the current legislation by broadening the types of violent crime that it covers, it will expand the protected categories to include hate crimes based on gender, sexual orientation, gender identity, and disability.

GLSEN believes that Congress must do everything it can to empower the federal government to assist in local hate crime prosecutions and to protect all Americans from violent crimes based on hate and bigotry. For any questions or additional information about GLSEN's position on hate crimes, please contact Shawn Gaylord, Director of Public Policy, or Eric Masten, Public Policy Associate, at 347-7780.

Sincerely yours,

Eliza Byard, PhD
Executive Director

Gay, Lesbian and Straight Education Network 1012 14th Street, NW, Suite 1105 Washington, DC 20005
tel: (202) 347 7780 fax: (202) 347 7781 e-mail: glsendc@glsen.org web: www.glsen.org

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Senate Judiciary Committee Hearing on the *Matthew Shepard Hate Crimes Prevention Act*
June 25th, 2009

Rev. Dr. Derrick Harkins, Senior Pastor, Nineteenth Street Baptist Church, Washington, DC:

I would like to thank the members of the Committee for inviting me to submit testimony for today's hearing. I welcome the opportunity to express my support for the *Matthew Shepard Hate Crimes Prevention Act*. I am the Senior Pastor of the Nineteenth Street Baptist Church here in Washington, DC, which has served the people of the District for almost 200 years. I have previously served as a pastor in Dallas, Texas, and as the Assistant Pastor of the Abyssinian Baptist Church in Harlem, New York. I am also a member of the Board of Directors for World Relief, and a vice president of the North American Baptist Fellowship of the Baptist World Alliance.

A strong Biblical imperative that I believe stands at the heart of my Christian faith is the preservation and protection of the inherent dignity of all persons. The Scriptures are replete with examples of God's concern and compassion for those seen as "other" by many. Jesus taught us this lesson by example again and again when he cared for the poor, ministered to the sick, and welcomed the stranger. In no uncertain words, Jesus said, "I tell you the truth, whatever you did not do for one of the least among you, you did not do for me." Protecting those who are vulnerable to attack based on who they are is a fundamental Christian value, and it is also the value that lies at the heart of the hate crimes bill.

As an American, I know the protection of personal dignity and human rights is a principle that makes us that much stronger as a nation, and certainly does not stand at odds with freedom of expression. While other countries may punish some forms of speech, our First Amendment protects the right of all Americans to profess their beliefs without fear of prosecution. The *Matthew Shepard Hate Crimes Prevention Act* explicitly incorporates protections for religious liberty, and it makes clear that a person can only be prosecuted for committing a violent crime that causes bodily injury. With these protections, pastors, priests, rabbis, and imams across the country can feel secure in preaching their best understanding of what their religion teaches about homosexuality, and all Americans can feel safer from acts of bias and hate.

In 2007, over 50% of reported hate crimes in 2007 were racially motivated, over 18% were motivated on the basis of religion, and nearly 17% were motivated by sexual orientation. In addition to adding protections against crimes based on a person's gender, sexual orientation gender identity, or disability, passage of the hate crimes bill will also bolster protections for those who are physically attacked because of their race, color, religion, or national origin. Current federal law only protects against hate crimes based on race, color, religion, or national origin if the person was targeted because they were engaged in a federally protected activity like voting or going to school. The *Matthew Shepard Hate Crimes Prevention Act* would remove that limitation, eliminating an existing barrier to prosecution of crimes based on race, religion, and the other characteristics protected under current law.

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We are all entitled to hold and profess our beliefs about sexuality and morality, and we all strive to act consistently with those deep seated values that we profess. Nothing in the hate crimes bill interferes with that expression—rather, it challenges us all to live up to the fundamental command: do unto others what you would have done unto you.

I believe that all people were created in the image of God and possess inherent dignity which should not be threatened by violence. That dignity cannot be erased by a person's characteristics or actions. The compassionate example set by Jesus himself, who opened his arms and his heart to people from all walks of life, illustrates this principle. I welcome the opportunity to support the *Matthew Shepard Hate Crimes Prevention Act* as an expression of my Christian witness, and my belief in our nation's highest aims for all its citizens.

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Senator Orrin G. Hatch
Statement for the Senate Judiciary Committee Record
On the Matthew Shepard Hate Crimes Prevention Act (S. 909)
June 25, 2009

Mr. Chairman, I appreciate the opportunity to provide a statement for today's hearing on the Matthew Shepard Hate Crimes Prevention Act (S. 909). The debate is over hate crimes is not a new or recent one. We've been debating similar issues for a number of years. However, this current legislation raises a number of issues that have not been addressed by this committee. So, I believe it is a good use of our time to have this discussion.

I was concerned when the Senate Majority Leader stated his intention to pass this legislation before August recess because, quite frankly, it seemed as though he made this promise without any consideration for this Committee or its responsibilities. In this regard, I am encouraged by your willingness to hold this hearing, though, I must question the timing, given the fact that so many of us on the Republican side of the Committee are deeply involved in the ongoing debate over health care reform and that, currently, much of the Committee's overall resources are being used in preparation for the upcoming hearings on the President's Supreme Court nomination.

It is my hope that you do not consider these hearings to be a mere formality and that you are committed to moving S. 909 through the Committee in regular order. Once again, this legislation raises issues that this Committee has had little or no opportunity to address. While the debate over federal hate crimes legislation has gone on for years, this is not the same legislation we've discussed and reported in the past. Even the bill's supporters have acknowledged that the latest incarnation is different from those debated in the past. That being the case, I hope, Mr. Chairman, that you're commitment to regular order will go further than a hastily scheduled hearing. I hope that we will get a chance to have a full and fair debate in this Committee, including a markup and an opportunity to offer amendments.

Those preliminary matters aside, I want to thank Attorney General Holder for his appearance here today. I know you spoke briefly on these matters at our hearing last week. But, your presence here today, I think, only demonstrates further the seriousness of this legislation for both those in favor and those of us who oppose it and the need for greater examination of the bill's provisions. Indeed, I want to thank all of our witnesses for appearing hear today.

I am opposed to this legislation for a number of reasons. As I've said in the past, I believe this bill is, at best, unnecessary, and, at worst, unconstitutional. Make no mistake, violent crime is a serious matter and I think we all agree that crimes motivated by bias or prejudice are morally reprehensible. Indeed, none of us want to excuse the violent actions of hateful people.

In recent years, hate crimes have been described as "an epidemic" or a "plague." In just the last Congress, I managed the floor for the Republican side in the debate over this legislation. During that time, I and others continually asked for evidence that there is an "epidemic" of hate crimes going unpunished at the state and local levels at a rate that would justify federal intervention. No such evidence has been presented.

We've heard no shortage of accounts of horrific crimes that this legislation is aimed at punishing or preventing. In fact, a favorite tactic by those who support federal hate crimes legislation is to recount the details of the most heinous instances of bias-motivated violence and use those stories as a basis for federal intervention. What we don't hear in these arguments is that, in almost every case, the perpetrators were arrested, tried, and convicted in state court under state laws.

The most oft-cited example, of course, is Matthew Shepard, for whom this bill is named. I won't detail the brutal aspects of the murder of Matthew Shepard. It was a horrific crime that rightly enraged people throughout the country. But,

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the detail that all too often gets lost in the Matthew Shepard story is that those responsible will spend the rest of their lives in prison, not because the Federal government intervened, but because state officials in Wyoming were diligent in their responsibility to investigate and punish crimes of violence. Matthew Shepard's story is indeed a tragic one. But, rather than demonstrating the need for this legislation, it is a testament to the fact that this bill is unnecessary. Indeed, had this legislation been in effect at the time of this murder, it literally could have done nothing to enhance the punishment the defendants received.

The truth of the matter is that the vast majority of states have hate crimes statutes on the books. And, the acts that are associated with this legislation – murder, assault, etc. – are punishable in every jurisdiction in the U.S. Under our legal system, defendants will, at times, receive penalties that many believe are not sufficient given the nature of their crimes. In addition, because our system is designed to protect the rights of all criminal defendants, some guilty parties undoubtedly go unpunished. But, I have seen no evidence proving that these inevitable occurrences happen more often in cases involving bias-motivated violence.

For this reason, I have, in past years, introduced alternative legislation that would mandate a study that would provide us with the information we should have before we even consider expanding the federal government's role in prosecuting hate crimes. Specifically, my alternative would provide a study to compare over a 12 month period the investigations, prosecutions, and sentencing in states that have differing laws with regard to hate crimes. In addition, it would require a report on the extent of these crimes throughout the United States and the success rate of state and local officials in combating them.

It seems to me that, before we move forward with this broad, sweeping approach, we should, at the very least, have enough information before us to answer the threshold question: is it necessary. My alternative legislation would help us get that information and, in my opinion, this further demonstrates the need for more committee action on this bill prior to consideration on the floor.

In addition to being unnecessary, there are legitimate constitutional questions surrounding this legislation. Like it or not, the Congress does not have the authority to act in any way that it chooses. Whenever Congress acts, it must do so pursuant to one of the powers enumerated in the Constitution. I don't believe any such power is implicated here.

Proponents of the bill have argued that this legislation is constitutional under the Commerce Clause. However, in *U.S. v. Morrison*, in evaluating a statute very similar to this one, the court determined that, in order regulate non-economic activity, Congress must demonstrate a direct connection between that activity and interstate commerce. The court specifically stated that such a connection cannot be established by aggregating all the instances of a non-economic activity. Given the restrictions outlined by the Court in *Morrison*, I don't believe this legislation can be justified under the Commerce Clause. Indeed, if the power to regulate interstate commerce extended to the punishment of violent crimes that take place completely within one state, it would difficult to imagine any area in which Congress cannot legislate.

Others want to argue that certain provisions – particularly those that punish racially-motivated violence – are constitutional due to the Thirteenth Amendment. The Supreme Court has determined that the Thirteenth Amendment, which ostensibly gave Congress the power to ensure the abolition of slavery, also allows Congress to abolish "the badges and incidents of slavery in the United States." However, as of yet, the Court has not defined the scope of such power. Frankly, the notion that, by empowering Congress to pass laws to abolish slavery and involuntary servitude, the drafters of the

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Thirteenth Amendment also intended to allow Congress to address all acts of racially-motivated violence more than a century later doesn't even pass the laugh test as far as I'm concerned.

Even the most strident supporters of this bill would have to admit that, by passing S. 909, Congress would, at the very least, be operating in a constitutional gray area. Given the fact that there is not a demonstrated need for this legislation, I'd like us to avoid venturing into a constitutional quagmire.

Finally, I would like to address what I believe are some of the more poorly drafted provisions of this legislation. The bill creates two new federal offenses. The first would punish causing or attempting to cause bodily injury "because of the actual or perceived race, color, religion, or national origin of quote any person." The second would do the same, but for crimes committed "because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity or disability of any person."

Where should I begin to address the problems with these provisions?

First, it wouldn't punish crimes motivated by hatred, prejudice, or animus toward a specific group, just simply if membership in one of these groups was a deciding factor in the commission of the crime. And, it's not just the victim's membership in one of these groups that we're talking about here, but that of "*any person*," whether it is the victim, the perpetrator, or an unknown third-party. This would grant the federal government the power to punish virtually any violent crime anywhere in the country. I want to give the drafters of this legislation the benefit of the doubt, but I think that, if we get a chance to discuss and debate this bill, we can at least find a more appropriate wording for this provision.

Also, the bill includes for the first time "gender identity" as a prohibited basis for causing bodily injury. However, "gender identity" is not defined in bill, nor is there any existing legal definition of the term. Using what appears to be the conventional understanding of "gender identity," one must conclude that it is matter of the self-perception – a person's perception of their own gender. So, in essence, this legislation would provide enhanced punishment for crimes wherein the perpetrator was motivated by any person's perception of their own gender. Taking us even further through the looking glass, the bill would also include crimes motivated by *perceived* gender identity, meaning the government could punish a perpetrator's false perception of any person's self-perception. While I don't mean to make light of a matter that is very personal to many people, I also don't think the committee can move forward on a bill with such ill-defined terms.

These are serious concerns and ambiguities and I would hope that, rather than rushing to make a grand gesture, we will work out some of the issues that I and others have raised. This hearing is only the first step and I hope that we'll do more to address this legislation in the Committee.

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Testimony of
Gail Heriot
Member, United States Commission on Civil Rights
Before The Senate Committee on the Judiciary
on S. 909
"The Matthew Shepard Hate Crimes Prevention Act of 2009"
June 25, 2009

Thank you for this opportunity to appear before the Senate Committee on the Judiciary. I am Gail Heriot, a member of the United States Commission on Civil Rights. Several weeks ago, the Commission voted to send a letter to members of the Senate Leadership opposing S. 909. I am here to answer any questions about that letter and to elaborate on my reasons as an individual commissioner for joining in that letter.

Americans were horrified by the brutal murders of James Byrd in Jasper, Texas and Matthew Shepard in Laramie, Wyoming a decade ago.[1] More recently, the murders of Angie Zapata and Stephen Johns have shocked and saddened us all.[2] There ought to be a law, some people have said, preferably a federal one.

Of course, there is a law. Murder is a serious crime everywhere regardless of its motive and it has been from the advent of our civilization. Indeed, all but a few states have additional special hate crimes statutes. To my knowledge, no one is claiming that state or D.C. authorities have been neglecting their duty to enforce the law.[3] Matthew Shepard's tormentors are now

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[1] James Brooke, Gay Man Dies from Attack, Fanning Outrage and Debate, New York Times (October 13, 1998); Carol Marie Cropper, Black Man Fatally Dragged in Possible Racial Killing, New York Times (June 8, 1998).

[2] Andrade Gets Life Plus 60 Years for Death of Transgender Woman, Denver Post (May 8, 2009); Christian Davenport, Fast Action by Guards Saved Lives, Officials Say, Washington Post (June 12, 2009).

[3] Indeed, few advocates of the proposed legislation are claiming that any state authorities should be faulted for neglecting their duty. For example, at a press conference in 1998 former Attorney General Janet Reno had this to say:

> "[I]n many, many instances, the State and local authorities handle these cases. Their statutes are adequate. And they handle them in a very appropriate manner. What we need to do is to have the authority so that we can work with State and local authorities. And if they cannot handle it, if they do not have a statute that is applicable or that provides an appropriate sentence, then we will have the authority to proceed to protect what we believe to be clearly a Federal interest."

See U. S. Department of Justice, Transcript of Press Conference: The Honorable Janet Reno, Attorney General (January 8, 1998), available at http://www.usdoj.gov/archive/ag/speeches/1998/jan0898.htm.

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serving life sentences; James Byrd's are on death row awaiting execution.[4] A Colorado jury recently convicted Zapata's killer of murder, and the same will almost certainly happen to James von Brunn if he lives long enough to be prosecuted and is found competent to stand trial.

Of course, miscarriages of justice occasionally occur. The American system of criminal justice, which requires proof of guilt beyond a reasonable doubt, errs on the side of failure to convict the guilty. But I know of no reason to suspect that it errs in that direction more often in the case of crimes that are inspired by bias. To the contrary, I would suspect that given the high profile that serious bias crimes tend to have, it errs less often.

Unfortunately, tragedies like these bias-inspired murders quickly became an opportunity for political grandstanding. False and reckless claims that hate crimes are "epidemic" and "on the rise" are all too easily made.[5] The proposed federal hate crimes legislation, however, which is

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Similarly, then-Deputy Attorney General Eric Holder testified at a Senate hearing, "I think it is fairly rare where we have hate crimes where local prosecutors, for inappropriate reasons decide not to pursue them." Combating Hate Crimes: Promoting a Responsive and Responsible Role for the Federal Government: Hearing on S. 622 Before the Senate Comm. on the Judiciary, 106th Cong., 16 (1999). After an earlier hearing, in response to written questions that pressed him to identify cases in which state authorities, for whatever reason, had failed to vigorously prosecute, Holder referred to three cases in which state authorities had failed to bring criminal charges. See The Hate Crimes Prevention Act of 1998: Hearing on S. 1529 Before the Senate Comm. on the Judiciary, 105th Cong. 65 (1998)(statement of Eric H. Holder, Jr.). In all three federal prosecutions, however, the defendants were acquitted. See id. See also Combating Hate Crimes: Promoting a Responsive and Responsible Role for the Federal Government: Hearing on S. 622 Before the Senate Comm. on the Judiciary, 106th Cong., 44 (1999)(statement of Burt Neuborne)(conceding that "it would ... be grossly unfair to local law enforcement officials to suggest that widespread reluctance exists in today's America to prosecute hate crimes"). See Christopher Chorba, The Danger of Federalizing Hate Crimes: Congressional Misconceptions and the Unintended Consequences of the Hate Crimes Prevention Act, 87 Va. L. Rev. 319, 346-53 (2001)(cataloging these arguments).

[4] Michael Janofsky, Parents of Gay Obtain Mercy for His Killer, New York Times (November 5, 1999). See Texas Department of Criminal Justice: Death Row Information, available at www.tdcj.state.tx.us/stat/deathrow.htm (giving status of Lawrence Brewer and John King). A third perpetrator, Shawn Berry, was sentenced to life in prison. See Third Defendant Is Convicted in Dragging Death in Texas, New York Times (November 19, 1999).

[5] According to FBI statistics for 2007, the most recent year available, 9006 hate crimes were reported in 2007. About two-thirds of the offenses were property defacement, such as through graffiti or of intimidation, such as through simple name calling. When the cases of simple assault are added, these minor offenses constitute about 80% of the whole. The 9006 figure was lower than the total figure reported for 2006 (9080) or the figure reported for 2004 (9035). It was somewhat higher than the figure for 2005 (8380). It was lower than the figure reported a decade earlier (9861). See James B. Jacobs & Kimberly Potter, Hate Crimes: Criminal Law & Identity Politics 59 (1998)(arguing that in comparison with earlier periods of racial violence in

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being touted as a response to these murders, shouldn't have been treated as a mere photo opportunity. It's real legislation with real world consequences–and not all of them are good. A close examination of its consequences, especially its consequences for federalism and double jeopardy protections, is therefore in order.

Hate Crimes Statutes Generally: All hate crimes statutes, even those that have been adopted at the state level, raise significant issues:

* Why should James Byrd's or Matthew Shepard's killers be treated differently from Jeffrey Dahmer or Ted Kaczynski? Hate crimes are surely horrible, but there are other crimes that are equally, if not more, horrible.

* What happens if hate crimes statutes aren't enforced evenhandedly? Some crime statistics show that an African American is more likely to commit a racially-inspired murder of a white than the other way around. Should all be punished as hate crimes? Or just those that fit the white supremacist James von Brunn stereotype?[6]
*What is gained by defining crimes in such a way that prosecutors must prove that the defendant's actions were motivated by racial or sexual animus? Is it enough to justify what is lost? When prosecutors are busy marshalling the extra evidence necessary for a hate crime prosecution, doesn't something have to give? Shouldn't our prosecutorial resources be deployed more efficiently?

* Will hate crimes statutes really make women and minorities feel that the law takes their safety seriously? Or might it have just the opposite effect? Sooner or later, a high profile crime will occur that some citizens strongly believe ought to be prosecuted as a hate crime. Rightly or wrongly, the prosecution will decline to prosecute it as such or the jury will convict only on the underlying crime and not on the hate crime charge. As

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American history, "it is preposterous to claim that the country is now experiencing unprecedented levels of [this kind of] violence"). A small number of crimes were, of course, very serious. For example, nine of the 9006 cases in 2007 were classified as murder or non-negligent manslaughter. No details were given. No one would deny that such horrific crimes frighten and intimidate law-abiding citizens. But casual statements that an epidemic of hate crimes is occurring can also frighten law-abiding citizens. Responsible people should avoid such loose talk. But see, e.g., Brad Knickerbocker, National Acrimony and a Rise in Hate Crimes, Christian Science Monitor (June 3, 2005), available at http://www.csmonitor.com/2005/0603/p03s01-ussc.html. See also Eddie B. Allen, Is Obama's Presidency Sparking a Rise in Hate Crimes?, BETnews.com (June 22, 2009), available at http://www.bet.com/News/news_is_obama_presidency_sparking_hate_crimes.htm?wbc_purpose=Basic&WBCMODE=PresentationUnpublished&Referrer={0471DDF0-D0D8-48A8-9E30-ADD40CBE0269}

[6] Christopher Chorba, The Danger of Federalizing Hate Crimes: Congressional Misconceptions and the Unintended Consequences of the Hate Crimes Prevention Act, 87 Va. L. Rev. 319 (2001).

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a result, those citizens will wind up feeling cheated–when they would have felt completely vindicated had no hate crime statute ever existed.

Americans may disagree in good faith about whether such laws will in the end help or hurt harmony in the community. The proposed federal hate crimes legislation, however, has special problems of overreach with implications for federalism and double jeopardy protections. These problems should cause even those who favor state hate crime statutes to question the desirability of a federal statute.

Current Federal Law: Under current law, adopted in 1969, federal authorities may bring a prosecution for a crime because it was motivated by the victim's "race, color, religion or national origin" only to protect the victim's right to engage in certain "federally protected activities." For example, if the defendant prevented a black woman from enrolling in a public school or from travelling by common carrier because she is black, he has committed a federal offense.[7] This statutory provision does not purport to be and is not a hate crimes statute. It was

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[7] Specifically, 18 U.S.C. Section 245(b) states:

"Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with–

...

(2) any person because of his race, color, religion, or national origin and because he is or has been–

(A) enrolling in or attending any public school or public college;

(B) participating in or enjoying any benefit, service, privilege, program, facility or activity provided or administered by any State or subdivision thereof;

(C) applying for or enjoying employment, or any perquisite thereof, by any private employer or any agency of any State or subdivision thereof, or joining or using the services or advantages of any labor organization, hiring hall, or employment agency;

(D) serving, or attending upon any court of any State in connection with possible service, as a grand or petit juror;

(E) travelling in or using any facility of interstate commerce, or using any vehicle, terminal, or facility of any common carrier by motor, rail, water, or air;

(F) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility which serves the public and which is principally engaged in selling food or beverages for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment which serves the public, or of any other establishment which serves the public and

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enacted to enforce the rights recognized by the courts or enacted by Congress during the Civil Rights Era. This was, of course, a time when there was genuine reason to fear that state authorities might not enforce the law.

The New Proposal: S. 909, entitled the "Matthew Shepard Hate Crimes Prevention Act of 2009" would remove the requirement that the victim be engaged in a federally-protected activity and would expand the list of protected categories to include actual or perceived "gender, sexual orientation, gender identity or disability" in addition to the "race, color, religion and national origin" already covered in the federal criminal code. Any crime fitting that description in which the defendant "willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon or an explosive or incendiary device, attempts to cause bodily injury to any person" may be fined and imprisoned for up to 10 ten years.[8] Ifdeath results or "the

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(i) which is located within the premises of any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishments, and;

(ii) which holds itself out as serving patrons of such establishments ...

shall be fined under this title, or imprisoned not more than one year, or both ....

[8] Section 7 of S. 909 would amend Chapter 13 of Title 18 of the United States Code by adding the following:

"Section 249. Hate crimes acts

(a) In General-

(1) OFFENSES INVOLVING ACTUAL OR PERCEIVED RACE, COLOR, RELIGION, OR NATIONAL ORIGIN- Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person--

(A) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

(B) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if--

(i) death results from the offense; or

(ii) the offense includes kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

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(2) OFFENSES INVOLVING ACTUAL OR PERCEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY-

(A) IN GENERAL- Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B) ..., willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity or disability of any person--

(i) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

(ii) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if--

(I) death results from the offense; or

(II) the offense includes kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

(B) CIRCUMSTANCES DESCRIBED- For purposes of subparagraph (A), the circumstances described in this subparagraph are that--

(i) the conduct described in subparagraph (A) occurs during the course of, or as the result of, the travel of the defendant or the victim--

(I) across a State line or national border; or

(II) using a channel, facility, or instrumentality of interstate or foreign commerce;

(ii) the defendant uses a channel, facility, or instrumentality of interstate or foreign commerce in connection with the conduct described in subparagraph (A);

(iii) in connection with the conduct described in subparagraph (A), the defendant employs a firearm, explosive or incendiary device, or other weapon that has traveled in interstate or foreign commerce; or

(iv) the conduct described in subparagraph (A)--

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offense includes kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill," the defendant may be sentenced to life in prison.[9]

These changes will vastly expand the reach of the federal criminal code.[10] Back in 1998, attorneys at the Department of Justice, eager to expand federal authority, drafted language for the bill that would create federal jurisdiction over many cases that can't honestly be regarded as hate crimes–at least not as that term is understood by most Americans. The fact is that, despite the misleading use of the words "hate crime," MSHCPA does not actually require that the defendant be inspired by hatred in order to convict. It is sufficient if he acts "because of" someone's actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity or disability.[11] Consider:

(I) interferes with commercial or other economic activity in which the victim is engaged at the time of the conduct; or

(II) otherwise affects interstate or foreign commerce.

[9] Note, for example, that this provision could be interpreted to contain an element of strict liability not usually found in the criminal law. A defendant who slaps me in the face because I am a law professor may be guilty only of a misdemeanor even if, through some unforeseeable sequence of events, I end up dying as a result of the slap. (Perhaps I slip on a banana peel and hit my head in my effort to escape him.) On the other hand, if he slaps me because I am a woman and my death results in the same unforeseeable manner, S. 909 could be interpreted impose a penalty of life in prison.

[10] See The Hate Crimes Prevention Act of 1998: Hearing on S. 1529 Before the Senate Comm. on the Judiciary, 105th Cong. 30 (1998)(statement of Richard J. Arcara, on behalf of the Judicial Conference of the United States, that the proposed legislation "unquestionably creates the potential for the federalization of a significant number of state crimes").

[11] It isn't necessary that the victim be chosen on the ground of his own perceived or actual status. It is enough, for example, that the victim is chosen on account of the perceived or actual status of some third person. For example, James von Brunn's brutal murder of Stephen Johns appears to have occurred because Johns was employed by a museum that memorializes the Jewish genocide during World War II. It probably would be unnecessary to prove under the proposed statute that Johns' own race was part of von Brunn's motivation; it would be enough if von Brunn was motivated by anti-semitism. In addition, however, an ordinary street criminal who robs a man because his travelling companion is wheelchair bound (and hence the man has his hands full pushing the wheelchair) would probably also be guilty under the proposed law.

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*Rapists are seldom indifferent to the gender of their victims. They are always chosen "because of" their gender.

*A thief might well steal only from the disabled because, in general, they are less able to defend themselves. Literally, they're chosen "because of" their disability.

* Suppose a burglar is surprised when the husband and wife who reside in the home return earlier than expected. The burglar shoots the husband and kills him, but finding himself unable to shoot a woman, turns and runs. Again, literally, the husband was killed "because of " his gender.

This wasn't just sloppy draftsmanship. The language was chosen deliberately. Officials understandably wanted something susceptible to broad construction, in part because it makes prosecutions easier.[12] As a staff member of the Senate Committee on the Judiciary back in 1998, I had several conversations with DOJ representatives. They repeatedly refused to disclaim the view that all rape will be covered, and resisted efforts to correct any ambiguity by re-drafting the language. They wanted a bill with broad sweep. The last thing they wanted was to limit the scope of the statute's reach by requiring that the defendant be motivated by ill will toward the victim's group.[13]

Among other things, this creates an efficiency problem. State hate crimes laws give prosecutors an extra weapon, to be used or not used as they see fit. Federal laws, on the other hand, bring in a new cast of characters to prosecute the same crimes that are already being handled by state authorities. While efforts can be made to minimize the tension, turf battles are

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[12] This inclusion of all rape as a "hate crime" would be in keeping with at least one previous Congressional statement. For example, Senate Report 103-138, issued in the connection with the Violence Against Women Act, stated that "[p]lacing [sexual] violence in the context of the civil rights laws recognizes it for what it is–a hate crime." See Kathryn Carney, Rape: The Paradigmatic Hate Crime, 75 St. John L. Rev. 315 (2001)(arguing that rape should be routinely prosecuted as a hate crime); Elizabeth Pendo, Recognizing Violence Against Women: Gender and the Hate Crimes Statistics Act, Harv. Women's L. J. 157 (1994)(arguing that rape is fundamentally gender-based and should be included in the Hate Crimes Statistics Act); Peggy Miller & Nancy Biele, Twenty Years Later: The Unfinished Revolution, in Transforming a Rape Culture 47, 52 (Emilie Buchwald et al. eds., 1993) ("Rape is a hate crime, the logical outcome of an ancient social bias against women.").

[13] In response to this situation, Senator Edward Kennedy seems to have disclaimed any intention of covering all rape in the bill. See Edward Kennedy, Hate Crimes: The Unfinished Business of America, 44 Boston Bar J. 6 (Jan./Feb. 2000)("This broader jurisdiction does not mean that all rapes or sexual assaults will be federal crimes"). But his statement that "such aggravating factors as a serial rapist" will be necessary is not found in any language of the statute and is inconsistent with the refusal of Department of Justice representatives in their earlier discussions with me. It is evidently made in the faith that the Department of Justice will choose not to act except in aggravated cases.

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inevitable as ambitious prosecutors jockey for position over big cases.[14] The result is that resources are diverted away from frontline crime fighting.[15]

What justification exists for this redundancy? Back in 1998, Administration officials argued that it was needed, because state proeedures often make it difficult to obtain convictions. They cited a Texas case involving an attack on several black men by three white hoodlums. Texas law required the three defendants to be tried separately. By prosecuting them under federal law, however, they could have been tried together. As a result, admissions made by one could be introduced into evidence at the trial of all three without falling foul of the hearsay rule.

One might expect that argument to send up red flags among civil libertarian groups like the ACLU. But political correctness seems to have caused them to abandon their traditional role as advocates for the accused.[16] Still, the argument cries out: Isn't this just an end-run around state procedures designed to ensure a fair trial? The citizens of Texas evidently believe that separate trials are necessary to ensure innocent men and women are not punished. No one is claiming that Texas applies this rule only when the victim is black or gay. And surely no one is arguing that Texans are soft on crime. Why interfere with their judgment?

The Double Jeopardy Issue in Particular: The double jeopardy issue stands out among the problems created by the proposed statute (as well as other proposed expansions of the federal

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[14] Section 7 of S. 909 requires "certification" by the Attorney General or his designee before a prosecution may be undertaken. Although the purpose of this requirement appears to be to avoid turf battles between state and federal authorities, the standards for certification are extremely vague and flexible, and the certification process itself is itself an extra playing field upon which bureaucratic turf battles may be fought. Among other things, a federal prosecution may be undertaken if "the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence" or "a prosecution by the United States is in the public interest and necessary to secure substantial justice." Concurrent state and federal investigations are permitted even without certification.

[15] For example, Chief Deputy and Prosecuting Attorney for Albany County (Laramie) Kenneth Brown testified at a Senate hearing against the proposed legislation in 1999 stating, "[W]e don't need brand new players on our team, unfamiliar with the territory, and at a huge additional expense to taxpayers." He told the story of the trial of one of Matthew Shepard's killers in which federal assistance was less than useful. "And the only thing that we did receive was some advice," he said. "The advice [then-Attorney General] Janet Reno's office offered was that we wear blue shirts, as they appeared better on television cameras." Combating Hate Crimes: Promoting a Responsive and Responsible Role for the Federal Government: Hearing on S. 622 Before the Senate Comm. on the Judiciary, 106th Cong. 35 (1999)(statement of Kenneth Brown).

[16] See ACLU Applauds Senate Introduction of Hate Crimes Legislation, available at www.aclu.org/lgbt/gen/29340prs20070412.html (April 12, 2007).

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criminal code).[17] It is also the issue that the U.S. Commission on Civil Rights featured most prominently in its letter to the Senate leadership opposing S. 909.

School children are taught that the Double Jeopardy Clause of the Constitution guarantees that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb."[18] They are seldom taught, however, about the dual sovereignty rule, which holds that the Double Jeopardy Clause does not apply when separate sovereign governments prosecute the same defendant. As the Supreme Court put it in *United States v. Lanza*, a defendant who violates the laws of two sovereigns has "committed two different offenses by the same act, and [therefore] a conviction by a court [of one sovereign] of the offense that [sovereign] is not a conviction of the different offense against the [other sovereign] and so is not double jeopardy."[19] A state cannot oust the federal government from jurisdiction by prosecuting first; similarly the federal government cannot oust the state. Indeed, New Jersey cannot oust New York from jurisdiction over a crime over which they both have authority, so in theory at least a defendant may face as many of 51 prosecutions for the same incident.[20]

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[17] The ACLU endorsed the bill without any discussion of the potential double jeopardy issues it raises. See supra at n.16. But Judge Paul Cassell reports that the ACLU was split on the federal prosecution on the police officers accused of using excessive force against Rodney King following their acquittal on state charges. Although the ACLU's Board of Directors ultimately mustered a vote of 37 to 29 to support the proposition that re-trials constitute double jeopardy, several chapters continued to demand that federal civil rights law be employed to prosecute the Rodney King defendants, notably the Southern California chapter, where the conduct took place. See Paul G. Cassell, The Rodney King Trials and the Double Jeopardy Clause: Some Observations on Original Meaning and the ACLU's Schizophrenic Views of the Dual Sovereign Doctrine, 41 UCLA L. Rev. 693, 709-15 (1994). See Susan N. Herman, Double Jeopardy All Over Again: Dual Sovereignty, Rodney King, and the ACLU, 41 UCLA L. Rev. 609 (1994); Paul Hoffman, Double Jeopardy Wars: The Case for a Civil Rights "Exception," 41 UCLA L. Rev. 649 (1994)(Legal Director of the ACLU Foundation of Southern California makes argument in favor of re-prosecutions in cases involving "civil rights").

[18] U.S. Const. amend. V.

[19] 260 U.S. 377, 382 (1922). See Abbate v. United States, 359 U.S. 187 (1959)(federal prosecution upheld following state conviction); Moore v. Illinois, 55 U.S. (14 How.) 13, 19-20 (1852)(dictum); Fox v. Ohio, 46 U.S. (5 How.) 410, 424-35 (1847)(dictum).

[20] At the time of *Lanza*, the Double Jeopardy Clause was thought not to apply to the states and some arguments for the dual sovereignty doctrine rely on that view. But the Supreme Court has held steadfastly to the dual sovereignty doctrine even after Benton v. Maryland, 395 U.S. 784 (1969), which held that the Clause had been incorporated through the Fourteenth Amendment. See Heath v. Alabama, 474 U.S. 82, 87-89 (1985)(case involving the dual sovereignty of Alabama and Georgia); United States v. Wheeler, 435 U.S. 313 (1978); Akhil Reed Amar & Jonathan L. Marcus, Double Jeopardy Law After Rodney King, 95 Colum. R. Rev. 1, 11-18 (1995).

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The doctrine is founded upon considerations that are real and understandable. If a state has the power to oust the federal government from jurisdiction by beating it to the "prosecutorial puneh," it can, in effect, veto the implementation of federal policy (and vice versa). In 1922, the Court in *Lanza* put it in terms of Prohibition, which was then hotly controversial. Allowing a state to "punish the manufacture, transportation and sale of intoxicating liquor by small or nominal fines," it wrote, will lead to "a race of offenders to the courts of that State to plead guilty and secure immunity from federal prosecution."[21]

But the dual sovereignty doctrine is still at best troubling. And its most troubling aspect is that it applies even when the defendant has been acquitted of the same offense in the first court and is now being re-tried.[22] Prosecutors in effect have two bites at the apple (or in a case in which two or more States are concerned, three, four, or five bites). The potential for abuse should be of concern to all Americans.

In the past, opportunities for such double prosecutions seldom arose, since so few federal crimes were on the books. But with the explosive growth of the federal criminal code in the last few decades, this is no longer true.[23] The nation is facing the real possibility that double prosecutions could become routinely available to federal prosecutors who wish to employ them.

S. 909 would add substantially to the problem in two ways.[24] By declining to require that the defendant be motivated by hatred or even malice in order to establish a "hate crime," it would

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[21] 260 U.S. at 385. See United States v. All Assets of G.P.S. Automotive Corp., 66 F.3d 483, 497 (2d Cir. 1995)(expressing concern over the doctrine while noting that "[t]he danger that one sovereign may negate the ability of another adequately to punish a wrongdoer, by bringing a sham or poorly planned prosecution or by imposing a minimal sentence, is ... obvious")(separate opinion of Calabresi, J.). See also Kenneth M. Murchison, The Dual Sovereignty Exception to Double Jeopardy, 14 N.Y.U. Rev. L. & Soc. Change 383 (1986).

[22] See Bartkus v. Illinois, 359 U.S. 121 (1959)(state prosecution following federal acquittal upheld); United States v. Avants, 278 F.3d 510, 516 (5th Cir.), cert. denied 536 U.S. 968 (2002)(under the "dual sovereignty doctrine," "the federal government may ... prosecute a defendant after an unsuccessful state prosecution based on the same conduct, even if the elements of the state and federal offenses are identical"); United States v. Farmer, 924 F.2d 647, 650 (7th Cir. 1991)(a "double jeopardy claim based on [a] prior state acquittal of murder is defeated by the 'dual sovereignty' principle").

[23] See generally James A. Strazzella, The Federalization of Criminal Law, 1998 A.B.A. Sect. Crim. Just. 5-13 (discussing the growth of federal crimes). According to former Attorney General Edwin Meese, III, Chair of the American Bar Association's Task Force on Federalization of Criminal Law, there are at least 3,000 federal crimes. See Edwin Meese, III, Big Brother on the Beat: The Expanding Federalization of Crime, 1 Tex. Rev. L. & Pol. 1, 3 (1997); Deanell Reece Tacha, Preserving Federalism in the Criminal Law: Can the Lines Be Drawn?, 11 Fed. Sentencing Rep. 129, 129 (1998).

[24] The ability to prosecute defendants in federal court after failed state prosecutions appears to be an important motivating factor behind S. 909. Former Attorney General Janet Reno, for example, told CNN in 1998, when the proposed legislation first surfaced that it would "give

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vastly expand the reach of the federal criminal code. A creative prosecutor will be able to charge defendants in a very broad range of cases–cases that ordinary users of the English language would never term "hate crimes." And it makes the most controversial cases–those that were arguably motivated by race, color, religion, national origin, gender, sexual orientation, etc.–front and center on the federal stage.

It should come as no surprise that re-prosecutions are common in cases that are emotionally-charged–cases like the Rodney King prosecutions and the Crown Heights murders. As Judge Guido Calabresi put it:

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people the opportunity to have a forum in which justice can be done if it is not done in the state court." Jacob Sullum, Thought Crimes, Reason Magazine (October 21, 1998), available at http://www.reason.com/news/printer/35878.html.

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"Among the important examples of successive federal-state prosecution are (1) the federal prosecution of the Los Angeles police officers accused of using excessive force on motorist Rodney King after their acquittal on state charges, (2) the federal prosecution of an African-American youth accused of murdering a Hasidic Jew in the Crown Heights section of Brooklyn, New York, after his acquittal on state charges, and (3) the Florida state prosecution–seeking the death penalty–of the anti-abortion zealot who had been convicted and sentenced to life imprisonment in federal court for killing an abortion doctor."[25]

[25] United States v. All Assets of G.P.S. Automotive Corp., 66 F.3d 483, 499 (2d Cir. 1995). High profile cases that involve re-prosecutions under 18 U.S.C. sec. 245(b) include: See Koon v. United States, 518 U.S. 81 (1996)(state acquittal); United States v. Nelson, 277 F.3d 164 (2d Cir. 2002)(state acquittal); United States v. Ebens, 800 F.2d 1422 (6th Cir. 1986)(state sentence thought to be insufficient). In all three of these cases, public pressure to re-prosecute was significant.

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While Judge Calabresi expressed no opinion about the merits of these cases, he noted that "there can be no doubt that all of these cases involved re-prosecutions in emotionally and politically charged contexts" and that it was "to avoid political pressures for the re-prosecution that the Double Jeopardy Clause was adopted." It "is especially troublesome," he stated, "that the dual sovereignty doctrine keeps the Double Jeopardy Clause from protecting defendants whose punishment, after an acquittal or an allegedly inadequate sentence, is the object of public attention and political concern."[26]

Hate crimes are perhaps the most emotionally-charged criminal issue in the nation today. According to CCN's Kyra Phillips, "Thousands of people converg[ed] on the U.S. Justice Department" on November 16, 2007 "demanding more federal prosecutions of hate crimes."[27] Can anyone seriously argue that political pressure of this sort will have no effect on the judgment of federal officials? Indeed, even before S. 909 has passed, advocacy groups have been calling for its use to overturn particular state court acquittals.[28]

Proponents of the bill argue that the actual risk of abuse at the Department of Justice is quite minimal. DOJ has its own internal guidelines, know as the "Petite Policy," under which it limits double prosecutions to cases that meet certain standards. Unfortunately, the standards are vague. For example, they authorize double prosecutions whenever there are "substantial federal interests demonstrably unvindicated" by successful state procedures. Under ordinary circumstances those federal interests are undefined and undefinable. In this case, however, the potential for abuse is the result of the law's clarity. S. 909 specifically refers to "the federal interest in eradicating bias-motivated violence." That means essentially that if federal prosecutors want to bring a hate crimes prosecution after a state declines to prosecute, a state court acquits or a state court fails to sentence the defendant as harshly as federal prosecutors think is appropriate, the Petite Policy will never stand in their way. Moreover, courts have consistently held that a criminal defendant cannot invoke the Petite policy as a bar to federal prosecution.[29]

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[26] Id. at 499.

[27] Thousands Protest Hate Crimes, CNN Newsroom Transcript (November 16, 2007)(available on Lexis/Nexis). According to the report, the Department of Justice spokesman said that the Department of Justice was aggressively pursuing hate crimes. One of the reasons cited for the failure to prosecute more hate crimes was the narrowness of the applicable statutes.

[28] Corrine Yu, Pennsylvania Teenagers Acquitted of Hate Crime; Federal Law Needed (May 5, 2009)(quoting MALDEF interim president and general counsel as calling for the federal prosecution for the acquitted defendants), available at http://www.civilrights.org/archives/2009/05/317-shenandoah.html

[29] See, e.g., United States v. Howard, 590 F.2d 564, 567-58 (4th Cir.), cert. denied, 440 U.S. 976 (1979) (noting that the Petite policy is "a mere housekeeping provision"); United States v. Musgrove, 581 F.2d 406, 407 (4th Cir. 1978) (stating the rule that "a defendant has no right to have an otherwise valid conviction vacated because government attorneys fail to comply with [Petite] policy on dual prosecutions."); United States v. Thompson, 579 F.2d 1184, 1189 (10th

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Conclusion: No one can deny the horror of violent crimes inspired by hatred of any kind. This is something upon which all decent people can agree. But it is precisely in those situations–where all decent people agree on the need to "do something"–that mistakes are made. Passage of the vaguely-worded prohibitions in S. 909 would be a giant step toward the federalization of all crime. Given the many civil liberties issues that would raise, including the routine potential of double jeopardy prosecutions, this is a step that members of the Senate should think twice before they take.

Cir. 1978)("Our view that [the Petite policy] is at most a guide for the use of the Attorney General and the United States Attorneys in the field ...."); United States v. Wallace, 578 F.2d 735, 740 (8th Cir. 1978).

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Department of Justice

STATEMENT OF

ERIC H. HOLDER, JR.
ATTORNEY GENERAL

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

AT A HEARING ENTITLED

"THE MATTHEW SHEPARD HATE CRIMES PREVENTION ACT OF 2009"

PRESENTED

JUNE 25, 2009

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STATEMENT
OF
ERIC H. HOLDER, JR.
ATTORNEY GENERAL

BEFORE THE
COMMITTEE ON THE JUDICIARY
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AT A HEARING ENTITLED
"THE MATTHEW SHEPARD HATE CRIMES PREVENTION ACT OF 2009"

PRESENTED ON
JUNE 25, 2009

Chairman Leahy, Ranking Member Sessions, and Members of the Committee, thank you for the opportunity to appear here before you today to discuss S. 909, the Matthew Shepard Hate Crimes Prevention Act of 2009. This Administration strongly supports this vital legislation, which will help protect all Americans from the scourge of the most heinous bias-motivated violence.

Almost exactly eleven years ago, on July 8, 1998, I first testified before this Committee as Deputy Attorney General to urge passage of an almost identical bill. While it is unfortunate that eleven years have come and gone without this bill becoming law, I am confident that we can make the important protections that it offers a reality this year. Indeed, one of my highest personal priorities upon returning to the Justice Department is to do everything I can to help ensure that this legislation finally becomes law.

President Obama strongly supports this bill; as you know, he co-sponsored similar legislation when he was in the Senate. On April 28, 2009, the President "urg[ed] members on both sides of the aisle to act on this important civil rights issue by passing this legislation to protect all of our citizens from violent acts of intolerance." The President and I seek swift passage of this legislation because hate crimes victimize not only individuals, but entire communities. Perpetrators of hate crimes seek to deny the humanity that we all share, regardless of the color of our skin, the God to whom we pray, or whom we choose to love.

As the recent tragedy at the Holocaust Museum demonstrates, our nation continues to suffer from horrific acts of violence inflicted by individuals consumed with bigotry and prejudice. Today, just as when I first testified in 1998, bias-motivated acts of violence divide our communities, intimidate our most vulnerable citizens, and damage our collective spirit. Indeed, the number of hate crime incidents per year is virtually unchanged from when I first testified before this Committee. The FBI reported 7,755 hate crime incidents in 1998 and 7,624 in 2007,

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the most current year for which the FBI has compiled hate crime data.[1] Since the year I first testified before the Senate Judiciary Committee on hate crimes legislation, there have been over 77,000 hate crime incidents reported to the FBI, not counting crimes committed in 2008 and 2009. That is nearly one hate crime every hour of every day over a decade.

The time has come to pass this crucial legislation, and I urge all Americans to stand with the President and the Department in supporting this bill, which has been pending for over a decade.

A. OVERVIEW

The Department's position on this legislation is detailed in a views letter that has been submitted in advance of this hearing. My testimony today will touch on some but not all of the issues discussed in that letter.

Hate crimes statistics reported to the FBI by State and local law enforcement agencies demonstrate that we have a significant hate crimes problem in this country. Over the past decade, approximately half of the hate crime incidents reported in the United States were racially motivated. However, many other victim classes are targeted for hate crimes. For example, during the last decade, religiously motivated incidents have generally accounted for the second highest number of hate crime incidents, followed closely by sexual orientation bias incidents. Moreover, recent numbers suggest that hate crimes against individuals of Hispanic national origin have increased four years in a row.[2] The Federal government has a strong interest in protecting people from violent crimes motivated by such bias and bigotry.

Although we at the Federal level are strongly committed to hate crimes enforcement, we recognize that most such crimes in the United States are investigated and prosecuted by other levels of government. The pending legislation would assist State, local, and tribal jurisdictions by providing funds and technical assistance to investigate and prosecute hate crimes. We welcome the bill's critical support of hate crimes enforcement efforts by State, local, and tribal authorities because all levels of law enforcement must have the tools they need to investigate and prosecute those who engage in bias-motivated violence.

This legislation also would create a new Federal criminal hate crimes statute, 18 U.S.C. § 249. Section 249(a)(1) would simplify the jurisdictional predicate for prosecuting violent acts

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[1] *See* Federal Bureau of Investigation, Uniform Crime Report, Hate Crime Statistics, 2007 at 1 (October 2008); Federal Bureau of Investigation, Uniform Crime Report, Hate Crime Statistics, 1998 at 1 (October 1999) (reports available at: http://www.fbi.gov/hq/cid/civilrights/hate.htm).

[2] *See* Federal Bureau of Investigation, Uniform Crime Report, Hate Crime Statistics, 1997-2007 (reports available at: http://www.fbi.gov/hq/cid/civilrights/hate.htm and http://www.fbi.gov/ucr/hc2007/incidents.htm).

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undertaken because of the actual or perceived race, color, religion, or national origin of any person, by eliminating the requirement in current law that such hate crimes also be motivated by the victim's participation in one of six enumerated federally protected activities. *See* 18 U.S.C. § 245. This is a welcome change. The federally-protected activity requirement has no connection to the seriousness of the crime and is not constitutionally necessary.

I am particularly pleased that Section 249(a)(2) would for the first time allow for Federal prosecution of violence undertaken because of the actual or perceived gender, disability, sexual orientation or gender identity of any person. During the decade from 1998 to 2007, there were 12,372 hate crime incidents involving violence based on sexual orientation. These crimes fell entirely outside the scope of current Federal jurisdiction. The Department therefore welcomes the expanded coverage of section 249, which would allow us to prosecute and deter violent acts of this sort more effectively.

The remainder of my testimony will address the following issues: (1) federalism and comity; (2) the need for stronger Federal hate crime legislation; (3) constitutionality of the proposed bill; and (4) specific comments on three issues of particular importance to the Department, namely, the bill's rule of construction, certification provision, and statute of limitations.

B. FEDERALISM AND COMITY

The pending bill would assist State, local, and tribal officials in the investigation and prosecution of violent hate crimes. State, local, and tribal officials are on the front lines, and they do a tremendous job in investigating and prosecuting hate crimes that occur in their communities. I want to emphasize that nothing in the bill will change this longstanding practice: State, local, and tribal law enforcement agencies will continue to play the primary role in the investigation and prosecution of all types of hate crimes. In fact, this bill is designed to assist State, local, and tribal jurisdictions by providing them with funds and technical assistance so that they are better able to address this problem on a community level. This bill will ensure that State, local, and tribal governments have the tools and resources they need to investigate, prevent, and punish such crimes.

Although State, local, and tribal governments will continue to take the lead in anti-hate crime enforcement efforts, there are occasions when the Federal government may be in a better position to investigate and prosecute a particular hate crime. For example, Federal resources may be better suited to investigate interstate hate crimes, in which the same defendant or group of defendants commit related hate crimes in multiple jurisdictions. There may also be times when a State, local, or tribal jurisdiction expressly requests that the Federal government assume jurisdiction. Finally, there may be rare circumstances in which State, local, or tribal officials are unable or unwilling to bring appropriate criminal charges, or when their prosecutions fail to adequately serve the interests of justice.

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For example, in July 2007, Joseph and Georgia Silva allegedly assaulted another couple on a public beach in South Lake Tahoe, California, using derogatory racial and ethnic slurs as they beat one of the Indian-American victims with a shoe and tackled and hit the other victim repeatedly in the head. Despite the defendants' repeated use of racial slurs, the State court refused to acknowledge that the crime was motivated by the victims' ethnicity. The court's dismissal of hate crime charges understandably resulted in outrage among Asian and South Asian communities. On March 5, 2009, a Federal grand jury in Sacramento charged each of the defendants with violations of 18 U.S.C. § 245(b)(2)(B) for their assaults on the victims. In special cases like this one, the public is served when, after consultation with State and local authorities, prosecutors have a Federal alternative to use to prosecute hate crimes.

The Department of Justice has carefully reviewed S. 909 and has concluded that its enactment would not unduly burden Federal law enforcement resources or infringe upon State interests in such prosecutions. The language of the bill itself would limit the number of newly prosecutable cases. First, the bill does not cover misdemeanor offenses and is expressly limited to violent acts that result in bodily injury (and a limited set of attempts to cause bodily injury). Second, the bill requires that Federal prosecutors obtain a written certification by the Attorney General or his designee before a prosecution may be undertaken. As under current law, such certification will ensure that a full and careful evaluation of any proposed prosecution by both career prosecutors and by officials at the highest level in the Department occurs before Federal charges are brought. And finally, the bill requires proof of a nexus to interstate commerce in cases involving conduct based on bias covered by any of the newly protected categories — gender, sexual orientation, gender identity, or disability.

In addition, the Department's prosecution efforts would be guided by Department-wide policies that impose additional limitations on the cases prosecuted by the Federal government. First, under the "backstop policy" that applies to all of the Department's criminal civil rights investigations, the Department would defer prosecution in the first instance to State and local law enforcement officials, except in highly sensitive cases in which the Federal interest in prompt Federal investigation and prosecution outweighed the usual justifications of the backstop policy. Second, under the Department's policy on dual and successive prosecutions, the Department would not bring a Federal prosecution following a State prosecution arising from the same incident unless the matter involved a "substantial Federal interest" that the State prosecution had left "demonstrably unvindicated."[3]

C. THE NEED FOR STRONGER FEDERAL HATE CRIME LEGISLATION

S. 909 would strengthen the ability of Federal law enforcement to combat bias-motivated violence in two vitally important ways. First, it would eliminate the antiquated and burdensome requirement under current law that prosecutors prove that a violent hate crime was motivated by a victim's participation in one of six enumerated federally protected activities. Second, the bill

[3] *See* United States Attorneys' Manual § 9-2.031

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would expand coverage of protected categories beyond actual or perceived race, color, religion or national origin to include gender, disability, sexual orientation, and gender identity.

1. The "Federally Protected Activity" Requirement of 18 U.S.C. § 245

The current principal Federal hate crimes statute prohibits the use or threat of force to injure, intimidate, or interfere with (or to attempt to injure, intimidate, or interfere with) "any person because of his race, color, religion or national origin" because of his participation in any of six "federally protected activities" enumerated in the statute. The six "federally protected activities" enumerated in the statute are: (A) enrolling in or attending a public school or public college; (B) participating in or enjoying a service, program, facility or activity provided or administered by any State or local government; (C) applying for or enjoying employment; (D) serving in a State court as a grand or petit juror; (E) traveling in or using a facility of interstate commerce; and (F) enjoying the goods or services of certain places of public accommodation. *See* 18 U.S.C. § 245(b)(2).

Not all hate crimes are committed because of the victim's participation in one of these six activities, however. Simply put, it makes no sense that our ability to prosecute violent hate crimes should depend on the happenstance of whether the victim was participating in a one of these six activities. Unfortunately, Department attorneys in fact have been unable to successfully prosecute incidents of brutal, bias-motivated violence because of the requirement that the Government prove not only that a defendant acted because of the victim's race, color, religion, or national origin, but also because of the victim's participation in one of the six federally protected activities enumerated in the statute.

This statutory requirement has led to acquittals in several prominent Federal prosecutions. For example, in June 2003, three white men brutally assaulted a group of Latino teenagers as the teenagers attempted to enter a Chili's restaurant in Holtsville, New York. The defendants used racial slurs as they assaulted the victims. As the defendants fled from the scene, one of them stabbed and seriously injured one of the victims. One of the three defendants entered a guilty plea for his involvement in the assaults and was sentenced to 15 months in prison. The two remaining defendants were acquitted at trial, after the jury determined that there was insufficient evidence to prove, beyond a reasonable doubt, that the offense happened because the victims were trying to use the restaurant (a public accommodation).

S. 909 would allow the Department to more effectively prosecute and deter violent acts based on existing protected categories of race, color, religion, or national origin by eliminating the "federally protected activity" requirement that serves as an unnecessary impediment to such prosecutions today.

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2. Violent Crimes Based on Sexual Orientation, Gender Identity, Gender, or Disability

Currently the main Federal hate crimes law, 18 U.S.C. § 245, does not cover hate crimes committed because of the victim's sexual orientation, gender, gender identity, or disability.[4] Yet we know that violent acts are committed based on these biases every day. For example, according to 2007 statistics published by the Federal Bureau of Investigation's Uniform Crime Reporting Program, 16.6 percent of hate crimes were motivated by sexual-orientation bias (exceeded only by racial bias, 50.8 percent, and religious bias, 18.4 percent).[5] S. 909 would allow the Federal government to help protect all Americans from such violence.

a. Sexual Orientation and Gender Identity

This bill is named in honor of Matthew Shepard, a gay man who was brutally murdered ten years ago in Laramie, Wyoming, in a case that shocked the nation. Matthew Shepard was murdered by two men, Russell Henderson and Aaron McKinney, who set out on the night of October 6, 1998, to rob a gay man. After going to a gay bar and pretending to befriend him, the killers offered their young victim a ride home, but instead drove him away from the bar, repeatedly pistol-whipped him in his head and face, and then tied him to a fence and left him to die. The passerby who found Shepard the next morning, tied to the fence and struggling to survive, initially thought that Matthew was a scarecrow. He was rushed to the hospital, where he died on October 12 from massive head injuries. At the defendants' murder trial, Henderson and McKinney initially tried to use a "gay panic" defense, claiming that they killed Shepard in an insane rage after he approached them sexually. At another point, they claimed that they intended only to rob Shepard, but not to kill him. Both men were sentenced to serve two consecutive life terms in prison.

Sadly, this appalling crime is not unique, and State prosecutions may not always fully vindicate Federal interests:

- On May 16, 2007, 20-year-old Sean Kennedy, a gay man, was murdered as he left a local gay bar in Greenville, South Carolina. According to the National Coalition of Anti-Violence Programs, Kennedy was walking to his car after leaving the bar, when a car pulled along side him and a man got out, approached Kennedy, and punched Kennedy in the face while calling him a "faggot." The punch knocked Kennedy to the ground, where he hit his head on the pavement and suffered a fatal head injury. A State grand jury indicted Kennedy's attacker, Stephen Moller, for voluntary manslaughter, which carries a maximum sentence of five years. The State had no hate crime statute. Moller was

[4]Note that the criminal provisions of the Fair Housing Act, 42 U.S.C. § 3631, cover gender and disability.

[5]*See* Federal Bureau of Investigation, Uniform Crime Report, Hate Crimes Statistics, 2007 (available at: http://www.fbi.gov/ucr/hc2007/incidents.htm).

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sentenced to five years, suspended to three years, with credit for seven months pre-trial detention. He is scheduled to be released from jail next month.

- On August 21, 2003, Emonie Spaulding, a transgendered woman in Washington, D.C., was shot to death by Derrick Lewis after Lewis learned that she was transgendered. Spaulding was shot and killed shortly after she left her home at 2:00 a.m. to head to an all-night convenience store. Her nude body was found in a grassy area near the street, with gunshot wounds in her arm and chest, and indications of blunt force trauma to the head. Lewis eventually pled guilty to the crime, admitting that he became angry upon discovering that Spaulding was transgendered. He was sentenced to serve ten years in prison.

b. Gender

Although acts of violence committed against women traditionally have been viewed as "personal attacks" rather than as bias-motivated crimes, it has long been recognized that a significant number of women "are exposed to terror, brutality, serious injury, and even death because of their gender."[6]

For example, the Leadership Conference on Civil Rights ("LCCR")[7] reports that in 2006, a gunman burst into a one-room Amish schoolhouse in Bart Township, Pennsylvania, where he shot ten young Amish girls, age 7 to 12. Before firing the shots, the gunman separated the boys from the girls, allowing the boys to leave. He then lined the girls against a blackboard, bound their feet with wire ties and plastic handcuffs, and shot them all at close range. Five of the victims died and the other five were severely injured. Local authorities reported that the gunman "wanted to exact revenge against female victims."[8]

Contrary to the concerns expressed by some, S. 909 would not result in the federalization of all sexual assaults and acts of domestic violence. Rather, the language of the bill itself, and the manner in which the Department of Justice would interpret that language, would ensure that the Federal government would strictly limit its investigations and prosecutions of violent gender-based hate crimes to those that implicate the greatest Federal interest. As is the case with other categories of hate crimes, State and local authorities would continue to prosecute virtually all gender-motivated hate crimes.

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[6]Statement of Helen R. Neuborne, Executive Director, NOW Legal Defense and Education Fund, *Women and Violence: Hearing Before the Senate Judiciary Committee*, 101st Congress, 2nd Sess. 62 (1990).

[7]*See* Leadership Conference on Civil Rights Education Fund, *Confronting the New Faces of Hate: Hate Crimes in America 2009*, at 33 (2009).

[8]*Id.*

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c. Disability

Congress has shown a consistent and durable commitment to the protection of persons with disabilities from discrimination based on their disabilities, including the 1988 amendments to the Fair Housing Act, the Americans with Disabilities Act in 1990, and the amendments to the Americans with Disabilities Act, which were signed into law by President George W. Bush last year. Congress has extended civil rights protections to persons with disabilities in many traditional civil rights contexts, and it is time they be protected from bias-motivated violence as well.

D. CONSTITUTIONALITY OF S. 909

The analysis underlying the Department's conclusion that S. 909 is constitutional is contained in the detailed views letter submitted in advance of today's hearing, as well as in the analysis contained in the Department's 2000 views letter on nearly identical legislation.[9] In short, the basis for the Department's view is that in criminalizing violent acts motivated by race, color, religion, or national origin, Congress would be acting pursuant to the power bestowed upon it by Section Two of the Thirteenth Amendment, and in criminalizing violent acts motivated by sexual orientation, gender, gender-identity, and disability, Congress would be acting pursuant to its authority under the Commerce Clause.

1. Thirteenth Amendment

Congress has authority under Section Two of the Thirteenth Amendment to punish racially motivated violence as part of a reasonable legislative effort to extinguish the relics, badges, and incidents of slavery. Congress may rationally determine, as it would do in S. 909, that "eliminating racially motivated violence is an important means of eliminating, to the extent possible, the badges, incidents, and relics of slavery and involuntary servitude," and that "[s]lavery and involuntary servitude were enforced . . . through widespread public and private violence directed at persons because of their race." S. 909 § 2(7).

The language of 249(a)(1) is not limited to violence involving racial discrimination; it would criminalize violence committed "because of the actual or perceived race, color, *religion, or national origin* of any person." The Supreme Court, in construing statutes enacted pursuant to the Thirteenth Amendment, has recognized that certain groups were considered to be "races" at the time the Thirteenth Amendment was passed even if – as is the case with Jewish and Arab groups – the characteristic defining the group is now more often considered a characteristic of religion or national origin. To the extent violence is directed at victims on the basis of a religion or national origin that was *not* regarded as a "race" at the time the Thirteenth Amendment was

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[9] *See* Letter for Senator Edward Kennedy from Robert Raben, Assistant Attorney General, Office of Legislative Affairs, United States Department of Justice (June 13, 2000); *see also* S. Rep. No. 107-147, at 15-23 (2002) ("Senate Report") (reprinting the Justice Department Letter as an explanation of the constitutional basis for such legislation).

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ratified, prosecutors may bring appropriate actions under the other provision of the bill, § 249(a)(2), since religion and national origin are covered in both subsections.

2. Commerce Clause Jurisdiction

The proposed legislation would cover four categories of hate crimes not reached by current Federal law — namely, those that are motivated by bias against a person's sexual orientation, gender, gender identity or disability — as well as crimes committed because of the victim's religion or national origin if prosecutors choose not to use § 249(a)(1). The interstate commerce element contained in § 249(a)(2)(B) would ensure that Federal prosecutions for hate crimes based on sexual orientation, gender, gender identity, or disability would be brought only in those particular cases in which a Federal interest is clear. This is important as a policy matter as well: while there is a clear need to enable Federal law enforcement officials to investigate and bring cases in these areas, the Department of Justice believes that the new hate crime legislation must be implemented in a manner respectful of the criminal law enforcement prerogatives of the States.[10]

E. COMMENTS ON THREE AREAS OF IMPORTANCE TO THE DEPARTMENT

The Department strongly supports this legislation. However, we believe three particular issues deserve specific comment because of their importance to the Department. First, although we believe that S. 909's Rule of Construction is unnecessary, we also believe it is far preferable to the analogous evidentiary provision in H.R. 1913, which if enacted could significantly harm our efforts to prosecute violations of the new statute. Second, we believe that the bill contains an overly complex certification provision that should be modified to comport with existing Federal hate crimes law. Third, we believe that S. 909 has an unnecessarily short statute of limitations that potentially could bar prosecution of some of the most egregious hate crimes.

1. The Evidentiary Provision

Some have expressed concern that this bill could possibly infringe on First Amendment rights. The Department has studied the bill and we are confident that nothing in it would criminalize any expressive conduct or association. Section 249 could be used only to investigate or prosecute discriminatory acts of violence causing bodily injury (or attempts to commit such violent acts) and thus could never be used to investigate or prosecute mere association or expressions of beliefs, no matter how offensive those beliefs might be. Simply put, bias-motivated violence is not protected speech.

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[10]In order to ensure the fullest possible coverage, the current bill also provides for prosecution of any hate crime that occurs in the Special Maritime and Territorial Jurisdiction of the United States (SMTJ). This will ensure that all categories of victims are protected in these unique locations, where there may be no State jurisdiction and no interstate commerce connection.

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The United States Constitution, the Federal Rules of Evidence, and existing caselaw provide adequate protection for expressive conduct and association. S. 909, however, provides additional assurance for the protection of First Amendment principles through its proposed Rule of Construction, which expressly provides that nothing in the legislation shall be construed "to prohibit any constitutionally protected speech, expressive conduct or activities" or "to allow prosecution based solely upon an individual's expression of racial, religious, political, or other beliefs or solely upon an individual's membership in a group advocating or espousing such beliefs." S. 909, § 10(3) and (4).

The Department strongly prefers S. 909's Rule of Construction to the evidentiary provisions in H.R. 1913. S. 909 would allow for the admission of evidence consistent with the First Amendment and the Federal Rules. By contrast, H.R. 1913 contains a rule of construction and an additional prohibition on the introduction of evidence in hate crimes cases unless the evidence "specifically" relates to the charged offense. We are concerned that H.R. 1913 could be interpreted as imposing evidentiary restrictions far beyond those contained in the Federal Rules or required by the First Amendment. Indeed, this provision could inadvertently prohibit introduction of the very evidence of discriminatory intent that renders a violent act a hate crime in the first instance. Suppose, for example, an African-American woman were violently murdered in a park by the local leader of the Ku Klux Klan but nothing at the scene indicated a bias-related motivation. The evidence that could establish the racial motivation for the murder (the defendant's Klan robes kept at home, his racist tattoos, and his racist, hate-filled speeches and correspondence advocating harm to minorities) might be excluded at trial unless it "specifically" pertained to the individual woman whom he murdered or to that particular murder.

No special rule of evidence is necessary or appropriate for hate crimes cases — indeed, the Department opposes the notion of requiring different rules of evidence for different offenses as a general matter. Moreover, imposing an additional limitation on the admissibility of evidence in hate crimes cases could very well undermine the very goal of such prosecutions: to punish and deter discriminatory violence. For this reason, although we do not believe it is necessary, the Department strongly prefers S. 909's Rule of Construction to the analogous provisions contained in the companion House bill.

2. The Statute of Limitations

Proposed section 249 contains no express statute of limitations; therefore, even the most egregious bias-motivated murder that is prosecutable under this new provision would be subject to the general five-year limitation period provided under 18 U.S.C. § 3282(a). Despite vigorous investigation and enforcement efforts, there always will be cases in which a perpetrator cannot be identified, or the hate-crime motivation cannot be discovered, until more than five years have passed. It is essential that the Department be able to prosecute the most serious of these crimes even after the passage of time. Applying a uniform five-year limitation period would undermine this mission and would be inconsistent with Congress's mandate, recently expressed in the Emmett Till Unsolved Civil Rights Crime Act of 2007, that the Department aggressively investigate and prosecute "cold" hate crime murders. Accordingly, the Department recommends

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that the bill expressly provide that any offense that results in the death of a victim have no limitations period and that the bill's statute of limitations be extended to seven years for all other offenses, as in the House companion bill.

3. The Certification Provision

Proposed subsection 249(b) would require the Attorney General or his designee to certify certain facts before a Federal hate crimes prosecution could be brought under the new statute. We recognize that such certification is important to ensure appropriate coordination between Federal and local law enforcement and in recognition of the fact that most crimes are generally investigated and prosecuted at the State or local level. However, we recommend that the bill's certification provision be amended to conform with the existing certification requirement in 18 U.S.C. § 245. Section 245's certification scheme has served the interests of justice effectively since its enactment over 40 years ago, and is already familiar to Federal, State, and local law enforcement.

F. CONCLUSION

I strongly urge passage of the Matthew Shepard Hate Crimes Act of 2009. We must do more than simply deplore horrific acts of bias-motivated violence. The time is now to provide our Federal, State, local, and tribal law enforcement officers with the tools they need to effectively prosecute and deter these heinous crimes. The time is now to provide justice to victims of bias-motivated violence and to redouble our efforts to protect our communities from violence based on bigotry and prejudice.

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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 23, 2009

The Honorable Edward M. Kennedy
United States Senate
Washington, D.C. 20510

Dear Senator Kennedy:

This letter presents the views of the Department of Justice on S. 909, the *Matthew Shepard Hate Crimes Prevention Act,* as introduced on April 28, 2009. The Department is committed to vigorous civil rights enforcement. Hate crimes victimize not only individuals, but entire communities. We strongly support S. 909 because it would help to protect all Americans from the scourge of bias-motivated violence. The Department appreciates the tireless leadership you have shown on this vitally important legislation.

This bill would assist State, local, and tribal jurisdictions by providing funds and technical assistance to investigate and prosecute hate crimes. Although we at the Federal level are strongly committed to hate crimes enforcement, we recognize that most such crimes in the United States are investigated and prosecuted by other levels of government. We welcome the bill's critical support of hate crimes enforcement efforts by State, local, and tribal authorities because all levels of law enforcement must have the tools they need to investigate and prosecute those who engage in bias-motivated violence.

This bill also would create a new Federal criminal hate crimes statute, 18 U.S.C. § 249. Section 249 would simplify the jurisdictional predicate for prosecuting violent acts undertaken because of the actual or perceived race, color, religion, or national origin of any person, by eliminating the requirement in current law that such hate crimes also be motivated by the victim's participation in one of a specific, limited number of federally protected activities. *See* 18 U.S.C. § 245. This section also would allow for prosecution of violence undertaken because of the actual or perceived gender, disability, sexual orientation and gender identity of any person — categories not covered under the existing Federal hate crimes statute. According to 2007 statistics published by the Federal Bureau of Investigation's Uniform Crime Reporting Program, 16.6 percent of hate crimes were motivated by sexual-orientation bias (exceeded only by racial bias, 50.8 percent, and religious bias, 18.4 percent). We welcome the coverage of such crimes in section 249, which would allow the Department to prosecute and deter violent acts of this sort more effectively.

The remainder of this letter explains in further detail the Department's views concerning the bill, including (1) our view that proposed new section 249 would be entirely constitutional; and (2) our views on three particular aspects of the bill, namely that we believe (a) the "Rule of Construction," though unnecessary, is far preferable to the analogous provisions of the

companion bill in the House of Representatives, H.R. 1913, which passed the House on April 29, 2009; (b) the certification provision should be modified to parallel the existing certification requirement found in the current Federal hate crimes statute, 18 U.S.C. § 245; and (c) an express statute of limitations similar to that contained in the House bill should be included to allow for the investigation and prosecution of some of the most egregious hate crimes that might otherwise be time-barred.

We very much look forward to working with Congress to ensure that this bill will be the most effective tool possible to help investigators and prosecutors at all levels of law enforcement eradicate discriminatory violence.

1. Constitutionality of Proposed Section 249

Subsection 7(a) of the bill would amend title 18 of the United States Code to create a new section 249, which would establish two criminal prohibitions called "hate crime acts."

First, proposed paragraph 249(a)(1) would prohibit willfully causing bodily injury to any person, or attempting to cause bodily injury to any person through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, "because of the actual or perceived race, color, religion, or national origin of any person." This provision is similar to 18 U.S.C. § 245, the principal difference being that the new paragraph 249(a)(1), unlike section 245, would not require the prosecutor to prove that the victim was or had been "participating in or enjoying any benefit, service, privilege, program, facility or activity provided or administered by any State or subdivision thereof."

Second, proposed paragraph 249(a)(2) would prohibit willfully causing bodily injury to any person, or attempting to cause bodily injury to any person through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, "because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity or disability of any person," subparagraph 249(a)(2)(A), but only if the conduct occurred in at least one of a series of defined "circumstances" that has a specified connection with or effect upon interstate or foreign commerce, *see* subparagraph 249(a)(2)(B). This new provision would prohibit certain forms of discriminatory violence — namely, violence committed because of a person's actual or perceived gender, sexual orientation, gender identity or disability — that are not addressed by the existing section 245 of title 18.[1]

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[1]A new proposed paragraph 249(a)(3) would make the same conduct unlawful if done within the special maritime or territorial jurisdiction of the United States — a provision that does not raise any serious questions with respect to Congress's authority. *See United States v. Sharpnack*, 355 U.S. 286, 288 (1958).

In these respects, S. 909 is nearly identical to a bill the Department reviewed in 2000.[2] In our analysis of that proposed legislation, which we transmitted to you, we concluded that the bill would be constitutional. *See* Letter for Senator Edward Kennedy from Robert Raben, Assistant Attorney General, Office of Legislative Affairs, United States Department of Justice (June 13, 2000) (attached); *see also* S. Rep. No. 107-147, at 15-23 (2002) ("Senate Report") (reprinting the Justice Department Letter as an explanation of the constitutional basis for such legislation). However, in 2007, the Office of Management and Budget indicated to the Congress that one provision of such legislation would raise constitutional concerns, *see* Statement of Administration Policy on H.R. 1592 (May 3, 2007), as did the Attorney General, *see* Letter for the Hon. Carl Levin, Chairman, Senate Committee on Armed Services, from Michael B. Mukasey, Attorney General, at 6 (Nov. 13, 2007) (regarding section 1023 of H.R.1585).

We have reviewed the relevant legal materials carefully and now conclude, as we did in 2000, that the legislation is constitutional.

a. Section 249(a)(1)

As we explained in 2000, *see* Senate Report at 16-18, we believe that the Congress has authority under section 2 of the Thirteenth Amendment to punish racially motivated violence as part of a reasonable legislative effort to extinguish the relics, badges, and incidents of slavery. Congress may rationally determine, as it would do in S. 909, that "eliminating racially motivated violence is an important means of eliminating, to the extent possible, the badges, incidents, and relics of slavery and involuntary servitude," and that "[s]lavery and involuntary servitude were enforced . . . through widespread public and private violence directed at persons because of their race." S. 909 § 2(7); *see also* H.R. 1585, 110th Cong., § 1023(b)(7) (2007) (same).[3]

Like the current 18 U.S.C. § 245, proposed paragraph 249(a)(1) of title 18 would not be limited by its terms to violence involving racial discrimination; it would criminalize violence committed "because of the actual or perceived race, color, *religion, or national origin* of any person." S. 909 explains (§2(8)) that "in order to eliminate, to the extent possible, the badges, incidents, and relics of slavery, it is necessary to prohibit assaults on the basis of real or perceived religions or national origins, at least to the extent such religions or national origins were regarded as races at the time of the adoption of the 13th, 14th, and 15th amendments."

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[2]The principal material difference is that paragraph 249(a)(2) of S. 909 encompasses violence on the basis of a person's real or perceived gender identity, something that the 2000 legislation did not address.

[3]Given our conclusion that the Congress possesses authority to enact this provision under the Thirteenth Amendment, we do not address whether the Congress also might possess sufficient authority under the Commerce Clause or the Fourteenth Amendment. *See United States v. Nelson*, 277 F.3d 164, 174-75 & n.10 (2d Cir. 2002).

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As we previously have concluded, under existing case law the proscription of violence motivated by "religion" and "national origin" would constitute a valid exercise of Congress's Thirteenth Amendment authority insofar as "the violence is directed at members of those religions or national origins that would have been considered races at the time of the adoption of the Thirteenth Amendment." Senate Report at 17-18; *see also Saint Francis College v. Al-Khazraji*, 481 U.S. 604, 610-13 (1987) (holding that the prohibition of race discrimination in 42 U.S.C. § 1981, a Reconstruction-era statute enacted pursuant to, and contemporaneously with, the Thirteenth Amendment, extends to discrimination against Arabs, as Congress intended to protect "identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics"); *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615, 617-18 (1987) (holding that Jews can state a claim under 42 U.S.C. § 1982, another antidiscrimination statute enacted pursuant to, and contemporaneously with, the Thirteenth Amendment, because Jews "were among the peoples [at the time the statutes were adopted] considered to be distinct races"); *Hodges v. United States*, 203 U.S. 1, 17 (1906) ("Slavery or involuntary servitude of the Chinese, of the Italian, of the Anglo-Saxon, are as much within its compass as slavery or involuntary servitude of the African."); *United States v. Nelson*, 277 F.3d 164, 176-78 (2d Cir. 2002) (concluding that 18 U.S.C. § 245 could be applied constitutionally to protect Jews against crimes based on their religion, because Jews were considered a "race" when the Thirteenth Amendment was adopted). While it is true that the institution of slavery in the United States, the abolition of which was the primary impetus for the Thirteenth Amendment, primarily involved the subjugation of African Americans, it is well-established by Supreme Court precedent that Congress' authority to abolish the badges and incidents of slavery extends "to legislat[ion] in regard to 'every race and individual.'" *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 288 n.18 (1976) (*quoting Hodges*, 203 U.S. at 16-17).[4]

Although "there is strong precedent to support the conclusion that the Thirteenth Amendment extends its protections to religions directly, and thus to members of the Jewish religion, without the detour through historically changing conceptions of 'race,'" *Nelson*, 277 F.3d at 179, it remains an open question whether and to what extent the Thirteenth Amendment empowers Congress to address forms of discrimination short of slavery and involuntary servitude with respect to persons of religions and national origins that were *not* considered "races" in 1865. Accordingly, to the extent that violence is directed at victims on the basis of a religion or national origin that was not regarded as a "race" at the time the Thirteenth Amendment was ratified, prosecutors may choose to bring actions under the Commerce Clause provision of S. 909, *i.e.*, proposed 18 U.S.C. § 249(a)(2), if they can prove the elements of such an offense. *See* Senate Report at 15.

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[4]In *McDonald,* for example, the Supreme Court held that 42 U.S.C. § 1981, a Reconstruction-era statute that was enacted pursuant to, and contemporaneously with, the Thirteenth Amendment, prohibits racial discrimination in the making and enforcement of contracts against all persons, including whites. *See* 427 U.S. at 286-96.

Proposed paragraph 249(a)(1) differs from the current 18 U.S.C. § 245 in that it would not require the Government to prove that the defendant committed the violence because the victim was or had been "participating in or enjoying any benefit, service, privilege, program, facility or activity provided or administered by any State or subdivision thereof."[5] The outer limits of the expansive list of specified activities in section 245 have not been defined conclusively, but courts have concluded that the section protects, *inter alia*, drinking beer in a

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[5]Paragraph 245(b)(2) makes it a crime, "whether or not acting under color of law, by force or threat of force willfully [to] injure[], intimidate[] or interfere[] with, or attempt[] to injure, intimidate or interfere with . . . any person because of his race, color, religion or national origin and because he is or has been —

(A) enrolling in or attending any public school or public college;

(B) participating in or enjoying any benefit, service, privilege, program, facility or activity provided or administered by any State or subdivision thereof;

(C) applying for or enjoying employment, or any perquisite thereof, by any private employer or any agency of any State or subdivision thereof, or joining or using the services or advantages of any labor organization, hiring hall, or employment agency;

(D) serving, or attending upon any court of any State in connection with possible service, as a grand or petit juror;

(E) traveling in or using any facility of interstate commerce, or using any vehicle, terminal, or facility of any common carrier by motor, rail, water, or air;

(F) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility which serves the public and which is principally engaged in selling food or beverages for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment which serves the public, or of any other establishment which serves the public and

(i) which is located within the premises of any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishments, and

(ii) which holds itself out as serving patrons of such establishments."

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public park (*see United States v. Allen*, 341 F.3d 870 (9th Cir. 2003)), and walking on a city street (*see Nelson*). Although it is not clear that the Congress included the activities element of section 245 in order to justify an exercise of its Thirteenth Amendment enforcement powers,[6] the courts have held that section 245 is proper Thirteenth Amendment legislation. *See, e.g.*, *Nelson*; *Allen*.

The Supreme Court's decisions in *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968), and *Griffin v. Breckenridge*, 403 U.S. 88 (1971), support the further judgment that the Thirteenth Amendment does not require such a Federal-activities element. In *Jones*, the Court upheld section 1 of the Civil Rights Act of 1866 (now 42 U.S.C. § 1982) as a valid exercise of Congress's Thirteenth Amendment enforcement authority. The statute in *Jones* was limited to discriminatory interferences with the rights to make contracts and buy or sell property, but the Court did not rest its approval on that limitation. Instead, the Court wrote, "[s]urely Congress has the power under the Thirteenth Amendment rationally to determine what are the badges and the incidents of slavery, and the authority to translate that determination into effective legislation." 392 U.S. at 440. Similarly, in *Griffin*, the Court held that the Thirteenth Amendment supported application of the Ku Klux Klan Act (now 42 U.S.C. § 1985) to a case of racially motivated violence intended to deprive the victims of what the Court called "the basic rights that the law secures to all free men," 403 U.S. at 105 — which in that case, according to the complaint, included the "right to be secure in their person" and "their rights to travel the public highways without restraint," *id.* at 91-92. The Court again endorsed the broad *Jones* formulation, which contains no interference-with-protected-activities limitation: "Congress has the power under the Thirteenth Amendment rationally to determine what are the badges and the incidents of slavery, and the authority to translate that determination into effective legislation." *Id.* at 105. To be sure, "there exist indubitable connections . . . between post Civil War efforts to return freed slaves to a subjugated status and private violence directed at interfering with and discouraging the freed slaves' exercise of civil rights in public places." *Nelson*, 277 F.3d at 190. But there are also such "indubitable connections" "between slavery and private violence directed against despised and enslaved groups" more generally. *Id.*[7] In light of these precedents, and

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[6]*See Nelson*, 277 F.3d at 191 n.26 (explaining that Congress included the "participating in or enjoying civil rights" requirement in section 245 for purposes of providing a basis for the provision under the Fourteenth Amendment and possibly also the Fifteenth Amendment).

[7]As the Second Circuit noted in *Nelson*, the Supreme Court has limited the scope of Congress's enforcement authority under section 5 of the Fourteenth Amendment in a series of recent cases. *See* 277 F.3d at 185 n.20. But as that court also noted, these precedents do not address the Thirteenth Amendment, which contemplates an inquiry that the Supreme Court has referred to as the "inherently legislative task of defining involuntary servitude." *Id.* (quoting *United States v. Kozminski*, 487 U.S. 931, 951 (1988)). The court of appeals in *Nelson* further explained that "the task of defining 'badges and incidents' of servitude is by necessity even more inherently legislative." *Id.* Finally, we note that the Thirteenth Amendment, unlike the Fourteenth Amendment, contains no state-action requirement, a distinction of relevance in

consistent with our conclusion in 2000, *see* Senate Report at 16-17, we think it would be rational for Congress to find that "[s]lavery and involuntary servitude were enforced ...through widespread public and private violence directed at persons because of their race" and that "eliminating racially motivated violence is an important means of eliminating, to the extent possible, the badges, incidents, and relics of slavery and involuntary servitude," S. 909 § 2(7), regardless of whether the perpetrator in a particular case is attempting to deprive the victim of the use of the activities covered by the current section 245.

Therefore, we conclude, as we did in 2000, that the prohibition of discriminatory violence in section 249(a)(1) would be a permissible exercise of Congress's broad authority to enforce the Thirteenth Amendment.

b. Section 249(a)(2)

Proposed paragraph 249(a)(2) of the bill would be a proper exercise of Congress's authority under the Commerce Clause, U.S. Const. art. 1, § 8, cl. 3, because it would require the Government to allege and prove beyond a reasonable doubt in each case that there was an explicit and discrete connection between the proscribed conduct and interstate or foreign commerce. In particular, it would require that the offense have occurred "in any circumstance described in [proposed 18 U.S.C. § 249(a)(2)(B)]." Those enumerated circumstances are that —

> (i) the conduct described in subparagraph (A) occurs during the course of, or as the result of, the travel of the defendant or the victim — (I) across a State line or national border; or (II) using a channel, facility, or instrumentality of foreign commerce;
>
> (ii) the defendant uses a channel, facility, or instrumentality of interstate or foreign commerce in connection with the conduct described in subparagraph (A);
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> (iii) in connection with the conduct described in subparagraph (A), the defendant employs a firearm, dangerous weapon, explosive or incendiary device, or other weapon that has traveled in interstate or foreign commerce; or
>
> (iv) the conduct described in subparagraph (A)-(I) interferes with commercial or other economic activity in which the victim is engaged at the time of the conduct; or (II) otherwise affects interstate commerce.

As we explained in 2000, *see* Senate Report at 18-23, requiring proof of at least one of these "jurisdictional" elements would "ensure, through case-by-case-inquiry, that the [offense] in

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determining Congress's authority to regulate private, racially motivated violence. *See* Senate Report at 18.

question affects interstate commerce." *United States v. Lopez*, 514 U.S. 549, 561 (1995). Nothing in the law since 2000 calls this analysis into question.[8]

For these reasons we adhere to our 2000 conclusion that the new criminal offenses created in S. 909 would be wholly constitutional.

2. The Rule of Construction, Certification Provision, and Statute of Limitations

As explained above, the Department strongly supports this legislation. However, we believe three particular issues deserve specific comment. First, we believe that the bill's Rule of Construction, though unnecessary, is far preferable to the analogous evidentiary provision in H.R. 1913, which if enacted could significantly harm our efforts to prosecute violations of the new statute. Second, we believe that the bill has an overly complex certification provision that should be modified to comport with existing Federal hate crimes law. Third, we believe that the bill has an unnecessarily short statute of limitations that potentially could bar prosecution of some of the most egregious hate crimes. Each of these comments is intended to help ensure that we will be able to enforce the vital provisions of this legislation effectively when ultimately enacted.

a. The Rule of Construction and Evidence of Expression or Association

The Department recognizes that some have expressed concern that proposed new section 249, like the existing Federal hate crimes laws, potentially could infringe on First Amendment rights if it were used to investigate or prosecute individuals based merely on their beliefs or membership in groups that espouse certain beliefs. However, nothing in section 249 would criminalize any expressive conduct or association. In fact, section 249 could be used only to investigate or prosecute discriminatory acts of violence causing bodily injury (or attempts to commit such violent acts). Thus, this new statute could never be used to investigate or prosecute mere association or expressions of beliefs, no matter how offensive.

Nevertheless, S. 909 provides additional assurance for the protection of First Amendment principles through its proposed Rule of Construction, which expressly provides that nothing in the legislation shall be construed "to prohibit any constitutionally protected speech, expressive

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[8] *See, e.g.*, *United States v. Dorsey*, 418 F.3d 1038, 1045-46 (9th Cir. 2005) (upholding 18 U.S.C. § 922(q)(2)(A), which makes it a crime "knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place the individual knows, or has reasonable cause to believe, is a school zone"); *United States v. Capozzi*, 347 F.3d 327, 335-36 (1st Cir. 2003) (upholding the Hobbs Act, 18 U.S.C. § 1951(a), which makes it a Federal crime to commit or attempt to commit extortion that "in any way or degree, obstructs, delays or affects [interstate] commerce").

conduct or activities" or "to allow prosecution based solely upon an individual's expression of racial, religious, political, or other beliefs or solely upon an individual's membership in a group advocating or espousing such beliefs." S. 909, § 10(3) and (4). Although it is the Department's view that the United States Constitution, the Federal Rules of Evidence, and existing caselaw provide adequate protection for such expression and association, rendering S. 909's proposed Rule of Construction unnecessary, we have no objection to your decision to allay such concerns in the bill itself.

Section 249 — like the existing hate crime statute — would require the Government to prove beyond a reasonable doubt both (a) that the defendant had a specific intent to commit a crime and (b) that the defendant committed the act because of certain characteristics of another person (race, color, religion, national origin, sexual orientation, gender, gender identity, or disability). Courts have long recognized that evidence of intent and motive is admissible in criminal prosecutions, even if that evidence is in the form of otherwise protected speech. *See Wisconsin v. Mitchell*, 508 U.S. 476 (1993). Although the Supreme Court has explained that the First Amendment prohibits use of evidence of "a defendant's abstract beliefs, however obnoxious" in obtaining a conviction or sentence where the evidenee in question does not prove anything *other than* those beliefs, *id.* at 485-86, it held at the same time that the First Amendment does not "prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent." *Id.* at 489.

Significantly, most defendants in Federal hate crime cases argue that their actions were not motivated by bias or animus. In many cases, defendants do not express their discriminatory intent during the actual commission of the crime; in other cases, there may be no surviving witnesses to provide evidence of any bias that was expressed. In such instances, often the only potential evidence of the defendant's state of mind in committing discriminatory violence will be his or her words or conduct away from the scene of the crime.

The Federal Rules of Evidence provide a careful balancing test to determine what evidence is admissible in any particular case. Under the Federal Rules, a judge first must determine whether the evidence is relevant to the crime that occurred. *See* Fed. R. Evid. 401 and 402. If relevant, the judge then must determine whether any prejudice to the defendant — including the risk that a defendant might be convicted for holding specific unpopular beliefs — is outweighed by the probative value of the evidence. *See* Fed. R. Evid. 403. Courts have been very judicious in admitting such evidence. *See, e.g., Allen*, 341 F.3d at 886 (affirming decision to admit some, but not all, evidence of racial animosity).

We strongly prefer S. 909's Rule of Construction to the analogous provisions in H.R. 1913. S. 909 would allow for the admission of evidence consistent with the First Amendment and the Federal Rules. By contrast, H.R. 1913, which in addition to its own rule of construction includes a prohibition on the introduction of evidence in hate crimes cases unless the evidence "specifically" relates to the charged offense, could inadvertently prohibit introduction of the very evidence of discriminatory intent that renders a violent act a hate crime in the first instance. For

example, if an African-American woman were violently murdered in a park by the local leader of the Ku Klux Klan but nothing at the scene indicated an impermissible motivation, the very evidence that would establish the racial motivation for the murder (the defendant's Klan robes kept at home, his racist tattoos, and his racist, hate-filled speeches and correspondence advocating harm to minorities) might be excluded at trial unless it "specifically" pertained to the individual woman whom he murdered, or to that particular conduct. We are concerned that H.R. 1913 could be interpreted as imposing evidentiary restrictions far beyond those contained in the Federal Rules or required by the First Amendment.

No special rule of evidence is necessary or appropriate for hate crimes cases — indeed, the Department opposes the notion of requiring different rules of evidence for different offenses as a general matter. Moreover, imposing an additional limitation on the admissibility of evidence in hate crimes cases could very well undermine the very goal of such prosecutions: to punish and deter discriminatory violence. For this reason, although we do not believe it is necessary, the Department strongly prefers S. 909's Rule of Construction to the analogous provisions contained in the companion House bill.

b. Certification Provision

Proposed subsection 249(b) would require the Attorney General or his designee to certify certain facts before a Federal hate crimes prosecution could be brought under the new statute. We recognize that such certification is important to ensure appropriate coordination between Federal and local law enforcement and in recognition of the fact that most crimes are generally investigated and prosecuted at the State or local level. However, we recommend that the bill's certification provision be amended to conform with that in 18 U.S.C. § 245, which has served well the interests of justice since its enactment over 40 years ago and is familiar to Federal, State and local law enforcement.

c. Statute of Limitations

Proposed section 249 contains no express statute of limitations; therefore, even the most egregious hate-motivated murder that is prosecuted under this new provision would be subject to the general five-year limitation period provided under 18 U.S.C. § 3282(a).

Despite vigorous investigation and enforcement efforts, there always will be cases in which a perpetrator cannot be identified, or the hate-crime motivation cannot be discovered, until more than five years have passed. Nevertheless, it is essential that the Department be able to prosecute the most serious of these crimes even after the passage of time. Applying a uniform five-year limitation period would undermine this mission and would be inconsistent with Congress's mandate, recently expressed in the Emmett Till Unsolved Civil Rights Crime Act of 2007, that the Department aggressively investigate and prosecute "cold" hate crime murders.

Accordingly, the Department recommends that the bill expressly provide that any offense under proposed section 249 that results in the death of a victim have no limitations period. The House bill contains such a provision. *See* H.R. 1913, § 6 (proposed section 249(d)). We also recommend that the bill's statute of limitations be extended to seven years for all other offenses under proposed section 249, as in the House bill.

* * * *

The Department strongly urges swift passage of S. 909, with the modifications discussed above. The Office of Management and Budget has advised that there is no objection to the presentation of this letter from the standpoint of the Administration's programs. Thank you for the opportunity to present our views.

Sincerely,

Ronald Weich
Assistant Attorney General

Attachment

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 13, 2000

The Honorable Edward Kennedy
United States Senate
Washington, D.C. 20510

Dear Senator Kennedy:

This letter responds to your request for our views on the constitutionality of a proposed legislative amendment entitled the "Local Law Enforcement Enhancement Act of 2000." Section 7(a) of the bill would amend title 18 of the United States Code to create a new § 249, which would establish two criminal prohibitions called "hate crime acts." First, proposed § 249(a)(1) would prohibit willfully causing bodily injury to any person, or attempting to cause bodily injury to any person through the use of fire, a firearm, or an explosive or incendiary device, "because of the actual or perceived race, color, religion, or national origin of any person." Second, proposed § 249(a)(2) would prohibit willfully causing bodily injury to any person, or attempting to cause bodily injury to any person through the use of fire, a firearm, or an explosive or incendiary device, "because of the actual or perceived religion, national origin, gender, sexual orientation, or disability of any person," § 249(a)(2)(A), but only if the conduct occurs in at least one of a series of defined "circumstances" that have an explicit connection with or effect on interstate or foreign commerce, § 249(a)(2)(B).

In light of United States v. Morrison, 120 S. Ct. 1740 (2000), and other recent Supreme Court decisions, defendants might challenge the constitutionality of their convictions under § 249 on the ground that Congress lacks power to enact the proposed statute. We believe, for the reasons set forth below, that the statute would be constitutional under governing Supreme Court precedents.[1] We consider in turn the two proposed new crimes that would be created in § 249.

[1] Because you have asked specifically about the effect of Morrison on the constitutionality of the proposed bill, this letter addresses constitutional questions relating only to Congress's power to enact the proposed bill.

1. Proposed 18 U.S.C. § 249(a)(1)

Congress may prohibit the first category of hate crime acts that would be proscribed — actual or attempted violence directed at persons "because of the[ir] actual or perceived race, color, religion, or national origin," § 249(a)(1) — pursuant to its power to enforce the Thirteenth Amendment to the United States Constitution.[2] Section 1 of that amendment provides, in relevant part, "[n]either slavery nor involuntary servitude . . . shall exist within the United States." Section 2 provides, "Congress shall have power to enforce this article by appropriate legislation."

Under the Thirteenth Amendment, Congress has the authority not only to prevent the "actual imposition of slavery or involuntary servitude," but to ensure that none of the "badges and incidents" of slavery or involuntary servitude exists in the United States. Griffin v. Breckinridge, 403 U.S. 88, 105 (1971); see Jones v. Alfred H. Mayer Co., 392 U.S. 409, 440-43 (1968) (discussing Congress's power to eliminate the "badges," "incidents," and "relic[s]" of slavery). "'Congress has the power under the Thirteenth Amendment rationally to determine what are the badges and incidents of slavery, and the authority to translate that determination into effective legislation.'" Griffin, 403 U.S. at 105 (quoting Jones, 392 U.S. at 440); see also Civil Rights Cases, 109 U.S. 3, 21 (1883) ("Congress has a right to enact all necessary and proper laws for the obliteration and prevention of slavery, with all its badges and incidents"). In so legislating, Congress may impose liability not only for state action, but for "varieties of private conduct," as well. Griffin, 403 U.S. at 105.

Section 2(10) of the bill's findings provides, in relevant part, that "eliminating racially motivated violence is an important means of eliminating, to the extent possible, the badges, incidents, and relics of slavery and involuntary servitude," and that "[s]lavery and involuntary servitude were enforced . . . through widespread public and private violence directed at persons because of their race." So long as Congress may rationally reach such determinations — and we believe Congress plainly could[3] — the prohibition of racially motivated violence would be a permissible exercise of Congress's broad authority to enforce the Thirteenth Amendment.

That the bill would prohibit violence against not only African Americans but also persons of other races does not alter our conclusion. While it is true that the institution of slavery in the United States, the abolition of which was the primary impetus for the Thirteenth Amendment, primarily involved the subjugation of African Americans, it is well-established by Supreme Court precedent that Congress's authority to abolish the badges and incidents of slavery extends "to legislat[ion] in regard to 'every race and individual.'" McDonald v. Santa Fe Trail Transp. Co., 427 U.S. 273, 288 n.18 (1976) (quoting Hodges v. United States, 203 U.S. 1, 16-17 (1906),

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[2] Given our conclusion that Congress possesses authority to enact this provision under the Thirteenth Amendment, we do not address whether Congress might also possess authority under the Commerce Clause and the Fourteenth Amendment.

[3] See, e.g., Patterson v. McLean Credit Union, 491 U.S. 164, 183 (1989); Jones, 392 U.S. at 441 n.78; Hodges v. United States, 203 U.S. 1, 34-35 (1906) (Harlan, J., dissenting).

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and citing Jones v. Alfred H. Mayer Co., 392 U.S. 409, 441 n.78 (1968)). In McDonald, for example, the Supreme Court held that 42 U.S.C. § 1981, a Reconstruction-era statute that was enacted pursuant to, and contemporaneously with, the Thirteenth Amendment, prohibits racial discrimination in the making and enforcement of contracts against all persons, including whites. See McDonald, 427 U.S. at 286-96.

The question whether Congress may prohibit violence against persons because of their actual or perceived religion or national origin is more complex, but there is a substantial basis to conclude that the Thirteenth Amendment grants Congress that authority, at a minimum, with respect to some religions and national origins. In Saint Francis College v. Al-Khazraji, 481 U.S. 604, 613 (1987), the Court held that the prohibition of discrimination in § 1981 extends to discrimination against Arabs, as Congress intended to protect "identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics." Similarly, the Court in Shaare Tefila Congregation v. Cobb, 481 U.S. 615, 617-18 (1987), held that Jews can state a claim under 42 U.S.C. § 1982, another Reconstruction-era antidiscrimination statute enacted pursuant to, and contemporaneously with, the Thirteenth Amendment. In construing the reach of these two Reconstruction-era statutes, the Supreme Court found that Congress intended those statutes to extend to groups like "Arabs" and "Jews" because those groups "were among the peoples [at the time the statutes were adopted] considered to be distinct races." Id.; see also Saint Francis College, 481 U.S. at 610-13. We thus believe that Congress would have authority under the Thirteenth Amendment to extend the prohibitions of proposed § 249(a)(1) to violence that is based on a victim's religion or national origin, at least to the extent the violence is directed at members of those religions or national origins that would have been considered races at the time of the adoption of the Thirteenth Amendment.[4]

None of the Court's recent federalism decisions casts doubt on Congress's powers under the Thirteenth Amendment to eliminate the badges and incidents of slavery. Both Boerne v. Flores, 521 U.S. 507 (1997), and United States v. Morrison, 120 S. Ct. 1740 (2000), involved legislation that was found to exceed Congress's powers under the Fourteenth Amendment. The Court in Morrison, for example, found that Congress lacked the power to enact the civil remedy of the Violence Against Women Act ("VAWA"), 42 U.S.C. § 13981, pursuant to the Fourteenth Amendment because that amendment's equal protection guarantee extends only to "state action," and the private remedy there was not, in the Court's view, sufficiently directed at such "state action." 120 S. Ct. at 1756, 1758. The Thirteenth Amendment, however, plainly reaches private conduct as well as government conduct, and Congress thus is authorized to prohibit private action that constitutes a badge, incident or relic of slavery. See Griffin, 403 U.S. at 105; Jones, 392 U.S. at 440-43. Enactment of the proposed § 249(a)(1) therefore would be within Congress's Thirteenth Amendment power.

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[4] In light of the Court's construction of §§ 1981 and 1982 in Shaare Tefila Congregation and St. Francis College, it would be consistent for the Court so to construe this legislation, especially with sufficient guidance from Congress.

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2. **Proposed 18 U.S.C. § 249(a)(2)**

Congress may prohibit the second category of hate crime acts that would be proscribed — certain instances of actual or attempted violence directed at persons "because of the[ir] actual or perceived religion, national origin, gender, sexual orientation, or disability," § 249(a)(1)(A) — pursuant to its power under the Commerce Clause of the Constitution, art. I., § 8, cl. 3.

The Court in Morrison emphasized that "even under our modern, expansive interpretation of the Commerce Clause, Congress' regulatory authority is not without effective bounds." 120 S. Ct. at 1748; see also United States v. Lopez, 514 U.S. 549, 557-61 (1995). Consistent with the Court's emphasis, the prohibitions of proposed § 249(a)(2) (in contrast to the provisions of proposed § 249(a)(1), discussed above), would not apply except where there is an explicit and discrete connection between the proscribed conduct and interstate or foreign commerce, a connection that the government would be required to allege and prove in each case.

In Lopez, the Court considered Congress's power to enact a statute prohibiting the possession of firearms within 1000 feet of a school. Conviction for a violation of that statute required no proof of a jurisdictional nexus between the gun, or the gun possession, and interstate commerce. The statute included no findings from which the Court could find that the possession of guns near schools substantially affected interstate commerce and, in the Court's view, the possession of a gun was not an economic activity itself. Under these circumstances, the Court held that the statute exceeded Congress's power to regulate interstate commerce because the prohibited conduct could not be said to "substantially affect" interstate commerce. Proposed § 249(a)(2), by contrast to the statute invalidated in Lopez, would require pleading and proof of a specific jurisdictional nexus to interstate commerce for each and every offense.

In Morrison, the Court applied its holding in Lopez to find unconstitutional the civil remedy provided in VAWA, 42 U.S.C. § 13981. Like the prohibition of gun possession in the statute at issue in Lopez, the VAWA civil remedy required no pleading or proof of a connection between the specific conduct prohibited by the statute and interstate commerce. Although the VAWA statute was supported by extensive congressional findings of the relationship between violence against women and the national economy, the Court was troubled that accepting this as a basis for legislation under the Commerce Clause would permit Congress to regulate anything, thus obliterating the "distinction between what is truly national and what is truly local." Morrison, 120 S. Ct. at 1754 (citing Lopez, 514 U.S. at 568). By contrast, the requirement in proposed § 249(a)(2) of proof in each case of a specific nexus between interstate commerce and the proscribed conduct would ensure that only conduct that falls within the Commerce power, and thus is "truly national," would be within the reach of that statutory provision.

The Court in Morrison emphasized, as it did in Lopez, 514 U.S. at 561-62, that the statute the Court was invalidating did not include an "express jurisdictional element," 120 S. Ct. at 1751, and compared this unfavorably to the criminal provision of VAWA, 18 U.S.C. § 2261(a)(1), which does include such a jurisdictional nexus. See id. at 1752 n.5. The Court indicated that the presence of such a jurisdictional nexus would go far towards meeting its constitutional concerns:

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> The second consideration that we found important in analyzing [the statute in Lopez] was that the statute contained "no express jurisdictional element which might limit its reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce." [514 U.S.] at 562. Such a jurisdictional element may establish that the enactment is in pursuance of Congress' regulation of interstate commerce.

Id. at 1750-51; see also id. at 1751-52 ("Although Lopez makes clear that such a jurisdictional element would lend support to the argument that [the provision at issue in Morrison] is sufficiently tied to interstate commerce, Congress elected to cast [the provision's] remedy over a wider, and more purely intrastate, body of violent crime.").

While the Court in Morrison stated that Congress may not "regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce," id. at 1754, the proposed regulation of violent conduct in § 249(a)(2) would not be based "solely on that conduct's aggregate effect on interstate commerce," but would instead be based on a specific and discrete connection between each instance of prohibited conduct and interstate or foreign commerce. Specifically, with respect to violence because of the actual or perceived religion, national origin, gender, sexual orientation or disability of the victim, proposed § 249(a)(2) would require the government to prove one or more specific jurisdictional commerce "elements" beyond a reasonable doubt. This additional jurisdictional requirement would reflect Congress's intent that § 249(a)(2) reach only a "'discrete set of [violent acts] that additionally have an explicit connection with or effect on interstate commerce," 120 S. Ct. at 1751 (quoting Lopez, 514 U.S. at 562), and would fundamentally distinguish this statute from those that the Court invalidated in Lopez and in Morrison.[5] Absent such a jurisdictional element, there exists the risk that "a few random instances of interstate effects could be used to justify regulation of a multitude of intrastate transactions with no interstate effects." United States v. Harrington, 108 F.3d 1460, 1467 (D.C. Cir. 1997). By contrast, in the context of a statute with an interstate jurisdictional element (such as in proposed § 249(a)(2)(B)), "each case stands alone on its evidence that a concrete and specific effect does exist." Id.[6]

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[5] See also Morrison, 120 S. Ct. at 1775 (Breyer, J., dissenting) ("the Court reaffirms, as it should, Congress' well-established and frequently exercised power to enact laws that satisfy a commerce-related jurisdictional prerequisite — for example, that some item relevant to the federally regulated activity has at some time crossed a state line"). Of course, our reliance on the jurisdictional nexus in § 249(a)(2) is not intended to suggest that such a jurisdictional nexus is always necessary to sustain Commerce Clause legislation.

[6] That a jurisdictional element makes a material difference for constitutional purposes is demonstrated by the Lopez Court's citation to the jurisdictional element in the statute at issue in United States v. Bass, 404 U.S. 336 (1971), as an example of a provision that "would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce." 514 U.S. at 561. The Lopez Court wrote:

> For example, in United States v. Bass, 404 U.S. 336 (1971), the Court interpreted former 18 U.S.C. § 1202(a), which made it a crime for a felon to "receiv[e], posses[s], or transpor[t] in commerce or affecting commerce ... any firearm." 404 U.S., at 337. The Court interpreted the possession component of § 1202(a) to require an additional nexus to interstate commerce both because the

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The jurisdictional elements in § 249(a)(2)(B) would ensure that each conviction under § 249(a)(2) would involve conduct that Congress has the power to regulate under the Commerce Clause. In Morrison, the Court reiterated its observation in Lopez that there are "'three broad categories of activity that Congress may regulate under its commerce power.'" 120 S. Ct. at 1749 (quoting Lopez, 514 U.S. at 558):

> "First, Congress may regulate the use of the channels of interstate commerce. . . . Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. . . . Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, . . . i.e., those activities that substantially affect interstate commerce."

Id. (quoting Lopez, 514 U.S. at 558-59).

Proposed § 249(a)(2)(B)(i) would prohibit the violent conduct described in § 249(a)(2)(A) where the government proves that the conduct "occurs in the course of, or as the result of, the travel of the defendant or the victim (a) across state lines or national borders, or (b) using a channel, facility, or instrumentality of interstate or foreign commerce." A conviction based on such proof would be within Congress's powers to "regulate the use of the channels of interstate commerce," and to "regulate and protect . . . persons or things in interstate commerce." Proposed § 249(a)(2)(B)(ii) would prohibit the violent conduct described in § 249(a)(2)(A) where the government proves that the defendant "uses a channel, facility or instrumentality of interstate or foreign commerce in connection with the conduct" — such as by sending a bomb to the victim via common carrier — and would fall within the power of Congress to "regulate the use of the channels of interstate commerce" and "to regulate and protect the instrumentalities of interstate commerce."[7]

> statute was ambiguous and because "unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance." Id., at 349.

514 U.S. at 561-62. In Bass itself, the Government argued that the statute in question should be construed not to require proof that the gun possession was in, or affected, interstate commerce. The Court responded that the Government's proposed "broad construction" would "render[] traditionally local criminal conduct a matter for federal enforcement and would also involve a substantial extension of federal police resources." 404 U.S. at 350. The Court accordingly construed the statute to require "proof of some interstate commerce nexus in each case," so that the statute would not "dramatically intrude[] upon traditional state criminal jurisdiction," id., in the way it would if there were no requirement of proof in each case of the nexus to interstate commerce.

[7] Such prohibitions are not uncommon in the federal criminal code. See, e.g., 18 U.S.C. § 231(a)(2) (1994) (prohibiting the transport in commerce of any firearm, explosive or incendiary device, knowing or having reason to know, or intending, that it will be used unlawfully in furtherance of a civil disorder); 18 U.S.C. § 875 (1994) (prohibiting the transmission in interstate or foreign commerce of certain categories of threats and ransom demands); 18 U.S.C. § 1201(a)(1) (Supp. IV 1998) (prohibiting the willful transportation in interstate or foreign commerce of a kidnaping victim); 18 U.S.C. § 1462 (1994 & Supp. II 1996) (prohibiting the transmission of

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Proposed § 249(a)(2)(B)(iii) would prohibit the violent conduct described in § 249(a)(2)(A) where the government proves that the defendant "employs a firearm, explosive or incendiary device, or other weapon that has traveled in interstate or foreign commerce in connection with the conduct."[8] Such a provision addresses harms that are, in a constitutionally important sense, facilitated by the unencumbered movement of weapons across state and national borders, and is similar to several other federal statutes in which Congress has prohibited persons from using or possessing weapons and other articles that have at one time or another traveled in interstate or foreign commerce.[9] The courts of appeals uniformly have upheld the constitutionality of such statutes.[10] And, in Lopez itself, the Supreme Court cited to the jurisdictional element in the statute at issue in United States v. Bass, 404 U.S. 336 (1971), as an example of a provision that "would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce." 514 U.S. at 561. In Bass, 404 U.S. at 350-

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obscene materials via common carrier); 18 U.S.C. § 1952 (1994) (prohibiting travel in interstate or foreign commerce, or the use of "any facility in interstate or foreign commerce," with the intent to commit or facilitate certain unlawful activities).

[8] We understand that this subsection would sanction the conduct described in subparagraph (A) where, in connection with that conduct, the defendant employs a firearm, an explosive or incendiary device, or another weapon, that has traveled in interstate or foreign commerce.

[9] For example:

- It is unlawful for convicted felons to receive any firearm or ammunition (18 U.S.C. § 922(g) (1994 & Supp. 1999), or to receive or possess any explosive (18 U.S.C. § 842(i) (1994)), "which has been shipped or transported in interstate or foreign commerce."

- A statute enacted as a response to Lopez makes it unlawful (with certain exceptions) for any individual knowingly to possess or discharge a firearm "that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows . . . is a school zone." 18 U.S.C. § 922(q)(2)-(3) (1994 & Supp. 1999).

- It is unlawful, with the intent to cause death or serious bodily harm, to engage in certain so-called "carjackings" of motor vehicles that "ha[ve] been transported, shipped, or received in interstate or foreign commerce." 18 U.S.C.A. § 2119 (West 2000).

- It is unlawful knowingly to possess matters containing any visual depiction that "involves the use of a minor engaging in sexually explicit conduct" that "has been mailed, or has been shipped or transported in interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means including by computer." 18 U.S.C.A. § 2252(a)(4)(B) (West Supp. 2000).

[10] See, e.g., United States v. Folen, 84 F.3d 1103, 1104 (8th Cir. 1996) (§ 842(i)); Fraternal Order of Police v. United States, 173 F.3d 898, 907-08 & n.2 (D.C. Cir.), and cases cited therein (§ 922(g)), cert. denied, 120 S. Ct. 324 (1999); Gillespie v. City of Indianapolis, 185 F.3d 693, 704-06 (7th Cir. 1999), and cases cited therein (same), cert. denied, 120 S. Ct. 934 (2000); United States v. Bostic, 168 F.3d 718, 723-24 (4th Cir.), cert. denied, 527 U.S. 1029 (1999) (same); United States v. Danks, 187 F.3d 643 (8th Cir. 1999) (per curiam) (table), 1999 WL 615445 at *1-*2 (§ 922(q)), cert. denied, 120 S. Ct. 823 (2000); United States v. Cobb, 144 F.3d 319, 320-22 (4th Cir. 1998), and cases cited therein (§ 2119); United States v. Bausch, 140 F.3d 739, 741 (8th Cir. 1998) (§ 2252(a)(4)(B)), cert. denied, 525 U.S. 1072 (1999); United States v. Robinson, 137 F.3d 652, 655-56 (1st Cir. 1998) (same).

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51, and in Scarborough v. United States, 431 U.S. 563 (1977), the Court construed that statutory element to permit conviction upon proof that a felon had received or possessed a firearm that had at some time passed in interstate commerce.

Proposed § 249(a)(2)(B)(iv)(I) would apply only where the government proves that the violent conduct "interferes with commercial or other economic activity in which the victim is engaged at the time of the conduct." This is one specific manner in which the violent conduct can affect interstate or foreign commerce.[11] This jurisdictional element also is an exercise of Congress's power to regulate "'persons or things in interstate commerce.'" Morrison, 120 S. Ct. at 1749 (quoting Lopez, 514 U.S. at 558). As Justice Kennedy (joined by Justice O'Connor) wrote in Lopez, 514 U.S. at 574, "Congress can regulate in the commercial sphere on the assumption that we have a single market and a unified purpose to build a stable national economy."[12]

Finally, proposed § 249(a)(2)(B)(iv)(II) would prohibit the violent conduct described in § 249(a)(2)(A) where the government proves that the conduct "otherwise affects interstate or foreign commerce." Such "affects commerce" language has long been regarded as the appropriate means for Congress to invoke the full extent of its authority. See, e.g., Jones v. United States, 120 S. Ct. 1904 (2000), No. 99-5739, slip op. at 5 (May 22, 2000) ("the statutory term 'affecting . . . commerce,' . . . when unqualified, signal[s] Congress' intent to invoke its full authority under the Commerce Clause"); Allied-Bruce Terminix Cos. v. Dobson, 513 U.S. 265, 273 (1995) ("Th[e] phrase — 'affecting commerce' — normally signals Congress's intent to exercise its Commerce Clause powers to the full.").[13] Of course, that this element goes to the

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[11] See, e.g., United States v. Nguyen, 155 F.3d 1219, 1224-25 (10th Cir. 1998), cert. denied, 525 U.S. 1167 (1999); see also, e.g., United States v. Thomas, 159 F.3d 296, 297-98 (7th Cir. 1998), cert. denied, 527 U.S. 1023 (1999).

[12] In this regard, it is worth noting that at least eight Justices in Morrison and in Lopez indicated that Congress can take a broad view as to what constitutes "commercial" or "economic" activity. See Morrison, 120 S. Ct. at 1750 (listing, as examples of "congressional Acts regulating intrastate economic activity," the statutes at issue in Wickard v. Filburn, 317 U.S. 111 (1942) (restricting the intrastate growing of wheat on a farm for personal home consumption); and Perez v. United States, 402 U.S. 146 (1971) (prohibiting intrastate loansharking)); id. at 1750 n.4 (describing the statute in Wickard as "regulat[ing] activity . . . of an apparent commercial character"); id. at 1765 (Souter, J., dissenting); see also Lopez, 514 U.S. at 560-61; id. at 573 (Kennedy, J., dissenting); id. at 628-30 (Breyer, J., dissenting).

[13] Such a jurisdictional element is found in many federal statutes, including criminal provisions that prohibit violent conduct or conduct that facilitates violence. See, e.g.:

- 18 U.S.C. § 231(a)(1) (1994) (prohibiting the teaching or demonstration of the use or making of firearms, explosives, or incendiary devices, or of techniques capable of causing injury or death, knowing or having reason to know or intending that the teaching or demonstration will be unlawfully employed in, or in furtherance of, a civil disorder "which may in any way or degree obstruct, delay, or adversely affect commerce or the movement of any article or commodity in commerce");

- 18 U.S.C.A. § 247(a)-(b) (West 2000) (prohibiting the intentional defacement, damaging or destruction of religious real property because of the religious character of that property, and the intentional obstruction

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extent of Congress's constitutional power does not mean that it is unlimited. Interpretation of the "affecting . . . commerce" provision would be addressed on a case-by-case basis, within the limits established by the Court's doctrine. There likely will be cases where there is some question whether a particular type or quantum of proof is adequate to show the "explicit" and "concrete" effect on interstate and foreign commerce that the element requires. See Harrington, 108 F.3d at 1464, 1467 (citing Lopez, 514 U.S. at 562, 567). But on its face this element is, by its nature, within Congress's Commerce Clause power.[14]

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by force or threat of force of any person in the enjoyment of that person's free exercise of religious beliefs, where "the offense is in or affects interstate or foreign commerce");

• 18 U.S.C.A. § 2332a(a)(2) (West Supp. 2000) (prohibiting the use, without lawful authority, of a weapon of mass destruction, including any biological agent, toxin, or vector, where the results of such use "affect interstate or foreign commerce").

[14] See United States v. Green, 350 U.S. 415, 420-21 (1956) (upholding constitutionality of Hobbs Act, 18 U.S.C. § 1951(a) (1994) — which prohibits robbery or extortion that "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce" — because "racketeering affecting interstate commerce [is] within federal legislative control"); see also United States v. Valenzeno, 123 F.3d 365, 367-68 (6th Cir. 1997) (affirming that Lopez did not affect constitutionality of Hobbs Act); United States v. Robinson, 119 F.3d 1205, 1212-14 (5th Cir. 1997) (same), cert. denied, 522 U.S. 1139 (1998).

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In sum, because § 249(a)(2) would prohibit violent conduct in a "discrete set" of cases, 120 S. Ct. at 1751 (quoting Lopez, 514 U.S. at 562), where that conduct has an "explicit connection with or effect on" interstate or foreign commerce, id., it would satisfy the constitutional standards articulated in the Court's recent decisions.[15]

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this letter.

Sincerely,

Robert Raben
Assistant Attorney General

[15] Any argument that Morrison sub silentio implies that Congress lacks any power whatever under the Commerce Clause to regulate violent crime (or that Congress may do so only where each violation by itself "substantially affects" interstate or foreign commerce), is unwarranted. For reasons explained above, the presence of a jurisdictional element materially distinguishes a statute such as proposed § 249(a)(2) from the statutes at issue in Lopez and in Morrison. The Court in Morrison explained that such an element helps to ensure that the statute will reach only "'a discrete set'" of offenses, and will not extend to conduct that lacks an "'explicit connection with or effect on interstate commerce.'" 120 S. Ct. at 1751 (quoting Lopez, 514 U.S. at 562). What is more, the findings in sections 2(6)-(9) of the draft bill would, if adopted by Congress, reflect Congress's conclusion that the bill's proposed § 249(a)(2) is appropriate legislation under each of the three Commerce Clause "categories" identified in Lopez and in Morrison. Section 2(6) would find that the violence in question "substantially affects interstate commerce in many ways, including – (A) by impeding the movement of members of targeted groups and forcing such members to move across State lines to escape the incidence or risk of such violence; and (B) by preventing members of targeted groups from purchasing goods and services, obtaining or sustaining employment or participating in other commercial activity." Sections 2(7)-(9) would find that perpetrators "cross State lines to commit such violence," use the channels, facilities and instrumentalities of interstate commerce to commit such violence, and use articles that have traveled in interstate commerce to commit such crimes. While such findings might not in and of themselves be "sufficient" to justify Congress's assertion of its Commerce Clause authority, see Morrison, 120 S. Ct. at 1752, nevertheless they would provide important support for Congress's authority under the Commerce Clause to enact the draft hate-crimes bill's proposed § 249(a)(2), see 120 S. Ct. at 1751 (citing Lopez, 514 U.S. at 563).

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HUMAN
RIGHTS
CAMPAIGN

May 21, 2009

Dear Senator:

On behalf of the Human Rights Campaign and more than 750,000 members and supporters nationwide, we are writing today to urge you to support the **Matthew Shepard Hate Crimes Prevention Act** (S. 909) introduced by Senators Edward Kennedy (D-MA), Patrick Leahy (D-VT), Arlen Specter (D-PA), Olympia Snowe (R-ME) and Susan Collins (R-ME).

The Matthew Shepard Hate Crimes Prevention Act has strong bipartisan support. On April 29, 2009 the House of Representatives passed a virtually identical bill (H.R. 1913) by a vote of 249-175. The Senate has previously supported substantially similar legislation on four separate occasions by wide bipartisan margins, most recently as an amendment to the 2008 Department of Defense Authorization bill by a vote of 60 to 39. In addition to public opinion polling that consistently finds an overwhelming majority of Americans in support of such legislation, the Matthew Shepard Hate Crimes Prevention Act has the support of more than 300 law enforcement, civil rights, civic and religious organizations.

Since the Federal Bureau of Investigation (FBI) began collecting hate crimes statistics in 1991, reported bias motivated crimes based on sexual orientation more than tripled; yet the federal government has no jurisdiction to assist states and localities in dealing with even the most violent hate crimes against lesbian, gay, bisexual and transgender Americans. The FBI's 2007 Uniform Crime Reports – the most recent year for which we have statistics – showed that reported violent crimes based on sexual orientation constituted 16.6 percent of all hate crimes in 2007, with 1,265 reported for the year.

By passing this common sense anti-hate crime measure, we would bring our nation's laws into the 21st century. The Matthew Shepard Hate Crimes Prevention Act is a logical extension of existing federal law. Since 1969, 18 U.S.C. §245 has permitted federal prosecution of a hate crime if the crime was motivated by bias based on race, religion, national origin, or color, ***and*** because the victim was exercising a "federally protected right" (e.g. voting, attending school, etc.). After forty years, it has become clear that the statute needs to be amended.

This bill adds actual or perceived sexual orientation, gender, disability and gender-identity to the list of covered categories and removes the federally protected activity requirement, thus bringing a much needed comprehensiveness to federal law. Removing the outdated intent requirement would untie the federal government's hands and allow them to partner with state and local officials in combating serious hate crimes that involve death and bodily injury.

We urge you to vote for this historic piece of legislation. For more information, please contact Allison Herwitt, Legislative Director, at (202) 216-1515 or allison.herwitt@hrc.org or David Stacy, Senior Public Policy Advocate, at (202) 572-8959 or david.stacy@hrc.org. Thank you.

Sincerely,

Joe Solmonese
Executive Director

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WRITTEN SUBMISSION OF ELISA MASSIMINO

CEO AND EXECUTIVE DIRECTOR

HUMAN RIGHTS FIRST

hearing on

"THE MATTHEW SHEPARD HATE CRIMES PREVENTION ACT OF 2009"

before the

SENATE JUDICIARY COMMITTEE

June 25, 2009

INTRODUCTION

Chairman Leahy, thank you for the opportunity to submit this statement on behalf of Human Rights First in support of the Matthew Shepard Hate Crime Prevention Act of 2009 (S.909).

Human Rights First believes that building respect for human rights and the rule of law will help ensure the dignity to which every individual is entitled and will help stem tyranny, extremism, intolerance, and violence. Since 2002, Human Rights First's Fighting Discrimination program has sought to reverse the tide of racist, antisemitic, xenophobic, anti-Muslim, homophobic and other violent bias crimes across North America, Europe, and the former Soviet Union.

Human Rights First applauds your efforts to press for passage by the Senate of S.909 at the earliest opportunity. Hate crime is a serious problem in the United States, and we have been concerned by certain omissions in the government response to them. The adoption and implementation of S.909 is an important step toward a comprehensive response to the problem at home, and toward ensuring continued U.S. leadership to combat the scourge of hate crime globally.

This statement sets the basis for our support of S.909, reflecting our findings on the incidence of violent hate crimes in the United States, together with recommendations for action. It also describes the larger global problem of bias-motivated violence, providing further recommendations for the U.S. government to combat hate crimes at home and to strengthen its leadership in both bilateral and multilateral efforts to confront the problem abroad.

HUMAN RIGHTS FIRST'S SUPPORT FOR S.909

Human Rights First strongly supports the Matthew Shepard Hate Crimes Prevention Act (S. 909) as it will help to ensure that law enforcement authorities have the tools they need to combat violent hate crime in the United States. This critical legislation, which has already passed in the House of Representatives in a bipartisan vote of 249-175, could prove to be one of the nation's strongest weapons to date to protect those who are most vulnerable to bias-motivated violence.

Forty-five states and the District of Columbia have hate crime laws, but many of those laws do not cover crimes based on disability, gender, gender identity, or sexual orientation. S. 909 would close this gap by providing federal law enforcement officials with the authority to investigate and prosecute a wider range of bias violence, including that based on disability, gender, gender identity or sexual orientation. And while state and local authorities will continue to investigate and prosecute the large majority of hate crime cases, S. 909 would provide an important backstop by ensuring that federal authorities can provide assistance in state and local hate crime investigations and by authorizing federal prosecutions when state and local authorities are unable or unwilling to act.

Importantly, the bill would also make grants available to state and local communities to train law enforcement officers or assist in state and local investigations and prosecutions of bias-motivated crimes.

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In endorsing this legislation, Human Rights First has joined more than 275 national civil rights, professional, civic, education, and religious groups, twenty-six state Attorneys General, and a number of the most important national law enforcement organizations in America. Additionally, more than five thousand Americans have acted together with Human Rights First, writing to their respective Senators to express their support for this critical bill.

HATE CRIMES IN THE UNITED STATES

In 1998, the murder of Matthew Shepard sent shock waves through the nation. A 21-year-old gay student at the University of Wyoming, Shepard was brutally beaten, tortured, tied to a fence, and left for dead. Eighteen hours later, a bicyclist found Shepard, initially thinking he was a scarecrow. He was rushed to the hospital and died five days later. Though it is widely believed and acknowledged that Matthew Shepard was targeted precisely because of his sexual orientation, his killers were not charged with a hate crime. There wasn't then and still isn't a state hate crime law in Wyoming.

Now, more than a decade later, hate violence remains a serious problem in the United States. As we documented in our 2008 report on *Hate Crime in the United States*, hate crimes in this country include assaults on individuals, damage to homes and personal property, and attacks on places of worship, cemeteries, community centers, and schools. In the report for 2007, the FBI documented 7,624 hate crimes directed against institutions and individuals because of their race, religion, sexual orientation, national origin, or disability. The prejudices differ from case to case, and often multiple prejudices combine in a single crime. Behind these statistics are individuals, families, and communities deeply impacted by these violent crimes. By undermining the shared value of equality and nondiscrimination, violent hate crimes also threaten the very fabric of the increasingly diverse society in which we live.

FBI hate crime statistics for 2007—the latest year available—documented a continued upward trend in certain categories of bias-motivated violence and confirmed the need for a more vigorous response by the federal government, including enactment of S.909 and other steps outlined below.

- Although the overall number of reported hate crime incidents remained steady from 2006 to 2007, reported violent attacks against persons of Hispanic origin continued to increase. According to the new FBI report, there were 595 incidents of anti-Hispanic hate crimes in 2007, an increase of 3.3% from the 576 incidents reported in 2006. In the period from 2003—2006, FBI hate crime reports reveal a 35 percent rise in hate crimes against people of Hispanic origin.
- There was also a rise in the number of hate crimes motivated by sexual orientation bias, with a 5.5% increase in incidents from 2006 to 2007 (from 1195 to 1265 incidents). Five of the nine reported hate crime killings were on the basis of sexual orientation bias. There is also a higher proportion of personal assaults targeting this victim group than in other categories of hate crime; over 47% of sexual orientation bias offenses were violent assaults, in comparison to 31% for all hate crimes. Nongovernmental surveys point to a staggering percentage of sexual orientation bias crimes that are not reported to the police, while these crimes are growing rapidly throughout the country.

Overall, people of African descent comprised the largest number of victims of violent hate crime, reflecting longstanding patterns of such crimes in the United States. However, new trends of rising

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anti-immigrant violence were also part of the larger pattern of racism and xenophobia: anti-immigrant hate crimes took the form of personal assaults leading to serious injury or death, as well as threatening graffiti on homes and businesses. The violence has emerged in the context of anti-immigrant and anti-Hispanic rhetoric in the news media, increasingly echoed by politicians and community leaders. Immigrants have been denigrated, dehumanized, and demonized.

Jewish people continue to be among the principal victims of racism combined with religious hatred and prejudice, with antisemitic crimes continuing at high levels. Antisemitic crimes ranged from attacks on synagogues and schools and vandalism of homes to physical assaults on religious and community leaders. Racism and religious bias also conspired to drive attacks on people of Muslim origin, with arson attacks on mosques and Islamic community centers, and attacks on ordinary citizens and immigrants who happen to be Muslims. These hate crimes placed people of Middle East and South Asian origins under threat whether or not they were Muslims, even as Muslims faced the double discrimination of racism and religious prejudice. Perpetrators of religious bias crimes also targeted Christian churches, their congregations, and clergy for crimes ranging from threatening graffiti to arson and deadly gunfire.

People with disabilities have also been targeted for ongoing abuse, torture, and murder. The number of attacks against disabled people is generally understood to be severely undercounted.

RECOMMENDATIONS FOR U.S. GOVERNMENT RESPONSE TO HATE CRIMES

Passage of S.909 would fill long-standing gaps in the federal response to violent hate crimes. Human Rights First recommends the following additional steps to strengthen that response.

- Congress should expand the mandate of the Community Relations Service of the Department of Justice to respond to community conflicts not only based on race, color, and national origin, but also to those based on religion, gender, sexual orientation, gender identity and disability—the full range of categories that will be covered by the Local Law Enforcement Hate Crime Prevention Act.
- The Department of Justice should take steps to increase hate crime reporting by local jurisdictions, targeting agencies that have not participated, have underreported, or have reported zero hate crimes in the past.
- Senior political leaders and law enforcement officials at all levels of government should condemn violent hate crimes, incitement to violence, and the demonization of any community, including immigrants, regardless of their status.
- The Department of Justice and/or the Department of Homeland Security should study the causes of increased bias-motivated violence against immigrants and Hispanic Americans, and report publicly on the findings.
- The Departments of Justice and Education should fund tolerance education and hate crime prevention initiatives. Congress should direct or authorize the Department of Education to do so in any elementary and secondary school education reauthorization legislation.

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THE UNITED STATES IS A GLOBAL LEADER IN COMBATING HATE VIOLENCE

Violent hate crime is a global problem. In our *2008 Hate Crime Survey*, Human Rights First documented a rising tide of racist, antisemitic, xenophobic, anti-Muslim and homophobic violence across Europe and the former Soviet Union and found that the majority of governments in these countries are failing to adequately address the problem.

- There were moderate to high rises in the overall recorded numbers of violent hate crimes motivated by racism and xenophobia in 2006 and 2007 in Finland, Ireland, the Slovak Republic, Sweden, and the United Kingdom. In the absence of official data, information from nongovernmental monitors showed rising levels of racist violence in Greece, Italy, the Russian Federation, Switzerland, and Ukraine. Individuals of African origin and Roma were particularly targeted in acts of racist and xenophobic violence in 2007 and 2008.
- Antisemitic hate crimes are also occurring at historically high levels in much of Europe—a reminder that the crimes of anti-Jewish hatred that culminated in the Holocaust are not merely a matter of history. In 2007, overall levels of violent antisemitic attacks against persons increased in Germany, the Russian Federation, Ukraine, and the United Kingdom according to official statistics and reports of nongovernmental monitors. There are several other European countries where antisemitic violence is also problematic, but where reliable statistical information on attacks—either from official or unofficial sources—is much less readily available.
- Anti-Roma and anti-Muslim hate crimes have also persisted in Europe in a climate of growing anti-immigrant bias and racist violence. There has been a surge in violence against Roma in 2007, especially in Italy where entire Roma settlements were razed and their inhabitants driven away without intervention by the police. Although there is ample evidence of violence targeting Muslims and those perceived to be Muslims across Europe and North America, only three European governments—Austria, Sweden, and the United Kingdom—publicly report on violent incidents motivated by this form of bias.
- Antigay violence is becoming more apparent in many parts of Europe. The increased public presence of gay rights movements has, especially in Eastern Europe and the former Soviet Republics, brought with it a rise in homophobic rhetoric and violent backlash. With homophobic violence as with other forms of hate crimes, underreporting remains endemic and thus the reported cases likely only represent the tip of the iceberg.
- Of particular concern are the Russian Federation and Ukraine. In Russia, the number of bias-motivated attacks on individuals continues to grow steadily, with 2008 being the fourth record-setting year in a row and with an annual number of bias-motivated murders approaching 100—by far higher than in any other European nation. Though government officials have begun to recognize the problem posed by neo-Nazi violence, the official response has been sorely inadequate. In Ukraine, too, racial, antisemitic and other bias-motivated violent crimes are on the rise. The government there has undertaken a number of steps to combat hate crimes, although its overall response to this problem has been inconsistent and insufficient.

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Despite making official commitments to combat hate crime, many governments have yet to introduce an adequate legislative framework, establish systems of monitoring and reporting of incidents, and implement police training, educational, and community engagement programs that would contribute to a more robust response to the problem. Human Rights First has developed a Report Card that assesses the extent to which the members of the Organization for Security and Cooperation in Europe (OSCE) have adopted measures in the areas of hate crime legislation and data collection. As a result of our monitoring, we have concluded that:

- Most European governments are failing to live up to their commitments to the OSCE to monitor and collect data on violent hate crime, a prerequisite to an effective official response. Over 40 of the 56 OSCE states collect and publish either limited or no information specifically on the incidence of violent hate crimes. This gap in data collection can distort the full picture, as the countries that take the steps necessary to collect and publish the data can appear to be the ones with the highest number of incidents.
- 23 OSCE countries do not have laws criminalizing or establishing enhanced penalties for a range of violent crimes motivated by racial or religious bias, despite reports that violent hate crimes are taking place in many of those countries. Moreover, only 12 countries have laws that extend to sexual orientation bias; only seven extend to disability bias.
- Even when appropriate laws are in place, it is nearly impossible to know the extent to which they are being implemented. Even the best official data collection systems do not generally assess how well police are responding to incidents and the disposition of cases in courts. There is virtually no systematic data on this from nongovernmental sources as well.

The United States has led efforts to confront hate crimes through its foreign policy and through engagement in multilateral institutions such as the Organization for Security and Cooperation in Europe (OSCE). In addition to improving the U.S. government's response to hate crime at home, enactment of S.909 will allow the United States to lead by example in its international efforts.

Human Rights First recommends that the Obama administration strengthen the international leadership of the United States at the OSCE, advocate measures to combat hate crime in bilateral relationships, and expand efforts to support civil society organizations throughout the OSCE area, by taking the following steps:

- Demonstrate International Leadership at the OSCE
  - Advancing the OSCE's tolerance and nondiscrimination agenda by taking a leading role in encouraging the fulfillment by participating states of their obligations to combat racism, xenophobia, antisemitism, and other forms of intolerance and discrimination, in particular the obligations to collect hate crime data and to report that data to the Office for Democratic Institutions and Human Rights (OSCE/ODIHR).
  - Providing for extrabudgetary contributions, secondment of personnel, and other in-kind support for OSCE programs to combat violent hate crimes, including by making available its law enforcement expertise. In this connection, undertaking a process to assess and reform the current mechanism of budget allocation by the State Department to ensure that the United States meets its funding obligations to the OSCE in a timely manner.

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◇ Advocate in Bilateral Relationships and Offer Technical Assistance

Promote stronger government responses to violent hate crime among OSCE participating states through U.S. reporting as well as the bilateral relationships of the United States with those countries, by:

- Organizing International Visitors Programs on combating bias-motivated violence for representatives of law enforcement, victim communities, human rights groups and legal advocates.
- Maintaining strong and inclusive State Department monitoring and public reporting on racist, antisemitic, xenophobic, anti-Muslim, homophobic, anti-Roma and other bias-motivated violence—including by consulting with civil society groups as well as providing appropriate training for human rights officers and other relevant mission staff abroad.
- Raising violent hate crime issues with representatives of foreign governments and encouraging, where appropriate, legal and other policy responses.
- Offering appropriate technical assistance and other forms of cooperation, including training of police and prosecutors in investigating, recording, reporting and prosecuting violent hate crimes as well as translation of Department of Justice and Federal Bureau of Investigation (FBI) materials on hate crimes. Moreover, the FBI's International Law Enforcement Academy should include a hate crime component in its training of law enforcement personnel in emerging democracies of Eastern Europe and the former Soviet Union.

◇ Support Civil Society Organizations

Expand funding and other support to build the capacity of civil society groups in the OSCE region to combat violent hate crimes, by:

- Providing extrabudgetary support to expand OSCE's civil society training program on combating hate crimes.
- Ensuring that groups working to combat all forms of violent hate crime have access to support under existing U.S. funding programs, including the Human Rights and Democracy Fund and programs for human rights defenders.
- Congressional establishment of a long-term funding program at the State Department, USAID or an outside agency to provide financial support for civil society groups in the OSCE region to monitor and report on violent hate crime, to advocate more effective laws and policies and stronger official responses to hate crime incidents, to provide services to victims, and to develop and implement programs to prevent and respond to hate crime.

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May 20, 2009

Dear Senator,

As the president of Interfaith Alliance, a national clergy-led organization with more than 185,000 members dedicated to protecting faith and freedom, **I am writing to urge you to support the Matthew Shepard Hate Crimes Prevention Act—S. 909.** By passing this bill, Congress can express with one voice its commitment to ending brutal, hate-motivated violence.

As people of diverse beliefs, we know that while legislation alone cannot remove hate from the hearts and minds of individuals, hate crimes legislation can help to create a society where hate-motivated violence is deemed intolerable. While a few religious voices, wrongly claiming to represent the view of all religious people, continue attempts to defeat hate crimes legislation, those of us who value religious pluralism and practice interfaith cooperation must not waver in sending a strong, unified message condemning prejudice and supporting hate crimes legislation.

As you may know, current law permits federal prosecution of a hate crime only if the crime was motivated by bias based on race, religion, national origin, or ethnicity, and the assailant intended to prevent the victim from exercising a "federally protected right." Matthew Shepard Hate Crimes Prevention Act would expand federal jurisdiction to reach violent hate crimes committed "because of the actual or perceived race, color, religion, national origin, sexual orientation, gender, or disability" of the victim.

The sacred scriptures of many different religious traditions speak with dramatic unanimity on the subject of intolerance. Everyone in this society should enjoy the strongest possible guarantee of freedom from attacks motivated by bigotry. If we aspire to be true to the prophetic core of our many faiths, we cannot condemn hate and then sit idly by while it destroys our communities. We believe that we must work together to create a society in which diverse people are safe as well as free.

Again, we urge you to support S. 909. If there is anything that we at Interfaith Alliance can do to assist you in this important matter, please do not hesitate to contact Jay Keller, National Field Director at 202-238-3281.

Sincerely,

Welton Gaddy

Rev. Dr. C. Welton Gaddy
President, Interfaith Alliance
Pastor of Preaching and Worship, North Minster Baptist Church (Monroe, LA)

1212 New York Ave NW, Suite 1250, Washington, DC 20005-4706 TEL: 202-238-3300 FAX: 202-238-3301

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DECLARATION OF RELIGIOUS AND FAITH-BASED SUPPORT FOR MASSACHUSETTS LEGISLATION, *AN ACT RELATIVE TO GENDER-BASED DISCRIMINATION AND HATE CRIMES*

DRAFTED BY THE INTERFAITH COALITION FOR TRANSGENDER EQUALITY

AFFIRMING A MORAL VISION

No society is truly just when its members face persecution. Justice requires that a society stand by its moral vision and act against that persecution. The signatories of this letter ask that the Commonwealth act upon its moral vision of a just society by passing An Act Relative to Gender-Based Discrimination and Hate Crimes.

The signatories of this letter are persons of faith, clergy, congregations, and organizations of faith. Some of us are transgender persons. Others are allies and loved ones. Some of us directly serve the gay, lesbian, bisexual, and transgender community. Others serve indirectly. *In our support for An Act Relative to Gender-Based Discrimination and Hate Crimes we speak with one voice. We speak on behalf of those who are vulnerable to violence and persecution because of their gender identities or gender expressions.*

Transgender people and others who do not conform to gender stereotypes face persecution in essential areas of life. This legislation adds "gender identity or expression" to the Commonwealth's hate crime laws and non-discrimination laws in the areas of employment, housing, public accommodations, public education, and credit. Violence and persecution on the basis of gender identity or expression often stem from the belief that people who do not conform to gender stereotypes are unworthy of protection by the law and are outside of the Commonwealth's moral vision. By passing An Act Relative to Gender-Based Discrimination and Hate Crimes, the legislature would speak out against such persecution.

OUR CONNECTED COMMUNITIES

People of all gender identities and expressions, including transgender people, are born into, enter into, or are called to many faiths. Our faith traditions help to ground and support us in our lifelong quests for fulfillment and responsibility to one another. All of our traditions respect the dignity of each and every human being and recognize our connection to one another.

Because of this connection, the persecution of a person on the basis of gender identity or expression is an injury, not only to an individual, but to everyone connected to that person: to the person's family, friends, and spiritual community. *The oppression of one person indelibly scars all of us. It calls all of us to take account of our moral duties, stand in unity, and take action.*

We ask that our legislators support
An Act Relative to Gender-Based Discrimination and Hate Crimes

ICTE INTERFAITH COALITION FOR TRANSGENDER EQUALITY

www.interfaithcoalition.org

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We ask that our legislators support An Act Relative to Gender-Based Discrimination and Hate Crimes

Congregational and organizational signers are listed in italics. Signatures as of April 3, 2009.

American Baptist
Rev. Irv Cummings
Rev. Nancy Hitt

Episcopal
Christ Episcopal Church, Somerville
Rev. Anne Bonnyman
Rev. Julia Dunbar
Rev. Christopher J. Fike
Rev. Francis Fornaro
Rev. Anne C. Fowler
Rev. Miriam C. Gelfer
Rev. Dr. Ted Gaiser
Rev. Gretchen S. Grimshaw
Rev. Robert E. Hensley
Rev. Dr. Gale Davis Morris
Rev. Cameron Partridge
Rev. Dr. William W. Rich
Rev. Timothy J. Rogers
Rev. Bonnie Sarah Spencer
Rev. Deborah M. Warner
Rev. George H. Welles, Jr.

Jewish
Boston Workmen's Circle
Congregation Am Tikva
Congregation Dorshei Tzedek
Congregation Eitz Chayim
Keshet
Jewish Alliance for Law and Social Action (JALSA)
Temple Emanu-El
Rabbi Katy Allen
Rabbi Thomas Alpert
Rabbi Joel A. Alter
Rabbi Stephen Arnold
Rabbi Howard A. Berman
Rabbi Braham David
Cantor Ray B. Einhorn
Rabbi Paula Feldstein
Rabbi Ronne Friedman
Rabbi Neal Gold
Rabbi Jeffrey Goldwasser
Rabbi Geoffrey Haber
Rabbi Boaz Heilman
Rabbi Shira H. Joseph
Rabbi Daniel Judson
Rabbi David L. Kline
Rabbi Stephanie D. Kolin
Rabbi Cherie E. Koller-Fox
Rabbi Ira L. Korinow
Rabbi Raquel S. Kosovske
Rabbi Jonathan Kraus
Rabbi Michele Lenke
Rabbi Devon A. Lerner
Rabbi Lee B. Levin
Rabbi Elias Lieberman
Rabbi Jane Rachel Litman
Rabbi Joseph B. Meszler
Rabbi Jeremy Morrison
Rabbi Steven P. Nathan
Rabbi David Paskin
Rabbi Michelle Pearlman
Rabbi Barbara Penzner
Rabbi Jay Perlman
Rabbi Victor Reinstein
Rabbi Rachel Schoenfeld
Rabbi Toba Spitzer
Rabbi Andrew D. Vogel
Rabbi Moshe Waldoks
Rabbi Elyse Wechterman
Rabbi David S. Widzer
Rabbi Jeffrey Wildstein
Rabbi Deborah Zecher
Rabbi Elaine Zecher
Rabbi Henry A. Zoob

Lutheran
Rev. Nathan D. Pipho

Metropolitan Community Churches
MCC Boston
Rev. Michael C. Cooper
Rev. Elder Diane Fisher
Rev. George McDermott
Rev. Jim Merritt
Rev. Joan Saniuk

Presbyterian
First Presbyterian Church of Waltham
Elder Vickie Boisseau
Rev. Jean Southard

United Church of Christ
Open and Affirming (ONA) Task Force – MA Conference UCC
Open and Affirming (ONA) Committee - Congregational Church of Needham, UCC
Rev. Dr. Jim Antal
Rev. Caroline Bail
Rev. Molly Baskette
Rev. Quinn Caldwell
Rev. Anne B. Day
Rev. Dr. Edward Deyton
Rev. Terry Fitzgerald
Rev. Charles Gross
Rev. Ann Hallstein
Rev. Judith Hanlon
Rev. Vicki Kemper
Rev. Peter Lovett
Rev. Dr. Phillip Mayher
Rev. Dr. Thomas McMillan
Rev. Michael McSherry
Deacon Mark Meehl
Rev. Roger Paine
Rev. Anne M. Rousseau
Rev. Nada Sellers
Rev. Dr. Nancy S. Taylor
Rev. Dr. Peter Wells

United Methodist
Cambridge Welcoming Ministries
Rev. Sean Delmore
Rev. Will Green
Rev. Linda Grenfell
Rev. Susan Morrison
Rev. Gary F. Nettleton
Rev. Jeremy Smith
Rev. Tiffany Steinwert

Unitarian Universalist
Unitarian Universalist Association
Rev. Harold Babcock
Rev. Dr. Sheldon W. Bennett
Rev Catherine Cullen
Rev Judy Deutsch
Rev. Dr. Anita Farber-Robertson
Rev. John Gibbons
Rev. Nannene Gowdy
Rev. Mark Harris
Rev. Elea Kemler
Rev. Dan Kane
Rev. Dan King
Rev. Timothy Kutzmark
Rev. Jack Mendelsohn
Rev. Hank Peirce
Rev. Ken Read-Brown
Rev. Katherine Reis
Rev. Jane Rzepka
Rev. Kenneth Sawyer
Rev. Thomas Schade
Rev. Jim Sherblom
Rev. William Sinkford
Rev. Leaf Seligman
Rev. Erin Splaine
Rev. Richard Stower
Rev Ann Willever
Rev. William P. Zelazny

Legislators
Rep. Denise Provost

Organizations
Dignity Boston
Trans Student Alliance of Hampshire College
The Womyn's Village

Lay Persons of Faith, Comprising Many Faiths

Robyn Adelman
Sumi Adams
Rebecca Aine
Chelsea L. Amato
Julia Appel
Cecile Arnold
Julie Aronowitz
Chi Azuakolam
Havaiah Grace Backus
Priscilla Ballou
Hanna Bao
Margaret Barusch
Yael Bat-Shimon
Jasmine Beach-Ferrara
Susanne Beeber
Catherine Bell
Keisa Bennett
Joseph Berman
Sandra Bernstein
Brian Besser
Lani Blechman

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Rosa Blumenfeld
Gabriela Bogin-Farber
Denise Boruillette
Barbara Boucher
James Boucher
Ann Brown
Angela Buonopane
Keli Busey
Michael Burggren
Sarah Bursky
Kathie Carpenter
Roberta Carson
Jim Casarjian-Perry
Elizabeth Claggett-Borne
Michelle Clapp
Andrew Cohen
Nadia Cohen
Dr. Alex Coleman
Kari Collins
Will Corrdin
Stephen J. Couto, Jr.
Sharon Crumrine
Ann Culver
Steven Davis
Lucia Marie Delosantos Coy
Aaron Desatnik
Sam Dreyfus
Sheila Decter
Judah-Abijah Dorrington
Claudia Downey
Ayana Dorcemus
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Judi Ehrlich
Jen Evans
Susan Farrell
Malaina Ferguson
Marion Freedman-Gursran
Rebecca Fishbein
Ellen Fishman
Jenifer Firestone
Melika M. Fitzhugh
Lynn Fogg
Richard Frank
Shari Friedman
Marcia Garber
Jen Garfield
Stacie Garnett
Sarah Gershuny
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Cara Gilbert
Robyn Giragosian
Stuart Glass
Phyllis Glazerman
Diana Fisher Gomberg
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Edmund Grogan
Jayne K. Guberman
Tamar Grimm
Ethan Halainen
Leonard Haley
Terry Hall
Dee Halzack

Christopher Hannon
Trey Harrison
Janet Hayes
Ben Healey
Lauren Herman
Rebecca Herst
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Lauren Jacobson
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Kristy Kade
Irena Karasik
Judith Kates
Howard Katz
Dusty Keeton-Williams
Michelle Kellaway
Elana Kieffer
Nancy Kieran
Marian King
Louise Kittredge
Idit Klein
Judith Klein
Heather Klish
Charla Kouadio
Rebekah Knapp
Gracie Knowles
Aliza Krevolin
Gail Landau
Kate Laudis
Yael Langer
Penelope Larson
Cricket le Fey
Ethan Levine
Jennifer Levi
David Levy
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Vanessa Lyndon
Hilary Lustick
Leah Madsen
Marla Marcum
Lisa McNeill
Charlie Melkonian
Zeb Michelson
Louis Mitchell
Lindsay Morgia
Kathleen Moore
Suzanna Morrison
Julia Moskowitz
Federico Murara
James Nadeau
Michael Naughton
Dr. Wendy Nelson
Rachel Neuman
Robert Newell
Meredith Nichols
Sanford Ostrol
Zippy Ostroy
Maryanne O'Toole
Julian Padilla
Seth Pardo
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Cassandra Rano
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Shiela Estelle Record-Stanley
Faye C. Reed
Mick Rehrig
Virginia Remedi-Brown
Catherine Reuben
Ayla Rich
Tracy Rich
Mark Rimbach
Jeanne Rintell
Robyn S. Robbins
Martha Roberts
Lea Robinson
Mark Roderick
Steven Rodick
Timothy J. Rogers
Sara Rosenblum
Jessica Rosenthal
Gilana Rosenthol
Ellen Rottersmann
Sabrina Santiago
Clay Sato
Dr. Lisa Schneier
Lesley Schoenfeld
Michelle Scholfield
Gunner Scott
Barbara Seidl
Enid A. Shapiro
Susan L. Shevitz
Alison Shriberg
Peter Shungu
Caren Silverlieb
Debra Singer
Hadley Smith
Jessica Solomon
Willie Sordillo
Erin Spiller
Esther David Steffens
Cindy Stewart
Melissa Sturteveint
Dena Snyder
Joseph Takarewski
Sarah Tasman
James Taylor
Max Tendler
Rebecca Tracey
Zipora Urbach
Kirk Van Gilder
Aliza Wasserman
Jan Walsh
Tom Walsh
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Denise Weaver
Liz Weber
Sue Weil
Dr. Elizabeth Whitney
Rebecca Williams
Laurie Wolfe
Patricia Zagarella
Rachel K. Zall
William Zarnoch

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The Interfaith Coalition for Transgender Equality (ICTE) was founded in 2007. Its efforts are currently guided by Co-Chairs Mycroft Masada Holmes and Rev. Cameron Partridge, Clerk Rev. Michael Cooper, Sean Delmore, Rev. Christopher Fike, Orly Jacobovits, Richard M. Juang, Rabbi Dan Judson, and Marla Marcum. ICTE supports activism and education on transgender issues within and across communities of faith. All faiths are welcome.

ICTE can be contacted through Orly Jacobovits, Keshet Senior Organizer & Community Organizer at orly@keshetonline.org and (617) 524-9227 or interfaithcoalition@gmail.com. For more information, please visit www.interfaithcoalition.org.

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West Goshen Township Police
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Smithfield Police Department
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Colonel Mark A. Dunaski
Chief Minnesota State Patrol
Saint Paul, MN

Parliamentarian
Gary J. Schira
Chief of Police
Batavia Police Department
Batavia, IL

Executive Director
Daniel N. Rosenblatt
Alexandria, VA

Deputy Executive Director
Chief of Staff
James W. McMahon
Alexandria, VA

May 20, 2009

The Honorable Edward Kennedy
Chairman, Committee on Health, Education, Labor and Pensions
United States Senate
Washington, DC 20510

Dear Chairman Kennedy:

On behalf of the International Association of Chiefs of Police (IACP), I am writing to express our strong support for S. 909, the Local Law Enforcement Hate Crimes Prevention Act. The legislation, which passed the House in April, will allow the federal government to provide technical support to state and local law enforcement agencies that are investigating hate crimes. In addition, the legislation authorizes the Department of Justice to provide grants to state and local law enforcement agencies to cover the costs of investigating and prosecuting hate crimes.

Most hate crimes are, and should continue to be, investigated and prosecuted by state, tribal, and local authorities. Unfortunately, there are instances, where as a result of either insufficient resources or a lack of jurisdiction, state, tribal and local authorities are unable to properly investigate these crimes. In response, the legislation provides the Department of Justice (DOJ) with jurisdiction in crimes of violence which were motivated because of an individual's race, color, religion, national origin, disability, gender, gender identity or sexual orientation.

However, the legislation properly bars the exercise of federal jurisdiction until the DOJ certifies that state authorities have requested that the federal government assume jurisdiction or that they have consulted with state, tribal and local law enforcement and have determined that local authorities are either unwilling or unable to act.

Senate passage of the Local Law Enforcement Hate Crimes Prevention Act will greatly assist state, tribal and local law enforcement agencies in investigating and prosecuting hate crimes. Thank you for your continued leadership and attention to this vital issue.

The IACP stands ready to assist in any way possible.

Sincerely,

Russell B. Laine

Russell B. Laine
President

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

TESTIMONY

Statement of

The International Association of Chiefs of Police

Before The

Committee on the Judiciary

United States Senate

June 25, 2009

515 N. WASHINGTON STREET
ALEXANDRIA, VA 22314
703-836-6767
WWW.THEIACP.ORG

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The International Association of Chiefs of Police (IACP), comprised of over 22,000 law enforcement executives throughout the world, strongly supports S. 909, the Matthew Shepard Hate Crimes Prevention Act.

In the United States, there are more than 18,000 law enforcement agencies and well over 800,000 officers who patrol our Nation's highways and the streets of our communities each and every day.

During the past 15 years, these officers and the law enforcement agencies they serve have made tremendous strides in reducing the level of crime and violence in our communities. This has been accomplished in part because these officers have an intimate knowledge of their communities and because they have developed close relationships with the citizens they serve.

Yet, despite the best efforts of our nation's law enforcement officers, the disturbing truth is that each year in the United States, well over a million of our fellow citizens are victims of violent crime.

Unfortunately, far too often these violent crimes are hate crimes that are carried out against the citizens we are sworn to protect.

For well over a decade, the IACP has long advocated for agencies to employ necessary resources and vigorous law enforcement action to identify and arrest hate crime perpetrators. In June 1998, the IACP convened the *Hate Crime in America Summit*, a gathering of over 100 police executives, community leaders, citizen activists, justice system decision makers, and scholars with hate crime expertise and experience. At this summit,

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participants explored the nature of hate crime and discussed ways to address it.

In addition to publishing recommendations from the summit, the IACP also prepared *Responding to Hate Crimes: A Police Officer's Guide to Investigation and Prevention*. This guide not only illustrates for law enforcement officers the differences between hate crimes and hate incidents, but also discusses the characteristics of an effective response to hate crimes:, how suspected hate crimes should be investigated, how victims should be treated, and finally, the critical role that law enforcement plays in helping hate crime victims and their communities respond to and recover from the impact of hate crimes.

In all of our efforts, one central theme has emerged. Though hate and its consequences have always been part of the human condition, we are not born with prejudices or intolerance. These attitudes are learned, as are the behaviors that constitute hate crime. Social change, particularly as rapid and pervasive as witnessed in the United States in the 20th and 21st centuries, can engender fear of being displaced, and, in turn, produce bias-motivated attitudes and behavior. Experience has repeatedly demonstrated that most perpetrators of hate crime are steeped in the fear and anger that fuel prejudice.

While all crime is abhorrent, hate crimes are particularly repugnant. Victims of hate crimes are targeted because of a core characteristic of their identity. These attributes cannot be changed. Victims often feel degraded, frightened, vulnerable and suspicious. This may be one of the most traumatic experiences in the lives of these victims. Community members who share

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with victims the characteristics that made them targets of a hate crime (race, religion, ethnic/national origin, gender, age, disability or sexual orientation) may also feel vulnerable, fearful and powerless. In this emotional atmosphere, law enforcement officers and investigators must attend carefully to the ways they interact and communicate with victims, their families and members of the community.

Any acts or threats of violence, property damage, harassment, intimidation, or other crimes motivated by hate and bias and designed to infringe upon the rights of individuals are regarded very seriously by law enforcement in the United States. Law enforcement recognizes that the fears and distress suffered by hate crime victims and their families, the potential for reprisal and escalation of violence, have far-reaching negative consequences on our communities.

It is for these reasons that federal, state, tribal and local law enforcement must have the tools and resources necessary to prevent, respond to, investigate and prosecute these crimes successfully. Over the last twenty years, federal, state, tribal and local law enforcement agencies, as well as public-interest organizations, have initiated a wide array of approaches to prevent and respond to hate crimes. Although a great deal has been accomplished, much work remains to be done.

The IACP firmly believes that most hate crimes are, and should continue to be, investigated and prosecuted by state, tribal, and local authorities. Unfortunately, there are instances; where as a result of either insufficient resources or a lack of jurisdiction, state, local and tribal authorities are unable to properly investigate these heinous crimes. This is simply

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unacceptable and that is why the IACP strongly supports S. 909, the Matthew Shepard Hate Crimes Prevention Act.

S. 909 would complement current law and eliminate some current jurisdictional obstacles to federal involvement in these cases—and also authorize the Department of Justice to investigate and prosecute certain bias-motivated crimes based on the victim's actual or perceived sexual orientation, gender, gender identity, or disability. The legislation also will allow the federal government to provide technical support to state, local and tribal law enforcement agencies that are investigating hate crimes. In addition, the legislation authorizes the Department of Justice to provide grants to state and local law enforcement agencies to cover the costs of investigating and prosecuting hate crimes.

Significantly, the legislation properly bars the exercise of federal jurisdiction until the DOJ certifies that state authorities have requested that the federal government assume jurisdiction or that they have consulted with state, tribal and local law enforcement and have determined that local authorities are either unwilling or unable to act.

Passage of the Matthew Shepard Hate Crimes Prevention Act will greatly assist state, tribal and local law enforcement agencies in investigating and prosecuting hate crimes. The IACP urges you to act swiftly to pass this vital and long overdue legislation.

Thank you for your attention to this vital issue.

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DECLARATION OF RELIGIOUS AND FAITH-BASED SUPPORT FOR MASSACHUSETTS LEGISLATION, *AN ACT RELATIVE TO GENDER-BASED DISCRIMINATION AND HATE CRIMES*

DRAFTED BY THE INTERFAITH COALITION FOR TRANSGENDER EQUALITY

AFFIRMING A MORAL VISION

No society is truly just when its members face persecution. Justice requires that a society stand by its moral vision and act against that persecution. The signatories of this letter ask that the Commonwealth act upon its moral vision of a just society by passing An Act Relative to Gender-Based Discrimination and Hate Crimes.

The signatories of this letter are persons of faith, clergy, congregations, and organizations of faith. Some of us are transgender persons. Others are allies and loved ones. Some of us directly serve the gay, lesbian, bisexual, and transgender community. Others serve indirectly. *In our support for An Act Relative to Gender-Based Discrimination and Hate Crimes we speak with one voice. We speak on behalf of those who are vulnerable to violence and persecution because of their gender identities or gender expressions.*

Transgender people and others who do not conform to gender stereotypes face persecution in essential areas of life. This legislation adds "gender identity or expression" to the Commonwealth's hate crime laws and non-discrimination laws in the areas of employment, housing, public accommodations, public education, and credit. Violence and persecution on the basis of gender identity or expression often stem from the belief that people who do not conform to gender stereotypes are unworthy of protection by the law and are outside of the Commonwealth's moral vision. By passing An Act Relative to Gender-Based Discrimination and Hate Crimes, the legislature would speak out against such persecution.

OUR CONNECTED COMMUNITIES

People of all gender identities and expressions, including transgender people, are born into, enter into, or are called to many faiths. Our faith traditions help to ground and support us in our lifelong quests for fulfillment and responsibility to one another. All of our traditions respect the dignity of each and every human being and recognize our connection to one another.

Because of this connection, the persecution of a person on the basis of gender identity or expression is an injury, not only to an individual, but to everyone connected to that person: to the person's family, friends, and spiritual community. *The oppression of one person indelibly scars all of us. It calls all of us to take account of our moral duties, stand in unity, and take action.*

We ask that our legislators support
An Act Relative to Gender-Based Discrimination and Hate Crimes

ICTE INTERFAITH COALITION FOR TRANSGENDER EQUALITY

www.interfaithcoalition.org

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We ask that our legislators support An Act Relative to Gender-Based Discrimination and Hate Crimes

Congregational and organizational signers are listed in italics. Signatures as of April 3, 2009.

American Baptist
Rev. Irv Cummings
Rev. Nancy Hitt

Episcopal
Christ Episcopal Church, Somerville
Rev. Anne Bonnyman
Rev. Julia Dunbar
Rev. Christopher J. Fike
Rev. Francis Fornaro
Rev. Anne C. Fowler
Rev. Miriam C. Gelfer
Rev. Dr. Ted Gaiser
Rev. Gretchen S. Grimshaw
Rev. Robert E. Hensley
Rev. Dr. Gale Davis Morris
Rev. Cameron Partridge
Rev. Dr. William W. Rich
Rev. Timothy J. Rogers
Rev. Bonnie Sarah Spencer
Rev. Deborah M. Warner
Rev. George H. Welles, Jr.

Jewish
Boston Workmen's Circle
Congregation Am Tikva
Congregation Dorshei Tzedek
Congregation Eitz Chayim
Keshet
Jewish Alliance for Law and Social Action (JALSA)
Temple Emanu-El
Rabbi Katy Allen
Rabbi Thomas Alpert
Rabbi Joel A. Alter
Rabbi Stephen Arnold
Rabbi Howard A. Berman
Rabbi Braham David
Cantor Ray B. Einhorn
Rabbi Paula Feldstein
Rabbi Ronne Friedman
Rabbi Neal Gold
Rabbi Jeffrey Goldwasser
Rabbi Geoffrey Haber
Rabbi Boaz Heilman
Rabbi Shira H. Joseph
Rabbi Daniel Judson
Rabbi David L. Kline
Rabbi Stephanie D. Kolin
Rabbi Cherie E. Koller-Fox
Rabbi Ira L. Korinow
Rabbi Raquel S. Kosovske
Rabbi Jonathan Kraus
Rabbi Michele Lenke
Rabbi Devon A. Lerner
Rabbi Lee B. Levin
Rabbi Elias Lieberman
Rabbi Jane Rachel Litman
Rabbi Joseph B. Meszler
Rabbi Jeremy Morrison
Rabbi Steven P. Nathan
Rabbi David Paskin
Rabbi Michelle Pearlman
Rabbi Barbara Penzner
Rabbi Jay Perlman
Rabbi Victor Reinstein
Rabbi Rachel Schoenfeld
Rabbi Toba Spitzer
Rabbi Andrew D. Vogel
Rabbi Moshe Waldoks
Rabbi Elyse Wechterman
Rabbi David S. Widzer
Rabbi Jeffrey Wildstein
Rabbi Deborah Zecher
Rabbi Elaine Zecher
Rabbi Henry A. Zoob

Lutheran
Rev. Nathan D. Pipho

Metropolitan Community Churches
MCC Boston
Rev. Michael C. Cooper
Rev. Elder Diane Fisher
Rev. George McDermott
Rev. Jim Merritt
Rev. Joan Saniuk

Presbyterian
First Presbyterian Church of Waltham
Elder Vickie Boisseau
Rev. Jean Southard

United Church of Christ
Open and Affirming (ONA) Task Force – MA Conference UCC
Open and Affirming (ONA) Committee - Congregational Church of Needham, UCC
Rev. Dr. Jim Antal
Rev. Caroline Bail
Rev. Molly Baskette
Rev. Quinn Caldwell
Rev. Anne B. Day
Rev. Dr. Edward Deyton
Rev. Terry Fitzgerald
Rev. Charles Gross
Rev. Ann Hallstein
Rev. Judith Hanlon
Rev. Vicki Kemper
Rev. Peter Lovett
Rev. Dr. Phillip Mayher
Rev. Dr. Thomas McMillan
Rev. Michael McSherry
Deacon Mark Meehl
Rev. Roger Paine
Rev. Anne M. Rousseau
Rev. Nada Sellers
Rev. Dr. Nancy S. Taylor
Rev. Dr. Peter Wells

United Methodist
Cambridge Welcoming Ministries
Rev. Sean Delmore
Rev. Will Green
Rev. Linda Grenfell
Rev. Susan Morrison
Rev. Gary F. Nettleton
Rev. Jeremy Smith
Rev. Tiffany Steinwert

Unitarian Universalist
Unitarian Universalist Association
Rev. Harold Babcock
Rev. Dr. Sheldon W. Bennett
Rev Catherine Cullen
Rev Judy Deutsch
Rev. Dr. Anita Farber-Robertson
Rev. John Gibbons
Rev. Nannene Gowdy
Rev. Mark Harris
Rev. Elea Kemler
Rev. Dan Kane
Rev. Dan King
Rev. Timothy Kutzmark
Rev. Jack Mendelsohn
Rev. Hank Peirce
Rev. Ken Read-Brown
Rev. Katherine Reis
Rev. Jane Rzepka
Rev. Kenneth Sawyer
Rev. Thomas Schade
Rev. Jim Sherblom
Rev. William Sinkford
Rev. Leaf Seligman
Rev. Erin Splaine
Rev. Richard Stower
Rev Ann Willever
Rev. William P. Zelazny

Legislators
Rep. Denise Provost

Organizations
Dignity Boston
Trans Student Alliance of Hampshire College
The Womyn's Village

Lay Persons of Faith, Comprising Many Faiths

Robyn Adelman
Sumi Adams
Rebecca Aine
Chelsea L. Amato
Julia Appel
Cecile Arnold
Julie Aronowitz
Chi Azuakolam
Havalah Grace Backus
Priscilla Ballou
Hanna Bao
Margaret Barusch
Yael Bat-Shimon
Jasmine Beach-Ferrara
Susanne Beeber
Catherine Bell
Keisa Bennett
Joseph Berman
Sandra Bernstein
Brian Besser
Lani Blechman

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Rosa Blumenfeld
Gabriela Bogin-Farber
Denise Boruillette
Barbara Boucher
James Boucher
Ann Brown
Angela Buonopane
Keli Busey
Michael Burggren
Sarah Bursky
Kathie Carpenter
Roberta Carson
Jim Casarjian-Perry
Elizabeth Claggett-Borne
Michelle Clapp
Andrew Cohen
Nadia Cohen
Dr. Alex Coleman
Kari Collins
Will Corrdin
Stephen J. Couto, Jr.
Sharon Crumrine
Ann Culver
Steven Davis
Lucia Marie Delosantos Coy
Aaron Desatnik
Sam Dreyfus
Sheila Decter
Judah-Abijah Dorrington
Claudia Downey
Ayana Dorcemus
Michelle Efros
Judi Ehrlich
Jen Evans
Susan Farrell
Malaina Ferguson
Marion Freedman-Gursran
Rebecca Fishbein
Ellen Fishman
Jenifer Firestone
Melika M. Fitzhugh
Lynn Fogg
Richard Frank
Shari Friedman
Marcia Garber
Jen Garfield
Stacie Garnett
Sarah Gershuny
Jeremie Giacoia
Cara Gilbert
Robyn Giragosian
Stuart Glass
Phyllis Glazerman
Diana Fisher Gomberg
Will Green
Marilyn Greenberg
Trevanna Grenfell
Daniel Grenfell-Lee
Tallessyn Grenfell-Lee
Eric Grenfell-Muir
Edmund Grogan
Jayne K. Guberman
Tamar Grimm
Ethan Halainen
Leonard Haley
Terry Hall
Dee Halzack

Christopher Hannon
Trey Harrison
Janet Hayes
Ben Healey
Lauren Herman
Rebecca Herst
Mycroft Masada Holmes
Dr. Andrea Jacobs
Orly Jacobovits
Lauren Jacobson
Andrew Jaffe
Milicent Johnson
Richard M. Juang
Asher Kaboth
Kristy Kade
Irena Karasik
Judith Kates
Howard Katz
Dusty Keeton-Williams
Michelle Kellaway
Elana Kieffer
Nancy Kieran
Marian King
Louise Kittredge
Idit Klein
Judith Klein
Heather Klish
Charla Kouadio
Rebekah Knapp
Gracie Knowles
Aliza Krevolin
Gail Landau
Kate Laudis
Yael Langer
Penelope Larson
Cricket le Fey
Ethan Levine
Jennifer Levi
David Levy
Thomas Lewis
Stephanie Lowitt
Vanessa Lyndon
Hilary Lustick
Leah Madsen
Marla Marcum
Lisa McNeill
Charlie Melkonian
Zeb Michelson
Louis Mitchell
Lindsay Morgia
Kathleen Moore
Suzanna Morrison
Julia Moskowitz
Federico Murara
James Nadeau
Michael Naughton
Dr. Wendy Nelson
Rachel Neuman
Robert Newell
Meredith Nichols
Sanford Ostrol
Zippy Ostroy
Maryanne O'Toole
Julian Padilla
Seth Pardo
Chelsea Paxton
Carrie Pericola

Christina Pienta
Ren Pilinger
Cassandra Rano
Joseph Pushkin-Rood
Desmond Ravenstone
Shiela Estelle Record-Stanley
Faye C. Reed
Mick Rehrig
Virginia Remedi-Brown
Catherine Reuben
Ayla Rich
Tracy Rich
Mark Rimbach
Jeanne Rintell
Robyn S. Robbins
Martha Roberts
Lea Robinson
Mark Roderick
Steven Rodick
Timothy J. Rogers
Sara Rosenblum
Jessica Rosenthal
Gilana Rosenthol
Ellen Rottersmann
Sabrina Santiago
Clay Sato
Dr. Lisa Schneier
Lesley Schoenfeld
Michelle Scholfield
Gunner Scott
Barbara Seidl
Enid A. Shapiro
Susan L. Shevitz
Alison Shriberg
Peter Shungu
Caren Silverlieb
Debra Singer
Hadley Smith
Jessica Solomon
Willie Sordillo
Erin Spiller
Esther David Steffens
Cindy Stewart
Melissa Sturteveint
Dena Snyder
Joseph Takarewski
Sarah Tasman
James Taylor
Max Tendler
Rebecca Tracey
Zipora Urbach
Kirk Van Gilder
Aliza Wasserman
Jan Walsh
Tom Walsh
Joanna Ware
Denise Weaver
Liz Weber
Sue Weil
Dr. Elizabeth Whitney
Rebecca Williams
Laurie Wolfe
Patricia Zagarella
Rachel K. Zall
William Zarnoch

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The Interfaith Coalition for Transgender Equality (ICTE) was founded in 2007. Its efforts are currently guided by Co-Chairs Mycroft Masada Holmes and Rev. Cameron Partridge, Clerk Rev. Michael Cooper, Sean Delmore, Rev. Christopher Fike, Orly Jacobovits, Richard M. Juang, Rabbi Dan Judson, and Marla Marcum. ICTE supports activism and education on transgender issues within and across communities of faith. All faiths are welcome.

ICTE can be contacted through Orly Jacobovits, Keshet Senior Organizer & Community Organizer at orly@keshetonline.org and (617) 524-9227 or interfaithcoalition@gmail.com. For more information, please visit www.interfaithcoalition.org.

JCPA
JEWISH COUNCIL
FOR PUBLIC AFFAIRS

National Member Agencies
American Jewish Committee
American Jewish Congress
Anti-Defamation League
B'nai B'rith
Hadassah
Jewish Labor Committee
Jewish Reconstructionist Federation
Jewish War Veterans
National Council
of Jewish Women
Union for Reform Judaism
Union of Orthodox Jewish
Congregations of America
United Synagogue
of Conservative Judaism
Women's American ORT
Women's League
for Conservative Judaism

June 15, 2009

Dear Senator:

On behalf of the Jewish Council for Public Affairs (JCPA), I write to urge you to support the Matthew Shepard Hate Crimes Prevention Act, S. 909 (MSHCPA), introduced by Senators Ted Kennedy (D-Ma), Patrick Leahy (D-Vt), Arlen Specter (D-Pa), Olympia Snowe (R-Me), and Susan Collins (R-Me). The JCPA is the American Jewish Community's umbrella agency for multi-issue organizations engaged in public policy and community relations. Our membership includes 14 national organizations and 125 local affiliates. We work with government representatives, the media, and a wide array of religious, ethnic, and civic organizations to address a broad range of public policy concerns and share the Jewish community's consensus perspectives.

The MSHCPA is a necessary piece of legislation that would improve the federal hate crimes laws by more effectively covering vulnerable populations. The definition of a hate crime would be expanded to include those violent offenses motivated by the victim's actual or perceived sexual orientation, gender identity, gender, or disability. This legislation would also provide additional resources to local law enforcement agencies to combat bias-motivated crimes. Lastly, the MSHCPA would remove the current requirement that a hate crime be committed while the victim is engaged in a specific federally-protected activity in order to be prosecuted. This back-stop authority would ensure that justice is pursued even when local authorities are unable or unwilling to do so independently. JCPA believes that while states should continue to play the primary role in the prosecutions of hate crime violence, the federal government must be able to address cases when local authorities are either unable or unwilling to fully pursue justice.

Hate crimes are deeply disturbing and have profound effects in the community. The Jewish Community is sensitive to these concerns. Our own history has made us acutely aware of the impact and devastation caused by these bias motivated crimes. No community should face these atrocities. For example, in 1999, the attack on the North Valley Jewish Community Center in Granada Hills, California sent shock waves throughout the entire American Jewish community: this was not a random shooting in Los Angeles, it was a deliberate attack against Jews in the United States. In 2006, the Jewish Federation Building in Seattle was attacked by gunman killing 1 woman and wounding another 5 people. Again, this was a purposeful and deliberate attack.

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www.jewishpublicaffairs.org • contactus@thejcpa.org

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The MSHCPA will send a clear message that crimes motivated by prejudice will not be tolerated in our society. Bias-motivated crimes committed against any individual hurt not only that person but also chip away at the very pillars of liberty, pluralism and dignity that support American democracy.

We again urge you to support this important legislation.

Sincerely,

Rabbi Steve Gutow
President

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Jewish War Veterans of the United States of America
Chartered By an Act of Congress

1811 R Street, NW • Washington, DC 20009 • (202) 265-6280 • Fax (202) 234-5662 • Email: inovoselsky@jwv.org • Website: www.jwv.org

June 24, 2009

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Senate Office Bldg
United States Senate
Washington, DC 20510

Dear Senator Leahy:

On behalf of the Jewish War Veterans of the USA (JWV), we are urging you to support S. 909, the Matthew Shepard Hate Crimes Prevention Act of 2009. This legislation would strengthen existing federal hate crime laws by authorizing the Department of Justice to assist local authorities in investigating and prosecuting certain bias-motivated crimes.

This legislation was approved as H.R. 1913 in the House of Representatives on April 29, 2009. The JWV urges swift action on this companion Senate measure.

The horrific events earlier this month at the U.S. Holocaust Museum are a timely reminder that hate remains a powerful motivator for those who wish to harm others, and the horrific murder of Stephen Johns in the assault on the museum underlines the necessity for such legislation.

The JWV urges you to support S. 909, the Matthew Shepard Hate Crimes Prevention Act of 2009, and hopes for quick passage of this needed legislation.

Sincerely,

Ira Novoselsky

Ira Novoselsky
National Commander

"The Patriotic Voice of American Jewry - over 100 years of Jewish Pride and American Patriotism"

Remarks of Senator Edward M. Kennedy
On The Matthew Shepard Hate Crimes Prevention Act
Thursday, June 25, 2009

Chairman Leahy, I commend you for calling today's hearing on hate crimes in America, and I wish I could be there in person. I join in welcoming Attorney General Holder to this hearing. His leadership at the Justice Department is launching a new era of civil rights enforcement. In recent months, we've worked with the Justice Department to improve our hate crimes bill so that it addresses hate crimes in the most effective and meaningful way.

Only days ago, a small distance from this Committee room, James von Brunn, a formerly convicted criminal and a known anti-Semite, entered the Holocaust Memorial Museum and began firing his rifle. During the attack, he shot and killed security guard Stephen Tyrone Johns. Tragic as this incident was, the heroism of Mr. Johns and other members of the museum security team prevented von Brunn from conducting a violent massacre of innocent men, women, and children. His intentions were clear – he intended to commit a brutal hate crime, a shameful act of domestic terrorism.

On the night of the attack, Janet Langhart Cohen's one-act play, *Anne and Emmett*, was to premiere at the museum. The play imagines a conversation between two teens, Anne Frank and Emmett Till. The subject of the play dealt with hate crimes of the past. Von Brunn's attack reminds us of the present, and I especially welcome Janet Cohen today, and look forward to her testimony.

I also welcome Michael Lieberman of the Anti-Defamation League and Dr. Mark Achtemeir of the University of Dubuque to this hearing. Their testimony will undoubtedly enlighten members of the committee on the need for hate crimes legislation.

I also welcome Gail Heriot of the U.S. Commission on Civil Rights and Brian Walsh of the Heritage Foundation, and I look forward to this testimony as well.

Enactment of this legislation is long overdue. Hate crimes like all terrorist acts, seek to spread fear to whole communities through violence on a few. We are committed to protecting our country from terrorists who strike from abroad, and we must make the same commitment to protect Americans from homegrown terrorists.

That's why 43 bipartisan cosponsors have joined with me and Chairman Leahy to introduce the Matthew Shepard Hate Crimes Prevention Act in the Senate. It strengthens the ability of the federal government to investigate and prosecute hate crimes. It removes excessive restrictions in current federal law that prevent effective hate crimes prosecutions. And, it offers federal assistance to state and local authorities in combating, investigating, and prosecuting hate crimes.

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Over 300 law enforcement, civil rights, civic, and religious organizations have endorsed our bill, including the International Association of Chiefs of Police, the National District Attorneys Association, the Leadership Conference on Civil Rights, the Anti-Defamation League, the American-Arab Anti-Discrimination Committee, the Human Rights Campaign, the National Center for Transgender Equality, the Consortium for Citizens with Disabilities, the National Women's Law Center and the Interfaith Alliance.

All of these diverse groups have come together to say that now is the time for us to protect our fellow citizens from the brutality of hate-motivated violence. They strongly support this legislation, because they know it is a balanced and sensible approach that will bring greater protection to our citizens and much-needed resources for local and state law enforcement.

Religious leaders across the country also support this legislation. As my colleagues know, the Golden Rule states that we ought to treat others as we ourselves would like to be treated, and it is one of the fundamental principles in virtually every religious tradition. The Matthew Shepard Hate Crimes Prevention Act embodies the Golden Rule by extending protection to individuals in communities that are vulnerable to violence fueled by hatred. While preserving the ability of our communities to be free from violent hate-motivated crime, this Act also protects freedom of speech and freedom of religion, including peaceful picketing or demonstrations.

Bias-motivated violence rips apart the fabric of our nation, terrorizes communities targeted by aggression, and harms individuals and families touched by violence. As legislators, we cannot completely eliminate hate, but we can and must address hate-motivated violence with effective criminal laws. By enacting the Matthew Shepard Hate Crimes Prevention Act, we can show the world that America will not tolerate hate-motivated violence.

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Statement of Elke Kennedy, Mother of Sean Kennedy

I am the mother of Sean Kennedy, an intelligent, vibrant young man whose life was cut tragically short by hate violence. Sean was punched in the face by a young man who did not like that Sean was gay. At approximately 3:45am on May 16, 2007, Sean fell to the ground, and he never regained consciousness. He died several hours later in the hospital. He was twenty years old. He was my youngest son.

My son was killed because of hate—because someone did not like him simply because of *who he was*. Losing a child is something no parent should have to suffer. It causes an indescribable pain. In the midst of my grieving, I was also forced to confront a system that did not want to see justice for Sean. Now, I tell Sean's story, and my story, as a testament to the devastation of hatred and the critical need for hate crimes legislation.

Sean spent the evening of May 15, 2007 with friends at a local Greenville, S.C. bar. In the early morning hours of May 16th, he walked outside where three men were waiting outside in a car. The men called Sean over and asked him for a cigarette. As Sean was walking away, one of the men in the backseat got out, walked around the car, approached Sean, and yelled "faggot." The man then delivered the punch that knocked my son to the ground, and to his death.

When Sean's friend discovered my son laying on the concrete, unconscious and bleeding from the head, she yelled to the bouncer of the nearby bar to call 911. He didn't call 911; instead, he told her not to worry because, he said, "he is just drunk." It was roughly fifteen minutes before someone called 911. When the ambulance arrived on the scene they listed Sean as having a trauma score of eight out of twelve. By the time they arrived at the hospital, Sean's trauma score had been reevaluated and was a three, indicating that it was unlikely he would survive. I will never know if those fifteen minutes could have made a difference.

While Sean's life was slipping away, the Greenville Police Department allowed the fire department to hose down the area where Sean fell, destroying any evidence that might have existed. The police did not start an investigation into the incident until four hours after it occurred—prompted by a call from my family to the coroner's office.

Following Sean's death, his friend, who rode with him in the ambulance, shared with us a voicemail that was left on her cell phone after the attack. The voice on this vicious recording was later identified as being the perpetrator's. In the message, he yelled a slew of anti-gay epithets, ending with, "tell him he owes me five hundred dollars for breaking my goddamn hand with his teeth." We contacted the police and shared the recording.

The police took statements from Sean's friend, as well as from the two men who were in the car and identified by tracking the cell phone number. The witnesses' statements conflicted, although they both denied knowing the perpetrator. Despite the discrepancies in their statements, both witnesses were given immediate immunity.

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Finally, the perpetrator turned himself in at the urging of a relative. After his admission, the witnesses amended their statements and admitted that they knew him. However, all three statements were still incongruent.

As the investigation and trial progressed, my family was not kept abreast of the proceedings, despite laws designed to include us in the process. For example, we were not notified of the first bond hearing before it took place, as the law requires. I was not assigned a Victim's Advocate until August, and this only happened after my persistent calls several times each week in search of updates.

Mark Moyer, the Assistant Solicitor assigned to Sean's case, only met with me once. He shared a statement from the perpetrator's cellmate, who happened to be gay. The cellmate told investigators that the perpetrator had never threatened him or made anti-gay statements while in jail, so there was no reason to believe that he hates gay people. I later learned that the perpetrator asked if he was being "set-up" by being placed with a gay cellmate.

During this time I was contacted on several occasions by my Congressman, Representative Bob Inglis. He assured me that South Carolina's laws would be sufficient to secure justice for Sean. Congressman Inglis helped me to set up a meeting with South Carolina Solicitor Bob Arial, the only meeting, in fact, that I ever had with him.

Arial told me, in no uncertain terms, that he would not discuss hate crimes or the need for a review of South Carolina's laws. He made it clear that broaching these topics would cause him to limit his contact with us during the investigation and trial. Mr. Arial also told us that he had been getting weekly calls from South Carolina Senators Jim DeMint and Lindsey Graham, as well as Representative Inglis—all of whom voted against the Matthew Shepard Act.

I refused to be intimidated by these thinly veiled attempts to deter me from speaking out. I knew that I had to work to address not only the flaws in South Carolina's justice system, but the need for comprehensive federal hate crimes legislation like the Matthew Shepard Hate Crimes Prevention Act.

Eventually, Investigator Paul Salvaggio called to inform me that a grand jury indicted the perpetrator for nonviolent involuntary manslaughter. Curiously, the judge left the court without signing the indictment. Investigator Salvaggio told me that he had never known this to happen in his fifteen years of working at the sheriff's department. As a result, the grand jury had to reconvene several days later to finalize the indictment.

The investigation determined that the fact that Sean was gay was not related to his murder. The perpetrator was released on a $25,000 bond after serving 199 days in county lockup. As I was mourning my first Christmas without Sean, the man who killed my son was home in time to spend the holiday with his family. Despite the vulgar admissions in the voicemail, the recording was never played for the grand jury.

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While the perpetrator was free on bond, I met with investigators who allowed me to review some of the evidence in Sean's case. However, I was denied access to my son's medical records. They were made available to the defense from the beginning.

The case never went to trial, only a plea hearing. Incredibly, the voicemail recording was still not played. A transcript was provided, but reading the words cannot adequately express the sarcasm and laughter used to describe the attack on Sean.

Sean's attacker was sentenced to five years in prison, with the sentence suspended to three years, less the seven months time served. He will be free on July 7th 2009, little more than two years after murdering my son.

It is the government's responsibility to ensure that justice is served. How can the state of South Carolina claim that justice prevailed when the man who killed my son will serve less than two years in jail?

Had the Matthew Shepard Act been law, it could have compensated for South Carolina's failed implementation of justice. The Act provides the Department of Justice with the ability to aid state and local jurisdictions either by lending assistance or, where local authorities are unwilling or unable to act, as was South Carolina in Sean's case, by taking the lead in investigations and prosecutions of bias-motivated, violent crimes.

My difficulties with South Carolina's judicial system did not end with the perpetrator's sentencing. Because the Victim's Advocate never informed me, I learned of a parole hearing in December 2008 by chance, only days before it was scheduled to occur. I called the Department of Parole and found out that the form I submitted six months earlier, requesting to be informed of any hearings related to the case, had never been processed in the Department's system. I learned that anyone, including me, could write a letter opposing parole. I also learned that the Greenville County Solicitor was not planning to attend the hearing, nor write a letter opposing parole. I was told that it was *my* responsibility to ask them to do so, which I did not know. Thankfully, I found out in time to ensure that they write a letter expressing that the perpetrator is a danger to society, and the Parole Board unanimously rejected his request for parole.

Following the parole hearing I finally received a copy of Sean's case file; it was less than an inch thick. During the investigation I saw the file and it exceeded a foot in height. However, I was told that I was given all of the information that law required and I was denied access to the remaining documents without further explanation.

Based on my experiences since Sean's death, I am convinced that his case was not given the consideration it merited. No one wanted to draw attention to South Carolina's inadequate criminal justice system, or risk igniting discussion of the much-needed Matthew Shepard Act. They wanted my son's case to simply disappear. I won't let that happen.

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I started Sean's Last Wish to educate the public, thereby giving Sean an enduring voice. Sean was compassionate, happy and he stood up for what he believed in. He knew that the future is always uncertain, but he lived his life being true to himself. For that, he was killed.

No mother should ever have to bury her child. But I did bury my child after losing him to hate and violence, and I have fought an uphill battle for justice ever since. I will not stop until the system that failed me, and failed Sean, is repaired.

I do not doubt that this case would have taken a different direction had the Matthew Shepard Act been law. Please, support this legislation before another mother or father loses their child to hate violence and justice eludes them, as it has me.

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"The Matthew Shepard Hate Crimes Prevention Act of 2009"
June 25, 2009

SENATE JUDICIARY COMMITTEE

Statement of Senator Kyl

Less than two weeks ago, we received a letter from the United States Commission on Civil Rights strongly urging us to vote against the proposed Matthew Shepard Hate Crimes Prevention Act (S. 909).[1] The Commission states that the bill that is the subject of today's hearing "will do little good and a great deal of harm." Those are very strong words from the federal body charged with investigating, reporting on, and making recommendations related to civil rights issues.

The Commission's letter details a number of specific concerns, including that the bill would permit federal authorities to re-prosecute defendants who have been previously acquitted by state juries—a result that it describes as contrary to the spirit of the Double Jeopardy Clause of the Constitution. It is no secret that I have also raised concerns when hate crimes legislation has been considered in the past. Like the Commission, I believe that hate crimes legislation poses significant constitutional problems and risks undermining important principles of federalism. I look forward to hearing what our witnesses today have to say about the issues raised by the Commission's letter.

[1] Letter from the United States Commission on Civil Rights to Members of the United States Senate (June 16, 2009).

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Written Testimony of Robert Knight

Senior Writer/Correspondent, Coral Ridge Ministries
and Senior Fellow, the American Civil Rights Union

RE: S. 909, The Matthew Shepard Hate Crimes Prevention Act

Committee on the Judiciary, United States Senate

June 25, 2009

This proposed law, whatever its sponsors' good intentions, is a grave threat to the constitutional guarantee of equal protection under the law, America's legal heritage of judging actions rather than thoughts or beliefs, and it will politicize law enforcement by making some crime victims' cases more important than others.

A grandma using an ATM machine should have at least as much protection under the law as a man walking out of a "gay" bar. But under S. 909, an assailant of a man who is a cross-dresser or is perceived as homosexual would face greater penalties than grandma's mugger.

Beyond the obvious unfairness of excluding some groups from enhanced protection, such as the elderly, the homeless, veterans and children, the proposed law advances an underlying, ambitious agenda to punish individuals and groups that hold traditional values.

Please take a moment to consider this:

During the Supreme Court hearings on the Boy Scouts case (*Boy Scouts of America vs. Dale*, 2000[1]), the Rev. Rob Schenck of the National Clergy Council was sitting next to the White House liaison on gay and lesbian issues. Thinking he was of like mind, she whispered to him:

"We're not going to win this case, but that's okay. Once we get 'hate crime' laws on the books, we're going to go after the Scouts and all the other bigots."

Why would she say that? The point is that the proposed federal "hate crime" law is less about righting unaddressed wrongs than in elevating sexual preferences – all of them – to

[1]*Boy Scouts of America v. Dale* (99-699) 530 U.S. 640 (2000)
160 N. J. 562, 734 A. 2d 1196, reversed and remanded, at: http://www.law.cornell.edu/supct/html/99-699.ZO.html.

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civil rights status so they can be used as a battering ram against people and groups with traditional values.

S. 909 adds "sexual orientation" and "gender identity" to a list of specially protected classes such as race, ethnicity, sex and religion. Congress would thus be officially creating a new civil rights category based on sexual confusion. Like "sexual orientation," "gender identity" is infinitely flexible, and includes transvestitism (cross-dressing) and transsexualism (believing that one is in the wrong sex's body and sometimes surgically changing one's sex organs). It is notable that former homosexuals, or "ex-gays," perhaps the most victimized group based on "sexual orientation" perceptions, have not been mentioned as being covered by this bill.

In the House version, an effort to amend the legislation to exclude "pedophilia" was defeated in committee. Rep. Alcee Hastings (D-FL) even read a partial list of paraphilias from the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, including pedophilia, and declared that "all of these philias and fetishes and isms that were put forward – need not live in fear because of who they are."[2] This is why some of the bill's opponents call it the "Pedophile Protection Act."

The law also lays the groundwork for the concept of "thought crime," in which someone's views or beliefs are criminalized. Violent acts are already illegal and punished under criminal law. This law adds penalties based on thought. In order to prove that the defendant holds particular beliefs that motivated a criminal act, his or her speech, writing, reading materials and organizational memberships would become key evidence.

At the end of the bill, two paragraphs were inserted to mollify such concerns:

> (3) CONSTITUTIONAL PROTECTIONS- Nothing in this Act shall be construed to prohibit any constitutionally protected speech, expressive conduct or activities (regardless of whether compelled by, or central to, a system of religious belief), including the exercise of religion protected by the First Amendment and peaceful picketing or demonstration. The Constitution does not protect speech, conduct or activities consisting of planning for, conspiring to commit, or committing an act of violence.
>
> (4) "FREE EXPRESSION- Nothing in this Act shall be construed to allow prosecution based solely upon an individual's expression of racial, religious, political, or other beliefs or solely upon an individual's membership in a group advocating or espousing such beliefs."

Ken Klukowski, an American Civil Rights Union senior legal analyst, explains why these would not provide any more legal protection against abuses under this bill:

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[2] U.S. Rep. Alcee Hastings reads sex fetishes on the House floor," Sun-Sentinel.com, May 1, 2009, at: http://weblogs.sun-sentinel.com/news/politics/broward/blog/2009/05/us_rep_alcee_hastings_reads_se.html.

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> "Paragraph (3) is only a statement of the obvious, so it has no legal effect. No statute can abridge constitutionally-protected speech. If any speech is burdened, and the speaker files suit, then the process and the result is the same regardless of whether there is any paragraph such as (3). The court then looks to the speech in question, the nature of the burden on that speech, and what protection the First Amendment extends to that particular speech. The court does not look to language such as (3) in deciding the case. If the burden in the specific case is unconstitutional, then it's impermissible whether the statute acknowledges the fact or not. So (3) is just there to help pass the bill by giving people a talking point to say 'this law does nothing to violate anyone's free speech rights.' It makes no difference in court whatsoever."

Another problem is that "intimidation" is considered an act of violence under federal law, and "intimidation" is in the mind of the beholder. Also note the word "solely" in paragraph (4). This implies that expressions, beliefs or membership in a group *can* be used as factors in prosecution – just not as the *only* factors.

The bill also would create a federal slush fund for hate crime prevention programs at the state and local levels, including school programs that equate traditional sexual morality with "bigotry." Resource groups recommended on the Justice Department's "hate crime" section,[3] such as the Southern Poverty Law Center, already lump legitimate conservative and Christian organizations among "hate groups."[4]

The tendency to equate conservative views with "extremism" was on display earlier this year when a revealing memo surfaced at the Department of Homeland Security and for which Secretary Janet Napolitano was forced to apologize.[5] The memo, "Rightwing Extremism: Current Economic and Political Climate Fueling Resurgence in Radicalization and Recruitment,"[6] listed as candidates for "violent radicalization" such Americans as returning veterans from the Iraq and Afghanistan wars, people who oppose illegal immigration and gun control, and those who warn of losing American sovereignty to globalism. This characterization of millions of Americans as security threats should give everyone pause about passing laws that redefine legal protection based on group status.

Besides its threats to basic freedoms, the law is unnecessary. America is not awash in an epidemic of hate crimes, which constitute a microscopic portion of the more than 11

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[3] National Center for Hate Crime Prevention Education Development Center, Inc., Office for Victims of Crime, United States Justice Department, "Responding to Hate Crime: A Multidisciplinary Curriculum for Law Enforcement and Victim Assistance Professionals" at: http://www.ojp.usdoj.gov/ovc/publications/infores/responding/files/ncj182290.pdf

[4] "Hate Groups in America Surging: New Southern Poverty Law Center Report," Diversity, Inc. March 10, 2008, at: http://www.diversityinc.com/public/3190.cfm.

[5] CNN, April 16, 2009, "Homeland Security Chief Apologizes to Veterans Groups, at: http://www.cnn.com/2009/POLITICS/04/16/napolitano.apology/.

[6] "Rightwing Extremism: Current Economic and Political Climate Fueling Resurgence in Radicalization and Recruitment," Extremism and Radicalization Branch , Homeland Environment Threat Analysis Division, Department of Homeland Security, at: http://wnd.com/images/dhs-rightwing-extremism.pdf.

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million crimes reported in the United States annually.[7] In the latest crime statistics released in October 2008 by the U.S. Justice Department for 2007, nearly 80 percent of the 7,624 incidents[8] of "hate crimes" listed in "crimes against persons" involved "intimidation" (47.4 percent) or "simple assault" (31.1 percent), which could involve nothing more than words. The proposed law, in effect, would make federal cases out of name-calling.

Per capita, the most vulnerable class is young, African-American men who are victims of other young, African-American men. The campaign for "hate crime" laws diverts attention from the ongoing brutality in urban areas. Furthermore, there is no evidence that "hate crime" victims receive any less law enforcement attention than victims of other crimes.

The bill also represents yet another abuse of the Constitution's Commerce Clause, using it to justify federal intervention upon the flimsiest tie-ins to interstate trade.

The proposed law, like all hate crime laws, politicizes crime, leading to pressure on police and prosecutors to devote more of their limited resources to certain victims at the expense of others. For example, homosexual activist groups descended on Wyoming and created a media circus around the Matthew Shepard case, costing the state heavily for public relations. Meanwhile, the story of Kristin Lamb, an eight-year-old girl who a month before Shepard's death was killed in Wyoming and her body thrown into a landfill, received virtually no news coverage or concerns about a possible "hate crime."

Hate crime laws not only politicize law enforcement but lay the groundwork for assaults on freedom of speech and freedom of religion. Similar laws in Canada, Great Britain and Sweden have triggered investigations and arrests of clergy who have publically criticized homosexuality, voiced the opinion that people can resist homosexual temptation, or merely supported man-woman marriage as the norm.

Progressive activists increasingly invoke such phrases as "hate speech," "hostile speech" and a "climate of violence" to describe pro-family, pro-marriage views. Legitimate opinion and free speech are thus recast as "hate" that can be actionable via creeping judicial activism.

"Hate crime" laws are already being used to silence people who speak publicly against homosexuality in the United States.

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[7] "Violent Crime in the United States," 2007, FBI, at: http://www.fbi.gov/ucr/cius2007/offenses/violent_crime/index.html; and "Property Crime in the United States," 2007, at: http://www.fbi.gov/ucr/cius2007/offenses/property_crime/index.html.

[8] "FBI Releases 2007 Hate Crime Statistics," Federal Bureau of Investigation, Oct. 27, 2008 at: http://www.fbi.gov/ucr/hc2007/summary.htm.

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A pastor in New York's Staten Island saw two billboards with a Bible verse on them taken down in 2000[9] under pressure from city officials, who cited "hate crime" rhetoric.

In Philadelphia, 11 Christians were arrested and jailed overnight for singing and preaching in a public park at a homosexual street festival in 2004. Five of them were bound over and charged with five felonies and three misdemeanors, totaling a possible 47 years in jail. These charges, based on Pennsylvania's "hate crimes" law, hung over them for months until a judge finally dismissed them.[10]

And we can look to our northern neighbor for clues about what happens when such laws are enacted. In Saskatchewan Canada, a newspaper publisher and a man who placed a newspaper ad faced jail and were fined $4,500 each, merely for running an ad containing references to several Bible verses regarding homosexuality.[11] A college teacher who wrote a letter to the editor affirming traditional morality was suspended.[12] And a best-selling author, Mark Steyn (*America Alone*), has faced charges in national and provincial tribunals for the supposed "hate crime" of reporting what Muslim leaders in Europe themselves say about the societal impact of changing demographics.[13]

In conclusion: While it might sound good on the surface (nobody is for crimes) the law is profoundly dangerous. It creates infinitely expansive new civil rights classes while excluding others. It helps build the legal foundation for violating the freedoms of speech, association and religion. It severely violates the constitutional concept of equal protection under the law. It expands the un-American concept of "thought crime," in which someone's actions are "more" illegal depending on thoughts or beliefs.

Coral Ridge Ministries and the American Civil Rights Union deplore violence against any innocent victims (including homosexuals), but strongly oppose as unjust and dangerous the concept of "hate crimes" laws.

All people deserve impartial justice under the 14th Amendment's guarantee of equal protection under the law. The proposed federal hate crime law imperils that cherished right on many levels.

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[9] Clyde Haberman, "NYC; All the Views Unfit to Print on a Billboard, *The New York Times*, Nov. 18, 2003, at: http://www.nytimes.com/2003/11/18/nyregion/nyc-all-the-views-unfit-to-print-on-a-billboard.html.

[10] WorldNetDaily.com, "'Philadelphia 11' told 'gays' limited speech: Judge's ruling says permit allows biblical messages to be restricted," Feb. 16, 2007, at: http://www.wnd.com/news/article.asp?ARTICLE_ID=54235.

[11] Rory Leishman, "Canadian Human Rights Tribunals Should Be Ditched," *London* (Ontario, Canada) *Free Press*, as reprinted on July 11, 2001, at http://www.cwfa.org/articles/110/CFI/cfreport and cited in Robert Knight and Lindsey Douthit, "'Hate Crime Laws Threaten Religious Freedom," Concerned Women for America, Dec. 12, 2005, at: http://www.cwfa.org/articledisplay.asp?id=9672&department=cfi&categoryid=papers.

[12] Hillary White, Chris Kempling to Quit BC Teachers College after Years of Harassment for Christian Beliefs," Lifesite News, July 7, 2008, at: http://www.lifesitenews.com/ldn/2008/jul/08070706.html.

[13] CBC News, "BC tribunal hears complaint against Maclean's article," June 2, 2008, at: http://www.cbc.ca/canada/british-columbia/story/2008/06/02/bc-macleans-human-rights.html.

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Confronting the New Faces of Hate: Hate Crimes in America

2009

LCCR Education Fund
www.civilrights.org

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The design and layout were created by Jenna Wandres of LCCREF and Laurie Rosenthal Seiler of Rosenthal Seiler Design.

This report is an update of our 2004 report, *Cause for Concern.* Sadly, five years later, the problem of hate crimes continues to be a significant national concern that demands priority attention. The purpose of this report is to highlight the need for a coordinated response by every sector of society to eradicate this problem.

The authors and publisher are solely responsible for the accuracy of statements and interpretations contained in this publication.

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Executive Summary

For many, the election of President Barack Obama appeared to close the book on a long history of inequality in America. But the spate of racially-motivated hate crimes and violence against minorities and immigrants that occurred before and after Election Day makes clear that a final victory over prejudice and racial hostility remains elusive. It is time for our nation to redouble its efforts to combat the commission of hate crimes in America.

Violence committed against individuals because of their race, religion, ethnicity, national origin, gender, gender identity, or sexual orientation remains a serious problem. In the nearly twenty years since the 1990 enactment of the Hate Crime Statistics Act (HCSA), the number of hate crimes reported has consistently ranged around 7,500 or more annually—that's nearly one every hour of every day. However, and of particular concern, the number of hate crimes committed against Hispanics and those perceived to be immigrants has increased each of the past four years for which FBI data is available, and hate crimes committed against individuals because of their sexual orientation has increased to its highest level in five years.

These data almost certainly understate the true number of hate crimes committed in our nation. Victims may be fearful of authorities and thus may not report these crimes. Some local authorities may not accurately classify these violent incidents as hate crimes and thus fail to report them to the federal government. Other local authorities, including at least 21 agencies in cities with populations between 100,000 and 250,000, did not participate in the FBI data collection effort in 2007—the most recent national report available.

The marked increase in hate violence against Hispanics correlates closely with the increasingly heated debate over comprehensive immigration reform and an escalation in the level of anti-immigrant vitriol on radio, television, and the Internet. Warned an April 2009 assessment from the Office of Intelligence and Analysis at the U.S. Department of Homeland Security (DHS), "in some cases, anti-immigration or strident pro-enforcement fervor has been directed against specific groups and has the potential to turn violent." As inflammatory rhetoric targets immigrants at the same time that the number of hate crimes against Hispanics and others perceived to be immigrants steadily increases, a heightened sense of fear has gripped Hispanic and other minority communities around the country.

In one of the most disturbing developments of recent years, some groups opposing immigration reform, such as the Federation for American Immigration Reform (FAIR), the Center for Immigration Studies (CIS), and NumbersUSA, have inflamed the immigration debate by invoking the dehumanizing, racist stereotypes and bigotry of hate groups. While these seemingly "legitimate" advocates against illegal immigration are frequently quoted in the mainstream media, have been called to testify before Congress, and often hold meetings with lawmakers and other public figures, their virulently anti-immigrant rhetoric veers dangerously close to—and too often crosses the line beyond—civil discourse over contentious immigration policy issues.

The inflammatory anti-immigrant messages of these groups have successfully infiltrated mainstream media, including shrill anti-immigration reform commentaries from high profile national media personalities such as CNN's Lou Dobbs and Talk Show Network's *The Savage Nation* host Michael Savage. The unintended consequence of "media celebrities" vilifying immigrants as "invaders" who poison our communities with disease and criminality has been—and will continue to be—an atmosphere in which some people will act on these demonizing screeds—violently targeting immigrants and those perceived to be immigrants.

Fear and vilification of immigrants has combined with the worst economic downturn in decades and the election of the first African-American president to cause a surge in the activity of white supremacist groups. According to the Southern Poverty Law Center (SPLC), the number of hate groups operating in the United States increased more than

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four percent in 2008 and has grown by 54 percent since 2000. "Barack Obama's election has inflamed racist extremists who see it as another sign that their country is under siege by non-whites," said Mark Potok, editor of the *Intelligence Report* published by the SPLC. "The idea of a black man in the White House, combined with the deepening economic crisis and continuing high levels of Latino immigration, has given white supremacists a real platform on which to recruit."

Extremists have taken advantage of the Internet and new technologies to recruit new members and promote their bigoted ideology. Whereas hate mongers once had to stand on street corners and hand out mimeographed leaflets to passersby, extremists now use mainstream social networking sites such as *MySpace* or *Facebook* to access a potential audience of millions—including impressionable youth. Daniel Cowart, 20, of Bells, Tennessee and Paul Schlesselman, 18, of West Helena, Arkansas, the two white supremacists arrested in the fall of 2008 for plotting an assassination attempt on Barack Obama followed by a plan to engage in a multi-state racist shooting spree, were reportedly introduced to each other by a mutual friend on a social networking website. After Obama's election victory in November, white supremacist online activity spiked, with people posting hundreds of messages to online forums. Don Black, a 55 year-old former Ku Klux Klan Grand Wizard, claimed more than 2,000 people joined his website on the day after Obama's election, up from 80 on an ordinary day. Started in 1995, Black's website is one of the oldest and largest hate group sites, now claiming 110,000 members.

Several examples from 2008 illustrate the ongoing hate crime crisis in our nation:

- In July 2008, in Shenandoah, Pennsylvania, Luis Ramirez, a 25 year-old Mexican and father of two, was murdered because of his ethnicity in a brutal beating allegedly by four teenagers who repeatedly punched him, knocked him to the ground, and then kicked him multiple times in the head. As Ramirez lay unconscious, convulsing and foaming at the mouth, one of the assailants reportedly yelled "Tell your fucking Mexican friends to get the fuck out of Shenandoah or you'll be fucking laying next to them." Fourteen months earlier, 20 miles from where Ramirez was murdered, Lou Dobbs had held a special "Broken Borders" town hall meeting edition of *Lou Dobbs Tonight* to spotlight and praise a neighboring small town's passage of an "Illegal Immigrant Relief Act" that sought to suspend the business permits and licenses of employers who hired "unlawful workers" or landlords who rented to illegal aliens.

- On Election Night 2008, Ralph Nicoletti and Michael Contreras, both 18, and Brian Carranza, 21, of Staten Island, New York decided shortly after learning of Barack Obama's election victory "to find African Americans to assault," according to a federal indictment and other court filings. The men then drove to a predominantly African-American neighborhood in Staten Island, where they came upon a 17 year-old African American who was walking home after watching the election at a friend's house. One of the defendants yelled "Obama!" Then, the men got out of the car and beat the youth with a metal pipe and a collapsible police baton, injuring his head and legs. The men went on to commit additional assaults that night. Their hate crime spree culminated with crashing their car into a man who they mistakenly believed to be African-American, causing his body to shatter the windshield.

- On February 12, 2008 in Oxnard, California, 15 year-old Lawrence King, an openly gay student, was sitting in a computer lab at his junior high school when Brandon McInerney, 14, shot him twice in the head as their fellow students watched in horror. In McInerney's bedroom, investigators discovered a "trove" of white supremacist literature and drawings, depicting a "racist skinhead philosophy," according to the prosecution. McInerney is being tried as an adult on a murder count, plus a hate crime allegation.

Eliminating the prejudice that underlies hate crimes requires that Americans develop respect for cultural differences and establish dialogue across racial, ethnic, cultural, and religious boundaries. Education, awareness, and acceptance of group differences are the cornerstones of a long-term solution to prejudice, discrimination, and bigotry. Hate crime laws and effective responses to hate violence by public officials and law enforcement authorities can play an essential role in deterring and preventing these

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crimes, creating a healthier and stronger society for all Americans.

All Americans have a stake in reducing hate crimes. These crimes are intended to intimidate not only the individual victim, but all members of the victim's community, and even members of other communities historically victimized by hate. By making these victims and communities fearful, angry, and suspicious of other groups—and of the authorities who are charged with protecting them—these incidents fragment and isolate our communities, tearing apart the interwoven fabric of American society. Thus, the damage done by hate crimes cannot be measured solely in terms of physical injury or dollars and cents. For these reasons and more, hate crimes demand a priority response from governmental authorities.

Hate crimes are by no means just an American phenomenon—they are on the rise in many countries in Europe and the former Soviet Union, where government responses in most countries across this region have been inadequate. Beyond tackling hate crime at home, it is incumbent upon the United States to demonstrate international leadership at intergovernmental bodies like the Organization for Security and Cooperation in Europe (OSCE), as well as in other public and private international organizations and through its own bilateral relationships, in order to promote the adoption and effective implementation of hate crime laws, improve the response of governments to hate violence, and help to build the capacity of civil society organizations to complement and support these government efforts.

RECOMMENDATIONS

Every sector of society has an important role to play in helping to ensure that no person is targeted for violence on the basis of his or her personal characteristics. We offer the following recommendations for action (international policy recommendations are available in the section of the report on "Hate Has No Borders"):

SET THE TONE FOR A CIVIL NATIONAL DISCOURSE ON COMPREHENSIVE IMMIGRATION REFORM

Civil rights organizations have become increasingly concerned about the virulent anti-immigrant and anti-Latino rhetoric employed by a handful of groups and coalitions that have positioned themselves as legitimate, mainstream advocates against illegal immigration in America. Leaders from every sector—including government, media, business, labor, religion, and education—have an essential role in shaping attitudes in opposition to all forms of bigotry. These leaders must moderate the rhetoric in the immigration debate. It is vital that civic leaders and law enforcement officials speak out against efforts to demonize immigrants—and use their bully pulpits to promote better intergroup relations. They must use their power of persuasion and political clout to condemn scapegoating, bias crimes, racism, and other hate speech and hate crimes, and to press for fair and workable immigration reform.

ENSURE A STRONG LAW ENFORCEMENT RESPONSE TO CONFRONT VIOLENT BIGOTRY

Although bigotry cannot be legislated out of existence, a forceful, moral response to hate violence is required of us all. Enactment of the Local Law Enforcement Hate Crimes Prevention Act will give local law enforcement officials important tools to combat violent, bias-motivated crimes, and facilitate federal investigations and prosecutions when local authorities are unwilling or unable to achieve a just result. Importantly, the LLEHCPA would also amend the Hate Crime Statistics Act of 1990 to mandate additional Justice Department hate crime data collection reporting requirements for bias-motivated violence directed at individuals on the basis of their gender and gender identity, and for crimes committed by and against juveniles.

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COMPLEMENT TOUGH LAWS AND VIGOROUS ENFORCEMENT WITH EDUCATION AND TRAINING INITIATIVES DESIGNED TO REDUCE PREJUDICE

The federal government has a central role to play in funding anti-bias education and hate crime prevention initiatives, as well as promoting awareness of effective anti-bias education initiatives. The Justice Department, the Department of Education, and other involved federal agencies should institutionalize and coordinate their response to prejudice-motivated violence and fund programs and initiatives developed for schools and for youth violence prevention programs. The federal government should make information available regarding effective hate crime prevention programs and resources, successful anti-bias training initiatives, and best practices. The FBI should receive funding to update and expand training and outreach to ensure the most comprehensive implementation of the Hate Crime Statistics Act.

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Hate Crimes in America: The Nature and Magnitude of the Problem

For many Americans, the election of President Barack Obama appeared to close the book on a long history of inequality. But the spate of racially-motivated hate crimes and violence against minorities and immigrants that occurred in the final weeks before and after Election Day makes clear that a final victory over prejudice and racial hostility remains elusive.

Violence committed against individuals because of their race, religion, ethnicity, national origin, gender, gender identity, or sexual orientation remains a serious problem in America. In the nearly twenty years since the 1990 enactment of the Hate Crime Statistics Act (HCSA), the number of hate crimes reported has consistently ranged around 7,500 or more annually, or nearly one every hour of the day. These data almost certainly understate the true numbers of hate crimes committed. Victims may be fearful of authorities and thus may not report these crimes. Or local authorities do not accurately report these violent incidents as hate crimes and thus fail to report them to the federal government.

All Americans have a stake in reducing hate crimes. These crimes are intended to intimidate not only the individual victim, but all members of the victim's community, and even members of other communities historically victimized by hate. By making these victims and communities fearful, angry, and suspicious of other groups—and of the authorities who are charged with protecting them—these incidents fragment and isolate our communities, tearing apart the interwoven fabric of American society.

In one of the most disturbing developments of recent years, some anti-immigration groups, claiming to warn people about the impact of illegal immigration, have inflamed the immigration debate by invoking the dehumanizing, racist stereotypes and bigotry of hate groups. It is no coincidence that as some voices in the anti-immigration debate have demonized immigrants as "invaders" who poison our communities with disease and criminality, haters have taken matters into their own hands.

With society and individuals under increasing stress due to unemployment and hard economic times, a tough law enforcement response to hate crimes, as well as education and programming to reduce violent bigotry, is urgently needed. In 1992, the American Psychological Association reported that "prejudice and discrimination" were leading causes of violence among American youth.[1] Failure to address this unique type of crime could cause an isolated incident to explode into widespread community tension.

Eliminating prejudice requires that Americans develop respect for cultural differences and establish dialogue across racial, ethnic, cultural, and religious boundaries. Education, awareness, and acceptance of group differences are the cornerstones of a long-term solution to prejudice, discrimination, and bigotry. Hate crime laws and effective responses to hate violence by public officials and law enforcement authorities can play an essential role in deterring and preventing these crimes, creating a healthier and stronger society for all Americans.

HATE IN AMERICA: A 2009 ENVIRONMENTAL SCAN

Since Congress enacted the Hate Crime Statistics Act in 1990, the FBI has been mandated to collect hate crime data from law enforcement agencies across America. Although the FBI's annual HCSA report clearly undercounts hate crimes, as will be discussed below, it still provides the best snapshot of the magnitude of the hate violence problem in America. As the 2007 HCSA report, the most recent available, makes clear, violence directed at individuals, houses of worship, and community institutions because of prejudice based on race, religion, sexual orientation, or national origin remains unacceptably high and continues to be a serious problem in America.

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As documented by the FBI's 2007 HCSA report:

- Approximately 51 percent of the reported hate crimes were race-based, with 18.4 percent on the basis of religion, 16.6 percent on the basis of sexual orientation, and 13.2 percent on the basis of ethnicity.
- Approximately 69 percent of the reported race-based crimes were directed against blacks, 19 percent of the crimes were directed against whites, and 4.9 percent of the crimes were directed against Asians or Pacific Islanders. The number of hate crimes directed against individuals on the basis of their national origin/ethnicity increased to 1,007 in 2007 from 984 in 2006.
- For the fourth year in a row, the number of reported crimes directed against Hispanics increased—from 576 in 2006 to 595 in 2007.
- Though the overall number of hate crimes decreased slightly, the number of hate crimes directed at gay men and lesbians increased almost six percent—from 1,195 in 2006 to 1,265 in 2007.
- Religion-based crimes decreased, from 1,462 in 2006 to 1,400 in 2007, but the number of reported anti-Jewish crimes increased slightly, from 967 in 2006 to 969 in 2007—12.7 percent of all hate crimes reported in 2007—and 69 percent of the reported hate crimes based on religion.
- Reported crimes against Muslims decreased from 156 to 115, 8.2 percent of the religion-based crimes. This is still more than four times the number of hate crimes reported against Muslims in 2000.[2]

THE FBI HCSA DATA UNDERCOUNTS THE NUMBER OF HATE CRIMES

In 2007, 13,241 U.S. law enforcement agencies participated in the FBI's HCSA data collection effort—the largest number of police agencies in the seventeen-year history of the Act. Yet, only 2,025 of these participating agencies—15.3 percent—reported even a single hate crime to the FBI.

As in past years, the vast majority of the participating agencies (84.7 percent) reported zero hate crimes. This does not mean that they failed to report; rather, they affirmatively reported to the FBI that *no hate crimes occurred in their jurisdiction*. In addition, more than 4,000 U.S. police agencies did not participate in this HCSA data collection effort—including at least four agencies in cities with populations of over 250,000 and at least 21 agencies in cities with populations between 100,000 and 250,000.

In contrast to the FBI's HCSA data, the U.S. Department of Justice Bureau of Justice Statistics in 2005 reported sharply higher numbers of hate crimes committed in the U.S.:

> *An annual average of 210,000 hate crime victimizations occurred from July 2000 through December 2003. During that period an average of 191,000 hate crime incidents involving one or more victims occurred annually. Victims also indicated that 92,000 of these hate crime victimizations were reported to police. These estimates were derived from victim reports to the National Crime Victimization Survey (NCVS) of the Bureau of Justice Statistics (BJS).*[3]

Studies by independent researchers and law enforcement organizations reveal that some of the most likely targets of hate violence are also the least likely to report these crimes to the police. There are many cultural and language barriers to reporting hate crimes to law enforcement officials. Some immigrant hate crime victims fear reprisals or deportation if incidents are reported. Many new Americans come from countries in which residents mistrust and would never call the police—*especially* if they were in trouble. Gay, lesbian, and transgender victims, facing hostility, discrimination, and, possibly, family pressures may also be reluctant to come forward to report these crimes.

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All this evidence strongly suggests a significant underreporting of hate crimes in the United States.

THE LEGAL LANDSCAPE: THE SCOPE OF HATE CRIME LAWS IN AMERICA

The vast majority of hate crimes are investigated and prosecuted by state and local law enforcement officials. In general, a hate crime is a criminal offense intentionally directed at an individual or property in whole or in part because of the victim's actual or perceived race, religion, national origin, gender, gender identity, sexual orientation, or disability. However, each state defines the criminal activity that constitutes a hate crime differently, and the breadth of coverage of these laws varies from state to state.

Hate crimes are generally not separate and distinct criminal offenses. At present, 45 states and the District of Columbia have enacted hate crime penalty enhancement laws, many based on a model statute drafted by the Anti-Defamation League in 1981. Under these laws, a perpetrator can face more severe penalties if the prosecutor can demonstrate, beyond a reasonable doubt, that the victim was intentionally targeted by the perpetrator on the basis of his or her personal characteristics. Almost every state penalty enhancement hate crime law explicitly includes crimes directed against an individual on the basis of race, religion, and national origin/ethnicity. Currently, however, only 30 states and the District of Columbia include sexual orientation-based crimes in these hate crimes statutes; only 26 states and the District of Columbia include coverage of gender-based crimes; only eleven states and the District of Columbia include coverage of gender identity-based crimes; and only 30 states and the District of Columbia include coverage for disability-based crimes.

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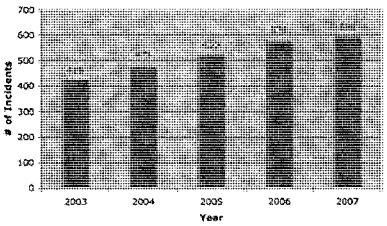
The State of Hate: Escalating Hate Violence Against Immigrants

The increase in hate crimes directed against Hispanics for the fourth consecutive year is particularly noteworthy and worrisome because the number of hate crimes committed against other racial, ethnic, and religious groups has over the same period shown either no increase or a decrease.

Anti-Hispanic Hate Crime Incidents



Source: FBI data

The increase in violence against Hispanics correlates closely with the increasingly heated debate over comprehensive immigration reform and an escalation in the level of anti-immigrant vitriol on radio, television, and the Internet. While reasonable people can and will disagree about the parameters of comprehensive immigration reform, in some instances, the commentary about immigration reform has not been reasonable; it has been inflammatory. Warned an April 2009 assessment from the Office of Intelligence and Analysis at the U.S. Department of Homeland Security (DHS), "in some cases, anti-immigration or strident pro-enforcement fervor has been directed against specific groups and has the potential to turn violent."

This toxic environment, in which hateful rhetoric targets immigrants while the number of hate crimes against Hispanics and others perceived to be immigrants steadily increases, has caused a heightened sense of fear in communities around the country.

THE ROLE OF EXTREMIST ANTI-IMMIGRATION GROUPS

Some groups opposing immigration reform, such as the Federation for American Immigration Reform (FAIR), the Center for Immigration Studies (CIS), and NumbersUSA, have portrayed immigrants as responsible for numerous societal ills, often using stereotypes and outright bigotry. While these groups, and other similar organizations, have strived to position themselves as legitimate, mainstream advocates against illegal immigration in America, a closer look at the public record reveals that some of these organizations have disturbing links to or relationships with extremists in the anti-immigration movement. These seemingly "legitimate" advocates against illegal immigration are frequently quoted in the mainstream media, have been called to testify before Congress, and often hold meetings with lawmakers and other public figures. This is one of the most disturbing developments of the past few years: the legitimization and mainstreaming of virulently anti-immigrant rhetoric that veers dangerously close to—and too often crosses the line beyond civil discourse over contentious immigration policy issues.

The Leadership Conference on Civil Rights, the Anti-Defamation League, the Southern Poverty Law Center (SPLC), the National Council of La Raza (NCLR), and the Mexican American Legal Defense and Educational Fund (MALDEF) have become increasingly concerned about the virulent anti-immigrant and anti-Latino rhetoric employed by a handful of groups and coalitions that have tried to position themselves as legitimate, mainstream advocates against illegal immigration in America. Recently, SPLC published *The Nativist Lobby: Three Faces of Intolerance*[4], which investigated three of these groups and found:

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Three Washington, D.C.-based immigration-restriction organizations stand at the nexus of the American nativist movement: the Federation for American Immigration Reform (FAIR), the Center for Immigration Studies (CIS), and NumbersUSA. Although on the surface they appear quite different—the first, the country's best-known anti-immigrant lobbying group; the second, an "independent" think tank; and the third, a powerful grassroots organizer—they are fruits of the same poisonous tree.

FAIR, CIS and NumbersUSA are all part of a network of restrictionist organizations conceived and created by John Tanton, the "puppeteer" of the nativist movement and a man with deep racist roots. Tanton has for decades been at the heart of the white nationalist scene. He has met with leading white supremacists, promoted anti-Semitic ideas, and associated closely with the leaders of a eugenicist foundation once described by a leading newspaper as a "neo-Nazi organization." He has made a series of racist statements about Latinos and worried that they were out-breeding whites. At one point, he wrote candidly that to maintain American culture, "a European-American majority" is required.

FAIR, which Tanton founded and where he remains on the board, has been listed as a hate group by the Southern Poverty Law Center. Among the reasons are its acceptance of $1.2 million from the Pioneer Fund, a group founded to promote the genes of white colonials that funds studies of race, intelligence and genetics. FAIR has also hired as key officials men who also joined white supremacist groups. It has board members who regularly write for hate publications. It promotes racist conspiracy theories about Latinos. And it has produced television programming featuring white nationalists.

CIS was conceived by Tanton and began life as a program of FAIR. CIS presents itself as a scholarly think tank that produces serious immigration studies meant to serve "the broad national interest." But the reality is that CIS has never found any aspect of immigration that it liked, and it has frequently manipulated data to achieve the results it seeks. Its executive director last fall posted an item on the conservative National Review Online website about Washington Mutual, a bank that had earlier issued a press release about its inclusion on a list of "Business Diversity Elites" compiled by Hispanic Business magazine. Over a copy of the bank's press release, the CIS leader posted a headline—"Cause and Effect?"—that suggested a link between the bank's opening its ranks to Latinos and its subsequent collapse.

Like CIS, NumbersUSA bills itself as an organization that operates on its own and rejects racism completely. In fact, NumbersUSA was for the first five years of its existence a program of U.S. Inc., a foundation run by Tanton to fund numerous nativist groups, and its leader was an employee of that foundation for a decade. He helped edit Tanton's racist journal, The Social Contract, *and was personally introduced by Tanton to a leader of the Pioneer Fund. He also edited a book by Tanton and another Tanton employee that was banned by Canadian border officials as hate literature and on one occasion spoke to the Council of Conservative Citizens, a hate group which has called blacks "a retrograde species of humanity."*

Together, FAIR, CIS and NumbersUSA form the core of the nativist lobby in America. In 2007, they were key players in derailing bipartisan, comprehensive immigration reform that had been expected by many observers to pass. Today, these organizations are frequently treated as if they were legitimate, mainstream commentators on immigration. But the truth is that they were all conceived and birthed by a man who sees America under threat by non-white immigrants. And they have never strayed far from their roots.[5]

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THE INFILTRATION OF MAINSTREAM MEDIA

The increasing number of shrill anti-immigration reform commentaries from high profile national media personalities, including CNN's Lou Dobbs and Talk Show Network's *The Savage Nation* host Michael Savage, correlates closely with the increase in hate crimes against Hispanics. There is a direct connection between the tenor of this rhetoric and the daily lives of immigrants, and many fear that the unintended consequence of media celebrities vilifying immigrants will be an atmosphere in which some people will act on these demonizing screeds, violently targeting immigrants and those perceived to be immigrants.

The frequent appearance of extremist groups such as FAIR on mainstream media programs and even at Congressional hearings is extremely worrisome. After reviewing FAIR's virulent rhetoric, SPLC found:

> *None of this—or any other material evidencing the bigotry and racism that courses through the group—seems to have affected FAIR's media standing. In 2008, the group was quoted in mainstream media outlets nearly 500 times. FAIR staff have been featured several times on CNN's* "Lou Dobbs Tonight," *along with countless appearances on other television news shows. Dobbs even ran his radio program from a FAIR event in Washington, D.C. this past September. And, perhaps most remarkably of all, FAIR has been taken seriously by Congress, claiming on its home page that it has been asked to testify on immigration bills "more than any other organization in America."*[5]

As Alex Nogales, President and CEO of the National Hispanic Media Coalition (NHMC) has noted, "We are very respectful of the First Amendment and free speech, but the hateful rhetoric, particularly against the immigrant minority communities, espoused by irresponsible TV and radio talk show hosts on American airwaves needs to be addressed." NHMC has undertaken a study to quantify hate speech in commercial radio, petitioned the Federal Communications Commission (FCC) to open an inquiry into hate speech on the nation's airwaves, and requested that the National Telecommunications and Information Administration (NTIA) update its 1993 report, *The Role of Telecommunications in Hate Crime*.[7] In that report, NTIA found "deeply troubling" examples where "telecommunications has been used to advocate or encourage the commission of hate crimes." But the report concluded that "the extent to which such messages (of hate) actually lead to the commission of crimes is unclear."[8]

On July 5, 2007, Michael Savage suggested America would be a better place if students staging a hunger strike in the hope of securing immigration reform legislation starved to death:

> SAVAGE: Then there's the story of college students who are fasting out here in the Bay Area. They're illegal aliens and they want green cards simply because they're students. I don't understand what—how this two and two adds up. *I would say, let them fast until they starve to death, then that solves the problem. Because then we won't have a problem about giving them green cards because they're illegal aliens; they don't belong here to begin with. They broke into the country; they're criminals.*[9]

Like Savage, Lou Dobbs has also stated on his CNN show, *Lou Dobbs Tonight*, "illegal aliens are criminals." (*Lou Dobbs Tonight* transcript, 4/6/05). As NCLR has pointed out, illegal immigrants are not considered criminals under current U.S. law. NCLR has chronicled many of Lou Dobbs's other comments made on CNN about immigrants and immigration reform:

- Dobbs has used the term "anchor babies" to refer to the U.S.-born children of undocumented immigrants, suggesting inaccurately that having a U.S. citizen child is a means of acquiring legal immigration status or being protected from deportation. (*Lou Dobbs Tonight* transcript, 3/31/05).
- Dobbs refers frequently to illegal aliens from Mexico into the United States as the "invasion" and as an "army of invaders" (*Lou Dobbs Tonight* transcript, 3/31/06). One of his reporters referred to a visit from Mexico's then-President Vicente Fox as a "Mexican military incursion."
- Dobbs linked illegal aliens to a host of diseases including tuberculosis, malaria, and leprosy. In 2005, a reporter on the show claimed that there had been 7,000 new cases

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of leprosy in the previous three years (*Lou Dobbs Tonight* transcript, 4/14/05). This claim has been disputed by the Centers for Disease Control and Prevention.[10] To date, and despite protests to the contrary, Dobbs has never acknowledged the error on his show.

- Dobbs has featured several stories on *Lou Dobbs Tonight* concerning the "reconquest" of the American Southwest. In one 2005 segment, a map purportedly showing "Aztlan" was provided to the show by the Council of Conservative Citizens, a prominent White supremacist organization (*Lou Dobbs Tonight* transcript, 5/23/06).

- Dobbs has also been a cheerleader for the Minuteman Project. He devoted extensive coverage to the Minuteman's first action in 2005, calling the group a "remarkable success." Minuteman leaders were frequent guests on *Lou Dobbs Tonight*, and on one occasion Dobbs wished one "all the success in the world."[11]

- Dobbs featured on *Lou Dobbs Tonight* the late Madeline Cosman as a "medical expert" in a discussion of the diseases that illegal aliens are bringing into the country. Ms. Cosman was not a medical doctor, but a prominent anti-immigrant activist who stated that Mexican immigrants were prone to molesting children (*Lou Dobbs Tonight* transcript, 6/8/05).

- As noted above, the Council of Conservative Citizens, one of the most well-known White supremacist groups in the country, was featured as a "source" in a 2006 segment on the show.[12]

On May 2, 2007, Dobbs held a special "Broken Borders" town hall meeting edition of *Lou Dobbs Tonight* in Hazelton, Pennsylvania to spotlight that town's passage of its "Illegal Immigrant Relief Act." This town ordinance sought to suspend the business permits and licenses of employers who hired "unlawful workers" or landlords who rented to illegal aliens. During the show, Dobbs praised the town: "Hazleton, the community, is leading the battle against illegal immigration, stepping in where the federal government has simply failed to perform its duty." The website of the *Lou Dobbs Tonight* show solicited contributions for the town's "legal defense fund" after a lawsuit filed by MALDEF and the American Civil Liberties Union (ACLU) prevented the law from taking effect.[13]

Fourteen months later, 20 miles from Hazelton in Shenandoah, Pennsylvania, Luis Ramirez, a 25 year-old Mexican and father of two, was murdered because of his ethnicity in a brutal beating allegedly by four current and former high school football players. The teenagers reportedly yelled, "This is Shenandoah, this is America, go back to Mexico," as well as ethnic slurs. They then repeatedly punched Ramirez, knocking him to the ground, and then kicked him multiple times in the head. As Ramirez lay unconscious, convulsing and foaming at the mouth, one of the assailants reportedly yelled "Tell your fucking Mexican friends to get the fuck out of Shenandoah or you'll be fucking laying next to them." On May 1, 2009, a jury convicted two teens of simple assault, a misdemeanor, acquitting them of the most serious charges brought against them, including murder, aggravated assault, and ethnic intimidation. A third teen faces counts of aggravated assault and ethnic intimidation in juvenile court, while a fourth pleaded guilty in federal court to violating Ramirez's civil rights in exchange for charges of third-degree murder, aggravated assault, and related counts against him being dropped.

Shenandoah had been considering an ordinance similar to Hazelton's but held off after the ACLU and MALDEF lawsuit blocked it from taking effect. Still, the Hazelton ordinance caused considerable tension between the town's Hispanic and white communities, which had formerly enjoyed peaceful relations. "They (the Hispanic community) just didn't feel comfortable then," said Flor Gomez, whose family runs a Mexican restaurant in Shenandoah. As *The New York Times* reported, "Many people believe the debate fueled by Hazleton's actions helped create the environment that led to Mr. Ramirez's death."

"Clearly there were a lot of factors here," said Gladys Limón, a lawyer for MALDEF. "But I do believe that the inflammatory rhetoric in the immigration debate does have a correlation with increased violence against Latinos."[14]

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The State of Hate: White Supremacist Groups Growing

The number of hate groups operating in the United States continued to rise in 2008 and has grown by 54 percent since 2000—an increase fueled last year by immigration fears, a failing economy, and the successful campaign of Barack Obama, according to the Southern Poverty Law Center (SPLC). The SPLC identified 926 hate groups active in 2008, up more than four percent from the 888 groups in 2007 and far above the 602 groups documented in 2000.[15]

"Barack Obama's election has inflamed racist extremists who see it as another sign that their country is under siege by non-whites," said Mark Potok, editor of the *Intelligence Report*, a SPLC quarterly investigative journal that monitors the radical right. "The idea of a black man in the White House, combined with the deepening economic crisis and continuing high levels of Latino immigration, has given white supremacists a real platform on which to recruit."[16]

The DHS assessment on right-wing extremism, which was provided to federal, state, and local law enforcement, warned that right-wing extremists "may be gaining new recruits by playing on their fears about several emergent issues. The economic downturn and the election of the first African American president present unique drivers for rightwing radicalization and recruitment."

In the days prior to the presidential election, Daniel Cowart, 20, of Bells, Tennessee and Paul Schlesselman, 18, of West Helena, Arkansas were arrested by federal agents for allegedly plotting to assassinate Obama followed by a plan to engage in a multi-state "killing spree." The men met through the Internet and planned to shoot 88 African Americans and behead another 14. Targets included a predominantly African-American school. At the end of the alleged spree, the men intended to try to kill Obama. "88," an important number in skinhead numerology, means "Heil Hitler"—as "H" is the eighth letter of the alphabet. "14" likely refers to the "14 Words," a white supremacist slogan that originated with the late David Lane. Lane died last year in prison while serving a sentence for his role in an assassination plot carried out by The Order, a white supremacist terrorist group that was destroyed in 1984. One of the suspects, Cowart, is a known member of a new skinhead hate group, the Supreme White Alliance (SWA), formed at the beginning of 2008, according to the Southern Poverty Law Center. He attended a birthday party for Adolf Hitler held last April by the group. SWA is headed by Steven Edwards, son of Ron Edwards, who leads the Imperial Klans of America.[17]

After Obama's election victory in November, white supremacist online activity spiked, with people posting hundreds of messages to online forums. White supremacist groups and individuals claimed that the Obama presidency, the immigration issue, and tough economic times would serve as powerful catalysts for recruiting more people to the white supremacist movement. Jeff Schoep, head of the National Socialist Movement, the largest Neo-Nazi group in America, said interest in the NSM "has really spiked up," but would not reveal by how much.[18] Don Black, a 55 year-old former Ku Klux Klan Grand Wizard, claimed more than 2,000 people joined his website on the day after Obama's election, up from 80 on an ordinary day. Started in 1995, Black's website is one of the oldest and largest hate group sites, now claiming 110,000 members. As David Duke, a former Klan leader who was once a member of the Louisiana legislature, has said, Obama is a "visual aid" that galvanizes the white supremacist movement.[19]

According to Schoep, extremists are also exploiting the economic crisis, spreading propaganda that blames minorities and immigrants for the subprime mortgage meltdown. "Historically, when times get tough in our nation, that's how movements like ours gain a foothold," he said. "When the economy suffers, people are looking for answers. ... We are the answer for white people."[20] Membership in the National Socialist Movement has grown by 40 percent in recent months, according to Schoep,

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the "most dramatic growth" since the mid-1990s, mostly because of the nation's dire economic circumstances. "You have an American work force facing massive unemployment. And you have presidents and politicians flinging open the borders telling them to take the few jobs left while our men are in soup kitchens."[21]

In Pennsylvania, where the Hispanic population has increased 41 percent from 2000 through 2007, "Keystone United," a hate group that recently changed its name from "Keystone State Skinheads," has used the immigration issue to recruit new members. "A lot of these small working-class towns are being invaded by different types of people," said Douglas Myers, one of Keystone United's founders. *USA Today* described Keystone United as a group that "speaks out for the rights of whites being pushed aside by newcomers." The group plans family-friendly outings, meets in public libraries, and avoids the violence traditionally associated with skinheads. "It's not the footage from the '80s with people burning crosses. It's a very healthy environment," said Myers.[22]

Ann Van Dyke of the Pennsylvania Human Relations Commission said of Keystone United: "It appears they are tapping into and fanning the flames of mainstream America's fear of immigrants. They are increasingly using the language of Main Street, things like, 'We want safe communities to raise our children.'"[23]

"Many white supremacist groups are going more mainstream," said Jack Levin, a Northeastern University criminologist who studies hate crime. "They are eliminating the sheets and armbands. ... The groups realize if they want to be attractive to middle-class types, they need to look middle-class." Levin estimated fewer than 50,000 people are members of white supremacist groups, but he says their influence is growing with a more sophisticated approach.[24]

DHS assesses that since the 2008 election, right-wing extremists "have capitalized on related racial and political prejudices in expanded propaganda campaigns, thereby reaching out to a wider audience of potential sympathizers."

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The State of Hate: Exploiting the Internet to Promote Hatred

Extremists have taken advantage of the open forums and venues on the Internet, as well as new technologies, to promote their bigoted ideology. Whereas hate mongers once had to stand on street corners and hand out mimeographed leaflets to passersby, the Internet has allowed extremists to access a potential audience of millions—including impressionable youth. It has also facilitated communication among like-minded bigots across borders and oceans, anonymously and cheaply enhancing their ability to promote and recruit for their cause.

During the period 2005-2008, white supremacists spread their hate messages and recruited new members through the use of social networking on mainstream sites such as *MySpace* or *Facebook* and extremist sites such as *NewSaxon*. Thousands of white supremacists have flocked to these sites, which allow them to link to other individuals much more easily than web-based forums or discussion groups. The two white supremacists arrested in the fall of 2008 for plotting a racist shooting spree and assassination attempt on Barack Obama were reportedly introduced to each other by a mutual friend on a social networking website. Even members of racist prison gangs have flocked to these sites and use them regularly.

In 2008, there has been a marked increase in anti-Semitic material in online discussion groups hosted on such mainstream websites as *Yahoo!*, *Google*, and *AOL*. Although there have been anti-Semitic comments on various online groups for some time, the number of these postings has doubled on *Yahoo! Finance* message boards as a result of the global economic crisis in the United States and the Bernard Madoff financial scandal. In addition, the recent comments have been more virulently anti-Semitic. These anti-Semitic postings have continued as the financial crisis has deepened. *Yahoo!*, however, has taken down many of the comments after they have been posted.

Haters are finding new and creative ways to spread their message. Many online newspapers allow readers to post comments after each article. Extremists are taking advantage of these open online venues to post anti-Semitic and racist comments, often completely unrelated to the article to which they are attached. In the wake of the Madoff scandal, the Florida-based *Palm Beach Post* had to disable its comments section due to the avalanche of anti-Semitic comments.

Anti-Semites and racists have found video-sharing websites, such as *YouTube* and *MySpace Video*, an effective means to promote propaganFda and hateful material that might not otherwise be seen by the public. Internet users who search video-sharing sites will often find anti-Semitic and racist videos when looking for information completely unrelated to the videos due to misleading tags and titles that extremists attach to the videos when uploading them to the sites.

Extremist groups and individuals are reformatting their websites to make them accessible to as many people as possible on Internet-enabled cell phones through *Mobile Web*. For example, *Stormfront*, the largest and most popular white supremacist forum on the Internet, and the *Vanguard News Network* forum, another popular white supremacist site, are fully accessible and searchable via a cell phone.

Although hate speech is offensive and hurtful, the First Amendment usually protects such expression. Beyond spreading hate, however, there is a growing, disturbing trend to use the Internet to intimidate and harass individuals on the basis of their race, religion, sexual orientation, or national origin. When speech contains a direct, credible threat against an identifiable individual, organization, or institution, it crosses the line to criminal conduct. Hate speech containing criminal threats is *not* protected by the First Amendment.

Criminal cases concerning hate speech on the Internet have, to date, been few in number. The Internet is vast and perpetrators of online hate crimes hide behind anonymous

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screen names, electronically garbled addresses, and websites that can be relocated and abandoned overnight. Those who send threatening e-mail communications through the Internet may convey these messages anonymously across state lines to victims in another part of the country. Prosecutors face the daunting task of identifying the perpetrator, collecting and preserving evidence, and establishing jurisdiction over the criminal act.

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THE INTERNATIONAL COMPONENT

Bias-motivated violence has been on the rise in many countries across Europe, the former Soviet Union, and North America—in some cases more than doubling in the last five years. Racism, anti-Semitism, xenophobia, anti-Muslim and anti-Roma bias, religious intolerance, disability bias, and homophobia are among the prejudices that have fueled hate crimes in those countries. That trend toward rising violence continued in 2007 and 2008 for several types of hate crime, including anti-Semitic, racist, and homophobic attacks. Although official data is available only for a minority of countries—mostly on racist violence alone—there were moderate to high rises in the officially recorded numbers of such attacks in 2006 and 2007 in Finland, Ireland, the Slovak Republic, Sweden, and the United Kingdom.

Information from nongovernmental monitors showed rising levels of racist violence in Greece, Italy, the Russian Federation, Spain, Switzerland, and Ukraine. A 2007 European crime victimization survey of people of immigrant background revealed high levels of hate crimes in Greece, Italy, Portugal, and Spain, despite the virtual absence of official data in those countries.

People of African origin and Roma were the targets of particularly frequent and extreme acts of racist and xenophobic violence in 2007 and 2008. Refugees and asylum seekers were also victims of numerous racist attacks. Anti-Muslim violence fueled by both racism and religious hatred continued at high levels, notably in France, Germany, and the United Kingdom. Mosques were desecrated or set alight, cemeteries were vandalized, and Muslim religious leaders, ordinary Muslims, and those perceived to be Muslim were targeted for sometimes deadly assaults.

The level of personal violence motivated by anti-Jewish prejudice remains historically high in many countries of Europe and North America. Anti-Semitic violence rose in Canada, Germany, the Russian Federation, Ukraine, and the United Kingdom. Violent attacks on persons as a proportion of overall incidents continued to rise in the United Kingdom and remained at high levels in France. Hundreds of Jewish cemeteries and memorials were vandalized throughout much of the region, mostly with impunity.

In the Russian Federation, Turkey, and the Central Asian republics, bias attacks on minority Christian faiths were increasingly common. Adherents of religions deemed by governments to be nontraditional in Eastern Europe and the Former Soviet Union were among those targeted for violence, sometimes in the context of government restrictions on religious activities and official rhetoric that vilifies such groups.

In Ireland and the United Kingdom, a new pattern of violence emerged in which Eastern European immigrants from the newly expanded E.U. were targeted with violent assaults, firebombs, and murder. In Germany, Greece, and Switzerland, anti-immigrant political campaigns generated new waves of racist violence against immigrants. In Switzerland, there were at least six firebomb or gunfire attacks on housing for asylum seekers in 2007.

In Italy, in 2007 and 2008, anti-Roma rhetoric by top leaders combined with aggressive anti-immigration policies to help generate racist violence at a level unprecedented in recent history. In several Italian cities, pogroms devastated Roma communities housing both Italian nationals and Roma immigrants. Attackers terrorized Roma and burned their settlements to the ground as police in some cases stood by. Some public officials added fuel to the fire by calling to eradicate the presence of Roma in towns and cities in official statements both before and after the attacks.

In Ukraine and the Russian Federation, extreme nationalists targeted immigrants and national minorities considered to be "dark-skinned" for assaults and, increasingly, murders. In the Russian Federation—where the leading NGO monitor of

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hate crimes documented nearly 100 racist or other bias-motivated murders in 2008—racial chauvinist attackers, in a new phenomenon, video-taped the execution style murders and attacks of minority victims.

Continuing violence motivated by hatred and prejudice based on sexual orientation and gender identity, though still largely unseen, is an intimidating day-to-day reality for people across Europe and North America. As in the past, the years 2007 and 2008 saw the greatest public visibility for LGBT persons in the form of gay pride parades, although that visibility triggered violence and other manifestations of intolerance in several countries. While gay pride events in Eastern Europe have frequently been targeted for verbal and physical attacks, increased official protection was reported in 2007 and 2008 in a number of countries in contrast to previous years, including Croatia, Estonia, Latvia, Poland, Romania. In others, such as Moldova and the Russian Federation, the authorities themselves continued to contribute to the danger faced by the participants in gay pride parades. In Bulgaria, the Czech Republic, Hungary and Slovenia, violent attacks occurred despite police action to protect the marchers.

GOVERNMENT AND INTERGOVERNMENTAL RESPONSES

Overall, government responses to the rise of bias-motivated violence have been inadequate. Despite making official commitments to combat hate crime, many governments have yet to introduce necessary legislative tools, carry out official monitoring of incidents, or implement police training, educational, and community engagement programs that would contribute to a more robust response to the problem.

While more governments are now responding to hate crime violence with monitoring and reporting systems, these governments still represent a significant minority. Some 40 governments (among the 56 states of the Organization for Security and Cooperation in Europe—the OSCE) do not collect and report expressly on violent hate crimes of any kind, or do so in an extremely limited manner. Even where data on racist violence may be developed, official data is often poorly disaggregated and does not cover certain bias crime, such as anti-Roma and anti-Muslim violence. Civil society groups help to fill these gaps in many countries, and have been instrumental in pointing out failures in government responses.

Though more than 38 of the 56 OSCE states have hate crime legislation of some kind, others have no such provisions. Even when hate crime legislation is on the books, most countries fall short on implementation. Italy, Spain, and Ukraine, for example, have hate crime legislation, but almost nothing to show with regard to reporting or prosecutions for hate crime incidents.

Some governments have responded to hate crime violence by strengthening their criminal justice response. This has included new legislation addressing hate crimes in Croatia (defining hate crimes to include a broad range of bias motivations, including sexual orientation and disability bias), Latvia (defining racist motivation as an aggravating circumstance), Portugal (on sexual orientation bias crimes). Others, like France, Sweden, and the United Kingdom have seen the benefit of major initiatives by law enforcement and prosecution services to introduce training and procedures making the implementation of hate crime legislation a major priority.

European countries' criminal law most commonly addresses hate crimes motivated by racism (including bias motivated by national origin, ethnicity, and xenophobia) and religious intolerance. Hate crime laws extend to sexual orientation bias in twelve of the 56 OSCE countries, with disability bias covered in only seven.

On an intergovernmental level, the OSCE has addressed hate crimes as a human rights issue and as a threat to regional security. In a series of high-level decisions, OSCE participating states have made commitments to monitor hate crimes and to regularly report on these findings and measures taken to combat them. The organization—particularly through its Office for Democratic Institutions and Human Rights' (ODIHR) Tolerance and Non-Discrimination Unit—has provided a unique forum to address hate crimes that brings together the governments of Europe, Central Asia, and North America. Among other initiatives, the OSCE has hosted a series of international conferences, round tables, and consultations on anti-Semitism, racism and xenophobia, anti-Roma bias, and anti-

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Muslim bias; appointed three personal representatives to the Chairman-in-Office on combating various forms of discrimination; provided training for law enforcement and civil society groups monitoring hate crimes; and produced regular reporting on hate crimes and measures to combat them.

As part of one recent initiative, the ODIHR recently published new guidance designed to establish a common framework for improving responses to hate crimes within the OSCE. The new publication, *Hate Crime Laws: A Practical Guide*, provides practical and accessible advice for lawmakers, community-based organizations, and law enforcement personnel charged with prevention and effective response to bias-motivated violence. The *Guide* is drafted to reflect the many different legal systems and traditions from the 56 nations that comprise the OSCE. The *Guide* has been already been used by ODIHR as the basis for legislative reviews and training sessions and has been translated into several languages, including French, Russian, and German.

INTERNATIONAL POLICY RECOMMENDATIONS FOR THE GOVERNMENT OF THE UNITED STATES

To demonstrate international leadership and reduce the number of hate crimes worldwide, the United States should take the following steps:

Demonstrate International Leadership at the OSCE

Take a leading political role in advancing the OSCE's tolerance and nondiscrimination agenda by ensuring support and guidance for the OSCE Chairman-in-Office's three personal representatives on combatting intolerance and the ODIHR's Tolerance and Non-Discrimination Unit, as well as ensuring continued high-level discussions on hate crimes within the framework of the organization.

Provide for extrabudgetary contributions, secondment of personnel, and other in-kind support for OSCE programs to combat violent hate crimes, including making available its law enforcement expertise. In this connection, undertake a process to assess and reform the current mechanism of budget allocation by the State Department to ensure that the United States meets its funding obligations to the OSCE in a timely manner.

Advocate in Bilateral Relationships and Offer Technical Assistance

Promote stronger government responses to violent hate crime among OSCE participating states through U.S. reporting as well as the bilateral relationships of the United States with those countries, by:

- Maintaining strong and inclusive State Department monitoring and public reporting on racist, xenophobic, anti-Semitic, anti-Muslim, homophobic, anti-Roma, and other bias-motivated violence—including by consulting with civil society groups as well as providing appropriate training for human rights officers and other relevant mission staff abroad.
- Raising violent hate crime issues with representatives of foreign governments and encouraging, where appropriate, legal and other policy responses, including those contained in Human Rights First's ten-point plan for governments to combat violent hate crime (available at: http://www.humanrightsfirst.org/discrimination/pages.aspx?id=152).
- Offering appropriate technical assistance and other forms of cooperation, including training of police and prosecutors in investigating, recording, reporting and prosecuting violent hate crimes.

Support Civil Society Organizations

Expand funding and other support to build the capacity of civil society groups in the OSCE region to combat violent hate crimes, by:

- Providing extrabudgetary support to expand ODIHR's civil society training program on combating hate crimes.
- Ensuring that groups working to combat all forms of violent hate crime have access to support under existing U.S. funding programs, including the Human Rights and Democracy Fund and programs for human rights defenders.

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The Human Face of Hate Crimes

HATE CRIMES AGAINST AFRICAN AMERICANS

Despite the election of our nation's first African-American president, African Americans remain by far the most frequent victims of hate crimes. Of the 7,624 hate crime incidents reported nationwide in 2007, the most recent year for which data is available, 34 percent (2,659) were perpetrated against African Americans, a number and percentage of incidents that has changed little over the past 10 years. According to the FBI's HCSA report, more than twice as many hate crimes were reported against African Americans as against any other group.

From lynching, to burning crosses and churches, to murdering a man by chaining him to a truck and dragging him down a road for three miles, anti-black violence has been and still remains the prototypical hate crime, intended not only to injure and kill individuals but to terrorize an entire group of people. Hate crimes against African Americans have an especially negative impact upon society for the history they recall and perpetuate, potentially intimidating not only African Americans, but other minority, ethnic, and religious groups.

Examples of recent hate crimes committed against African Americans include:

- On Election Night 2008, Ralph Nicoletti and Michael Contreras, both 18, and Brian Carranza, 21, of Staten Island, New York decided shortly after learning of Barack Obama's election victory "to find African Americans to assault," according to a federal indictment and other court filings. The men then drove to a predominantly African-American neighborhood in Staten Island, where they came upon a 17 year-old African American who was walking home after watching the election at a friend's house. One of the defendants yelled "Obama!" Then, the men got out of the car and beat the youth with a metal pipe and a collapsible police baton, injuring his head and legs. The men went on to commit additional assaults that night. Their hate crime spree culminated with crashing their car into a man who they mistakenly believed to be African-American, causing his body to shatter the windshield. While the victim ultimately survived the attack, he was in a coma for a period of time.[26] Brian Carranza pleaded guilty to conspiring to assault Staten Island residents after the election of President Obama and faces 10 years in prison. Nicoletti and Contreras pleaded not guilty.[27]

- Justin Sigler, 19, of Natchitoches, Louisiana, pleaded guilty in December 2008 to conspiring with two other individuals to violate the civil rights of a man in Lena, Louisiana who was the first African American to move into a home in the neighborhood. Sigler and two others fired shotguns at a target on a field adjacent to the victim's property before one member of the group turned his shotgun away from the target and toward the victim and his house. The next evening, Sigler, dressed in a white robe as a member of the Ku Klux Klan, went with his co-conspirators to a field adjacent to the victim's residence and shouted, "White Power!" and "White Knights!" Shaken by these events, the family eventually sold their home.[28]

- William A. "Bill" White, the self-proclaimed Commander of the American National Socialist Workers Party, a neo-Nazi group, was indicted by a federal grand jury for, among other charges, using intimidation to delay or prevent the testimony of African- American tenants in an official court proceeding. The tenants were involved in a discrimination case against their landlord. On May 23, 2007, White allegedly mailed letters to the African-American tenants at their Virginia Beach, Virginia homes. The letters displayed the letterhead of the White National Socialist American Working Party, a Nazi swastika and White's signature and title. The letters read, in part: "I do not know [name redacted] but I do know your type of slum nigger, and I wanted you to know that your actions have not been missed by the white community ... and we know that you

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are and will never be anything other than a dirty parasite—and that our patience with you and the government that coddles you runs thin." In addition to the letter, White also included a copy of the ANSWP Magazine titled "The Negro Beast and Why Blacks Who Work Aren't Worth the Cost of Welfare."

The indictment also charged that White threatened to injure "LP," an African-American journalist. On June 3, 2007, at approximately 11 p.m., White called LP's personal telephone at his Bowie, Maryland home and spoke with LP's wife. Fifteen minutes later, White sent LP an e-mail, which read, in part: "You and your fellow black filth are quickly losing ground and I look forward to the rapidly approaching day when whites once again rise up and slaughter and enslave your ugly race to the last man, woman and child. Itz [sic] coming." White then listed LP's personal home phone number, date of birth, home address, and wife's name on overthrow.com and other websites frequented by white supremacists. At the end of the post, White wrote, "His wife gets very upset when you call."

Another count of the indictment charged White with threatening to injure "CT," the African-American mayor of a town in New Jersey. On March 1, 2008, White contacted CT via telephone and spoke with CT's wife. He identified himself as the Commander of a Neo-Nazi organization and told CT's wife that he knew where she lived and was going to put a swastika on her front yard. Soon after, White sent an e-mail to CT, which read, in part, as follows: "I recently read of the racism you've faced in New Jersey, and I wanted to make something perfectly clear:

> 1. You are a nigger unworthy to govern over any white man; and,
>
> 2. Fuck you. You've gotten exactly what you deserve from your constituents.

"Unfortunately, the days when white men would simply burn the local newspaper and run the nigger officials out with tar and feathers are past. However, your incidents give me hope that perhaps we shall see them again. ... ps: we know where you live at [CT's address and phone number]. I just spoke to your wife [CT's wife's name]. I hope you got my message."[29]

- Benjamin Haskell, 22, Michael Jacques, 24, and Thomas Gleason, 21, all of Springfield, Mass., were arrested on January 16, 2009 for allegedly burning and entirely destroying the Macedonia Church of God in Christ, a predominantly African-American congregation's nearly completed new church building. The building was burned to the ground on Nov. 5, 2008, hours after the election of President Barack Obama. Investigators determined the fire was caused by gasoline applied to the exterior and interior of the building.[30] The three men were indicted by a federal grand jury on January 27, 2009 for conspiring to burn the church in retaliation for the election results.[31]

- Steven Sandstrom, 23, and Gary L. Eye, 22, both of Kansas City, Missouri were sentenced to multiple life sentences on September 9, 2008 for the racially-motivated murder of William L. McCay on March 9, 2005. While McCay was walking to work one morning, Eye attempted to shoot McCay with Sandstrom's gun as they were driving in a stolen car. He missed and McCay fled. Eye and Sandstrom, afraid that McCay would report them to the police, pursued him. At the next block, Eye got out of the car and fatally shot him.[32]

HATE CRIMES AGAINST HISPANICS

In the five years from 2003-2007, the number of hate crimes reported against Hispanics increased nearly 40 percent (from 426 in 2003 to 595 in 2007). Of all hate crimes reported in the United States in 2007, 7.8 percent were committed against Hispanics. Of hate crimes in 2007 motivated by bias due to the victim's ethnicity or national origin, nearly 60 percent were committed against Hispanics, up nearly 50 percent from 2003. This alarming increase, and its correlation to increasingly virulent anti-immigrant rhetoric, is discussed above in *The State of Hate: Escalating Hate Violence Against Immigrants*. Other examples of recent hate crimes committed against Hispanics include:

- In Brooklyn, New York on December 7, 2008, Jose Osvaldo Sucuzhañay, a 31 year-old Ecuadorian and father of two, was walking home from a bar and a church party with his brother, their arms around each other, as is common among men in many Latino cultures. Three men

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drove up to the brothers yelling anti-gay and anti-Hispanic slurs. While his brother escaped, Sucuzhañay, who ran a local real estate agency and had lived in New York for a decade, was struck on the head by a beer bottle and fell to the ground. Another attacker beat his head with an aluminum baseball bat. The three attackers continued kicking and punching him. Suffering severe head fractures and extensive brain damage, he died two days later.[33] Keith Phoenix, 28, and Hakim Scott, 25, were indicted on March 3, 2009. The two men were charged with second-degree murder, manslaughter and assault, all as hate crimes, and could face 78 years to life in prison. Both men claim that they are not guilty.[34]

- On Long Island, New York on November 8, 2008, Marcelo Lucero, a 37 year-old Ecuadorian real estate agent, was beaten and fatally stabbed by seven teenagers who were driving around to "go find some Mexicans to f— up." The teens spotted Lucero and a friend, then proceeded "[l]ike a lynch mob...got out of their car and surrounded Mr. Lucero," beating and stabbing him, according to the local prosecutor. The teenagers, all 17 and 16 years old, were charged with felony gang assault. One of them was also charged with manslaughter as a hate crime. Steve Levy, the County Executive of Suffolk County, where the murder occurred, has frequently and forcefully spoken out against immigrants, including on *Lou Dobbs Tonight*.

The New York Times editorialized about Lucero's death and hate crimes against Latinos:

> *A possible lynching in a New York suburb should be more than enough to force this country to acknowledge the bitter chill that has overcome Latinos in these days of rage against illegal immigration.*
>
> *The atmosphere began to darken when Republican politicians decided a few years ago to exploit immigration as a wedge issue. They drafted harsh legislation to criminalize the undocumented. They cheered as vigilantes streamed to the border to confront the concocted crisis of Spanish-speaking workers sneaking in to steal jobs and spread diseases. Cable personalities and radio talk-show hosts latched on to the issue. Years of effort in Congress to assemble a responsible overhaul of the immigration system failed repeatedly. Its opponents wanted only to demonize and punish the Latino workers on which the country had come to depend.*
>
> *A campaign of raids and deportations, led by federal agents with help from state and local posses, has become so pervasive that nearly 1 in 10 Latinos, including citizens and legal immigrants, have told of being stopped and asked about their immigration status, according to the Pew Hispanic Center. Now that the economy is in free fall, the possibility of scapegoating is deepening Hispanic anxiety.*[35]

HATE CRIMES AGAINST JEWS

In 2007, there were 969 reported hate crimes committed against Jews, according to the FBI, constituting 12.7 percent of all hate crimes reported and 69 percent of religious bias hate crimes reported.

The Jewish community—unlike some new immigrant communities—has long understood the importance of reporting crimes directed against community members and institutions. The Anti-Defamation League has been collecting information on anti-Semitic incidents since 1979. Using official crime statistics and information provided to ADL's regional offices by victims, law enforcement officials, and community leaders, the ADL's Audit provides an annual snapshot of this activity and helps identify possible trends. In 2007 (the most recent report available), the League reported 1,460 incidents—761 directed at individuals and 699 directed at institutions.[36]

The Nazi swastika, one of the most powerfully-enduring symbols of anti-Semitism and religious and ethnic hatred, has been present in hundreds of attacks against buildings, synagogues, cemeteries, and private homes over the past few years. In September 2007, for example, a massive swastika, the size of a football field, was carved into a New Jersey cornfield.

Hate groups continue to utilize the Internet to spread their message of anti-Semitism and hate. In recent years, groups

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such as the National Socialist Movement and Ku Klux Klan actively contributed to the continued Internet circulation of anti-Jewish conspiracy charges and theories of Jewish control of government, finance, and the media. There are thousands of hate sites on the Internet, and they continue to multiply. Many of these sites include Internet radio shows and downloadable music and games with anti-Semitic themes and propaganda. Extremists also continued to exploit social networking sites, such as *MySpace, Facebook, YouTube*, and blogs, using text messages and videos to propagate anti-Semitism.

Examples of recent anti-Semitic hate crimes include:

- On June 10, 2009, a white supremacist and anti-Semite entered the U.S. Holocaust Memorial Museum on the Mall in Washington, DC and opened fire, killing a security guard, Stephen T. Johns, before being critically wounded himself. The shooter, James Von Brunn, has published an anti-Semitic book and created an anti-Semitic Web site, on which he posted Holocaust denial essays and embraced various conspiracy theories involving Jews, blacks and other minority groups. He had been arrested and imprisoned in 1981 for using a sawed-off shotgun to try to take Federal Reserve Board members hostage on the grounds that Jews control the nation's banking system.

  That night, President Obama issued a statement saying, in part, "This outrageous act reminds us that we must remain vigilant against anti-Semitism and prejudice in all its forms. No American institution is more important to this effort than the Holocaust Museum, and no act of violence will diminish our determination to honor those who were lost by building a more peaceful and tolerant world." Later in the week, the House of Representatives passed H Res 529 and the Senate passed S Res 184 to condemn the attack, support the important work of the Holocaust Museum, and express condolences to the family of Officer Johns.

- On May 20, 2009, four New York residents were arrested for an alleged plot to attack two synagogues in the Bronx and to shoot down planes at a military base in Newburgh, New York. They were arrested after planting what they believed to be bombs in cars outside of the Riverdale Temple and the nearby Riverdale Jewish Center. They also plotted to destroy military aircraft at the New York Air National Guard Base located at Stewart Airport in Newburgh, New York.

  Evidence indicates that the four perpetrators were Muslims and were motivated to act because of their hatred of America and Jews. "These were people who were eager to bring death to Jews," Assistant U.S. Attorney Eric Snyder said at a court hearing the day after the arrests. "These are extremely violent men." Authorities said the men were angry over the U.S. war in Afghanistan and had voiced hatred of Jews

  The men reportedly began surveillance of several synagogues and a Jewish Community Center in the Bronx in April 2009. In preparation for the attack, the men went to a warehouse in Stamford, Connecticut to obtain what they believed to be a surface-to-air guided missile system and three IEDs, which they transported back to Newburgh. The men also purchased a semiautomatic handgun to use during the planned terrorist operation.

  On June 2, the U.S. District Court in New York returned an eight-count indictment against the four suspects, adding three counts of attempting to use weapons of mass destruction and two counts of conspiracy to kill U.S. officers and employees.

- In December 2007, four Jewish students from Hunter and Baruch Colleges in New York City were assaulted on a subway train by a group of eight assailants as they wished people a happy Hanukkah. At least two victims were punched in the face, and a knife was pulled. Police arrested the assailants after the train was stopped.

- In January 2008, more than 50 headstones were overturned and vandalized in a northwest Chicago Jewish cemetery. The headstones were sprayed with anti-Semitic images, such as swastikas and the Star of David hanging from a gallows. Some grave markers also contained white supremacist symbols. A 21 year-old self-professed neo-Nazi was arrested and charged with felony hate crime and felony criminal damage to property.

- In July 2006, an individual forced his way into the building of the Jewish Federation of Greater Seattle and went on a mur-

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derous rampage, killing one woman, Pam Waechter, 58, and seriously injuring five others, one of whom was 17 weeks pregnant. Eyewitnesses reported that the murderer, a U.S. citizen of Pakistani descent, forced his way through a security door and announced "I'm a Muslim American; I'm angry at Israel" as he began shooting. The perpetrator told a 911 dispatcher "I want these Jews to get out....I'm upset at your foreign policy. These are Jews...." He was arrested and charged with fifteen felony counts, including murder. In June 2008, a jury deadlocked on the question of the insanity of the perpetrator. The King County prosecutor has promised to retry the case. The trial is scheduled for October 2009.[37]

HATE CRIMES AGAINST ASIAN PACIFIC AMERICANS

Ignorance, racism, and anti-immigrant sentiment cause hate violence targeting of Asian Pacific Americans of Chinese, Japanese, Korean[15], or Vietnamese descent, and other heritages. In 2007, 2.5 percent of all reported hate crimes (188 out of 7,624) were committed against Asian Pacific Americans, a ratio that has declined slightly relative to other groups over the past decade.

This decline obscures an extremely disturbing fact: many of these hate crimes are perpetrated against Asian Pacific American children, often by other children. In a troubling article titled "Asian Youth Persistently Harassed By U.S. Peers," the Associated Press chronicled these hate crimes committed against Asian Pacific American youth:

- In 2005, while waiting on a subway platform in Brooklyn, New York, 18 year-old Chen Tsu was accosted by four high school classmates who demanded his money. After Tsu showed his classmates his pockets were empty, they assaulted him, taking turns beating his face. Tsu was scared and injured—bruised and swollen for several days—but hardly surprised. At his school, Lafayette High in Brooklyn, Chinese immigrant students like him are harassed and bullied so routinely that school officials in June agreed to a Department of Justice consent decree to curb alleged "severe and pervasive harassment directed at Asian-American students by their classmates." Said Tsu after his beating, "Those guys looked like they could kill somebody. ... I was scared to go back to school."
- In South Boston, 16 year-old Vietnamese student Bang Mai was killed on July 11, 2004 in a massive brawl between white and Vietnamese youths. The basketball court brawl was the result of weeks of tension between the two groups. Mai was fatally stabbed as he attempted to walk away from the brawl. Sixteen year-old Keith E. Gillespie was convicted of manslaughter and sentenced to five years in prison.[38]
- In Fresno, California at Edison High School, Hmong students had been taunted and had food thrown at them during lunch. On February 25, 2005, the taunts escalated into fights involving at least 30 students, resulting in numerous injuries, suspensions, and expulsions. Eight students were convicted of misdemeanor assault.[39]

Across the nation, the Associated Press found that Asian students say they are often beaten, threatened, and called ethnic slurs by other young people, and school safety data suggest that the problem may be worsening. Youth advocates say these Asian teens, stereotyped as high-achieving students who rarely fight back, have for years borne the brunt of ethnic tension as Asian communities expand and neighborhoods become more racially diverse. "We suspect that in areas that have rapidly growing populations of Asian Americans, there often times is a sort of culture clashing," said Aimee Baldillo of the National Asian Pacific American Legal Consortium (now the Asian American Justice Center). Youth harassment is "something we see everywhere in different pockets of the U.S. where there's a large influx of (Asian) people."[40]

Other examples of hate crimes committed against Asian Pacific Americans include:

- In August 2006, four New Yorkers of Chinese descent were attacked in Douglaston, Queens, New York by two white men shouting racial epithets. The white men beat two of the Chinese Americans with a steering wheel locking bar. Kevin M. Brown, 19, of Auburndale, and Paul A. Heavey, 20, of Little Neck, were charged with assault and hate crimes. Douglaston and other nearby communities are now almost one-third Asian, and tensions have escalated. "There's an undercurrent of suspicion of the new immigrant—what are they doing, what are they building, what are they putting in that store?" said Susan Seinfeld, the district manager of Community Board 11, which includes Douglaston. A local City Councilman has intro-

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duced legislation to require store owners to include English translations on signs.[41]

"It definitely doesn't shock me," said one white resident of the area about the attack. "The entire strip of Northern Boulevard in the past four or five years went from German and Italian to Korean."[42]

- In Chicago in September 2007, Du Doan, a 62 year-old Vietnamese man, was pushed off a fishing pier into the icy waters of Lake Michigan, where he drowned. John Haley, 31, a self-described "skinhead,"[43] was charged with first degree murder after he told police how he "pushed our victim in the water—that being taking both hands, shoving them in the back, and literally catapulting him into the water." Earlier, Haley reportedly pushed a second Asian man into Lake Michigan who was able to swim safely to shore and also tried to shove a third Asian man off the pier who fought him off. Despite these reports, police did not charge Haley with a hate crime and have not classified the murder as a hate crime incident.[44]

HATE CRIMES AGAINST ARAB AMERICANS, MUSLIMS, AND SIKHS

Following the terrorist attacks of September 11, 2001, the number of hate crimes directed against Arab Americans, Muslims, and Sikhs escalated dramatically. In 2001, Arab Americans, Muslims, and Sikhs were victimized in nearly five percent of the total number of hate crimes reported that year (481 out of 9,730), a seventeen-fold increase over the prior year. While the number of reported hate crimes against Arab Americans, Muslims, and Sikhs has declined from the peak of 2001, it remains substantially above pre-2001 levels. In 2007, for example, 115 hate crimes were reported—more than four times as many as were reported in 2000.

Examples of hate crimes against Arab Americans, Muslims, and Sikhs include:

- In January 2009, Memphis store clerk Mohammed Al Hadi was murdered by an unknown assailant who calmly took aim and then fired, as if "he has some vendetta." On the same day, at another grocery story nearby, another clerk of Middle Eastern descent was also murdered.

"It's terrible and I hate it because I knew the young man and he was nice," said one community resident. But a community activist warned that the store owners will need "to have a lot of security because this is not the end. This is only the beginning."[45]

The two murders came on the heels of the killing on New Year's Day 2009 of an African American during an angry confrontation with another Middle Eastern store clerk, who police charged with murder. Following the shooting, unknown perpetrators set fire to the store and an employee's car, and activists called for a boycott of "all Arab-owned businesses in the neighborhood."[46]

This incident reveals a significant problem with likely underreporting of hate crimes by law enforcement authorities. As of the date of this report, Memphis Police had classified the deaths of the two Middle Eastern grocery clerks as robberies, not hate crimes.[47] On March 6, 2009 George Williams was arrested and charged with first degree murder in perpetration of a robbery.[48]

- In Berkeley, California in September 2004, eight female Muslim students at the University of California were accosted by three white males who sprayed water on them, pelted them with water bottles, screamed derogatory statements, and mocked the traditional hijabs worn by some Muslim women. One woman was called an "East Oakland nigger." Two of the Muslim women reported that while this was the first time they have been physically confronted in Berkeley, verbal racial taunts are frequent.[49]

- On a Lake Tahoe beach in July 2007, Vishal Wadhwa, 38, suffered fractures of several facial bones and an orbital fracture in one eye after being kicked and beaten by Joseph and Georgia Silva. Wadhwa approached the Silvas after they called him, his fiancée, and her cousin "terrorists," "relatives of Osama Bin Laden," and other slurs. The Silvas mistakenly believed the three victims "were Iraqi or Iranian or Middle Eastern"—in fact, they are all Indian American.

In August 2008, the Silvas pleaded guilty to misdemeanors after a judge dismissed hate crime charges against Joseph Silva, finding that prosecutors had failed to prove that the

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attack was motivated by hate or prejudice or that sufficient force was used to make the crime a felony.[50]

- In October 2008, Gagandeep Singh, a 10 year-old Sikh boy, was assaulted while walking home from school in Wayne, New Jersey by an unknown assailant who threw him to the ground and then cut his hair. To Sikhs, the cutting of hair is a particularly hateful crime, as they consider their hair a gift from God. "He came out of nowhere," Singh said. "He just came up behind me, threw me on the floor, held me with his feet and cut my hair with the knife or scissor. Then I jumped a few fences and ran away because I was so scared." Singh wonders of his assailant, "Why did you cut my hair? What do you want from Punjabis?"

  A few weeks later, a 67 year-old Sikh man was viciously beaten in the same community. "I said, 'What do you want?' And he hit me," Ajit Singh Chima said. "A blow on the nose knocked me to the ground, [then] he kept punching and punching."

  Authorities believe the same assailant committed both crimes and that the motive was hate.[51]

HATE CRIMES AGAINST LESBIAN, GAY, BISEXUAL, AND TRANSGENDER INDIVIDUALS

Reported hate crimes committed against individuals because of their sexual orientation increased in 2007 to 1,265, the highest level in five years. Of all hate crimes reported in 2007, the proportion committed against lesbian, gay, bisexual, and transgender (LGBT) individuals rose to 16.6 percent, also the highest level in five years. According to the FBI's HCSA reports, gay men and lesbians have consistently been the third most frequent target of hate violence over the past decade.

The result of this increase in hate crimes based on sexual orientation is heightened fear and insecurity among LGBT individuals. Says Candace Nichols of the Gay and Lesbian Community Center of Southern Nevada, "Every time I get into an elevator with people, if I'm not by myself, I make sure I'm with a friend. When I go to the bathroom, I always make sure someone is with me, and that's not something I used to do."[52]

"Until we address the root causes of bias toward (LGBT) people, we'll continue to have hate perpetrated against us," says Shawna Virago, a program director for the San Francisco advocacy group Community United Against Violence.[53]

Examples of high profile hate crimes committed against LGBT individuals that have heightened fear and insecurity and perpetuated hate against them include:

- In Richmond, California on December 13, 2008, an openly gay 28 year-old woman was attacked and gang raped by four men, including two juveniles, on a street outside her parked car. The perpetrators took her to a second location and assaulted her again, all the while making slurs about her sexual orientation. As Shawna Virago noted, "The only way we know about (the Richmond) case is because of the bravery of the survivor coming out. Hatred and bias are a routine occurrence for many LGBT people." Two men and a teenager were charged on January 6, 2009. Thirty-one year-old Humberto Hernandez Salvador, 21 year-old Josue Gonzalez, and 16 year-old Darrell Hodges were charged with kidnapping, carjacking and gang rape. A 15 year-old boy was also arrested in connection with the attack.[54] Hate crime enhancements were added to charges against Salvador.[55]

  "What you get is this kind of immature desire to display power," said Jose Feito, a psychology professor at St. Mary's College in Moraga, California. "And so they go looking for easy victims, or suitable victims." "Suitable" in the Richmond case, according to Feito, meant a victim who the perpetrators could marginalize in their minds due to her sexual orientation and gender nonconformity. "That all ties into blaming the victim, who's seen as flaunting their homosexuality."[56]

- In Oxnard, California on February 12, 2008, 15 year-old Lawrence King was sitting in a computer lab at his junior high school when Brandon McInerney, 14, shot him twice in the head as their fellow students watched in horror. "Even before his death, Larry King was notorious," according to press reports. "He was the sassy gay kid who bragged about his flashy attire and laughed off bullying, which for him included everything from name-calling to wet paper towels hurled in his direction. King was an

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easy target—he stood 5 foot 4 and was all of 100 pounds."[57] In McInerney's bedroom, investigators discovered a "trove" of white supremacist literature and drawings, depicting a "racist skinhead philosophy of the variety espoused by Tom Metzger, David Lane and others," according to a prosecution filing with the court. McInerney is being tried as an adult on a murder count, plus a hate crime allegation.[58]

- In Greeley, Colorado on July 16, 2008, Angie Zapata, 20, was fatally beaten by her date after he discovered she was transgender. Zapata's killer, Allen Andrade, told police that after he discovered Zapata had male genitalia, he hit her twice in the head with a fire extinguisher thinking he had, in his words, "killed it." Andrade was reportedly a member of a Colorado gang that is reputed to have a zero-tolerance policy on homosexuality. He was charged with first degree murder and a hate crime.[59] Andrade was found guilty of these crimes on April 22, 2009.

- In Greenville, South Carolina on May 21, 2007, Sean Kennedy, a gay man, died of injuries sustained after he was attacked outside a bar. While making derogatory comments regarding Kennedy's sexual orientation, the assailant fatally beat and punched him until he fell, hitting his head on the pavement. The killer was originally charged with murder, but his charge was reduced to involuntary manslaughter. He was sentenced to five years in prison, which was suspended to three years with credit for the seven months he had already served. He was also ordered to attend both anger management and drug/alcohol management classes. No hate crime was charged as South Carolina is one of only five states (along with Arkansas, Georgia, Wyoming, and Indiana) that do not have a penalty-enhancement hate crime law.[60]

HATE CRIMES AGAINST INDIVIDUALS WITH DISABILITIES

In 2007, 79 hate crimes were reported against individuals with disabilities, one percent of the total reported. This represents a significant increase from the 44 hate crimes (0.44 percent of the total) reported in 2003.

Through much of our country's history and well into the twentieth century, people with disabilities—including those with developmental delays, epilepsy, cerebral palsy, and other physical and mental impairments—were seen as useless and dependent, hidden and excluded from society, either in their own homes or in institutions. Now, this history of isolation is gradually giving way to inclusion in all aspects of society, and people with disabilities everywhere are living and working in communities alongside family and friends. But this has not been a painless process. People with disabilities often seem "different" in the eyes of people without disabilities. They may look different or speak differently. They may require the assistance of a wheelchair, a cane, or other assistive technologies. They may have seizures or difficulty understanding seemingly simple directions. These perceived differences evoke a range of emotions in others, from misunderstanding and apprehension to feelings of superiority and hatred.

Bias against people with disabilities takes many forms, often resulting in discriminatory actions in employment, housing, and public accommodations. Disability bias can also manifest itself in the form of violence—and it is imperative that a message be sent to our country that these acts of bias motivated hatred are not acceptable in our society.

Numerous disability and criminology studies, over many years, indicate a high crime rate against people with disabilities. However, the U.S. Office on Crime Statistics reported in 2002 that in many cases, crime victims with disabilities have never participated in the criminal justice process, "even if they have been repeatedly and brutally victimized." There are a number of challenges for disability-based hate crime reporting. For instance, hate crimes against people with disabilities are often never reported to law enforcement agencies. The victim may be ashamed, afraid of retaliation, or afraid of not being believed. The

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victim may be reliant on a caregiver or other third party to report the crime, who fails to do so. Or, the crime may be reported, but there may be no reporting of the victim's disability, especially in cases where the victim has an invisible disability that they themselves do not divulge.

Perhaps the biggest reason for underreporting of disability-based hate crimes is that disability-based bias crimes are all too frequently mislabeled as "abuse" and never directed from the social service or education systems to the criminal justice system. Even very serious crimes—including rape, assault, and vandalism—are too-frequently labeled "abuse."

In one of the few disability-bias cases successfully prosecuted, in 1999, Eric Krochmaluk, a man with cognitive disabilities from Middletown, N.J., was kidnapped, choked, beaten, burned with cigarettes, taped to a chair, his eyebrows shaved, and ultimately abandoned in a forest. Eight people were subsequently indicted for this hate crime—making this one of the first prosecutions of a disability-based hate crime in America.

The special problems associated with investigating and prosecuting hate violence against someone with a disability makes the availability of federal resources for state and local authorities all that much more important to ensure that justice prevails. To address this need, the pending Local Law Enforcement Hate Crime Prevention Act (LLEHCPA), discussed below, will expand existing federal criminal civil rights protections to include disability-based hate crimes.

It is critical that people with disabilities are covered in the federal hate crimes statute in order to bring the full protection of the law to those targeted for violent, bias-motivated crimes simply because they have a disability.

HATE CRIMES AGAINST WOMEN

The number of hate crimes committed against women, as well as the rate of increase or decrease, is unknown. The reason is that the Hate Crime Statistics Act was passed, signed into law, and reauthorized without including hate crimes against women as a class. Other federal laws and many state hate crime statutes also exclude bias crimes targeting women.

In recent years, many women's advocates have spoken out about the alarming rate of violent physical and sexual assaults against women. Although the most common forms of violence against women have traditionally been viewed as "personal attacks," or even the victim's "own fault," there is growing recognition that many assaults against women are not "random" acts of violence but are actually bias-related crimes. As one advocate testified before Congress "women and girls.... are exposed to terror, brutality, serious injury, and even death because of their sex."

One of the most horrific examples of a gender-based hate crime is the 2006 shooting of 10 young Amish girls at the Georgetown Amish School in Bart Township, Pa., about 60 miles west of Philadelphia. Armed with three guns, two knives, and 600 rounds of ammunition, Charles Carl Roberts IV, 32, burst into the one-room schoolhouse and shot the girls at close range in the back of the head. Five were killed: Lena Miller, 7, and Mary Liz Miller, 8; Naomi Ebersol, 7; Anna Mae Stoltzfus, 12; and Marian Fisher, 13. Five others were seriously wounded. Although Roberts lived in the area, he was not Amish, and reportedly did not know his victims personally. After Roberts arrived at the school, he separated the boys, ages 6 to 13, from the girls, and allowed the boys to leave. He then lined the girls against a blackboard and bound their feet with wire ties and plastic handcuffs before shooting them. Local authorities reported that "[A]pparently there was some sort of an issue in his past that he, for some reason, wanted to exact revenge against female victims."[61]

Existing federal law authorizes involvement in federal crimes in which the defendant "intentionally selects a victim, or in the case of a property crime, the property that is the object of the crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person."[62] In addition, federal investigators and prosecutors have authority to be involved in a limited range of non-federal hate crimes (some cases in which the victim was targeted because of race, color, religion, or national origin) but not violent crimes motivated by the victim's gender. The pending LLEHCPA would fill this gap in current law and would also require the FBI to collect statistics on gender-motivated crimes from police departments across the

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country under the Hate Crime Statistics Act of 1990. These changes are crucial for women who might otherwise not be afforded relief by the criminal justice system.

The pending federal hate crime legislation would not convert every instance of domestic violence, rape, or sexual assault into a prosecution under the federal hate crime law. The law applies only to felony crimes that involve a direct connection to interstate or foreign commerce, which requires, for example, that the perpetrator or victim crossed state lines or that the perpetrator employed a weapon that traveled in interstate commerce. The legislation would also limit federal involvement to those instances in which the Attorney General (or an authorized designee) not only certifies that the crime appears to be motivated by gender bias, and confirms the need for federal intervention by certifying in each instance that local officials cannot or will not act, or have requested federal assistance, or fail to adequately prosecute the incident.

It is important to note that not every violent crime against women is a bias crime, just as not every crime against an African American is based on racial prejudice. Federal courts already routinely assess the question of gender motivation in the context of workplace discrimination claims and claims raised under other federal civil rights laws, such as 42 U.S.C. § 1983. Prosecutors and judges can rely on the same totality of the circumstances analysis—considering the language, nature and severity of the attack, absence of another apparent motive, patterns of behavior, and common sense—to determine whether a violent crime was motivated by gender bias. A look at the actual numbers of prosecutions under state hate crimes laws further stems any concern that this legislation will open the floodgates to federal hate crimes prosecutions. States that recognize gender-based hate crimes have not been overwhelmed by prosecutions of domestic violence, rape, and sexual assault under their existing hate crimes laws. Instead, these laws have operated in a very targeted way. The experience in these states demonstrates that protection against gender-motivated bias crimes is essential.

HATE CRIMES AGAINST JUVENILES

There is little published information about juvenile hate crime offenders. The FBI's annual Hate Crime Statistics Act report does not provide specific information about either juvenile hate crime offenders or victims. However, it does document that schools and colleges were the third most frequent locations for hate crimes in 2007—as they have been in every year since 2000.

In addition, according to the annual U.S. Department of Justice/Department of Education report *Indicators of School Crime and Safety: 2007*, 11 percent of students ages 12–18 reported that someone at school had used hate-related words against them, and more than one-third (38 percent) reported seeing hate-related graffiti at school in 2005.[63]

An October 2001 report by the U.S. Justice Department's Bureau of Justice Statistics provided disturbing information about the too-frequent involvement of juveniles in hate crimes. Analyzing nearly 3,000 of the 24,000 hate crimes to the FBI from 1997 to 1999, the report found that a disproportionately high percentage of both the victims and the perpetrators of hate violence were young people under 18 years of age:

- Thirty-three percent of all known hate crime offenders were under 18; those under 18 constituted 31 percent of all violent crime offenders and 46 percent of the property offenders.
- Another 29 percent of all hate crime offenders were 18–24.
- Thirty percent of all victims of bias-motivated aggravated assaults and 34 percent of the victims of simple assault were under 18.[64]

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Pending Federal Legislation

In those states without hate crime statutes, and in others with limited coverage, local prosecutors are not able to pursue hate crime convictions. The Local Law Enforcement Hate Crime Prevention Act (LLEHCPA) would establish a new federal criminal code provision to complement and expand existing law and to provide additional tools for the federal government to combat bias-motivated violence. The LLEHCPA is designed to eliminate gaps in federal authority to investigate and prosecute bias-motivated crimes. This bill would provide a necessary backstop to state and local law enforcement by permitting federal authorities to provide assistance in these investigations—and by allowing federal prosecutions when necessary to achieve a just result.

Over the past eight years, this legislation has been approved on several occasions by bipartisan majorities in both the Senate and House of Representatives, but has been stymied by opposition and a veto threat from the Bush administration. The legislation has attracted the support of more than 300 religious, civil rights, education, professional, and civic groups—as well as every major law enforcement organization in America.

Public support for this legislation continues to grow. According to a May 2007 Gallup Poll, 68 percent of Americans support strengthening hate crimes laws to include sexual orientation and gender identity and giving local law enforcement the tools they need to prosecute these violent acts of bigotry.[65]

For more information about the LLEHCPA, visit http://www.civilrights.org/issues/hate/.

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Recommendations

Hate crimes merit a priority response because of their special impact on the victim and the victim's community. Failure to address this unique type of crime could cause an isolated incident to explode into widespread community tension. The damage done by hate crimes cannot be measured solely in terms of physical injury or dollars and cents. Hate crimes may effectively intimidate other members of the victim's community, leaving them feeling isolated, vulnerable, and unprotected by the law. Moreover, the demonization of immigrants has led to an increased sense of vulnerability and fear in communities around the country and created a toxic environment in which hateful rhetoric targeting immigrants has become routine—and bias-motivated violence all too common.

Every sector of society has an important role to play in helping to ensure that no person is targeted for violence on the basis of his or her personal characteristics. We offer the following recommendations for action:

SET THE TONE FOR A CIVIL NATIONAL DISCOURSE ON COMPREHENSIVE IMMIGRATION REFORM

Civil rights organizations have become increasingly concerned about the virulent anti-immigrant and anti-Latino rhetoric employed by a handful of groups and coalitions that have positioned themselves as legitimate, mainstream advocates against illegal immigration in America. Leaders from every sector—including government, media, business, labor, religion, and education—have an essential role in shaping attitudes in opposition to all forms of bigotry. These leaders must moderate the rhetoric in the immigration debate. It is vital that civic leaders and law enforcement officials speak out against efforts to demonize immigrants—and use their bully pulpits to promote better intergroup relations. They must use their power of persuasion and political clout to condemn scapegoating, bias crimes, racism, and other hate speech and hate crimes, and to press for fair and workable immigration reform.

ENSURE A STRONG LAW ENFORCEMENT RESPONSE TO CONFRONT VIOLENT BIGOTRY

Although bigotry cannot be legislated out of existence, a forceful, moral response to hate violence is required of us all. Enactment of the Local Law Enforcement Hate Crimes Prevention Act will give local law enforcement officials important tools to combat violent, bias-motivated crimes, and facilitate federal investigations and prosecutions when local authorities are unwilling or unable to achieve a just result. Importantly, the LLEHCPA would also amend the Hate Crime Statistics Act of 1990 to mandate additional Justice Department hate crime data collection reporting requirements for bias-motivated violence directed at individuals on the basis of their gender and gender identity, and for crimes committed by and against juveniles.

COMPLEMENT TOUGH LAWS AND VIGOROUS ENFORCEMENT WITH EDUCATION AND TRAINING INITIATIVES DESIGNED TO REDUCE PREJUDICE

The federal government has a central role to play in funding anti-bias education and hate crime prevention initiatives, as well as promoting awareness of effective anti-bias education initiatives. The Justice Department, the Department of Education, and other involved federal agencies should institutionalize and coordinate their response to prejudice-motivated violence and fund programs and initiatives developed for schools and for youth violence prevention programs. The federal government should make information available regarding effective hate crime prevention programs and resources, successful anti-bias training initiatives, and best practices. The FBI should receive funding to update and expand training and outreach to ensure the most comprehensive implementation of the Hate Crime Statistics Act.

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Endnotes

1 *Report of the American Psychological Association Commission on Violence and Youth*, American Psychological Association, 1992, http://www.apa.org/pi/violence&youth.pdf.
2 The full FBI Hate Crime Statistics Act Report for 2007 is at http://www.fbi.gov/ucr/hc2007/index.html.
3 Caroline Wolf Harlow, U.S. Dept. of Justice, Bureau of Justice Statistics, "Hate Crimes Reported by Victims and Police," November 2005, http://www.ojp.usdoj.gov/bjs/pub/pdf/hcrvp.pdf.
4 Heidi Beirich, *The Nativist Lobby: Three Faces of Intolerance*, ed. Mark Potok, Southern Poverty Law Center, February 2009, http://www.splcenter.org/pdf/static/splc_nativistlobby_022009.pdf.
5 Mark Potok, Southern Poverty Law Center website, "The Nativist Lobby: Three Faces of Intolerance," February 2009, http://www.splcenter.org/intel/nativist_lobby.jsp.
6 Beirich, *The Nativist Lobby: Three Faces of Intolerance*, 9.
7 The petition can be found here: http://www.nhmc.org/documents/Sumary-FCCPetitionforInquiryonHateSpeechinMedia.pdf.
8 U.S. Dept. of Commerce, National Telecommunications and Information Administration, *The Role of Telecommunications in Hate Crime*, December 1993, i.
9 County Fair Blog, Media Matters for America, "Savage on Immigrant Students' Hunger Strike..." July 6, 2007, http://mediamatters.org/items/200707060009. [Boldface added].
10 New U.S. Reported Hansen's Disease (Leprosy) Cases by Year, 1976-2006, U.S. Department of Health and Human Services Health Resources and Service Administration, http://www.hrsa.gov/hansens/30yeartrend.htm.
11 Additional information on the Minuteman Project can be found here: http://www.adl.org/Extremism/minutemen.asp.
12 www.WeCanStopTheHate.org , National Council of La Raza, "Journalists as Anti-Immigrant Activists," n.d., http://www.wecanstopthehate.org/site/page/journalists_as_anti_immigrant_activists#talkradio.
13 County Fair Blog, Media Matters for America, "Hosting Segment From Hazleton, Pa., Dobbs Did Not Acknowledge Fundraising for the Embattled Town," May 9, 2007, http://mediamatters.org/items/200705090007.
14 Sean D. Hamill, "Mexican's Death Bares a Town's Ethnic Tension," *New York Times*, August 5, 2008, http://www.nytimes.com/2008/08/05/us/05attack.html. John J. Moser, "1st-, 2nd-Degree Murder Charges Tossed in Death of Ramirez, *The Morning Call*, August 19, 2008.
15 David Holthouse, Southern Poverty Law Center, "The Year in Hate," *Intelligence Report*, Spring 2009, http://www.splcenter.org/intel/intelreport/article.jsp?aid=1027.
16 "Hate Group Numbers Up By 54% Since 2000," Southern Poverty Law Center, February 26, 2009, http://www.splcenter.org/news/item.jsp?aid=366.
17 Heidi Beirich, Hatewatch Blog, Southern Poverty Law Center, "Skinheads Arrested in Plot to Kill Obama," October 27, 2008, http://www.splcenter.org/blog/2008/10/27/skinheads-arrested-in-plot-to-kill-obama/.
18 Marisol Bello, "White Supremacists Target Middle America," *USA Today*, October 21, 2008, http://www.usatoday.com/news/nation/2008-10-20-hategroups_N.htm.
19 Stephanie Chen, "Growing Hate Groups Blame Obama, Economy," *CNN.com*, February 26, 2009, http://www.cnn.com/2009/US/02/26/hate.groups.report/index.html.
20 Bello, "White Supremacists Target Middle America."
21 Chen, "Growing Hate Groups Blame Obama Economy."
22 Bello, "White Supremacists Target Middle America."
23 Id.
24 Id.
25 This section is largely based on Human Rights First's 2008 Hate Crime Survey, available at: http://www.humanrightsfirst.org/discrimination/index.aspx.
26 U.S. Dept. of Justice, "Three Staten Island, NY Men Indicted on Federal Hate Crime Conspiracy Charges," January 7, 2009, http://www.usdoj.gov/opa/pr/2009/January/09-crt-011.html.
27 "Man Pleads Guilty in Election Attacks," *The New York Times*, January 26, 2009, http://www.nytimes.com/2009/01/27/nyregion/27bias.html?scp=3&sq=%22ralph%20nicoletti%22%20%22michael%20contreras%22&st=cse.
28 U.S. Dept. of Justice, "Louisiana Man Pleads Guilty to Conspiring to Violate Civil Rights of Homeowner," December 18, 2008, http://www.usdoj.gov/opa/pr/2008/December/08-crt-1128.html.
29 U.S. Attorney's Office, Western District of Virginia, "Leader of American National Socialist Workers Party Indicted," December 11, 2008, http://richmond.fbi.gov/dojpressrel/pressrel08/internetthreats121108.htm.
30 U.S. Dept. of Justice, "Arrests Made in Springfield, Massachusetts Church Arson," January16, 2009, http://www.usdoj.gov/opa/pr/2009/January/09-ag-052.html.

VerDate Nov 24 2008 10:57 Jun 10, 2010 Jkt 056684 PO 00000 Frm 00280 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\56684.TXT SJUD1 PsN: CMORC

56684.233

31 U.S. Dept. of Justice, "Three Men Indicted for Racially-Motivated Church Arson in Springfield Mass.," January 27, 2009, http://www.usdoj.gov/opa/pr/2009/January/09-crt-067.html

32 U.S. Dept. of Justice, "Two Kansas City, Missouri Men Receive Multiple Life Sentences for Racially-Motivated Murder," September 9, 2008, http://www.usdoj.gov/opa/pr/2008/September/08-crt-800.html.

33 Robert D. McFadden, "Attack on Ecuadorean Investigated as Hate Crime," *The New York Times*, December 8, 2008, http://www.nytimes.com/2008/12/09/nyregion/09assault.html?partner=rss&emc=rss.

34 Kareem Fahim, "2 Indicted in Fatal Beating of Ecuadorian Immigrant," *The New York Times*, March 3, 2009, http://www.nytimes.com/2009/03/04/nyregion/04ecuadorean.html?scp=5&sq=%22keith%20phoenix%22&st=cse.

35 Editorial, "A Death in Patchogue," *The New York Times*, November 10, 2008, http://www.nytimes.com/2008/11/11/opinion/11tue3.html?_r=2&ei=5070&emc=eta1&oref=slogin.

36 Anti-Defamation League, "2007 Audit of Anti-Semitic Incidents," March 5, 2008, http://www.adl.org/main_Anti_Semitism_Domestic/audit_2007.htm.

37 "Retrial Delayed in Seattle Jewish Center Shooting," *Associated Press*, January 2, 2009, http://www.wtvynews4.com/community/headlines/37016854.html.

38 John R. Ellement, "Teen Gets 5-year Sentence in S. Boston Slaying," *The Boston Globe*, December 6, 2005, http://www.boston.com/news/local/articles/2005/12/06/teen_gets_5_year_sentence_in_s_boston_slaying/.

39 Texeira, "Asian Youths Suffer Harassment in Schools."

40 Associated Press, "Asian Youth Persistently Harassed by U.S. Peers," *USA Today*, November 13, 2005, http://www.usatoday.com/news/nation/2005-11-13-asian-teens-bullied_x.htm.

41 Michelle O'Donnell, "Accusations of a Hate Crime Expose Tensions," *The New York Times*, August 15, 2006, http://query.nytimes.com/gst/fullpage.html?res=9C0CE0D9173EF936A2575BC0A9609C8B63.

42 Id.

43 Asian American Institute, "AAI Commends Filing of Felony Murder Charge Against Killer of Du Doan," September 5, 2007, http://aaichicago.org/news.09.05.07.html.

44 C.N. Le, Asian Nation Blog, "Possible Hate Crime in Chicago," September 6, 2007, http://www.asian-nation.org/headlines/2007/09/possible-hate-crime-in-chicago/.

45 Joyce Peterson, "Middle Eastern Clerks Shot in Memphis: Robberies or Hate Crimes?" *My Eyewitness News*, February 2, 2009, http://www.myeyewitnessnews.com/news/local/story/Middle-Eastern-Clerks-Shot-in-Memphis-Robberies/GNcuo8fhNk-Zia0oq3NiUA.cspx.

46 "Man who police say shot 12-year-old boy makes court appearance," *The Commercial Appeal* (Memphis), January 2, 2009, http://www.commercialappeal.com/news/2009/jan/02/crime-report-deputies-search-suspects-atm-heist/?partner=yahoo_headlines.

47 Peterson, "Middle Eastern Clerks Shot in Memphis: Robberies or Hate Crimes?"

48 "Suspect Arrested in Orange Mound Store Clerk Murder," *My Fox Memphis*, March 6, 2009, http://www.myfoxmemphis.com/dpp/news/030909_Suspect_Arrested_in_Orange_Mound_Store_Clerk_Murder.

49 Mary-Kameko Shibata, "8 Female Muslims Victims of Hate Crime," *Daily Californian*, September 20, 2004, http://www.dailycal.org/article/16158/8_female_muslims_victims_of_hate_crime.

50 Bob Egelko, "2 Plead Guilty in S.F. Man's Beating in Tahoe," *San Francisco Chronicle*, August 2, 2008, http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/08/02/BA1N1244P8.DTL. Jonathan Curiel, "Tahoe Couple Face Hate-crime Charges in Beating of S.F. Man," *San Francisco Chronicle*, August 21, 2007, http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/08/21/BAGGSRMMLC13.DTL&hw=silva+2007+Tahoe&sn=001&sc=1000.

51 Dave Carlin, "Hate Crimes Committed Against 2 NJ Sikhs," *WCBS-TV*, October 31, 2008, http://wcbstv.com/local/hate.crimes.sikhs.2.853026.html.

52 Chris Saldana, "Hate Crimes Based on Sexual Orientation on the Rise," *CBS News*, October 27, 2008, http://www.lasvegasnow.com/Global/story.asp?S=9247646&nav=168XDWn.

53 Robert Salonga, "Attack on Lesbian in Richmond Reflects Increase in Suspected Hate Crimes," *San Jose Mercury News*, January 2, 2009, http://www.mercurynews.com/alamedacounty/ci_11358834?nclick_check=1.

54 "Suspects Charged in Richmond Gang Rape of Lesbian," *CBS 5*, January 6, 2009, http://cbs5.com/local/lesbian.gang.rape.2.901501.html.

55 "2 men, teen charged in gang rape of lesbian," *USA Today*, January 6, 2009, http://www.usatoday.com/news/nation/2009-01-06-gangrape_N.htm.

56 Salonga, "Attack on Lesbian in Richmond Reflects Increase in Suspected Hate Crimes."

57 Neil Broverman, "Mixed Messages," *The Advocate*, April 8, 2008, http://www.advocate.com/issue_story_ektid52689.asp.

58 Catherine Saillant, "Teen Accused of Killing His Gay Classmate Had White Supremacist Materials," *Los Angeles Times*, October 3, 2008, http://articles.latimes.com/2008/oct/03/local/me-oxnard3.

59 Associated Press, "Colorado Man Charged in Transwoman's Slaying," July 31, 2008, http://www.365gay.com/news/073108-trans-murder/. Dan Frosch, "Death of a Woman Is Called a Hate Crime," *The New York Times*, August 2, 2008, http://www.nytimes.com/2008/08/02/us/02murder.html?ref=us.

VerDate Nov 24 2008 10:57 Jun 10, 2010 Jkt 056684 PO 00000 Frm 00281 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\56684.TXT SJUD1 PsN: CMORC

56684.234

60 Adam Parker, "Mom Urges Hate Crime Law in S.C.," *The Post and Courier*, May 27, 2007, http://www.charleston.net/news/2007/may/27/mom_urges_hate_crime_law_sc/. "Man Pleads Guilty in 2007 Death of Gay Man," *Fox Carolina - TV*, June 11, 2008, http://www.foxcarolina.com/news/16570367/detail.html.
61 Raymond McCaffrey, Paul Duggan, and Debbi Wilgoren, "Five Killed at Pa. Amish School," *The Washington Post*, October 3, 2006, http://www.washingtonpost.com/wp-dyn/content/article/2006/10/03/AR2006100300229.html.
62 28 USC 994 Note.
63 U.S Dept. of Education, National Center for Education Statistics and U.S. Dept. of Justice, Bureau of Justice Statistics, "Indicators of School Crimes and Safety: 2007," December 2007, http://nces.ed.gov/pubs2008/2008021.pdf.
64 U.S. Dept. of Justice, Bureau of Justice Statistics, "Hate Crimes Reported in NIBRS, 1997-99," September 2001, http://www.ojp.usdoj.gov/bjs/abstract/hcrn99.htm.
65 Frank Newport, "Public Favors Expansion of Hate Crime Law to Include Sexual Orientation: Majorities of Republicans, conservatives, and frequent church attendees in favor," *Gallup*, May 17, 2007, http://www.gallup.com/poll/27613/Public-Favors-Expansion-Hate-Crime-Law-Include-Sexual-Orientation.aspx.

VerDate Nov 24 2008 10:57 Jun 10, 2010 Jkt 056684 PO 00000 Frm 00282 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\56684.TXT SJUD1 PsN: CMORC

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Selected Resources on Hate Crime Response and Counteraction

These websites include outstanding resources on hate crimes laws, anti-bias and prevention programs, and links to other related sites:

American Psychological Association

Report of the American Psychological Association Commission on Violence and Youth, http://www.apa.org/pi/violence&youth.pdf

Anti-Defamation League

How to Combat Bias and Hate Crimes: An ADL Blueprint for Action http://www.adl.org/combating_hate/blueprint.asp

Hate Crime Laws, http://www.adl.org/99hatecrime/intro.asp

FBI

Hate Crime Data Collection Guidelines http://www.fbi.gov/ucr/hatecrime.pdf

Hate Crime Statistics, 2007 http://www.fbi.gov/ucr/hc2007/index.html

Training Guide for Hate Crime Data Collection http://www.fbi.gov/ucr/traingd99.pdf

Department of Education

Preventing Youth Hate Crime, http://www.ed.gov/pubs/HateCrime/start.html

Department of Education/National Association of Attorneys General

Protecting Students from Harassment and Hate Crime, http://www.ed.gov/offices/OCR/archives/Harassment/harassment.pdf

Department of Homeland Security

Rightwing Extremism: Current Economic and Political Climate Fueling Resurgence in Radicalization and Recruitment, www.civilrights.org/assets/files/dhs_rightwingextremism_040709.pdf

Department of Justice

Addressing Hate Crimes: Six Initiatives That Are Enhancing the Efforts of Criminal Justice Practitioner, http://www.ncjrs.gov/pdffiles/bja/179559.pdf

Hate Crime Training: Core Curriculum for Patrol Officers, Detectives, and Command Officers http://www.usdoj.gov/crs/pubs/hct.pdf

A Policymaker's Guide to Hate Crimes, http://www.ncjrs.gov/pdffiles1/bja/162304.pdf

Human Rights First

2008 Hate Crime Survey, http://www.humanrightsfirst.org/pdf/FD-081103-hate-crime-survey-2008.pdf

2007 Hate Crime Report Card, http://www.humanrightsfirst.info/pdf/071217-discrim-hc-report-card-overview-2007.pdf

Everyday Fears: A Survey of Violent Hate Crimes in Europe and North America, http://www.humanrightsfirst.org/discrimination/pdf/everyday-fears-080805.pdf

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International Association of Chiefs of Police

Hate Crime in America Summit Recommendations

http://www.theiacp.org/documents/index.cfm?fuseaction=document&document_id=160

Responding to Hate Crimes: A Police Officer's Guide to Investigation and Prevention,

http://www.theiacp.org/documents/index.cfm?fuseaction=document&document_id=141

Leadership Conference on Civil Rights

Cause for Concern: Hate Crimes in America, 2004 http://www.civilrights.org/publications/reports/cause_for_concern_2004/

National Criminal Justice Reference Service

http://www.ncjrs.org/spotlight/hate_crimes/publications.html

National District Attorneys Association

A Local Prosecutor's Guide for Responding to Hate Crimes, http://www.ndaa.org/publications/apri/hate_crimes.html

Organization of Chinese Americans

Responding to Hate Crimes: A Community Action Guide, 2nd Edition,

http://www.ocanational.org/images/stories/docscenter/ocahatecrime2006.pdf

Partners Against Hate

Building Community and Combating Hate: Lessons for the Middle School Classroom,

http://www.partnersagainsthate.org/educators/middle_school_lesson_plans.pdf

Hate on the Internet: A Response Guide for Educators and Families,

http://www.partnersagainsthate.org/publications/hoi_full.pdf

Investigating Hate Crimes on the Internet, http://www.partnersagainsthate.org/publications/investigating_hc.pdf

Peer Leadership: Helping Youth Become Change Agents in Their Schools and Communities,

http://www.partnersagainsthate.org/publications/prefix.pdf

Program Activity Guide: Helping Children Resist Bias and Hate, Elementary School Edition,

http://www.partnersagainsthate.com/publications/pahprgguide302.pdf

Program Activity Guide: Helping Youth Resist Bias and Hate, Middle School Edition,

http://www.partnersagainsthate.org/educators/pag_2_ed.pdf

Professor Jim Nolan/West Virginia University

http://www.as.wvu.edu/%7Ejnolan/nibrshatecrime.html

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APPENDIX A (page 1)

ANTI-DEFAMATION LEAGUE STATE HATE CRIME STATUTORY PROVISIONS

	AL	AK	AZ	AR	CA	CO	CT	DC	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO
Bias-Motivated Violence and Intimidation—Criminal Penalty *1	X	X	X		X	X	X	X	X	X		X	X	X		X	X	X	X	X	X	X	X	X	X	X
Civil Action				X	X	X	X	X		X	X		X	X		X			X	X		X	X	X		X
Race, Religion, Ethnicity	X	X	X		X	X	X	X	X	X		X	X	X		X	X	X	X	X	X	X	X	X	X	X
Sexual Orientation			X		X	X	X	X	X	X		X		X		X	X	X	X	X	X	X		X		X
Gender		X	X		X		X	X				X		X		X			X	X			X	X	X	X
Disability	X	X	X		X	X	X	X	X	X		X		X		X	X		X	X		X		X		X
Other *2					X	X	X	X		X		X				X	X		X	X	X			X		X
Institutional Vandalism	X		X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X
Data Collection *3			X		X		X	X		X		X	X	X		X		X	X	X	X	X	X	X		
Training for Law Enforcement Personnel *4			X		X		X							X		X		X	X			X		X		

*1. The following states also have statutes criminalizing interference with religious worship: AR, CA, DC, FL, ID, KS, MA, MN, MS, NH, NJ, NM, NY, NC, OK, RI, SC, SD, TN, VA, WV.

*2. "Other" includes political affiliation (CA, DC, IA, LA, WV), age (CA, DC, FL, IA, HI, KS, LA, ME, MN, NE, NM, NV, VT), and homosexuality/sexual orientation (CA, CO, CT, DC, HI, MD, MN, MO, NJ, NM, OR, VT).

*3. States with bias collection statutes which include sexual orientation are AZ, CA, CT, DC, FL, HI, IL, IA, MD, MI, MN, NV, NM, OR, PA, TX, WA, WI. States which include gender are AZ, CA, DC, HI, IL, IA, MI, MN, NJ, RI, TX, and WA.

*4. Some other states have administrative regulations mandating such training.

Compiled by the Anti-Defamation League's Washington Office

More information about ADL's resources on hate crimes can be found on the Internet at: www.adl.org and http://www.partnersagainsthate.org/

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APPENDIX A (page 2)

ANTI-DEFAMATION LEAGUE STATE HATE CRIME STATUTORY PROVISIONS

	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
Bias-Motivated Violence and Intimidation—Criminal Penalty *1*5	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	
Civil Action		X	X		X			X		X	X	X	X	X		X	X	X		X	X	X		X	
Race, Religion, Ethnicity	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X		X	X	X	X	X	
Sexual Orientation		X	X	X	X	X	X					X		X			X	X		X		X		X	
Gender		X		X	X	X	X	X	X					X			X	X		X		X	X		
Disability		X	X	X	X	X	X				X			X			X	X		X		X		X	
Other *2		X			X	X	X					X								X			X		
Institutional Vandalism	X	X	X		X	X	X	X		X	X	X	X	X	X	X	X	X			X	X		X	
Data Collection *3		X	X		X	X					X	X	X	X				X			X	X	X		
Training for Law Enforcement Personnel *4					X	X						X		X								X			

*5 The Utah statute has penalties for hate crimes to violations of the victim's constitutional rights.

Compiled by the Anti-Defamation League's Washington Office

More information about ADL's resources on hate crimes can be found on the ADL Web site: http://www.adl.org and http://www.perlmessageandshare.org/

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APPENDIX B

TEN-YEAR COMPARISON OF FBI HATE CRIME STATISTICS (2007–1997)

	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997
Participating Agencies	13,241	12,620	12,417	12,711	11,909	12,073	11,987	11,690	12,122	10,730	11,211
Total Hate Crime Incidents Reported	7,624	7,722	7,163	7,649	7,489	7,462	9,730	8,063	7,876	7,755	8,049
Number of States, including D.C.	50	50	50	50	50	50	50	49	49	47	49
Percentage of U.S. Population Agencies Represented	85.7%	85.2%	82.7%	86.6%	82.8%	85.7%	85.0%	84.2%	85.0%	80.0%	83.0%

Updated October, 2008

Compiled by the Anti-Defamation League's Washington Office from information collected by the FBI

More information about ADL's resources on hatecrimes is available on the Internet at the League's Website: www.adl.org

APPENDIX C

OFFENDERS' REPORTED MOTIVATIONS IN PERCENTAGES OF INCIDENTS (2007–1997)

	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997
RACIAL BIAS	3,870 / 50.8	4,000 / 51.8	3,919 / 54.7	4,402 / 57.5	3,844 / 51.3	3,642 / 48.8	4,367 / 44.9	4,337 / 53.8	4,295 / 54.5	4,321 / 55.7	4,710 / 58.5
Anti-Black	2,658 / 34.9	2,640 / 34.2	2,630 / 36.7	2,731 / 35.7	2,548 / 34.0	2,486 / 33.3	2,899 / 30	3,884 / 35.8	2,486 / 33.3	2,901 / 37.4	3,120 / 38.8
Anti-White	749 / 9.8	890 / 11.5	828 / 11.6	829 / 10.8	830 / 11.1	719 / 9.6	891 / 9.1	875 / 10.9	781 / 9.9	792 / 10.2	993 / 12.3
Anti-Asian / Pacific Islander	186 / 2.5	181 / 2.3	199 / 2.8	217 / 2.8	231 / 3.1	217 / 2.9	280 / 2.9	281 / 3.5	298 / 3.8	293 / 3.8	347 / 4.3
RELIGIOUS BIAS	1,400 / 18.4	1,462 / 18.9	1,227 / 17.1	1,374 / 18.0	1,343 / 17.9	1,426 / 19.1	1,828 / 18.8	1,472 / 18.3	1,411 / 17.9	1,390 / 17.9	1,385 / 17.2
Anti-Semitic	969 / 12.7	967 / 12.5	848 / 11.8	954 / 12.5	927 / 12.4	931 / 12.5	1,043 / 10.7	1,109 / 13.8	1,109 / 14.1	1,081 / 13.9	1,087 / 13.5
Anti-Semitic as Percentage of Religious Bias	69	66	69	69	69	65	57	75	79	78	79
Anti-Islamic	115 / 1.5	156 / 2.0	128 / 1.8	156 / 2.0	149 / 2.0	155 / 2.1	481 / 4.9	28 / 0.35	32 / 0.40	21 / 0.27	28 / 0.35
ETHNICITY / NATIONAL ORIGIN	1,007 / 13.2	984 / 12.7	944 / 13.2	972 / 12.7	1026 / 13.7	1,102 / 14.8	2,098 / 21.6	911 / 11.3	829 / 10.5	754 / 9.7	836 / 10.4
Anti-Hispanic	595 / 7.8	576 / 7.5	522 / 7.3	475 / 6.2	426 / 5.7	480 / 6.4	597 / 6.1	557 / 6.9	466 / 5.9	482 / 6.2	491 / 6.1
SEXUAL ORIENTATION	1,265 / 16.6	1,195 / 15.5	1,017 / 14.2	1,197 / 15.6	1,239 / 16.5	1,244 / 16.7	1,393 / 14.3	1,299 / 16.1	1,317 / 16.7	1,206 / 16.2	1,102 / 13.7
DISABILITY	79 / 1.0	79 / 1.0	53 / 0.74	57 / 0.74	33 / 0.44	45 / 0.59	35 / 0.36	36 / 0.45	19 / 0.24	25 / 0.32	12 / 0.15

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More information about ADL's resources on response to hate violence can be found at the ADL's Website, www.adl.org

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APPENDIX D HCSA STATE BY STATE INCIDENT REPORT CHART 2007

	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996	1995	1994	1993	1992	1991
Alabama	5	1	0	3	1	2	0	**	**	**	0	0	**	**	5	4	**
Alaska	8	6	4	9	13	7	26	4	5	**	10	9	8	9	24	**	**
Arizona	161	149	138	224	246	238	364	240	252	283	330	250	220	205	208	172	46
Arkansas	33	113	134	93	170	0	3	3	8	3	0	1	7	9	13	37	10
California	1,400	1,267	1,379	1,393	1,472	1,646	2,246	1,943	1,949	1,749	1,931	2,052	1,751	954	364	75	5
Colorado	156	138	125	59	82	56	126	101	148	128	113	133	149	173	178	258	128
Connecticut	127	131	95	116	134	129	169	161	126	109	113	114	87	68	117	52	53
Delaware	49	48	45	33	17	13	17	34	37	19	58	67	45	42	33	47	29
DC	41	57	48	49	33	14	11	5	4	2	6	16	4	2	10	14	**
Florida	186	216	231	274	231	257	302	240	267	179	93	187	164	214	239	334	**
Georgia	13	13	17	29	23	31	39	35	36	34	45	28	49	61	75	66	23
Hawaii	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**
Idaho	38	23	33	37	20	43	34	45	34	58	46	72	114	79	70	54	33
Illinois	187	156	165	187	209	155	282	183	247	277	339	348	145	239	724	241	133
Indiana	40	39	54	63	48	77	74	108	111	50	62	36	35	32	82	19	0
Iowa	27	28	37	23	38	46	32	33	31	0	55	43	29	61	39	36	88
Kansas	110	109	72	49	49	55	71	42	41	54	55	28	**	**	0	3	6
Kentucky	48	64	44	71	81	76	82	73	71	45	48	109	81	4	13	5	0
Louisiana	31	22	17	22	7	15	10	12	6	16	4	6	7	9	23	13	6
Maine	72	59	57	68	77	36	32	28	22	57	57	58	75	7	32	19	**
Maryland	150	212	195	245	248	211	231	217	230	282	321	357	353	325	404	484	431
Massachusetts	353	379	271	348	403	430	584	458	443	431	441	454	333	**	343	424	200
Michigan	627	653	640	556	427	416	442	425	407	384	461	486	405	252	247	122	**
Minnesota	157	137	206	239	215	203	210	169	225	248	214	268	288	**	**	411	225
Mississippi	0	0	0	2	1	3	3	2	2	3	0	3	8	6	0	0	1
Missouri	114	78	78	71	54	64	65	70	83	118	157	150	135	139	168	158	136
Montana	21	24	65	56	5	13	13	19	27	22	15	10	11	0	21	**	**
Nebraska	44	56	71	62	46	74	53	17	35	52	3	3	**	**	**	**	**
Nevada	63	125	77	81	97	62	94	85	75	60	45	44	88	18	12	23	16
New Hampshire	43	34	32	48	36	27	27	32	20	10	**	1	24	3	0	**	**
New Jersey	748	759	738	769	594	570	767	652	617	757	684	839	789	896	1,101	1,114	885
New Mexico	14	20	18	21	11	15	20	15	16	31	24	44	24	4	4	**	0
New York	493	522	249	388	602	893	712	608	500	776	853	903	845	911	934	1,112	943
North Carolina	75	100	89	86	77	62	85	31	31	39	42	34	52	7	10	1	**
North Dakota	14	16	12	8	18	18	17	5	2	2	2	2	3	5	1	1	**
Ohio	312	300	176	353	231	263	363	240	232	172	265	234	267	357	260	105	80
Oklahoma	30	51	41	51	38	44	46	80	42	57	41	83	37	20	80	147	99
Oregon	170	141	137	155	95	61	222	142	123	93	105	172	152	177	237	376	296
Pennsylvania	83	97	118	105	115	93	132	141	165	168	168	205	282	278	391	432	277
Rhode Island	47	19	15	29	45	38	63	48	41	29	43	40	46	37	62	48	**
South Carolina	127	130	98	106	54	70	41	33	52	94	71	42	26	30	27	4	**
South Dakota	37	76	9	7	10	4	5	7	14	19	34	3	5	1	4	**	**
Tennessee	239	202	128	136	161	129	336	230	127	56	46	33	25	20	2	4	1
Texas	242	245	264	309	294	347	434	286	242	300	333	350	328	364	418	486	95
Utah	35	35	44	59	59	54	65	71	59	66	49	59	107	93	45	12	**
Vermont	21	21	32	28	27	18	17	19	16	13	3	4	10	12	1	**	**
Virginia	323	341	295	307	280	291	362	325	203	160	105	100	51	95	100	102	53
Washington	195	177	171	175	222	174	278	242	230	221	190	198	266	281	457	374	196
West Virginia	44	34	47	31	33	41	39	60	32	21	3	4	**	**	**	**	**
Wisconsin	69	84	46	37	31	32	61	47	49	**	50	43	45	40	19	67	41
Wyoming	21	5	3	4	12	5	10	9	2	6	6	4	19	6	10	0	**
TOTALS	**7,624**	**7,722**	**7,163**	**7,649**	**7,489**	**7,462**	**9,730**	**8,063**	**7,876**	**7,755**	**8,049**	**8,759**	**7,947**	**5,932**	**7,587**	**7,466**	**4,558**

** Indicates that state did not participate in the reporting effort.
Updated October, 2008. Compiled by the Anti-Defamation League's Washington Office from information collected by the FBI.
For more information visit www.adl.org

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APPENDIX E STATE BY STATE COMPARISON, HCSA REPORTING - NUMBER OF PARTICIPATING AGENCIES

	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996	1995	1994	1993	1992	1991
Alabama	156	42	32	51	36	31	6	**	**	**	282	289	**	**	4	4	**
Alaska	1	2	1	1	1	1	1	1	1	**	1	1	1	1	1	**	**
Arizona	78	80	78	82	89	88	97	88	86	90	85	81	87	82	89	90	1
Arkansas	265	257	205	192	126	7	3	4	192	193	194	191	190	189	187	183	169
California	727	728	725	725	727	728	725	722	720	719	720	718	744	13	11	7	2
Colorado	213	220	205	205	185	130	202	234	235	233	232	230	226	231	199	197	194
Connecticut	101	99	98	100	98	84	98	97	98	94	59	98	94	89	39	23	29
Delaware	53	53	53	53	53	50	51	52	54	50	54	50	51	51	49	57	58
DC	2	2	2	2	2	2	2	1	1	1	1	1	1	1	1	1	**
Florida	490	491	492	490	489	489	491	491	483	464	580	394	411	370	374	374	**
Georgia	18	61	71	77	82	76	86	90	56	58	5	2	3	3	4	4	2
Hawaii	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**
Idaho	108	105	106	119	119	117	114	118	121	120	119	112	116	117	110	116	98
Illinois	60	66	66	63	73	69	72	46	55	73	96	113	1	19	224	620	26
Indiana	127	124	142	137	139	163	143	166	143	150	139	179	164	89	52	5	1
Iowa	226	222	225	219	221	221	223	220	222	219	230	231	232	226	196	190	201
Kansas	348	350	349	357	341	339	344	1	1	1	1	1	**	**	1	2	3
Kentucky	324	320	321	326	435	341	336	317	251	264	213	527	513	5	3	2	1
Louisiana	103	108	133	148	140	159	168	174	172	134	147	140	146	92	58	10	6
Maine	149	148	147	147	149	180	182	181	165	133	131	131	130	5	5	9	**
Maryland	156	153	150	150	149	148	148	146	146	147	148	148	148	150	153	156	156
Massachusetts	337	328	287	301	247	305	336	341	303	177	359	405	202	**	135	158	30
Michigan	593	598	597	601	610	619	621	620	610	546	465	485	480	518	555	454	**
Minnesota	321	289	302	318	327	279	295	313	314	72	312	307	66	**	**	69	42
Mississippi	58	62	67	68	57	66	72	78	88	90	75	123	51	53	17	1	4
Missouri	561	309	278	259	183	144	85	166	209	212	194	230	157	155	91	17	18
Montana	96	93	108	105	82	93	102	102	88	77	95	95	6	2	18	**	**
Nebraska	162	197	194	204	202	203	196	202	233	202	10	10	**	**	**	**	**
Nevada	32	34	35	35	35	35	36	37	37	35	34	4	35	5	9	3	1
New Hampshire	143	134	140	140	125	107	108	110	86	57	**	2	2	2	1	**	**
New Jersey	512	513	513	513	555	557	561	564	565	565	567	568	568	559	317	291	271
New Mexico	49	46	46	49	47	49	54	43	59	59	58	70	70	57	13	**	1
New York	273	277	302	520	526	505	568	539	506	500	502	499	520	567	571	569	773
North Carolina	369	434	435	418	461	446	449	205	463	434	445	93	39	7	6	1	**
North Dakota	77	72	71	69	55	74	73	80	84	81	84	101	74	82	91	1	**
Ohio	534	493	443	410	387	400	363	348	351	344	304	405	321	286	128	26	30
Oklahoma	293	294	297	297	296	301	298	301	300	25	300	293	7	4	9	9	7
Oregon	239	169	168	170	1	172	174	171	239	167	171	174	243	208	279	279	39
Pennsylvania	1,173	954	916	857	828	849	770	933	1,146	1,127	1,108	1,137	1,134	1,044	1,036	944	50
Rhode Island	47	47	48	48	48	48	48	48	48	48	45	46	45	45	45	44	**
South Carolina	480	476	446	468	419	310	340	352	339	300	316	340	293	302	295	4	**
South Dakota	105	91	95	195	114	130	113	121	117	76	42	32	32	4	3	**	**
Tennessee	461	459	455	453	456	443	445	422	355	260	167	191	101	113	56	2	2
Texas	999	996	997	987	993	999	952	942	939	931	924	915	914	895	879	870	28
Utah	117	111	112	58	57	59	58	127	122	101	124	124	116	123	121	9	**
Vermont	80	78	75	74	59	57	57	43	43	37	20	3	19	18	1	**	**
Virginia	408	399	395	395	393	399	397	394	372	415	409	409	175	150	21	74	19
Washington	244	253	252	253	253	246	248	236	231	238	229	230	229	226	207	207	206
West Virgina	338	340	349	431	392	336	279	268	249	112	32	22	**	**	**	**	**
Wisconsin	374	371	359	389	18	370	359	368	364	**	345	338	337	150	161	145	303
Wyoming	62	62	51	42	36	31	35	67	65	33	38	70	59	80	49	5	**
TOTALS	**13,241**	**12,620**	**12,417**	**12,711**	**11,909**	**12,073**	**11,987**	**11,690**	**12,122**	**10,461**	**11,211**	**11,354**	**9,584**	**7,356**	**6,865**	**6,181**	**2,771**

** Indicates that the state did not participate in the reporting effort
Updated October, 2008. Compiled by the Anti-Defamation League's Washington Office from information collected by the FBI.
More information about HCSA responses an response to hate violence can be found at the League's Website www.adl.org

APPENDIX F 30 LARGEST CITIES IN US: 2007–1992 HCSA REPORTING

	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996	1995	1994	1993	1992
1. New York, NY	298	274	DNR	97	291	291	321	400	373	475	512	535	416	506	583	583
2. Los Angeles, CA	279	211	219	244	276	354	556	555	541	404	403	481	437	DNR	DNR	DNR
3. Chicago, IL	37	33	38	54	58	52	103	87	78	80	126	82	146	216	217	202
4. Houston, TX	36	20	28	14	29	66	56	21	36	39	30	34	39	52	25	23
5. Phoenix, AZ	80	60	DNR	100	100	106	154	147	139	170	217	135	125	134	125	115
6. Philadelphia, PA	28	34	27	20	40	44	47	53	70	77	82	97	145	120	202	DNR
7. San Antonio, TX	22	28	19	24	14	18	28	13	2	5	4	0	5	4	0	0
8. San Diego, CA	62	55	41	50	84	85	154	139	141	106	84	98	119	DNR	DNR	DNR
9. Dallas, TX	23	39	45	48	41	47	29	26	13	19	40	70	40	41	59	86
10. San Jose, CA	34	29	22	15	31	49	62	39	45	42	21	21	21	27	25	DNR
11. Detroit, MI	48	37	49	DNR	DNR	3	1	3	0	DNR	DNR	5	9	14	2	DNR
12. Jacksonville, FL	1	3	5	3	5	9	13	10	9	7	0	19	1	2	7	1
13. Indianapolis, IN	DNR	DNR	6	DNR	DNR	13	DNR	7	DNR	0	DNR	DNR	DNR	DNR	DNR	DNR
14. San Francisco, CA	66	94	104	139	117	180	164	141	184	218	256	260	280	270	289	63
15. Columbus, OH	94	71	50	122	48	71	73	69	72	DNR	89	57	112	159	142	DNR
16. Austin, TX	6	13	20	5	7	15	25	26	18	28	43	43	38	23	28	41
17. Fort Worth, TX	19	10	6	11	7	13	26	21	19	15	29	40	36	35	60	50
18. Memphis, TN	88	38	6	1	8	18	47	16	DNR	DNR	DNR	DNR	DNR	DNR	DNR	DNR
19. Charlotte, NC	10	11	3	8	11	13	16	9	0	0	0	DNR	DNR	DNR	DNR	DNR
20. Baltimore, MD	6	7	6	15	14	13	3	7	11	33	127	58	4	28	38	67
21. El Paso, TX	4	4	8	8	10	11	7	9	10	13	12	7	3	16	17	20
22. Milwaukee, WI	28	44	11	2	2	DNR	3	1	1	DNR	3	3	5	3	2	16
23. Boston, MA	164	143	143	101	114	133	212	177	152	193	155	199	164	DNR	230	228
24. Seattle, WA	28	11	18	25	25	18	27	21	31	28	36	27	40	43	125	106
25. Nashville, TN	12	30	2	5	26	7	0	0	0	DNR	DNR	DNR	DNR	DNR	DNR	DNR
26. Denver, CO	24	11	12	7	8	3	16	7	19	6	4	8	19	21	45	43
27. Washington, DC	37	53	43	44	29	11	10	5	4	2	8	16	4	2	10	14
28. Las Vegas, NV	52	105	65	71	94	45	68	55	46	34	27	38	58	1	12	21
29. Louisville, KY	2	2	DNR	6	3	3	4	2	6	1	4	1	4	DNR	DNR	
30. Portland, OR	63	40	72	79	95	10	104	32	57	23	67	81	90	101	140	227
31. Oklahoma City, OK	0	0	1	0	4	2	4	3	6	12	6	10	0	17	5	5
32. Tucson, AZ	0	11	27	22	28	23	47	19	39	30	8	4	5	14	25	4
33. Atlanta, GA	7	7	5	16	8	19	20	21	26	16	34	27	38	36	66	62
34. Albuquerque, NM	11	10	11	15	10	13	6	12	13	27	24	31	14	0	4	DNR
35. Fresno, CA	9	7	11	26	26	22	26	16	26	17	41	32	21	DNR	DNR	DNR
36. Long Beach, CA	13	25	27	25	30	41	30	22	39	39	44	20	22	DNR	DNR	DNR
37. Sacramento, CA	20	37	50	32	41	24	31	52	42	37	25	44	36	DNR	DNR	DNR
38. Mesa, AZ	9	3	28	37	45	25	87	6	14	19	12	26	16	9	DNR	DNR
39. Kansas City, MO	4	DNR	3	2	10	5	7	16	9	15	16	39	30	29	1	DNR
40. Cleveland, OH	18	15	15	39	23	37	61	31	21	32	21	21	6	51	37	DNR
41. Virginia Beach, VA	24	28	17	27	29	27	37	49	17	19	6	3	1	4	7	20
42. Omaha, NE	7	6	20	5	6	12	12	3	7	8	DNR	DNR	DNR	DNR	DNR	DNR
43. Miami, FL	0	0	0	0	8	7	16	2	0	0	0	0	0	2	DNR	6
44. Oakland, CA	15	2	3	3	0	2	6	2	13	14	22	19	10	DNR	DNR	DNR
45. Tulsa, OK	0	5	2	11	4	18	9	10	9	8	3	12	19	16	32	126
46. Minneapolis, MN	45	DNR	28	36	43	50	73	46	66	48	58	52	44	DNR	DNR	DNR
47. Colorado Springs, CO	7	20	10	6	12	29	29	26	36	27	DNR	0	0	0	DNR	DNR
48. Raleigh, NC	6	3	8	1	10	8	4	3	6	0	0	0	0	DNR	3	DNR
49. Honolulu, HI	DNR	DNR	DNR	DNR	DNR	DNR	DNR	DNR	DNR	DNR	DNR	DNR	DNR	DNR	DNR	DNR
50. Arlington, TX	6	1	4	5	3	4	6	8	19	14	12	23	21	29	25	49

* "DNR" = Did not submit report

Updated October, 2008. Compiled by the Anti-Defamation League's Washington Office from information collected by the FB
More information about ADL's resources on response to hate violence can be found at the League's Website: www.adl.or

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On "The Matthew Shepard Hate Crimes Prevention Act Of 2009"
June 25, 2009

Today, the Senate Judiciary Committee addresses the serious and growing problem of hate crimes. Recent events have made clear that these vicious crimes are a continuing problem. The Senate has before it bipartisan legislation that would help law enforcement respond to this problem, and this legislation has stalled for far too long. The time to act is now.

The Matthew Shepard Hate Crimes Prevention Act has been pending in the Senate for more than a decade. We have held previous hearings on this bill and the House has held many hearings on it. Both the House and Senate have voted for this bill, again and again. Nonetheless, when the Ranking Rebublican Member requested a hearing on this legislation at last week's oversight hearing, I proceeded expeditiously to accommodate his request. I thank, in particular, the Attorney General for his willingness to return to the Committee just days after our oversight hearing in order to testify on this important legislative priority.

Two weeks ago, just blocks away from this hearing room a man entered the National Holocaust Memorial Museum and shot and killed Stephen T. Johns, a security guard. The cowardly action of this white supremacist resulted in the death of a 39-year-old husband and the father of an 11-year-old son. This tragic murder is just the latest in an alarming string of hate crimes.

No doubt the courageous actions of officer Johns and his fellow guards saved dozens of lives. I regret that as a private security guard protecting a Federal facility he was without a bulletproof vest, which may have saved his life.

The facts set out in several recent reports show how hate crimes and hate groups are growing nationwide. Just last week, the Leadership Conference for Civil Rights released a report on hate crimes that found that "the number of hate crimes reported has consistently ranged around 7,500 or more annually, or nearly one every hour of the day." Similarly, a recent report from the Southern Poverty Law Center found that hate groups have increased by 50 percent since 2000, from 602 hate groups in 2000, to 926 in 2008. Last Saturday 2,000 mourners filled the Ebenezer AME Church and heard Reverend John McCoy say: "The hope of the Holocaust museum was that the world would never again allow such crimes against humanity. Yet Officer Johns is another victim… ." As mourners of many faiths and backgrounds listened, Reverend Grainger Browning, Jr. said "the same hate that created slavery was the same hate that caused the Holocaust."

The sight of stray bullet holes covering the door of the National Holocaust Museum was a jarring reminder right here in Washington that our country must do more. The time to act against violence motivated by bias and by hatred is now.

From the horrific slayings of Matthew Shepard and James Byrd, Jr. during the 1990s to the recent tragic murder of Louis Ramirez last year, it has long been clear that we must do more to protect all Americans from these crimes. The answer to hate and bigotry has to ultimately be found in increased respect and tolerance for all our citizens. In the meantime, strengthening our Federal hate crimes legislation to give law enforcement the tools they need is a necessary step.

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I commend Senator Kennedy for his leadership in this effort over many years. I am proud to be a cosponsor of the *Matthew Shepard Hate Crimes Prevention Act of 2009*. This bipartisan legislation improves existing law by making it easier for Federal authorities to investigate and prosecute crimes of racial or religious violence. It focuses the attention and resources of the Federal Government on the problem of crimes committed against people because of their sexual orientation, gender, gender identity, or disability, which is a long-overdue protection. The bill also provides assistance and resources to state, local, and tribal law enforcement to address hate crimes.

Last Congress, this legislation was attached to the Department of Defense Authorization bill with the bipartisan support of 60 Senators. I was disappointed that the hate crime provision was taken out of that bill at conference, but I hope that Senators on both sides of the aisle can work together this year and help us to finally enact this bipartisan civil rights measure into law.

This year's Senate bill makes some modest changes requested by federal law enforcement to ensure that the hate crimes laws work as effectively as possible. We have worked closely with the Justice Department to ensure that we are advancing a bill that is fair, constitutional, and effective in cracking down on brutal acts of hate-based violence.

This bill would strengthen Federal jurisdiction over hate crimes to support, but not to substitute for, State and local law enforcement, which I appreciate as a former State prosecutor. It strengthens State and local law enforcement and has received strong support from State and local law enforcement organizations across the country.

This legislation would combat acts of violence motivated by hatred and bigotry, but it does not target pure speech, however offensive or disagreeable, and it certainly does not target religious speech. This bill was carefully crafted to respect constitutional limits and differences of opinion.

This week we commemorate the 45th anniversary of perhaps the most famous hate crime in recent memory, the day three civil rights workers in Mississippi paid the ultimate price in the struggle to secure civil rights and expand our democracy for all Americans. On June 21, 1964, these three young men were abducted, brutally beaten, and shot to death by Ku Klux Klansmen for simply attempting to register African-Americans voters. As we pay tribute to these courageous men, and to too many more recent victims of hate, Congress has an opportunity to send an important message. By passing this hate crimes legislation, we can act to prevent future hate crimes and civil rights abuses.

I welcome back our Attorney General and thank him for appearing today. We also welcome Janet Langhart Cohen, the wife of former Secretary of Defense, former Senator and former member of this Committee, William Cohen. Her husband was at the Holocaust Museum at the time of the shooting and knew Stephen Johns, the security guard who was killed. Ms. Langhart is well-respected by Republicans and Democrats alike, as are our other witnesses, and I look forward to hearing from her, Michael Lieberman of the Anti-Defamation League, Dr. Mark Achtemeier and our other witnesses today.

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Prepared Statement of Prof. Brian Levin

Director, Center for the Study of Hate & Extremism

California State University, San Bernardino

Hearings on the Matthew Shepard Hate Crimes Prevention Act of 2009

United States Senate Judiciary Committee

Washington, DC June 25, 2009

My name is Brian Levin and I am an attorney and Director of the Center for the Study of Hate & Extremism at California State University, San Bernardino, where I am also a Professor of Criminal Justice. The Center conducts sophisticated research in the area of hate crime and domestic terrorism and provides this information and expertise to law enforcement agencies, legislatures, civil rights organizations, the media and educators. I want to thank the Committee on the Judiciary for the opportunity to render this testimony in strong support of S. 909, the Matthew Shepard Hate Crimes Prevention Act of 2009 (MSHCPA) sponsored by Senators Kennedy and Leahy.

When I first conducted research on the topic at the University of Pennsylvania some twenty-three years ago under the mentorship of the Honorable A. Leon Higginbotham, and in my later research at Stanford Law School and the Southern Poverty Law Center, two key issues repeatedly emerged. First, there was a material gap in the coverage and effectiveness of federal civil rights law, and second, there was massive underreporting of these "bias," or hate crimes. Since 1987 I advised Congress of this fact. Eleven years ago I joined now Attorney General Holder in urging this committee to enact many of the same changes we still seek today. The MSHCPA would remedy the defects present in the hodgepodge of criminal laws at the state and federal level that leave many innocent Americans without adequate protection. While we strongly believe states should be at the forefront of criminal prosecution, we also contend that it is essential for federal authorities to have the ability to intervene, when necessary, in circumstances and jurisdictions when there are compelling obstacles to criminal enforcement.

SEVERITY & EXTENT OF HATE CRIME

For the purposes of this testimony I define hate crimes essentially similar to the definition found in Section 3 of the MSHCPA, as those criminal acts that are discriminatorily committed because of the actual or perceived group status of another. Each legislature establishes which group characteristic the law is to protect. These laws generally protect on the basis of race, religion, ethnicity and to a significantly lesser extent sexual orientation, gender, gender identity, disability, political affiliation and homeless status. From a criminological standpoint hate crimes are far more prevalent and dangerous than previously thought. While official reported data has been fairly consistent over the last

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several years, the diminishing quality of the data means that many victims are overlooked, and that some trends may not be readily apparent. This is an important issue, as it indicates that there are still significant problems in many parts of the country with the response to these serious offenses by some state and local authorities.

The latest 2007 FBI hate crime data of 7,624 reported incidents mean that there is approximately one reported hate crime almost every hour. However, this number drastically undercounts the actual number of cases in the United States. A 2005 Bureau of Justice Statistics victimization survey indicates that the actual annual number of victimizations is far higher at about191,000. Moreover, the reported state data submitted to the FBI itself indicates that many states simply are not reporting hate crimes accurately. This is key as identification of incidents themselves is the crucial first step to resolution and prosecution of cases. Hawaii, for instance did not participate at all in the federal reporting program. Moreover, three of the five states with the highest proportion of African-Americans, who account for 35% of all reported hate crimes nationally, barely reported hate crime at all.

1. Mississippi, 38% African-American, 0 hate crimes

2. Louisiana, 32% African-American, 31 hate crimes

3. Georgia, 31% African-America, 13 hate crimes

Contrast these totals with that of South Carolina, a state in the same region with similar demographics and a total population almost the same as Louisiana and half that of Georgia's. South Carolina, has over one million African American residents comprising 29% of the state's total population. The state reported 127 hate crime in 2007. In 2007 Boston, with a dedicated police hate crime unit and a population of 500,000, counted more hate crime cases than Georgia, Alabama, Arkansas, Louisiana, and Mississippi combined.

Also disturbing is the diminishing participation by other states with large and diverse populations. Illinois reported 348 hate crimes in 1996 through 113 participating law enforcement agencies. By 2007 the state reported only 167 incidents from only 60 agencies. Other states "participate" but merely collect forms showing "zero" hate crimes from various counties and municipalities.

Because of the unique severity of hate crime, its discriminatory nature, and its effects across state borders, it is thoroughly appropriate for federal laws to specifically punish and deter them. Over two decades of data collection from a variety of reliable sources have produced a much more clear picture of the dangers of hate crime. Hate crimes are directed against persons about 70% of the time. Non-hate crimes, by contrast, are directed against persons only 11 percent of the time. Center Advisory Board members Northeastern University professors Jack McDevitt and Jack Levin found that hate motivated assaults are twice as likely to cause injury and four times as likely to result in

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hospitalization as assaults in general. In addition, law enforcement data and other respected academic studies, establish that hate crimes are more likely to involve groups of assailants, escalating serial attacks (often against the same target), a heightened risk of civil disorder and retaliatory violence, greater psychological trauma to victims and a greater expenditure of resources to solve cases.

STATUS & INADEQUACY OF PRESENT LAW

The laws of about 45 states and several federal criminal statutes are applicable to hate crimes under certain limited circumstances. The Supreme Court has consistently upheld these types of state and federal civil rights laws. See Wisconsin v. Mitchell, 508 U.S. (1993) (Court upholds state hate crime penalty enhancement law.); United States v. Price, 383 U.S. 787 (1966) (Court affirms broad application of criminal civil rights conspiracy law); Screws v. United States, 325 U.S. 91 (1945) (Court affirms conviction of policeman under 18 U.S.C 242 for killing an African-American). Furthermore, the federal government as a separate sovereign has the legal authority to enforce statutes that may punish the same conduct as some state laws. See United States v. Lanza, 260 U.S. 377 (1922); Abbate v. United States, 359 U.S. 187 (1959).

The applicability of federal laws is limited by two basic elements. The first required element relates to the type of victim group that is protected such as race or religion. The next element relates to the type of activity undertaken by the victim that is protected or the type of criminal conduct of the offender that is proscribed. For instance 18 U.S.C. 245 only addresses the violation of a specifically enumerated right such as voting or employment. Some state laws only enhance certain types of criminal conduct such as assaults and vandalisms but not other offenses motivated by hate.

While nearly all state hate crime laws punish discriminatory crimes based on race, religion, and ethnicity only about half the states protect on the basis of gender or disability. About thirty states protect on the basis of sexual orientation, and far fewer on the basis of other characteristics. Moreover, there is no broadly applicable federal hate crime law, and existing federal criminal civil rights statutes, with one narrow exception (The Hate Crime Sentencing Enhancement Act of 1994, Pub. Law 103-322, § 280003) completely exclude protection on the basis of gender, gender identity, sexual orientation and disability. The idea that the federal government increasingly and unnecessarily intervenes in hate crime cases is simply not borne out by the facts, and there is no indication that this law would materially redefine the federal government's limited role. From 1998 to 2005 the number of civil rights criminal cases, which includes hate crimes as a subset, opened by the FBI actually dropped from over 2000 to around 500. The number of federal racial violence/hate crime cases declined from over 200 in 1998 to around 75 by 2005.

Forcible Interference with Civil Rights: 18 U.S.C. 245, the primary federal criminal civil rights law and target of HCPA reforms, was enacted in 1968 as a result of brutal attacks on civil rights activists in the South. Its application to hate crime attacks is severely

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limited by its restriction of which groups are covered and which rights it protects. At best it protects only on the basis of race, color, religion, and national origin. Furthermore, it requires an interference with a right specifically referenced in the statute such as voting or employment. Companion statutes that protect a more open ended set of rights are limited in application because they require such things as conspiracies or the involvement of government officials in the offense. 18 U.S.C. 241, 18 U.S.C. 242.

A NEW BREED OF VIOLENCE

When 18 U.S.C. 245 was enacted forty years ago African-Americans were frequently attacked to prevent them from exercising particular rights such as voting, jury service or use of public accommodations. Even though today's attacks are also symbolic, they are also far more random- generally instilling widespread terror, rather than targeting the exercise of a single specific civil right.

While most hate crime offenders today, perhaps 90%, are not hard core hatemongers or members of organized hate groups, these extremists are disproportionately represented in the most violent attacks on religious and ethnic minorities, gays, and other symbolic targets. Many violent extremists are agitated by the election of President Obama, immigration and increasing diversity, the financial crisis, and a perceived erosion moral traditions. Over one third of hate motivated homicides appear to be the work of hard core hatemongers. While no clear trend has yet been established with respect to hate crime overall with available data from 2007 and 2008, there appears to be an increase in the most extreme forms of hate violence. Hate crime homicides in 2007 tripled to nine from three a year earlier. The Southern Poverty Law Center counted a record 926 hate groups in the United States in 2008. Today's hard core hatemongers follow a different script than their civil rights era predecessors. They are not only armed, but use computers for social networking and research. They often cross state lines. As I wrote in November 2008 about the risk of far right extremists:

"the current shift is to a more decentralized assortment of people who prefer the anonymity of the Internet for their hate education, inspiration and social networking. It is in this decentralized group of loners and small cells that an additional stealth threat arguably resides. Unstable lone bigots or anonymous small cells, with varying degrees of competency, operate on the fringes of established organizations. They are motivated by a vast array of vitrol to act out violently against a litany of enemies demonized in the supremacist freelance doctrine of leaderless resistance"

United States Extremist Criminal Incidents: 2009

Boston, MA Jan. 21; White Supremacist James Luke 22, allegedly kills two, rapes, one, and shoots another while en route to a synagogue to kill Jews.

Belfast, ME Feb. 10, James Cummings, a neo-Nazi killed by his wife was allegedly attempting to construct a dirty bomb.

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Miramar Bch., FL Feb. 26 Dannie Baker, 60, a man known for racist ramblings, allegedly shoots 5, and kills two Chilean immigrants

Pittsburgh, PA Apr. 5, Neo-Nazi Richard Popalawski, 22, agitated over the belief that President Obama would ban guns, kills three police officers during a domestic violence call.

Fort Walton, FL Apr. 28, Army reservist Joshua Cartwright, 21, who believed there was a government conspiracy against him allegedly kills two Okaloosa County Sherff's Deputies following a domestic dispute

Middletown, CT May 6, Stephen Morgan, 29, who wrote of killing Jews, allegedly killed a Jewish Wesleyan student with whom he was obsessed.

New York, NY May 20, Four Muslim converts are arrested on federal charges relating to a plot to bomb Jewish and military targets.

Pima County, AZ May 30 Leaders of the Minuteman American Defense group allegedly kill a 29 year old suspected drug dealer and his nine year old daughter in an attempt to steal drugs and money to finance their civilian border patrol group.

Witchita, KS May 31, Dr, George Tiller, is allegedly killed by Freemen movement adherent Scott Roeder, 51.

Little Rock, Ark, June 1, Abdulhakid Mujahid Mohammed, 23, a Muslim convert shot two soldiers, killing one outside a recruiting office

Washington, DC Jun. 10, Holocaust denier James von Brunn, 88, allegedly kills a special police officer at the U.S. Holocaust Memorial Museum.

As I stated to this committee over ten years ago, many extremists subscribe to a strategy called leaderless resistance, popularized in the Neo-Nazi tract, The Turner Diaries and by former Ku Klux Klansman Louis Beam. Leaderless resistance encourages random acts of violence, not just on public activists, but on all minorities, by either lone assailants or small tightly knit cells. Extremists other than white supremacists embrace similar tactics as well. This obviously makes it harder to apply the more open-ended federal civil rights conspiracy law, 18 U.S.C. 241. Some racists are still influenced by by Christian Identity, the bigoted religion of white supremacy, which preaches that Jews are the spawn of Satan and African- Americans subhuman or similar theologies. Bigoted extremists today now include others on their list of enemies. Feminists, gays, biracial individuals, immigrants and the disabled have no place in their vision of a perfect Aryan society. One ex-Aryan Nations official confided to me that after the nation was rid of blacks, Jews, progressives, the disabled were next on their list.

Unfortunately, this more expansive message of hate has gained currency not just among

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extremists, but in the mainstream as well, where it is often galvanized by portrayals in the media. These negative and dehumanizing stereotypes then fuel other hate attacks from less ideological offenders-ranging from thrill seeking young people trying to gain validation from their peers to disenfranchised adult loners. For example, gay Americans, are increasingly singled out for attack from a vast spectrum of assailants ranging from skinheads to roving bands of armed high school students. Last year, for example, the National Coalition of Anti-Violence Programs identified 29 murders because of sexual orientation or gender identity, a 28% increase form the year before and the most since 1999. We have also seen disturbing attacks, including killings, of immigrants and transgendered people across the country, as well as the disabled. A homeless wheelchair bound man was set ablaze in Spokane not long ago, and just released 2008 Virginia figures show an increase in attacks against the disabled.

And while today's hateful assailants and their violent methods of attack have evolved, the laws designed to protect Americans have remained stagnant. The current limitations put federal prosecutors at a distinct disadvantage. Consider the 1980 shooting of Vernon Jordan, then President of the National Urban League. Jordan was shot in the back and critically wounded after emerging from a car with a white female assistant in Fort Wayne, Indiana in what President Jimmy Carter called "an assassination attempt"

The defendant in the case, avowed white supremacist serial killer Joseph Paul Franklin was acquitted of violating 18 U.S.C. 245, even though jurors subsequently admitted that they believed Franklin shot Jordan because he was African-American. The reason for the acquittal: the prosecutors could not establish that the assassination attempt was intended to specifically interfere with Jordan's use of a public accommodation- the Fort Wayne Marriot Hotel.

Federal prosecutors nationwide have expressed frustration about 18 U.S.C. 245. Federal authorities in California opted to use only weapons and explosives charges against a group of Nazis who plotted to machine gun the parishioners of a Black church and assassinate civil rights leaders. Using existing federal civil rights law was just too risky and difficult, a prosecutor confided to me. Former Assistant Attorney General Drew Days III, in Congressional hearings as far back as 1980 testified: "*One would think, and I think most people in the United States do believe, that it is a federally protected and constitutional right to live, and that if one's life is taken by another person because one is black, Hispanic or some minority group, then that constitutes a violation of federal law...[b]ut it is my considered judgment that this type of violence can take place without running afoul of federal statutes.*"

EXPANDING GROUP COVERAGE

Expanding protection of the criminal civil rights law to gays and lesbians, women, transgendered people and the disabled is thoroughly consistent with the aims of hate crime law generally. Hate crimes do not express "hatred" per se and these laws do not punish expressions of abstract bigotry- which are constitutionally protected. Hate crimes

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really are the discriminatory use of violence to enforce a particular social hierarchy- one where the roles and status of victims and their groups are degraded and threatened. This discriminatory violence is not worse merely because victims face a heightened risk of injuries and future attacks. These crimes are also worse because they threaten whole groups of people from meaningful participation in our society because of who they are. Thus, they our crimes against our national community.

Our research is replete with examples of people who are targeted for discriminatory violence because of their gender, gender identity, sexual orientation and disability. Still, their unique vulnerability and the negative stereotypes relating to them make them entirely proper for coverage by these reforms.

We do have a more clear picture of gender based attacks. For example, Canadian Marc Lepine segregated and murdered fourteen female engineering students at a university in 1989. Before shooting himself he left a note blaming women and feminists for his problems. Some of our nation's worst serial killers sought out women to kill during multi-state murder sprees. Women are over nine times as likely to be murdered by men than by other women. Certainly, many of these crimes were committed in large part because of gender. The fact that many female victims know their assailants does not in and of itself preclude hate crime status. While many hate crimes do involve stranger attacks, we have never held that particular element as a preclusive identifying factor. To do so would irrationally preclude the brutal murder of James Byrd over a decade ago as a hate crime merely because he knew one of his alleged assailants.

According to the FBI gays and lesbians account for about 12 percent of the hate crimes committed every year and recent studies establish that they face a high risk of criminal victimization merely because they are perceived to be gay or lesbian. Many anti-gay hate crimes involve bands of roving assailants hunting down random "gay looking" victims with weapons such as tire irons, baseball bats and bricks. Some mistakenly contend that punishing violent thugs who brutalize gays promotes homosexuality. Yet, no one has seriously argued that anti-church arson laws impermissibly promote religion, or laws against involuntary servitude encourage illegal immigration.

CONCLUSION

Most hate crime violations are prosecuted at the state level and we have no desire to "federalize" an unlimited array of crime. Federal prosecutors only intervene in those cases of overriding national concern or where local enforcement is highly flawed. However, much of the act's potency, lies not in what it punishes, but rather in its recognition of the primary role local authorities now play in combating hate crime. Nearly all hate crime investigations and prosecutions in the United States are handled by state and local authorities. Gone are the days, where masses of federal agents and soldiers have had to swoop into states to protect new students and freedom riders from thugs in

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Klan dominated municipalities. The MSHCPA has a clear bias in favor of local prosecution and has restrictions that require federal prosecution only in limited cases where the leadership of the Department of Justice approves. However, reporting data indicates that some states apparently provide limited assistance to hate crime victims. Thus, there appear to be various circumstances where federal help or prosecution are still necessary.

Today, in the midst of our economic downturn, federal authorities are needed much more to assist cash-strapped local departments not as an unwelcome occupying force, but as a desperately needed partner to assist with forensics, technical assistance, and investigations. Even in police departments with model hate crime investigative units, such as the Boston Police Department's Community Disorders Unit, modern cases increasingly involve interstate travel or internet hate networks, and require sophisticated ballistic and DNA testing or computer forensics. These measures may be beyond the capacity of many local police agencies particularly, in difficult economic times. The MSHCPA also provides greater access to local communities for federal training programs and mediation services that can prevent hate crimes before they boil over in to violence.

But there is something more to hate crime's harms that cannot be completely captured by statistics or criminological studies. As the recent attack at the United States Holocaust Memorial Museum demonstrates, hate crimes threaten pluralistic democracies in a way that other crimes do not. Unlike many other crimes they are at once discriminatory and terroristic. As law professor James Weinstein observed: "The effect of Kristallnacht on German Jews was greater than the sum of the damage to buildings and assaults on individual victims. Violence and threats that destabilize the bonds between citizens and the democratic institutions that they share are worthy of additional punishment and federal assistance. Moreover, victims of hate motivated violence are entitled to legal protection no matter where they reside. That is why over two thirds of the American public favor hate crime laws, and why the Senate should heed their call to pass the MSHCPA.

Thank you.

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Statement by Michael Lieberman
Washington Counsel, Anti-Defamation League
On Behalf of
Anti-Defamation League
and
The Leadership Conference on Civil Rights
Senate Committee on the Judiciary
Regarding S. 909
The Matthew Shepard Hate Crimes Prevention Act
June 25, 2009

On behalf of the Anti-Defamation League and the Leadership Conference on Civil Rights, I am pleased to provide testimony as the Senate Judiciary Committee conducts hearings on S. 909, the Matthew Shepard Hate Crimes Prevention Act (HCPA). This necessary legislation, long championed by Senator Edward Kennedy, with 43 current cosponsors, would eliminate gaps in federal authority to investigate and prosecute bias-motivated crimes. The House of Representative approved its very similar version of this legislation, H.R. 1913, the Local Law Enforcement Hate Crime Prevention Act, on April 29 by a vote of 249-175.

The Anti-Defamation League

Since 1913, the mission of ADL has been to "stop the defamation of the Jewish people and to secure justice and fair treatment to all citizens alike." Dedicated to combating anti-Semitism, prejudice, and bigotry of all kinds, defending democratic ideals and promoting civil rights, ADL is proud of its leadership role in the development of innovative materials, programs, and services that build bridges of communication, understanding, and respect among diverse racial, religious, and ethnic groups.

Over the past decade, the League has been recognized as a leading resource on effective responses to violent bigotry, conducting an annual *Audit of Anti-Semitic Incidents*, drafting model hate crime statutes for state legislatures, and serving as a principal resource for the FBI in developing training and outreach materials to assist in the implementation of the Hate Crime Statistics Act (HCSA), which requires the Justice Department to collect statistics on hate violence from law enforcement officials across the country.

The Leadership Conference on Civil Rights

LCCR is the nation's oldest, largest, and most diverse coalition of civil and human rights organizations. Founded in 1950 by A. Philip Randolph, Arnold Aronson, and Roy Wilkins, LCCR works in support of policies that further the goal of equality under law through legislative advocacy and public education. Today the LCCR consists of more than 200 organizations representing persons of color, women, children, organized labor, persons with disabilities, the elderly, gays and lesbians, and major religious groups.

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I. DEFINING THE ISSUE

1) The Impact of Hate Violence

All Americans have a stake in effective response to violent bigotry. These crimes demand priority attention because of their special impact. Bias crimes are designed to intimidate the victim and members of the victim's community, leaving them feeling fearful, isolated, vulnerable, and unprotected by the law. Failure to address this unique type of crime could cause an isolated incident to explode into widespread community tension. The damage done by hate crimes, therefore, cannot be measured solely in terms of physical injury or dollars and cents. By making members of minority communities fearful, angry, and suspicious of other groups – and of the power structure that is supposed to protect them – these incidents can damage the fabric of our society and fragment communities.

2) The Nature and the Magnitude of the Hate Crime Problem in America in 2009

The FBI has been tracking and documenting hate crimes reported from federal, state, and local law enforcement officials since 1991 under the Hate Crime Statistics Act of 1990 (HCSA). Though clearly incomplete, the Bureau's annual HCSA reports provide the best national snapshot of bias-motivated criminal activity in the United States. In 2007, the most recent report available, the FBI documented 7,624 hate crimes reported by over 13,200 law enforcement agencies across the country – nearly one hate crime every hour of every day. The importance of the Hate Crime Statistics Act and the findings of the Bureau's 2007 HCSA report are discussed more fully below.

Last week, the Leadership Conference on Civil Rights Education Fund released a new report, *Confronting the New Faces of Hate: Hate Crimes in America 2009*. This report, included as Appendix A to this testimony, is comprehensive and excellent – the single best environmental scan of the issue available.

The report makes it clear that violence committed against individuals because of their race, religion, ethnicity, national origin, gender, gender identity, or sexual orientation remains a serious problem – and highlights a number of disturbing trends:

- The number of hate crimes committed against Hispanics and those perceived to be immigrants has increased each of the past four years for which FBI data is available – and hate crimes committed against individuals because of their sexual orientation has increased to its highest level in five years;
- The election of the first African-American President, a deep economic crisis, a broken immigration system, and faster, better means of communication among like-minded individuals comprise a perfect storm of grievances for extremists and hate group organizing;
- There has been an increase in harsh, hateful rhetoric against Hispanics, immigrants, and those who look like immigrants – and some in the mainstream media have contributed to the spreading of inflammatory anti-immigrant messages;

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- The number of organized hate groups in America, including the increased use of the Internet and social networking sites to recruit new members continues to grow; and
- The governmental response to increasing bias crimes in other countries has been inadequate, and the United States can play an important role internationally as a leader in crafting effective responses and prevention strategies.

The report emphasizes the importance of enactment of the Matthew Shepard Hate Crime Prevention Act and contains a series of recommendations for action by public officials, civic leaders, and the public.

3) Punishing Bias-Motivated Violence: The Framework for Hate Crime Laws
Criminal activity motivated by bias is distinct and different from other criminal conduct. These crimes occur because of the perpetrator's bias or animus against the victim on the basis of actual or perceived status – the victim's race, color, religion, national origin, sexual orientation, gender, gender identity, or disability is the *reason* for the crime. In the vast majority of these crimes, but for the victim's personal characteristic, no crime would occur at all.

Analogous to anti-discrimination civil rights laws. Hate crime laws are best viewed as a criminal justice system parallel to the thousands of federal, state, and local laws that prohibit invidious discrimination because of race or other identifying characteristic. In language, structure, and application, the majority of the nation's hate crime laws are directly analogous to anti-discrimination civil rights laws.

For example, Title VII of the Civil Rights Act of 1964, as amended, prohibits various discriminatory employment actions "*because of*" the employee or prospective employee's race, color, religion, sex, or national origin. One relevant section of the Fair Housing Act, 42 U.S.C. §3604 (a), prohibits interference with housing choices "*because of* [the victim's] race, color, religion, sex, familial status, or national origin." Further, a number of current federal criminal laws punish intentional discrimination on the basis of race, religion, or other characteristic. For example, by enacting 18 U.S.C. §242, the Reconstruction Era Congress made it a crime to deprive a person of constitutional rights "by reason of his color, or race" 18 U.S.C. § 245 makes it a crime to intentionally injure, intimidate, or interfere with any person's enjoyment of a federal right or benefit (or attempt to do so) "because of his race, color, religion, or national origin" and because the person is engaged in an enumerated federally-protected activity.

Like workplace and housing civil rights laws, the prohibited conduct under hate crime laws is the intentional selection of the victim for targeted, discriminatory behavior on the basis of the victim's personal characteristics.

Comparable to other status crimes. Many federal and state criminal laws provide different penalties for crimes depending on the victim's particular status. Virtually every criminal code provides enhanced penalties for crimes directed at the elderly,

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or the very young, or teachers on school grounds, or law enforcement officials. Legislators have legitimate and neutral justifications for selective protection of certain categories of victims – and enhanced criminal penalties – based on their judgment of the social harm these crimes cause.

Consistent with the First Amendment. The First Amendment does not protect violence – and it does not prevent the government from imposing criminal penalties for violent discriminatory conduct directed against victims on the basis of their personal characteristics. Hate crime laws do not punish speech. Americans are free to think, say, and believe whatever they want. It is only when an individual commits a crime because of those biased beliefs and intentionally targets another for violence or vandalism that a hate crime statute can be triggered. In *Wisconsin v. Mitchell*, 508 U.S. 476 (1993), the U.S. Supreme Court unanimously upheld the constitutionality of the Wisconsin penalty-enhancement statute – effectively removing any doubt that state legislatures may properly increase the penalties for criminal activity in which the victim is intentionally targeted because of his/her race, religion, sexual orientation, gender, or ethnicity.

Deterrent Impact. Law enforcement officials have come to recognize that strong enforcement of these laws can have a deterrent impact and can limit the potential for a hate crime incident to explode into a cycle of violence and widespread community disturbances. In partnership with human rights groups and civic leaders, law enforcement officials have found they can advance police-community relations by demonstrating a commitment to be both tough on hate crime perpetrators and sensitive to the special needs of hate crime victims.

Punishment to fit the crime. Laws shape attitudes. Bigotry cannot be outlawed, but hate crime laws demonstrate an important commitment to confront and deter criminal activity motivated by prejudice. Hate crime laws – like anti-discrimination laws in the workplace – are color-blind mechanisms which allow society to redress a unique type of wrongful conduct in a manner that reflects that conduct's seriousness. Since hate violence has a uniquely serious impact on the community, it is entirely appropriate for legislators to acknowledge that this form of criminal conduct merits more substantial punishment.

II. THE CASE FOR S. 909, THE MATTHEW SHEPARD HATE CRIME PREVENTION ACT

1) Deficiencies in Existing Federal Criminal Civil Rights Statutes

S. 909, the Matthew Shepard Hate Crimes Prevention Act (HCPA), would establish a new federal criminal code provision, 18 U.S.C. §249. This section would complement an existing statute, 18 U.S.C. §245 – one of the primary statutes used to combat racial and religious bias-motivated violence. Enacted in 1968, 18 U.S.C. §245 prohibits intentional interference, by force or threat of force, with the enjoyment of a federal right or benefit (such as voting, going to school, or working) on the basis of race, color, religion, or national origin.

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Under current law, the government must prove both that the crime occurred because of a person's membership in a protected group, such as race or religion, and *because* (not while) he/she was engaging in a federally-protected activity. This unwieldy, overly-burdensome dual jurisdictional requirement has prevented the government from investigating and prosecuting a significant number of cases. In addition, federal authorities are currently unable to involve themselves in cases involving death or serious bodily injury resulting from crimes directed at individuals because of their sexual orientation, gender, gender identity, or disability.

The HCPA addresses both of these deficiencies. First, the legislation would eliminate the overly-restrictive obstacles to federal involvement by permitting prosecutions without having to prove that the victim was attacked because he/she was engaged in a federally-protected activity. Second, it would provide new authority for federal officials to work in partnership with state and local law enforcement authorities to investigate and prosecute cases in which the bias violence occurs because of the victim's actual or perceived sexual orientation, gender, gender identity, or disability.

The bill would give local law enforcement officials important tools to combat violent, bias-motivated crime. Federal support – through training or direct assistance grants – will help ensure that bias-motivated violence is effectively investigated and prosecuted. The legislation would also facilitate federal investigations and prosecutions when local authorities are unwilling or unable to act.

State and local authorities investigate and prosecute the overwhelming majority of hate crime cases – and will continue to do so after the HCPA is enacted. From 1991- 2007, for example, the FBI documented over 129,000 hate crimes. During that period, however, the Justice Department brought fewer than 170 cases under 18 U.S.C. § 245. Some crimes do merit federal involvement – for exactly the same reasons that Congress in 1968 determined that certain crimes directed at individuals because of "race, color, religion or national origin" required a federal remedy.

2) An Inadequate Patchwork of Laws: State and Federal Hate Crime Statutes

A. State Hate Crime Statutes

At present, forty-five states and the District of Columbia have enacted hate crime penalty-enhancement laws, many based on an ADL model statute drafted in 1981. Currently, however, only thirty states and the District of Columbia include sexual orientation-based crimes in their hate crimes statutes; only twenty-six states and the District of Columbia include coverage of gender-based crimes; only twelve states and the District of Columbia include coverage of gender-identity based crimes, and only thirty states and the District of Columbia include coverage for disability-based crimes. And five states – Arkansas, Georgia, Indiana, South Carolina, and Wyoming – have no hate crime statute at all. A chart of state hate crimes statutory provisions is included at Appendix B.

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The inability of the federal government to investigate some hate crime cases – or provide forensic expertise or other aid – has resulted in unequal justice and unequal access to federal investigative and prosecutorial assistance.

Three examples:

- In Greenville, South Carolina on May 21, 2007, Sean Kennedy, a gay man, died of injuries sustained after he was attacked outside a bar. While making derogatory comments regarding Kennedy's sexual orientation, the assailant beat and punched him until he fell, hitting his head on the pavement. The killer was originally charged with murder, but his charge was reduced to involuntary manslaughter. He was sentenced to five years in prison, which was suspended to only three years with credit for the seven months he had already served. He was also ordered to attend both anger management and drug/alcohol management classes. South Carolina is one of five states with no hate crime statute – and the Federal government had no authority to investigate whether justice was served in this sexual orientation hate crime case.

- The June, 1998 bias-motivated murder of James Byrd, Jr in Texas, and the October, 1998 bias-motivated murder of Matthew Shepard in Wyoming sparked national outrage and concern. The Federal government had jurisdiction to assist in the investigation of the race-based murder of James Byrd, Jr, (because the crime had occurred on a road used in interstate commerce) – and appropriately provided over $250,000 in Byrne Grants to assist in the case. Federal authorities, however, could not provide similar assistance for the sexual orientation-based murder of Matthew Shepard. According to the chief investigator in the case, the small Albany County Sheriff's Department was forced to furlough five law enforcement employees in order to pay for costs associated with the successful investigation and prosecution of that high-profile case.

- In September, 2003, Billy Ray Johnson, a mentally disabled black man, was taken to a party, ridiculed, called racial slurs, knocked unconscious, and then dumped by the side of the road by four white men. Johnson suffered permanent brain damage from the attack. Predominantly white juries acquitted the defendants of all serious charges. Three of the perpetrators received 30-day sentences, and the fourth received a 60-day sentence. The Southern Poverty Law Center brought a civil suit of behalf of Johnson against two of the perpetrators and won a $9 million damage award in April, 2007. It is arguable that a federal criminal jury might have returned a guilty verdict had federal jurisdiction permitted such a prosecution.

The availability of expert federal hate crime assistance should not depend on the vagaries of the facts of a case, such as whether the attack occurs on a public highway, rather than in the private parking lot across the street.

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B. Federal Hate Crime Statutes

In recent years, Congress has provided broad, bipartisan support for several federal initiatives to address hate violence. These initiatives have led to significant improvements in the response of the criminal justice system to bias-motivated crime. The HCPA builds on the foundation of these existing laws.

The Hate Crime Statistics Act (HCSA) (28 U.S.C. § 534)

Though a number of private groups and state law enforcement agencies track incidents of hate violence, the HCSA now provides the best national picture of the magnitude of the hate violence problem in America -- though still clearly incomplete. Enacted in 1990, the HCSA requires the Justice Department to acquire data on crimes which "manifest prejudice based on race, religion, sexual orientation, or ethnicity" from law enforcement agencies across the country and to publish an annual summary of the findings. President George H.W. Bush's signing statement for the Act from April 23, 1990 is eloquent:

> Enacting this law today helps move us toward our dream: a society blind to prejudice, a society open to all. Until we reach that day when the bigotry and hate of mail bombings, and the vandalisms of the Yeshiva school and the Catholic churches we've seen recently, and so many other sad, sad incidents are no more -- until that day, we must remember: For America to continue to be a good place for any of us to live, it must be a good place for all of us to live.
> http://bushlibrary.tamu.edu/research/public_papers.php?id=1791&year=1990&month=all

In the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322 September 13, 1994), Congress expanded coverage of the HCSA to require FBI reporting on crimes based on "disability."

Hate Crime Sentencing Enhancement Act (28 U.S.C § 994 Note)

Substantial opposition to the HCPA over the years has been based on the fact that the bill will expand federal criminal civil rights laws to include protection for crimes in which the victim is attacked because of his or her sexual orientation, gender, gender, identity, or disability. Yet the federal criminal code already contains an inclusive federal counterpart to state hate crime penalty-enhancement laws. These provisions, enacted as the Hate Crime Sentencing Enhancement Act, require the United States Sentencing Commission to increase the penalties for crimes in which the victim was selected "because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person." This measure, while important, has limited utility, since it applies only to federal crimes, such as bias-motivated violence or vandalism that occurs on federal property, such as national parks.

The Church Arson Prevention Act (CAPA) (Public Law 104-155 July 3, 1996)

This measure was drafted to amend 18 U.S.C. § 247, a 1988 statute designed to provide federal jurisdiction for religious vandalism cases. Similar to the HCPA, a

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broad coalition of civil rights and religious groups and federal, state, and local law enforcement officials testified that the statute's restrictive interstate commerce requirement and its relatively significant damages threshold had been obstacles to federal prosecutions. Following hearings that documented a disturbing series of arsons at places of religious worship – especially African-American congregations – Congress unanimously voted to expand federal criminal jurisdiction to investigate and prosecute attacks against houses of worship, increase the penalties for these crimes, and authorized additional FBI and BATF investigators, DOJ prosecutors, and community conciliators.

3) Limited Jurisdiction for Federal Hate Crime Prosecutions

As drafted, the HCPA contains a number of appropriate, significant limitations on prosecutorial discretion. First, the bill's requirement of actual injury, or, in the case of crimes involving the use of fire, a firearm, a dangerous weapon, or any explosive device, an attempt to cause bodily injury, limits the federal government's jurisdiction to the most serious crimes of violence against individuals – not property crimes.

Second, for the proposed new categories – gender, gender identity, sexual orientation, and disability – federal prosecutors will have to prove an interstate commerce connection with the crime -- similar to the constitutional basis relied upon for the Church Arson Prevention Act in 1997.

Third, like 18 U.S.C. § 245, the HCPA contains a restrictive certification requirement:

> `(b) **Certification Requirement-**
>
> `(1) IN GENERAL- No prosecution of any offense described in this subsection may be undertaken by the United States, except under the certification in writing of the Attorney General, or his designee, that--
>
> `(A) the State does not have jurisdiction;
>
> `(B) the State has requested that the Federal Government assume jurisdiction;
>
> `(C) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence; or
>
> `(D) a prosecution by the United States is in the public interest and necessary to secure substantial justice.

Federal prosecutors can be expected to continue to defer to state authorities under its expanded authority – a fact that has led virtually every major law enforcement organization in the country and the National District Attorneys Association to support this bill. But the HCPA will permit prosecutions of bias-motivated violence that might not otherwise receive the attention they deserve. Supporters of the HCPA know well that new federal criminal civil rights jurisdiction to address crimes directed at individuals because of their gender, gender identity, sexual orientation, or disability will not result in the elimination of these crimes. But the possibility of federal involvement in select cases, the impact of FBI investigations in others, and

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partnership arrangements with state and local investigators in still other cases, should prompt more effective state and local prosecutions of these crimes.

4) The Disturbing Prevalence of Hate Violence

In 2007 (the most current data available) there were 7,624 reported bias-motivated criminal incidents. Of the 7,624 total incidents, 3,870 were motivated by racial bias; 1,265 by sexual orientation bias; 1,007 by ethnicity/national origin bias; and 79 were reported to have occurred against disabled individuals. 1,400 (18.3%) of all reported crimes were motivated by religious bias. Of the incidents motivated by religious bias in 2007, 969 (69.2%) were directed against Jews and Jewish institutions. They accounted for 12.7% of the total number of reported hate crimes in 2007.

This data almost certainly understates the true number of hate crimes committed in our nation. Only 13,241 of the 17,000 law enforcement agencies in the United States participated in this data collection effort. And of those participating agencies, only 15.3% reported even a single hate crime.

Of special concern is the fact that reported crimes directed against Hispanics increased markedly – in a report in which virtually every other category of crime decreased. In fact, as previously mentioned, 2007 was the fourth straight year the FBI documented increased reported hate crimes against Hispanics. ADL recently documented a disturbing increase in the number of violent assaults against Hispanics, legal, and undocumented immigrants – and those perceived to be immigrants – by white supremacists and other far-right extremists in our report, "Extremists Declare 'Open Season' on Immigrants: Hispanics Target of Incitement and Violence." That report is available here:
http://www.adl.org/main_Extremism/immigration_extremists.htm

Clearly these hate crime numbers do not speak for themselves. Behind each and every one of these statistics is an individual or a community targeted for violence for no other reason than race, religion, sexual orientation, disability, or national origin.

The FBI's 2007 HCSA report is available here:
http://www.fbi.gov/ucr/hc2007/index.html. A chart which compiles and details the findings from the annual FBI HCSA reports from 1997-2007 is included as Appendix C.

The HCSA has proved to be a powerful, if incomplete, mechanism to confront violent bigotry against individuals on the basis of their race, religion, sexual orientation, or ethnicity. For that reason, the Anti-Defamation League and the Leadership Conference on Civil Rights especially welcome provisions in S. 909 that would mandate additional reporting requirements for hate crimes directed at individuals on the basis of their gender and gender identity – and for crimes committed by and against juveniles.

Very few states systematically collect statistics on these categories of hate crimes. Studies have demonstrated that victims are more likely to report a hate crime if they know a special reporting system is in place. Yet, studies by the National

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Organization of Black Law Enforcement Executives (NOBLE) and others have revealed that some of the *most* likely targets of hate violence are the *least* likely to report these crimes to the police. In addition to cultural and language barriers, some immigrant victims, for example, fear reprisals or deportation if incidents are reported. Many new Americans come from countries in which residents would never call the police -- especially if they were in trouble. Gay, lesbian, and transgender victims, facing hostility, discrimination, and, possibly, family pressures, may also be reluctant to come forward to report these crimes.

The history of the FBI's fine implementation of the HCSA, however, demonstrates that data collection efforts can spark increased public awareness of the problem and improvements in the local response of police and the criminal justice system to these crimes.

The legislation's proposed new data collection requirement for juvenile hate crime perpetrators and victims is also very important. There is a paucity of published information about juvenile hate crime offenders. The annual HCSA report does not provide specific information about either juvenile hate crime offenders or victims. An October 2001 report by the Justice Department's Bureau of Justice Statistics, however, provided disturbing information about the too-frequent involvement of juveniles in hate crime incidents.

This report, http://www.ojp.usdoj.gov/bjs/abstract/hcrn99.htm which carefully analyzed nearly 3,000 of the 24,000 hate crimes to the FBI from 1997 to 1999, revealed that a disproportionately high percentage of both the victims and the perpetrators of hate violence were young people under 18 years of age:

- 33% of all known hate crime offenders were under 18; 31% of all violent crime offenders and 46% of the property offenders.
- Another 29% of all hate crime offenders were 18-24.
- 30% of all victims of bias-motivated aggravated assaults and 34% of the victims of simple assault were under 18.
- 34% of all persons arrested for hate crimes were under 18; 28% of the violent hate crimes and 56% of the bias-motivated property crimes.
- Another 27% of those arrested for hate crimes were 18-24.

5) Support From a Very Broad Coalition of Groups

This legislation has been endorsed by more than 300 civil rights, professional, civic, educational, and religious groups, twenty-six state Attorneys General, former US Attorney General Dick Thornburgh, and virtually every major national law enforcement organizations in America, including:

- Federal Law Enforcement Officers Association
- Hispanic American Police Command Officers Association
- Hispanic National Law Enforcement Association
- International Association of Chiefs of Police
- International Brotherhood of Police Officers

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- Major Cities Chiefs Association
- National Asian Peace Officers Association
- National Black Police Association
- National Center for Women & Policing
- National Coalition of Public Safety Officers
- National District Attorneys Association
- National Latino Police Officers Association
- National Organization of Black Law Enforcement Executives
- Police Executive Research Forum
- Police Foundation

The Committee has also received supportive sign-on letters from 44 women's organizations, 64 disability rights organizations associated with the Consortium for Citizens with Disabilities, and 47 religious and faith organizations.

Conclusion

The fundamental cause of bias-motivated violence in the United States is the persistence of racism, bigotry, homophobia, and anti-Semitism. Unfortunately, there are no quick, complete solutions to these problems. Complementing state hate crime laws and prevention initiatives, the federal government has an essential leadership role to play in confronting criminal activity motivated by prejudice and in promoting prejudice reduction initiatives for schools and the community. And effective responses to hate violence by public officials and law enforcement authorities can play an essential role in deterring and preventing these crimes. Ultimately, the impact of all bias crime initiatives will be measured in the response of the criminal justice system to the individual act of hate violence.

We urge the Senate to approve this important, long-delayed legislation as soon as possible.

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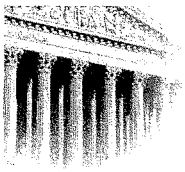

Local Law Enforcement Hate Crimes Prevention Act of 2009

Endorsing Organizations

The Local Law Enforcement Hate Crimes Prevention Act is supported by twenty-six state Attorneys General and over 300 national law enforcement, professional, education, civil rights, religious, and civic organizations.

A. Philip Randolph Institute
AIDS National Interfaith Network
African American Ministers in Action
African-American Women's Clergy Association
Agudath Israel
Alexander Graham Bell Association for the Deaf and Hard of Hearing (AG Bell)
Alliance for Rehabilitation Counseling
American-Arab Anti-Discrimination Committee
American Association for Affirmative Action
American Association of University Women
American Association on Health and Disability
American Association on Intellectual and Developmental Disabilities
American Association on Mental Retardation (AAMR)
American Association of People with Disabilities (AAPD)
American Citizens for Justice
American Civil Liberties Union (ACLU)
American Conference of Cantors
American Council of the Blind
American Counseling Association
American Dance Therapy Association
American Ethical Union, Washington Office
American Federation of Government Employees
American Federation of Musicians
American Federation of State, County, and Municipal Employees, AFL CIO
American Federation of Teachers
AFL-CIO
American Foundation for the Blind
American Islamic Congress
American Jewish Committee
American Jewish Congress
American Medical Association
American Medical Rehabilitation Providers Association (AMRPA)
American Music Therapy Association
American Network of Community Options and Resources (ANCOR)
American Nurses Association
American Occupational Therapy Association (AOTA)
American Psychological Association
American Rehabilitation Association
American Speech-Language Hearing Association
American Therapeutic Recreation Association
American Psychological Association
Americans for Democratic Action
American Veterans Committee
And Justice For All
Anti-Defamation League
Aplastic Anemia Foundation of America, Inc.
Arab American Institute
The Arc of the United States
Asian American Justice Center
Asian American Legal Defense & Education Fund
Asian Law Caucus
Asian Pacific American Labor Alliance
Asian Pacific American Legal Center
Association for Gender Equity Leadership in Education
Association of Tech Art Projects (ATAP) c/o Washington Partners LLP
Association of University Centers on Disabilities (AUCD)
Autism Society of America
AYUDA
Bazelon Center for Mental Health Law
Bi-Net
B'nai B'rith International
Brain Injury Association, Inc.
Break the Cycle
Buddhist Peace Fellowship
Business and Professional Women, USA
Catholics for Free Choice
Center for Community Change
Center for Democratic Renewal
Center for the Study of Hate & Extremism
Center for Women Policy Studies
CenterLink: The Community of LGBT Centers
Central Conference of American Rabbis
Chinese American Citizens Alliance
Christian Church Capital Area
Church Women United
Coalition of Black Trade Unionists
Coalition of Labor Union Women
Colorado Coalition Against Sexual Assault (CCASA)
Communication Workers of America
Congress of National Black Churches
Consortium for Citizens with Disabilities
Consortium of Developmental Disabilities Councils
Council for Learning Disabilities
Council of State Administrators of Vocational Rehabilitation
Cuban American National Council

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Democrats.com
Disability Rights Education and Defense Fund
Disciples of Christ Advocacy Washington Network
Disciples Justice Action Network
Easter Seals
The Episcopal Church
Epilepsy Foundation
Equal Partners in Faith
Equal Rights Advocates, Inc.
Evangelical Lutheran Church of America, Office for Government Affairs
Fair Employment Council of Greater Washington
Family Pride Coalition
Federal Law Enforcement Officers Association
Federally Employed Women
Feminist Majority
Friends Committee on National Legislation
Gay, Lesbian and Straight Education Network
Gender Public Advocacy Coalition
GenderWatchers
General Federation of Women's Clubs
Goodwill Industries International, Inc.
Hadassah, the Women's Zionist Organization of America
Helen Keller National Center
Hispanic American Police Command Officers Association
Hispanic National Law Enforcement Association
Human Rights Campaign
Human Rights First
The Indian American Center for Political Awareness
Interfaith Alliance
International Association of Chiefs of Police - (Senate) / (House)
International Association of Jewish Lawyers and Jurists
International Association of Jewish Vocational Services
International Brotherhood of Teamsters
International Dyslexia Association
International Federation of Black Pride
International Union of United Aerospace and Agricultural Implements
Japanese American Citizens League
Jewish Council for Public Affairs
Jewish Labor Committee
Jewish Reconstructionist Federation
Jewish War Veterans of the USA
Jewish Women International
JAC-Joint Action Committee
Justice for All
LDA, The Learning Disabilities Association of America
Labor Council for Latin American Advancement
The Latino Coalition
Latino/a, Lesbian, Gay, Bisexual & Transgender Organization
Lawyers' Committee for Civil Rights Under Law
Leadership Conference on Civil Rights
LEAP- Leadership Education for Asian Pacifics, Inc.
Learning Disabilities Association of America
League of Women Voters
League of United Latin American Citizens (LULAC)
Legal Momentum
Log Cabin Republicans
Major Cities Chiefs Association
MALDEF - Mexican American Legal Defense & Education Fund
MANA - A National Latina Organization
Maryland State Department of Education
Matthew Shepard Foundation
The McAuley Institute
Methodist Federation for Social Action
Moderator's Global Justice Team of Metropolitan Community Churches
National Abortion Federation
NAACP
NAACP Legal Defense and Educational Fund, Inc.
NA'AMAT USA
NAKASEC- National Korean American Service & Education Consortium, Inc
National Abortion Federation
National Alliance on Mental Illness (NAMI)
National Alliance of Postal and Federal Employees
National Asian Pacific American Bar Association
National Asian Pacific American Women's Forum
National Asian Peace Officers Association
National Association for Multicultural Education
National Association for the Education and Advancement of Cambodian, Laotian and Vietnamese Americans
National Association of Commissions for Women
National Association of Collegiate Women Athletics Administrators
National Association of the Deaf
National Association of Developmental Disabilities Councils (NADDC)
National Association of Latino Elected and Appointed Officials (NALEO)
National Association for Multicultural Education
National Association of People with AIDS
National Association of Private Schools for Exceptional Children
National Association of Rehabilitation Research and Training Centers
National Association of School Psychologists
National Association of Social Workers
National Black Justice Coalition
National Black Police Association
National Black Women's Health Project
National Center for Lesbian Rights
National Center for Transgender Equality
National Center for Victims of Crime
National Center for Women & Policing
National Coalition Against Domestic Violence
National Coalition for Asian Pacific American Community Development
National Coalition of Anti-Violence Programs
National Coalition on Deaf-Blindness
National Coalition of Public Safety Officers
National Conference for Community and Justice (NCCJ)
National Congress of American Indians
National Congress of Black Women

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National Council of Churches of Christ in the USA
National Council of Jewish Women
National Council of La Raza
National Council of Women's Organizations
National Crime Prevention Council
National Disability Rights Network
National District Attorneys Association
National Down Syndrome Society (NDSS)
National Education Association
National Federatiou of Filipino American Associations
National Fragile X Foundation (Fragile X)
National Gay and Lesbian Task Force
National Hispanic Leadership Agenda (NHLA)
National Italian American Foundation
National Jewish Democratic Council
National Korean American Service and Education Consortium
National Latino Police Officers Association
National League of Cities
National Mental Health Association
National Multicultural Institute
National Newspaper Publishers Association
National Organization of Black Law Enforcement Executives
National Organization for Women
National Parent Network on Disabilities
National Partnership for Women & Families
National Puerto Rican Coalition, Inc.
National Rehabilitation Association
National Respite Network
National Spinal Cord Injury Association
National Spiritual Assembly of the Baha'is of the United States
National Structured Settlement Trade Association (NSSTA)
National Therapeutic Recreation Society
National Urban League
National Victim Center
National Women's Conference
National Women's Committee (NWC)
National Women's Law Center
National Youth Advocacy Coalition
NISH
NOW - National Organization for Women
NOW Legal Defense & Education Fund
NETWORK, A National Catholic Social Justice Lobby
9to5 Atlanta
9to5 Bay Area
9to5 Colorado
9to5 Los Angeles
9to5 Poverty Network Initiative (Wisconsin)
9to5, National Association of Working Women
North American Federation of Temple Youth
Northwest Women's Law Center
Organization of Chinese Americans
ORT- Organization for Educational Resources and Technological Training
Paralyzed Veterans of America
Parents, Families and Friends of Lesbians and Gays
People For the American Way
Police Executive Research Forum
Police Foundation
Presbyterian Church (USA), Washington Office
Pride at Work
Project Equality, Inc.
Rainbow/PUSH Coalition
Rehabilitation Engineering and Assistive Technology Society of North America
Research Institute for Independent Living
The Rabbinical Assembly
Rock the Vote
Sargent Shriver National Center on Poverty Law
School Social Work Association of America
Service Employees International Union, AFL-CIO
Sikh American Legal Defense and Education Fund (SALDEF)
Society for the Psychological Study of Social Issues
South Asian Americans Leading Together (SAALT)
Southeast Asia Resource Action Center
Southern Poverty Law Center
Spina Bifida Association of America
Texas Police Chiefs Association
Third Way
Union of Reform Judaism
Union of Needletrades, Industrial & Textile Employees (UNITE)
Unitarian Universalist Association of Congregations
United Cerebral Palsy
United Church of Christ – Justice and Witness Ministries
United Church of Christ - Office of Church in Society
United Food and Commercial Workers International Union
United Methodist Church – General Board of Church and Society
United Methodist Church - General Commission on Religion and Race
United Spinal Association
The United States Conference of Mayors
United States Student Association
United Synagogue of Conservative Judaism
Washington Teachers Union
The Woman Activist Fund, Inc.
Women Employed
Women of Reform Judaism, Federation of Temple Sisterhoods
Women Work!
Women's Alliance for Theology, Ethics & Ritual
Women's American ORT
The Women's Institute for Freedom of the Press
Women's Law Center of Maryland, Inc.
Women's Research and Education Institute (WREI)
World Institute on Disability (WID)
YWCA of the USA

Updated June, 2009

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MEMORANDUM

June 22, 2009

To: Civil Rights, Religion, Education, and Legal Affairs Reporters, Editors, and Columnists

RE: Matthew Shepard Hate Crime Prevention Act of 2009 (HCPA)

The Senate Judiciary Committee will hold a hearing on S. 909, the Matthew Shepard Hate Crimes Prevention Act, on Thursday, June 25. This legislation is currently pending with 43 cosponsors. On April 29, 2009 the House approved H.R. 1913, The Local Law Enforcement Hate Crime Prevention Act by a vote of 249-175. The bill has repeatedly received bipartisan majority support in both the House and the Senate since its original introduction in 1997. President Obama has issued a statement of support on behalf of the legislation.

Background

The Matthew Shepard Hate Crimes Prevention Act of 2009 (HCPA) would strengthen existing federal hate crime laws in several ways. First, the measure would eliminate a serious limitation on federal involvement under the existing 1968 law – the requirement that a victim of a bias-motivated crime was attacked because he/she was engaged in a specified federally-protected activity, such as serving on a jury or attending public school.

Second, current law, 18 U.S.C. § 245, authorizes federal involvement only in those cases in which the victim was targeted because of race, color, religion, or national origin. The HCPA would also authorize the Department of Justice to investigate and prosecute certain bias-motivated crimes based on the victim's actual or perceived sexual orientation, gender, gender identity, or disability. Current federal law does not provide sufficient authority for involvement in these cases.

The HCPA is designed to eliminate gaps in federal authority to investigate and prosecute bias-motivated crimes. The bill would provide a necessary backstop to state and local law enforcement by permitting federal authorities to provide assistance in these investigations – and by allowing federal prosecutions when necessary to achieve a just result. In those states without hate crime statutes, and in others with limited coverage, local prosecutors are simply not able to pursue bias crime convictions.

Currently, only thirty one states and the District of Columbia include sexual orientation-based crimes in their hate crimes statutes; only twenty-six states and the District of Columbia include coverage of gender-based crimes; only twelve states and the District of Columbia include coverage of gender-identity based crimes, and only thirty states and the District of Columbia include coverage for disability-based crimes. A chart of existing state hate crimes statutory provisions is available here: http://www.adl.org/combating_hate/

In addition, the bill would give local law enforcement officials important tools to combat violent, bias-motivated crime. Federal support – through training or direct assistance – will help ensure that bias-motivated violence is effectively investigated and prosecuted. The legislation would also facilitate federal investigations and prosecutions when local authorities are unwilling or unable to achieve a just result.

The Nature and Magnitude of the Hate Crime Problem in America

Last week, the Leadership Conference on Civil Rights Education Fund released a new report, *Confronting the New Faces of Hate: Hate Crimes in America 2009.* This comprehensive report provides background on the nature and magnitude of this national problem, highlighting a number of disturbing trends:

- A perfect storm of grievances for extremists and hate group organizing – the election of the first African-American President, a deep economic crisis, a broken immigration system, and faster, better means of communication among like-minded individuals;

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- An increase in harsh, hateful rhetoric against Hispanics, immigrants, and those who look like immigrants – and the attempted legitimization of inflammatory anti-immigrant messages by mainstream media;
- The growth in the number of organized hate groups in America, including the increased use of the Internet and social networking sites to recruit new members; and
- The inadequate governmental response to increasing bias crimes in other countries, and the important role of the United States internationally as a leader in crafting effective responses and prevention strategies.

The report emphasizes the importance of enactment of the Matthew Shepard Hate Crime Prevention Act and contains a series of recommendations for action by public officials, civic leaders, and the public.

Enacted in 1990, the Hate Crime Statistics Act (HCSA) requires the Justice Department to acquire data on crimes which "manifest prejudice based on race, religion, sexual orientation, or ethnicity" from law enforcement agencies across the country and to publish an annual summary of the findings. Though the voluntary reporting program is clearly incomplete, the HCSA now provides the best national picture of the magnitude of the hate violence problem in America. In 2007 (the most current data available) there were 7,624 reported bias-motivated criminal incidents, compared to 7,722 in 2006. 13,241 law enforcement agencies in the United States participated in the 2007 data collection effort – the largest number of police agencies in the seventeen-year history of the Act. Yet, only 2,025 of these participating agencies – 15.3 percent – reported even a single hate crime to the FBI.

The 2007 FBI HCSA report documented decreases in hate crimes on the basis of race and religion – but increases in hate crimes on the basis of sexual orientation and national origin over the 2006 report. Though the overall number of hate crimes decreased slightly, the number of hate crimes directed at gay men and lesbians increased almost six percent – from 1,195 in 2006 to 1,265 in 2007. Of the 7,624 total incidents, 3,870were motivated by racial bias; 1,265by sexual orientation bias; 1,007 by ethnicity/national origin bias; and 79 were reported to have occurred against disabled individuals. In addition, 1,400 (18.4%) of all reported crimes were motivated by religious bias, as compared to 1,462 (18.9%) in 2006. 969 (12.7%) were directed against Jews and Jewish institutions and 115 (1.5%) were directed against Muslims.

Of special concern is the fact that reported crimes directed against Hispanic individuals increased markedly in 2007 – from 576 in 2006 to 595 in 2007 – the fourth straight year that the number of these specific crimes has increased significantly. The Anti-Defamation League (ADL) and the Southern Poverty Law Center (SPLC) have recently documented a disturbing increase in the number of violent assaults against Hispanics, legal, and undocumented immigrants – and those perceived to be immigrants – by white supremacists and other far-right extremists. The ADL report is available here: http://www.adl.org/main_Extremism/immigration_extremists.htm. The SPLC report is available here: http://www.splcenter.org/intel/intelreport/article.jsp?aid=642&printable=1

Enactment of the LLEHCPA will facilitate more comprehensive hate crime reporting. The FBI's 2007 HCSA report is available here: http://www.fbi.gov/ucr/hc2007/incidents.htm.

Broad Support for the Legislation

A broad coalition of nearly 300 law enforcement, religious, civil rights, and civic organizations support this legislation (listing included at the end). According to a May 2007 Gallup Poll:

- 78% of the public favors the prosecution of hate crimes on the basis of the victim's race, color, religion, or national origin
- 68% of the public favors expanding hate crime legislation to include sexual orientation, gender, and gender identity
- 60% of self-identified Republicans and 57% of self-identified Conservatives support the expansion
- 64% of people who go to church weekly support the expansion, only a slightly lower percentage than people who attend church monthly (67%) or people who seldom or never attend church (73%)

The report concluded: "The data reviewed in this analysis indicate that there is strong majority support for the expansion of hate crime legislation to include sexual orientation, gender, and gender identity among the

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general American population. Specifically, there is majority support among identifiable groups of Christians, frequent church attenders, conservatives, and Republicans for expansion of the legislation." http://www.gallup.com/poll/27613/Public-Favors-Expansion-Hate-Crime-Law-Include-Sexual-Orientation.aspx

In addition, the measure has also been endorsed by twenty-six current state Attorneys General, former U.S. Attorney General Dick Thornburgh, and virtually every major national law enforcement organizations in America, including:

- Federal Law Enforcement Officers Association
- Hispanic American Police Command Officers Association
- Hispanic National Law Enforcement Association
- International Association of Chiefs of Police
- International Brotherhood of Police Officers
- Major Cities Chiefs Association
- National Asian Peace Officers Association
- National Coalition of Public Safety Officers
- National District Attorneys Association
- National Latino Police Officers Association
- National Organization of Black Law Enforcement Executives
- Police Executive Research Forum
- Police Foundation
- National Center for Women & Policing
- National Black Police Association

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The LLEHCPA Does Not Limit Free Speech

Hate crimes laws punish violent acts, not beliefs or thoughts. The First Amendment guarantees that Americans are free to think, believe, and preach whatever they want. It is only when an individual commits a crime based on those biased beliefs and intentionally targets another for violence that they would be able to be prosecuted under the HCPA .

The Supreme Court has clearly ruled that considering bias as a motivation for the crime does not run afoul of the First Amendment. In 1993, the Court unanimously upheld the Wisconsin hate crime statute in *Wisconsin v. Mitchell.* The Court made it clear that "a physical assault is not by any stretch of the imagination expressive conduct protected by the First Amendment." The Court also held that "the First Amendment . . . does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent."

The HCPA is aimed at conduct, punishing only violent actions that result in death or bodily injury -- or that attempt to cause bodily injury to a person through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device. It does not criminalize ideas or expression in any way. Contrary to the assertions of some opponents of this legislation, nothing in the bill would prohibit the lawful expression of one's deeply held religious beliefs. In fact, the measure contains a Rule of Construction (Section 10) that provides explicit protection for expression and association.

Conclusion

All Americans have a stake in effective response to violent bigotry. These crimes demand priority attention because of their special impact. Bias crimes are designed to intimidate the victim and members of the victim's community, leaving them feeling isolated, vulnerable, and unprotected by the law. Failure to address this unique type of crime could cause an isolated incident to explode into widespread community tension. The damage done by hate crimes, therefore, cannot be measured solely in terms of physical injury or dollars and cents. By making members of minority communities fearful, angry, and suspicious of other groups -- and of the power structure that is supposed to protect them -- these incidents can damage the fabric of our society and fragment communities.

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WASHINGTON BUREAU · NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
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E-MAIL: WASHINGTONBUREAU@NAACPNET.ORG · WEB ADDRESS WWW.NAACP.ORG

June 15, 2009

Members
United States Senate
Washington, DC 20510

via fax

RE: NAACP URGES SWIFT SENATE ACTION ON HATE CRIMES PREVENTION LEGISLATION

Dear Senator;

On behalf of the NAACP, our nation's oldest, largest and most widely-recognized grassroots-based civil rights organization, I urge you, in the strongest terms possible, to support and work towards the swift passage by the United States Senate of hate crimes prevention legislation, H.R. 1913 / S. 909. This legislation is an important first step in the battle against hate crimes; a battle that must be won if we are going to be able to protect all of our citizens, our nation and our democracy. Sadly, we were reminded of the dire need for swift enactment of this legislation just last week when a gunman, motivated purely by hatred, stormed into the Holocaust Museum here in Washington, D.C. and killed an African American guard and threatened the well being of many others.

We need to strengthen existing hate crimes laws because hate crimes are such a unique offense; they are an attack not just on individuals but an attempt to terrorize and demoralize entire communities. Existing policies are inadequate, as too many African Americans are aware. Even though we make up just over 14% of the population, we are the subjects of roughly 60% of reported hate crimes. H.R. 1913 / S. 909 will provide local law enforcement units with much-needed additional resources to help address, and hopefully reduce these heinous crimes. If enacted as written, H.R. 1913 / S. 909 will help to ensure that criminals will be punished for committing hate-motivated crimes, law enforcement in this country will be strengthened and the Justice Department will have authority to provide federal involvement in hate-based violence when necessary. H.R. 1913 / S. 909 also affirmatively protects freedom of speech and freedom of religion in that it clearly

asserts that to be prosecuted under this law the hate crime must involve acts of violence.

Hate crimes continue to plague and terrorize this nation *and are on the increase.* Thus, I hope that you will do all you can to see that this legislation becomes law as quickly as possible. Thank you in advance for your attention to this matter; should you have any questions regarding the NAACP's position on this issue, please feel free to contact me at (202) 463-2940.

Sincerely,

Hilary O. Shelton
Senior Vice President for Advocacy /
Director, NAACP Washington Bureau

06/15/2009 1:35PM

Testimony of the National Center for Transgender Equality

For the Hearing:
S.909 The Mathew Shepard Hate Crimes Prevention Act
Committee on Judiciary
United States Senate
Room 226 Dirksen Building

June 25, 2009

Chairman and Members of the Committee:

The National Center for Transgender Equality (NCTE) is a social justice organization, founded in 2003 and dedicated to advancing the equality of transgender people through advocacy, collaboration and empowerment. When we speak of transgender people, we refer to an umbrella term for people whose gender identity, expression or behavior is different from those typically associated with their assigned sex at birth, including but not limited to transsexuals, cross-dressers, androgynous people, genderqueers, and other gender non-conforming people. All of these people face the threat of disrespect, discrimination or violence because of their real or perceived gender identity or expression. Hate violence is among the greatest dangers and most serious challenges faced by and feared by transgender people on a day-to-day basis.

The Matthew Shepard Hate Crimes Prevention Act (S.909) is a desperately needed piece of legislation for transgender people for three reasons:

- First, it will help educate law enforcement about the frequent hate violence against transgender people and the need to prevent and appropriately address it.
- Second, it will help provide federal expertise and resources when it is needed to overcome a lack of resources or the willful inaction on the part of local and/or state law enforcement.
- Third, it will help educate the public that violence against anyone is unacceptable and illegal.

THE FREQUENCY OF HATE VIOLENCE AGAINST TRANSGENDER PEOPLE

Because hate crimes based on actual or perceived gender identity have never been accurately counted by United States law enforcement, it is not possible to document exactly how many transgender people are physically attacked each year because they have or are perceived to have a gender identity (or an expression of that gender identity) that is different than the sex they were assigned at birth. This lack of information itself points to the need for this legislation. Presently, California is the only state that specifically tracks data on crimes against transgender people.

Undeniably, however, transgender individuals are far-too-often the targets of harassment and physical violence because of their actual or perceived gender identity. The transgender community has anecdotally reported on more than one bias motivated murder of a transgender person per month over

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the past few decades[1]. In addition, to these known murders, there have no doubt been many other uncategorized murders where the victim's transgender identity was not clear in news or community accounts. There have unquestionably been countless other acts of physical violence, such as assault, against transgender people. These crimes against transgender people often bear the characteristic signs of hate motivated violence, including the viciousness of the attacks and the use of biased and brutal epitaphs by the perpetrator during the attack.

The statistics that are available show staggering rates of violence. For example, according to the GLSEN, the Gay, Lesbian, Straight Education Network, a recent study shows that 53% of transgender students have been physically harassed in school, while 26% were assaulted, including being punched, kicked or injured with a weapon. The majority of those students did not report the incidents to school authorities.[2]

Crimes against transgender individuals remain underreported for a myriad of other reasons. Transgender people fear that police will not take the crime seriously, that their perpetrator will find them and retaliate, or that the police themselves will be violent or disrespectful. Transgender individuals may underreport crimes because they fear the additional violence and discrimination they may face if they are subsequently "outed" as transgender during the reporting of the crime or a trial.

Finally, it is very clear that multiple types of bias come into play in anti-transgender hate crimes, including race, age, economic status, and other factors. Transgender people who live at the intersection of multiple identities face higher risks of being the victim of bias-motivated crime. A look at the victims of anti-transgender murders, for example, show a highly disproportionate number of young transgender women of color.

The Matthew Shepard Hate Crimes Prevention Act will enable the federal government to assist local and state agencies in reporting accurate data on hate crimes against transgender individuals, which is vital to the efforts to respond to and prevent such crimes. It will also send a message to transgender people that reports of hate crimes against them will be taken more seriously by authorities.

EFFECTS OF THE ACT

The July 2008 murder of transgender teenager Angie Zapata in Greeley, Colorado was the first and only time that any state applied a state hate crime law to an anti-transgender crime.[3] Currently, only 12 states have transgender-inclusive hate crimes laws.

The Matthew Shepard Hate Crimes Prevention Act would expand the Department of Justice's jurisdiction to investigate bias-motivated crimes. It also would enable the federal government to give

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[1] Source is the Remembering our Dead project, a community-based effort to count and memorialize transgender people who have been murdered because of their gender identity. http://www.transgenderdor.org/

[2] Harsh Realities: The Experiences of Transgender Youth in Our Nation's Schools, Gay, Lesbian and Straight Education Network, 2009.

[3] A state crime charge was made in the October 2002 murder of transgender teenager Gwen Araujo. While the jury convicted the assailants of murder, the hate crime charge failed. Research shows there are no other known cases in the United States of prosecutors applying a hate crime charge in an anti-transgender act of violence.

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financial and technical assistance to local and state agencies to assist them in responding to hate crimes. The Act would not create sentencing enhancements, nor would it criminalize any additional behavior not already addressed under current law. And, despite misinformation from opponents of the Act, it would not and cannot criminalize "hate speech" or infringe on First Amendment protections.

This Act is important for the transgender community because it will enable the federal government to assist local and state law enforcement agencies in investigating and prosecuting acts of violence against transgender individuals. Additionally, the Act gives the federal government the authority to intervene when local and state officials are responding inadequately to anti-transgender violence.

The need for the Act to educate law enforcement about hate violence against transgender people and how to address it is obvious to transgender people. In a soon-to-be released study of 6,456 transgender people in the United States, 45% of transgender individuals in the survey reported being uncomfortable seeking police help. Also telling is that 71 % of survey respondents who have interacted with police reported being treated with disrespect by officers.[4] With the help of the Matthew Shepard Hate Crimes Prevention Act, the federal government will be able to provide much needed education and training programs to local and state authorities regarding violence against transgender individuals so that officials will be adequately prepared to identify and respond to all such acts of violence against transgender individuals.

It is also apparent to transgender people and our allies that the Act is needed to send a clear statement to the public that anti-transgender violence is not acceptable. Ironically, the intentionally provocative arguments of the opponents of this legislation help prove the need for the bill. Opponents inaccurately claim that the bill would criminalize hate speech and thought. This legislation clearly does not do that and, in fact, The National Center for Transgender Equality would not support it if it did. Still, it is telling of the need for public education that opponents of bill proudly defend their right to think and speak hate about transgender and other people covered by this legislation. While NCTE strongly defends their right to hate and to speak their hate, however deplorable, it is not surprising that hate crimes against transgender people are so rampant when such extremists openly defend their right in front of Congress to specifically hate transgender, lesbian, gay and bisexual people.

Without the passage of this legislation, the public will continue to learn about violence against transgender people, but perversely, it would too often continue be a message that it is acceptable to commit this violence. For example, last month, two hosts of a popular radio show in Sacramento, California referred on the air to transgender children as "freaks" and "idiots" with "mental disorders" and encouraged parents of transgender children to verbally degrade them and physically abuse them. The hosts applauded the fact that transgender high school students "go out into society and society beats them down." This transphobic discourse is all too common and insults our society at its core.

Passage of S.909, while strongly protecting free speech and thought, will help counter the pervasive public misunderstanding of transgender people and send a strong message that actual physical violence is never an acceptable response to differences among us.

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[4] Prevalence of Discrimination Against Transgender People in the U.S. (July 2009) was conducted by the National Center for Transgender Equality and the National Gay and Lesbian Task Force.

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CONCLUSION

The Matthew Shepard Hate Crimes Prevention Act will not end frequent, vicious hate crimes against transgender people,but it will allow the federal government to help ensure that violence targeted at an individual based on that individual's gender identity will not be tolerated. It will also help educate law enforcement and the public about this horrible form of violence and provided needed resources to assist local law enforcement to investigate and prosecute acts of violence when they do occur.

In the United States of America we believe that all acts of violence based on intolerance are unacceptable. In particular, hate crimes remind us that bigotry and ignorance have far-reaching and dangerous consequences. By passing the Matthew Shepard Hate Crimes Prevention Act, the United States will demonstrate its longstanding commitment to eradicating hate in all its forms.

Thank you.

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Bringing America Home

Statement for the Record of the National Coalition for the Homeless

to the
Committee on the Judiciary
United States Senate

Hearing on
The Matthew Shepard Hate Crimes Prevention Act of 2009

June 25, 2009

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INTRODUCTION

The National Coalition for the Homeless is pleased to submit a statement for the record to the Committee on the Judiciary of the United States Senate at its hearing on the Matthew Shepard Hate Crimes Prevention Act of 2009 (S. 909).

The National Coalition for the Homeless (NCH), founded in 1982, is a national network of people who are currently experiencing or who have experienced homelessness, activists and advocates, community-based and faith-based service providers, and others committed to a single mission. That mission, our common bond, is to end homelessness. We are committed to creating the systemic and attitudinal changes necessary to prevent and end homelessness. At the same time, we work to meet the immediate needs of people who are currently experiencing homelessness or who are at risk of doing so. We take as our first principle of practice that people who are currently experiencing homelessness or have formerly experienced homelessness must be actively involved in all of our work.

NCH Public Policy Recommendation on Federal Hate Crimes Statutes

The National Coalition for the Homeless strongly supports current federal hate crimes statutes. They are one of the civil rights pillars in this nation. Furthermore, NCH enthusiastically endorses the Matthew Shepard Hate Crimes Prevention Act (S. 909) and companion legislation approved by the U.S. House of Representatives, the Local Law Enforcement Hate Crimes Prevention Act (H.R. 1913). We commend those lawmakers, advocates, and thousands of concerned citizens who have fought tirelessly for over a decade to bring the Hate Crimes Prevention Act to the cusp of enactment. The Hate Crimes Prevention Act takes a leap forward in civil rights policy by extending the reach of federal hate crimes statutes to additional people vulnerable to intentional selection for crimes against them or their property due to their socially recognizable status characteristics.

The National Coalition for the Homeless urges Congress to include people experiencing homelessness as a status group in federal hate crime statistics and enforcement statutes. Further, we recommend that Congress use the Hate Crimes Prevention Act as the vehicle for accomplishing this addition. It is long overdue that people experiencing homelessness be included in federal hate crimes laws. There is no substantive rationale why their addition can not be accomplished through the Hate Crimes Prevention Act – legislation Congress is using to open the federal law to add other status categories.

The Intersection of Homelessness and Hate Crimes

"Hate crimes" are criminal offenses committed against a person, property, or society which are motivated, in whole or in part, by the offender's bias against a certain class of people. In many cases, perpetrators of hate crimes do not know their victims personally and they do not seek material gain or vengeance; their actions are intended only to intimidate or dehumanize. The damage done by hate crimes cannot be measured solely in terms of physical injury or dollars and cents; hate crimes leave a special emotional and psychological mark on victims and their communities, leaving them feeling isolated, vulnerable, and unprotected by the law.

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Sadly, but with a great body of evidence to buttress the assertion, people experiencing homelessness have been selected and are continuing to be selected intentionally as victims of crime due to their status as homeless.

The National Coalition for the Homeless commenced tracking of unprovoked, bias-motivated crimes against people experiencing homelessness in the late 1990s, in response to anecdotal testimony from homeless people and their advocates that such crimes were increasing in both number and intensity. Since 1999, NCH and the National Law Center on Homelessness & Poverty have published annual reports on the extent and characteristics of hate-motivated violent attacks against people experiencing homelessness. Cumulatively, NCH and NLCHP have documented over 700 such attacks, with over 200 of those attacks resulting in death—an extremely high mortality rate when compared to hate-motivated homicides of individuals in currently protected categories of victims combined. Victims included men and women, veterans, children as young as four, youth, and elders. Though our statistics are troubling, they do not represent the full extent of the criminality, as countless acts of violence against people experiencing homelessness go unnoticed or unreported, and moreover due to the lack of this population's inclusion in the federal system for collecting and reporting hate crimes.

The decennial edition of our annual report, *Hate, Violence, and Death on Main Street USA: A Report on Hate Crimes and Violence Against People Experiencing Homelessness, 2008*, scheduled for release later this summer, will offer yet another year of chilling evidence that people experiencing homelessness are being targeted for crime due to no other motivation than animus against them. Among the homeless hate crimes to be reported in the 2008 decennial edition:

October 9, 2008
LOS ANGELES—John Robert McGraham, 55, a homeless man, was drenched in gasoline and set on fire at 9:30 p.m. on the side of the road on 3rd Street in the Mid-Wilshire area. He was brought to a hospital and then pronounced dead. Benjamin Martin, 30, was linked to the murder by DNA evidence and witness accounts. Deputy Chief Charlie Beck commented on Martin's motive saying Martin had, "straight-up personal dislike and a little bit of crazy" toward homeless people. McGraham, or simply "John," as he was known to many in the community was said to have never bothered anyone and rarely asked for money, according to the Los Angeles Times. On the evening of Sunday, October 12, a group of 200 plus people gathered at the spot where McGraham was killed and created a memorial for him at the site.

June 25, 2008
CLEVELAND—At least three teenagers brutally beat Anthony Waters, 42, in Cleveland, Ohio on June 25, 2008. Waters was on his way to visit his mother who lives in the area, taking side streets because he feared harassment from local residents. A security camera outside G&M Towing Company, where the beating took place, caught passing cars slowing down as they saw Waters being attacked, but nobody stopped to help until employees at G&M ran to Waters' aid. Waters' mother, Joyce Watkins, said that her son has been battling alcoholism and that he often stayed at a men's shelter near her house, but that they always stayed in contact with each other. "He may have been hurting himself with his drinking, but he would never do anything to hurt another person," his mother said. "This is ridiculous and I can't understand why they would beat him like that. My heart

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is broken." Lt. Thomas Stacho, a Cleveland Police Department spokesman, said that the attackers appeared to be between the ages of 13-18 and all wore white shirts. Walters suffered a lacerated spleen and broken ribs. He later died at a hospital.

December 24, 2008
WASHINGTON, D.C.—Yoshio Nakada, 61, was murdered in his sleep this Christmas Eve. With chop wounds splitting his fractured skull, it is believed Nakada suffered blows to the head from a hatchet. Often characterized as "sweet in nature" and "sweetest of all people," Nakada was found dead due to head injuries near the Watergate complex in Washington, D.C. Of the 2,859 recorded homeless individuals in the D.C. area, 34 percent say they have fallen victim to some type of violent crime.

Crimes against people experiencing homelessness such as documented above are rightly understood to be hate crimes, and accordingly should be classified as such for purposes of hate crime data collection and for enhanced penalties at sentencing.

Hate crimes laws have proven measurably effective in tracking the frequency and nature of bias-motivated crimes and in providing a deterrent to individuals who wish to commit them. Current federal hate crimes laws were passed before the phenomenon of homeless-victim hate crimes was well understood. Now that ten years of documentation of such crimes through community-based data collection and media reporting points to a clear and growing problem, Congress should act to prevent additional hate-motivated violence by adding people experiencing homelessness to federal hate crimes statutes.

U.S. Representative Eddie Bernice Johnson (D-Texas) has sought to do just that. In the 110th Congress, Representative Johnson offered for consideration the Hate Crimes Against the Homeless Statistics Act (H.R. 2216) and the Hate Crimes Against the Homeless Enforcement Act (H.R. 2217). The former would direct the Civil Rights Division of the Federal Bureau of Investigation to monitor and collect data from law enforcement agencies on hate crimes against homeless individuals and to include that data in their annual report. The latter would add "homeless status" as a protected class under existing hate crimes statute for the purpose of law enforcement. Earlier this year, Representative Johnson offered amendments to add homeless status to the Local Law Enforcement Hate Crimes Prevention Act of 2009 (H.R. 1913) before that bill came to a vote in the House of Representatives. Regrettably, the Rules Committee did not accept any floor amendments to the legislation. NCH thanks Representative Johnson for her continued leadership on this issue.

Support exists across the civil rights community for the addition of people experiencing homelessness to federal hate crimes statistics and enforcement statutes. Over 150 national, state, and local organizations representing a broad spectrum of constituency groups, including many organizations representing populations currently protected under current hate crimes law or proposed for protection by the Hate Crimes Prevention Act have endorsed a joint position statement on the need for a public policy response to hate-motivated crime against homeless individuals. Among the endorsers are NAACP, the National Council of La Raza, the Southern Poverty Law Center, the National Gay and Lesbian Task Force, the United States Veterans Initiative, the National Council of

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Jewish Women, Presbyterian Church USA, United Methodist Church, and a number of community-based homeless groups and local faith-based organizations.

In May 2009, Maryland became the first state to protect homeless individuals under state hate crimes statute. Similar legislation is pending in California, the District of Columbia, Florida, and Texas.

RESPONSE TO THE "MUTABILITY" ARGUMENT

Though NCH's effort to extend federal hate crimes protections to homeless victims has gained the support of national, state, and local organizations representing a thorough cross-section of the civil rights community, an isolated few argue that people experiencing homelessness should continue to be excluded from hate crimes statutes because their status is mutable.

The first and most obvious refutation of this argument is that the current list of protected classes already includes a characteristic that is unquestionably mutable: religion. While in many cases one's religion is closely tied to one's ethnicity, a far less mutable trait, in today's society religious conversion is a regular feature of the cultural landscape. The inclusion in current law of protections for religious victims is an acknowledgement by the federal government that often people are targeted for discrimination and violence based on mutable traits, as well. The fact that one's religion can be altered does not make it less worthy of statutory protection. Moreover, while homeless status is indeed a mutable quality, it is not one that can be changed on a whim; it can often take weeks, months, or even years for a homeless person to reverse their unhoused status.

Furthermore, mutability itself has never been a preclusive factor for the inclusion of a group in civil rights laws. The Fourteenth Amendment, a significant and more rigid precursor to modern civil rights statutes, was itself left open-ended and not limited specifically to immutable characteristics, like race. Since that time, the judicial and legislative record is quite clear that governments have wide authority to enact civil rights protections beyond merely immutable characteristics. The main reasons for coverage under civil rights laws are, and always have been, an increased risk of victimization and discriminatory victim selection.

CONCLUSION

Hate-motivated physical violence or property damage is a threat that people experiencing homelessness persistently face and fall victim. While NCH and NLCHP's annual reports on the subject, dating back to 1999, provide extensive documentation of instances of bias-motivated violence against the homeless, they record only a fraction of the many cases of discrimination, harassment, selective enforcement, and violence that so often are ignored or unreported. In the unanimous decision on the 1993 Supreme Court case *Wisconsin v. Mitchell*, Chief Justice William Rehnquist wrote, "Bias-motivated crimes are more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest." Those words ring true to people experiencing homelessness for whom threat of attack is a daily concern.

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The National Coalition for the Homeless urges Congress to recognize that our recommendation to add people experiencing homelessness to federal hate crimes statutes is in keeping with the spirit and history of the civil rights movement. After a decade of struggle, it may take many years more for Congress to take up another hate crimes measure. In the meantime, there is no telling how many more homeless people will be subject to brutal, hate-motivated attacks. Accordingly, we urge that the Hate Crimes Prevention Act be amended to include people experiencing homelessness before the legislation is passed by Congress and enacted into law.

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National District Attorneys Association
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Written Testimony of the

National District Attorneys Association (NDAA)

Hearing on S. 909, the "Matthew Shepard Hate Crimes Prevention Act of 2009"

Senate Judiciary Committee

United States Senate

June 25, 2009

Chairman Leahy, Ranking Member Sessions, members of the Committee, thank you for inviting the National District Attorneys Association (NDAA) to submit a written statement for the record for today's hearing on S. 909, the Matthew Shepard Hate Crimes Prevention Act of 2009. NDAA is the oldest and largest organization representing over 39,000 district attorneys, state's attorneys, attorneys general and county and city prosecutors with responsibility for prosecuting criminal violations in every state and territory of the United States. We'd also like to recognize and thank Senator Kennedy specifically for introducing this important piece of legislation.

The United States has long been a "melting pot" society, to which people of different ethnic groups and races, from many diverse cultures and countries, have come. They and their children have become Americans, to form this unique and unified nation. Yet throughout our history these distinctions have fostered bias, prejudice, and hatred by some people— manifested in the form of harassment, intimidation, and bias-motivated crimes. Bias or hate-motivated incidents and crimes can have a serious impact not only on the victim but also on those who share his or her characteristics because they have been singled out as a result of inherent characteristics and robbed of self-esteem[1]. The deep psychological impact of hate crimes causes terror among victims and victimized groups, distrust of the criminal justice system and its ability to protect against hate crimes, and the potential for retaliatory crimes against the offender or the group the

[1] Ogawa, Brian. (1999). *Color of Justice: Culturally Sensitive Treatment of Minority Crime Victims.* Boston, MA: Allyn and Bacon.

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offender represents[2]. For these reasons, hate crimes must be addressed in a manner that takes into account the seriousness of the offenses and their impact on victims/victimized groups and that serves to stop biased attitudes and beliefs from escalating into crimes.

Hate crimes are not new phenomena; in fact, crimes committed because of hatred or prejudice toward a certain group of people have existed for centuries. What is new, however, is greater public awareness of and attention to hate crimes, our understanding of the profound effect such crimes has on communities, and the need for comprehensive and coordinated responses to addressing these crimes.

In recent years, a number of highly-publicized bias crimes have dramatically increased public awareness and concern about the problem of hate violence – and have sparked calls for more effective federal, state, and local responses. Just a few weeks ago, here in our nation's Capital – an international symbol of freedom and equality for all - the unfortunate shooting of a security guard at the United States Holocaust Memorial Museum by a longtime white supremacist served as a grim reminder of how a hate crime can bring national attention and focus to such heinous acts. Police officials and prosecutors have come to appreciate the special consequences of these crimes and the benefits of responding to them in a priority fashion. S. 909 would provide the resources necessary for America's criminal justice system to enforce and prosecute hate crimes more effectively.

The fundamental cause of bias-motivated violence in the United States is the persistence of racism, anti-Semitism, and other forms of bigotry. The attempt to eliminate these prejudices requires that Americans develop respect for differences and begin to establish dialogue across ethnic, cultural, and religious boundaries. While bigotry cannot be outlawed, effective response by public officials and law enforcement authorities to hate violence can make a difference in deterring and preventing these crimes.

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[2] Bureau of Justice Assistance (BJA). (1997). *A Policymaker's Guide to Hate Crimes.* Washington, D.C.: U.S. Department of Justice, Office of Justice Programs.

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Like many you have done in this committee, federal, state and local policymakers and legislators have taken many steps to address prejudice and bias and to ensure the equal rights of all persons. In the past decade, tougher laws have been enacted at the state and federal levels to address hate-motivated crimes. Prosecutors, as the attorneys for the people, play a critical role in enforcing such laws, seeking punishment for offenders who commit bias-motivated crimes, and protecting citizens in their community from becoming victims of such crimes. While significant strides have been made to address hate crimes, vast differences in the treatment of hate crimes exist among criminal justice agencies and across the states.

These differences in responses to hate crimes exist in part because of differences in criminal legislation and tools available to criminal justice practitioners for handling hate crimes. To effectively address hate crimes in light of these differences, steps should be taken to ensure consistency within jurisdictions in the treatment of hate crimes—from law enforcement through adjudication.

The Matthew Shepard Hate Crimes Prevention Act of 2009 – named for Matthew Shepard, a homosexual college student who was brutally murdered in Wyoming by two men in 1998 – recognizes the special circumstances involved with the enforcement and prosecution of crimes against individuals due to the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person. As was the case with the trial associated with the murder of Matthew Shepard, hate crimes and the public scrutiny of such criminal acts often lead to community unrest and provide a flashpoint-like setting for additional hate-based behavior and criminal acts.

In addition to the potential community unrest and instability, hate crimes pose other challenges for law enforcement, prosecutors, and policymakers. Studies by the National Organization of Black Law Enforcement Executives (NOBLE) and others have revealed that some of the most likely targets of hate violence are the least likely to report these crimes to the police[3]. In addition to cultural and language barriers, some immigrant victims, for example, fear reprisals or

[3] National Organization of Black Law Enforcement Executives (NOBLE). (1985). *Racial and Religious Violence: A Model Law Enforcement Response*, p. 36.

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deportation if incidents are reported. Many new Americans come from countries in which residents would never call the police – *especially* if they were in trouble[4]. Gay and lesbian victims, facing hostility, discrimination, and, possibly, family pressures because of their sexual orientation, may also be reluctant to come forward to report these crimes. These issues present a critical challenge for improving the response of the criminal justice system to hate violence. In conjunction with police efforts to identify and appropriately respond to these crimes, aggressive enforcement of hate crime statutes by prosecutors sends the clear message that hate violence is a law enforcement priority and that each hate crime – and each hate crime victim – is important.

In recent years, the role of the prosecutor has expanded in many communities to include leadership in a host of activities including participation in state and local criminal justice committees, task forces, and coalitions. Prosecutors, like others in the criminal justice system, are required to handle more work without substantial increases in funding to support that work. As a result, coordination and collaboration among criminal justice agencies, other government agencies, service providers, and community-based organizations has become increasingly important, particularly on the issue of hate crime. Interagency coordination and collaboration can result in a broader range of remedies for victims and communities that have been targets of bias-motivated crimes. Because state and local authorities continue to be responsible for prosecuting the overwhelming majority of violent crimes in the United States, including violent crimes motivated by bias, the funding authorized in the Matthew Shepard Hate Crimes Prevention Act of 2009 would provide the necessary resources for state and local prosecutors to carry out their responsibilities more effectively. Because of this, NDAA would like to offer its full support of S. 909, the Matthew Shepard Hate Crimes Prevention Act of 2009 and encourages the United States Congress to pass this bill as expeditiously as possible.

[4] For a fine review of these issues, see 1998 Audit of Violence Against Asian Pacific Americans, National Asian Pacific American Legal Consortium, August, 1996 and Walk With Pride – Taking Steps to Address Anti-Asian Violence, Japanese American Citizens League, August, 1991. NAPALC has also noted that a lack of bilingual police officers can exacerbate community fears and mistrust – and may contribute to an inability to initially identify a hate crime incident and create difficulties in interviewing the victim and conducting an effective investigation.

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We'd like to thank Chairman Leahy, Ranking Member Sessions and the rest of the Committee for holding this important hearing and allowing NDAA to submit a statement for the record on behalf of America's prosecutors.

DRAFT

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National District Attorneys Association
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May 20, 2009

Honorable Edward M. Kennedy
United States Senate
317 Russell Senate Building
Washington, D.C. 20501

Re: Matthew Shepard Hate Crimes Prevention Act of 2009

Dear Senator Kennedy,

The National District Attorneys Association, the association that has represented America's prosecutors for nearly 60 years, is honored to support the Matthew Shepard Hate Crimes Prevention Act of 2009.

In that this Act will strengthen law enforcement's ability to investigate and prosecute hate crimes and provide grants to meet extraordinary expenses that are often associated with these types of crimes, it will undoubtedly make a difference in the lives of many Americans; moreover, it will enable law enforcement and prosecutors to send the word that we, as a nation, are serious when we say no person should be subjected to violence because of one's race, color, national origin, religion, sexual orientation, gender, gender identity or disability.

On behalf of the District Attorneys and Prosecutors across America, thank you Senator Kennedy for your tireless work to always protect the innocent, to make certain that victims of crime receive the support they deserve, and to hold accountable those that violate our laws. If there is anything we, as an association, can do to assist in the passage of this Act and in support of your efforts, please do not hesitate call us to action.

Respectfully,

Scott Burns
Executive Director

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National Religious Broadcasters
Dept. of Government Relations
Capitol Hill Office

227 Massachusetts Avenue NE
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Congressional Testimony

United States Senate
Committee on the Judiciary
Hearing Regarding the
Matthew Shepard Hate Crimes Prevention Act of 2009

June 25, 2009

The National Religious Broadcasters (NRB) is opposed to the concept, as well as the current legislative permutations, of so-called "hate crimes". This legislation takes any conduct that is viewed as a threat to homosexuals or bisexuals, or a threat to persons who want to immunize their religion from public debate, and turns that threat or perceived threat into a new species of criminal felony. As a consequence, this legislation will inevitably stifle the free exercise of religion and freedom of speech, and brings with it the very real likelihood of abusive prosecutions. Federal "hate crimes" laws also ignore the fact that the underlying core offense (the causing of bodily injury to another) is already criminalized in all 50 states.[1]

Hate crimes legislation in its present form also poses a threat of criminal prosecution for constitutionally protected expressive conduct, particularly religiously motivated expression. We believe that religious protection language is necessary, and carries with it the greatest potential to minimize the risk of such wrongful prosecutions. Accordingly, NRB supports the following amendment to the *Matthew Shepard Hate Crimes Prevention Act of 2009*.

[1] See generally: *Tyranny over the mind: a legal and policy analysis of H.R. 1592 and S. 1105 (Hate Crimes Legislation)* Craig L. Parshall, Esq., May 14, 2007, on behalf of the National Religious Broadcasters (NRB).

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Proposed Religious Free Speech Amendment to be Attached to Hate Crimes Legislation

"CONSTRUCTION AND APPLICATION - Nothing in this section or an amendment made by this section shall be construed or applied in a manner that infringes any rights under the First Amendment to the U. S. Constitution, or substantially burdens any exercise of religion (regardless of whether compelled by, or central to, a system of religious belief), speech, expression, or association, if such exercise of religion, speech, expression, or association was not intended to - (1) plan or prepare for an act of physical violence; or (2) incite an imminent act of physical violence against another."[2]

Why Our Amendment Is Needed

There have been amendments proposed in the past that purport to protect religious exercise or free speech. However, from the perspective of the National Religious Broadcasters, none of them were effective enough. The chief defect in these past amendments is that they attempted to link such protections *solely* to a First Amendment, constitutional framework. One example is the amendment by Rep. Artur Davis (D-AL) added to hate crimes legislation (H.R. 1592) in the House Judiciary Committee in the 110th Congress. It said:

> Nothing in this Act, or the amendments made by this Act, shall be construed to prohibit any expressive conduct protected from legal prohibition by, or any activities protected by the free speech or free exercise clauses of, the First Amendment to the Constitution.

This is problematic because – particularly in the free exercise of religion arena – the Supreme Court has severely limited those First Amendment rights as a result of its decision in *Employment Division, Dept. of Human Resources of Oregon v. Smith* [494 U.S. 872 (1990)]. In the words of the 9th Circuit Court of Appeals in a recent religious freedom case that construed the Religious Freedom Restoration Act of 1993 (RFRA):

> Congress made formal findings that the [Supreme] Court's decision in *Smith* 'virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral [on their face] toward religion'.

Navajo Nation v. United States Forest Service, ___ F,3d ___m Bi, 06-15371 (9th Cir. 3/12/2007), page 8. Thus Congress was quick to recognize the damage done to religious freedom in *Smith*. Accordingly, it would be an *exercise in futility to link religious freedom protections in hate crimes legislation to the troublesome Free Exercise jurisprudence of the Supreme Court.*[3]

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[2] This language is the product of drafting and scrutiny from, and is supported by, the General Counsel's office of the *National Religious Broadcasters*, the *American Center for Law and Justice* (ACLJ), and the *Alliance Defense Fund* (ADF). An amendment similar to this language, which would have added a new subsection (j) to the hate crimes bill sponsored by Senator Ted Kennedy, was introduced by Senator Arlen Specter during the Defense Authorization debate in the Senate in the 110th Congress. The purpose of the Specter amendment was: "[t]o insure that the prohibition on hate crimes does not inappropriately burden any exercise of religion, speech, expression, or association."

[3] In cases where there is proof of intentional, targeted, anti-religious discrimination, it has been the experience of NRB's Chief Counsel that the Free Exercise clause can still be viable, though such proof is often difficult to come by except in rare cases. *LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412 (2d Cir. 1995) (open, and overtly hostile animus against Orthodox Judaism by Village officials).

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Instead, we believe the framework of RFRA should be adopted in amendment form. This was a framework previously created by Congress to protect religious free speech in other contexts. We are certain that this approach is the only practical method to create a *realistic* bulwark for basic civil liberties in light of the high risk of abuse from hate crimes legislation.

Why a RFRA based Amendment Is Necessary for Religious Freedom

In contrast to the muddled Free Exercise jurisprudence of the Supreme Court, the courts have noted that the Congressionally-created RFRA model possess clarity and ease of construction.[4] RFRA claims have enjoyed a distinct status – regardless of the insufficiency of free exercise claims – and losing on the free exercise claim "may not foreclose a claim" under RFRA.[5] In fact, numerous claims that would have been, or in fact were, unsuccessful under the flawed Free Exercise Clause jurisprudence of the Supreme Court, have either prevailed or were entitled to remand for more favorable review under RFRA.[6]

Text Regarding Religious Freedom

The amendment language developed by NRB and other noted Constitutional attorneys includes verbiage (i.e. "nothing in this section…shall…substantially burden" and "any exercise of religion…system of religious belief…") taken from the *Religious Freedom Restoration Act of 1993* (RFRA) (42 U.S.C. §2000bb-1(a), as further amended by the *Religious Land Use and Institutionalized Persons Act of 2000* (RLUIPA)(42 U.S.C. §2000bb-2(4), 2000cc-5(7)(A), collectively referred to here as "RFRA". Note that the phrase "substantially burden" means, "a burden [that] must be 'more than an inconvenience'…and must prevent [the actor] 'from engaging in [religious] conduct or having a religious experience'." [7]

Language Is Necessary To Help Protect Free Speech

Current hate crimes proposals not only threaten religiously motivated expressive conduct, but *all* speech where it is critical of homosexuality or has anything negative to say in relation to any religion, cult, or religious group. For that reason, our proposed amendment also seeks to protect "speech, expression [or] association…" Such explicit protection is necessary in light of recent Supreme Court decisions. In *Virginia v. Black*, 538 U.S. 343 (2003) (construing Virginia's criminalization of cross burning), the Court indicated expressive conduct can be made the subject of a crime if it involves a "true threat". Yet the Court then indicated that "[t]he speaker need not actually intend to carry out the threat" in order to qualify for treatment as a criminal. Even more

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[4] *Grosz v. City of Miami Beach, Florida*, 82 F.3d 1005, 1007 (11th Cir. 1996) (Jewish Rabbi's claim for religious discrimination in zoning which was dismissed under the Free Exercise Clause reasoning of *Employment Division, Dept. of Human Resources of Oregon v. Smith*, was reinvigorated under RFRA; the Court noting the "threat of 'doctrinal confusion' in free exercise cases…and the relative clarity of the analysis commanded by RFRA").

[5] *University of Great Falls, v. NLRB*, no. 00-1415 (D.C. Cir., December 12, 2002).

[6] *Western Presbyterian Church v. Board of Zoning Adjustment of the District of Columbia*, 849 F. Supp. 77 (D.C. 1994)(Church food program for the homeless entitled to injunction against government interference under RFRA); *Ridgon v. Perry*, 962 F. Supp. 150 (D.C. 1997)(Catholic and Jewish chaplains in the military entitled to injunction under RFRA to protect their right to speak out on abortion issues); *Grosz v. City of Miami Beach, Florida*, *supra*; *University of Great Falls, v. NLRB* (Catholic school free of jurisdiction of National Labor Relations Board).

[7] *Navajo Nation*, Id. at page 11.

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disturbing in the hate crimes context, the Court added, "[I]ntimidation in the constitutionally proscribable sense of the word is a type of true threat…." Thus, any pure speech or other expressive conduct that, in the mind of a prosecutor or grand jury or judge, may have caused "intimidation" to a homosexual or member of a cult or minority religion (for example), would *not* be protected under the First Amendment if the speaker is charged with a hate crime.

We could envision a situation where a religious preacher might instruct his congregation that "God condemns Homosexual behavior" – citing Old Testament and New Testament texts in the Bible – And, if a homosexual visitor were present, he could claim to have been clearly "intimidated" by such a message. Yet under the logic of the Supreme Court, the preacher would have no First Amendment protection if his message were even remotely tied to the occurrence of some alleged "hate crime" against the visitor.

Further, the Supreme Court in *Watchtower Bible and Tract Society of NY v. Village of Stratton*, 536 U.S. 150 (2002) concluded their opinion by indicating that if the government can show "an interest in crime prevention," or can demonstrate that the form of expressive conduct in question is part of a "special crime problem" addressed by the regulation (i.e. a supposed problem of "hate" intimidation against homosexuals or members of certain religious groups, which is allegedly addressed by hate crimes legislation), then in that event, the First Amendment would offer no protection. It is clear that without exempting language, free speech rights will be in dire jeopardy.

Violent Conduct

Current hate crimes legislation must also include protections for religious exercise, speech, expression or association if that conduct is intentionally used to plan or prepare for a crime of physical violence. Given that, our language also provides that there is no protection for *deliberate* incitements of "imminent" physical violence against others, and thus is simply a reflection of existing law regarding "incitement". The Supreme Court has construed "imminent" to mean immediate, rather than something in the "indefinite future".[8]

Also, the addition of a reference to "physical violence" is necessary because of the ambiguity of the hate crimes use of the phrase "bodily injury," a phrase that can include non-physical, mental distress.[9] This clarification should not be objectionable to the sponsors of hate crimes legislation, as the *Findings* sections of those bills emphasize, repeatedly, that their intended aim is to actually quell *only* crimes of physical "violence".[10]

-END-

[8] *Hess v. Indiana*, 414 U.S. 105 (1973).
[9] *Tyranny over the mind: a legal and policy analysis of H.R. 1592 and S. 1105* (Hate Crimes Legislation) Craig L. Parshall, Esq., May 14, 2007, on behalf of National Religious Broadcasters, pages 7 – 8.
[10] In the 110th Congress, in the Senate version of hate crimes (S. 1105), in the "Findings" section, "violence" or "violent crime(s)" is mentioned in 11 of the 15 total paragraphs and subparagraphs.

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Christian Communicators Impacting the World

TYRANNY OVER THE MIND:
A LEGAL AND POLICY ANALYSIS OF H.R. 1592 AND S. 1105
(HATE CRIMES LEGISLATION)
By
Craig L. Parshall, Esq.[1]

May 14, 2007

National Religious Broadcasters ("NRB"), the preeminent association representing the interests of Christian communicators and broadcasters, formally opposes H.R. 1592 ("Local Law Enforcement Hate Crimes Prevention Act of 2007") and S. 1105, the companion bill in the Senate. In the words of NRB President and CEO, Frank Wright, Ph.D., this proposed legislation is "a dagger aimed at the heart of free speech and free exercise of religion in America." [2]

In this paper, we explain the legal and policy framework for that opposition, and provide an overview of the dangerous consequences that would likely follow the passage of these bills.

Executive Summary

Introduction

There is no better starting point on the dangers of "hate-crimes" legislation than Thomas Jefferson, who stated: "I have sworn eternal hostility against every form of tyranny over the mind of man."[3] Any federal legislation that labels certain ideas as "hate," when it comes to matters of religion, or sexual orientation or gender, is contrary to our constitutional understanding of the freedom of thought, and belief. More than three decades ago, the U.S. Supreme court stated:

> *"Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for correction not on the conscience of judges and juries but on the competition of other ideas." Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339-400 (1974).

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[1] Mr. Parshall is Senior Vice-President and General Counsel of National Religious Broadcasters. He is licensed to practice before the Virginia Supreme Court, and is also licensed to practice in, and has represented clients before, the U.S. Supreme Court, the Courts of Appeal of the 2nd, 3rd, 4th, 5th, 7th, 10th, and D.C. Circuits, and the District Courts of Virginia, Texas (Dallas) and Colorado, among others. He has, in the past, testified before the House Judiciary Committee, Subcommittee on the Constitution, regarding religious liberty issues.

[2] See: April 23, 2007 Letter of Frank Wright, Ph.D., President & CEO of NRB to the Honorable Lamar Smith, Ranking Member, Committee on the Judiciary.

[3] Charles B. Sanford, The Religious Life of Thomas Jefferson, (Charlottesville, VA: University Press of Virginia, 1992) page 176.

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As *Gertz* points out, "politically incorrect" ideas should not be punished with the force of federal law; instead, competing ideas should be encouraged, not stunted.

Elsewhere, Thomas Jefferson, in his famous letter to the Danbury Baptist Association, in January, 1802, wrote that "religion is a matter which lies solely between Man & his God, that he owes account to none other for his faith or his worship, that *the legitimate powers of government reach actions only & not opinions* ..."(emphasis added).[4]

But as this paper explains, the line between *speech or opinions* on the one hand (which are protected under the First Amendment) and various *conduct* (which can be banned under criminal law) on the other, is a variable, often shifting line whose "longitude and latitude" is difficult to predict in advance. The pending "hate-crimes" bills invite that line to be moved farther toward the establishment of official federal *orthodoxy* on issues of religion and sexual orientation, among others. That is a devastatingly dangerous migration away from the Founder's vision of our fundamental rights, and represents a major intrusion into the freedoms enshrined in the First Amendment. Furthermore, this bill represents a particular threat to people of faith, for whom the right to vocally, and unhesitatingly proclaim what the Bible has to say about a wide range of social, moral, theological, and cultural issues rests within the deepest core of their beliefs.

There is a particular danger of wrongfully prosecuting so-called "hate crimes." In 2005, a group of Christians were reciting Bible verses during a homosexual festival; some of the attendees were offended, and the Christians were arrested and charged with several felonies including, among other things, violating Pennsylvania's hate crimes law. Only after losing a preliminary hearing, an appeal to a federal court, and then proceeding to a full trial before a state judge were the Christians' civil liberties finally vindicated. [5]

America has historically protected the right to preach, and communicate, faith-based ideas, regardless of their lack of popularity or whether such statements are "politically correct" or not. The passage of H.R. 1592, S. 1105, or similar "hate-crimes" legislation, [6] will place that protection in doubt.

Moreover, the rejection of religious freedom amendment offered by Representative Pence makes this bill even more troubling. During debate in the House Judiciary Committee, Representative Pence introduced an amendment that simply stated: "Nothing in this section limits the religious freedom of any person or group under the Constitution." [7] That provision was voted down by the proponents of H.R. 1592.

These bills, though touted to be a cure for "hate crimes," are actually an invitation for mean-spirited prosecution of politically incorrect, faith-based communicators. Leading African American clergy like Bishop Harry Jackson, Jr., and Rev. Bill Owens, Founder and Chairman of the Coalition of African American Pastors, have denounced the bills as an offense to African Americans and an affront to the religious community.[8]

We urge the Congress to join them in opposing these bills.

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[4] Final version of the letter reproduced at: Library of Congress Information Bulletin, June 1998, Vol. 57, No. 6.

[5] Christian Post, February 17, 2005.

[6] In the Senate, S. 1105 ("Matthew Shepard Local Law Enforcement Hate Crimes Prevention Act of 2007) has been introduced, and is virtually identical to H.R. 1592.

[7] F:\MDB\2007\JUD\CRIME\MV_072.XML

[8] Press Conference, April 16, 2007, National Press Club, Zenger Room, Washington, D.C.

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Specific Flaws in H.R. 1592 and S. 1105

- Judging by the statistical data on the occurrence of so-called "hate-crimes" which involve actual violence, as well as the testimony of the bill's supporters, it is clear that there is no "serious national problem" warranting a radical new federal criminal statute to deal with that subject.
- The law federalizes, as a new criminal felony (punishable by up to 10 years in prison), criminal conduct which is already outlawed in all 50 states, but is usually treated as a petty or misdemeanor offense.
- The "causation" element in the bill: religious communicators can be held criminally liable under the current bill under theories of incitement or conspiracy.
- The "bodily injury" element in the bill: non-physical, mental "injuries" can be the subject of this criminal law, thus expanding its breadth beyond actual acts of violence to also include expressive acts which the "victim" perceives as intimidation or harassment, thus further assuring a chilling affect on First Amendment rights.
- Religious communicators can lose First Amendment protection under these bills: the Davis Amendment is insufficient to protect those rights, and current concepts of incitement and "fighting words," coupled with a loss of a religious defense under the *Smith* case, make such persons vulnerable for wrongful prosecution.
- "Hate-crimes" proposals in both the House and Senate are unconstitutional in violating principals of federalism set out in the Constitution. As the Supreme Court has stated, Congress' ability to regulate "violence" occurring within the states is closely circumscribed, and is limited to only those acts of violence that are directed "at" the very channels of commerce between the states. Further, the Court has stated that "gender-based" acts of violence cannot be generally regulated by Congress. Thus, there is little question that Congress cannot regulate so-called acts of violence based on sexual orientation or "gender identity," or based on the myriad of other categories listed in "hate-crimes" proposals.
- Federalizing "hate" in matters of religion and sexual orientation will pave the way for further regulations that inhibit faith-based communications and decisions.
- If the U.S. continues to follows its trend of incorporating international law concepts into its jurisprudence, "hate-crimes" laws will be expanded to include regulations against "intolerance" or "hate-speech" prohibitions, as has occurred in other nations.
- The vitriolic attacks against evangelical Christians in recent years by mainstream journalists and commentators show a rising cultural hostility against persons of faith which will only be further fed, and fanned by "hate-crimes" legislations, creating a strange irony: "hate" legislation being uses as a weapon of hate to marginalize conservative Christians.

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I. The "Crime" Component of Hate-Crimes

A. This law is unnecessary

The underlying, predicate crime in these bills is the "wilfull[] caus[ing] of bodily injury to any person ..." H.R. 1592, Sec. 249, (a)(1) and (2). [9] In common parlance, under state law, these are commonly known as crimes of "battery." All fifty states already outlaw such conduct, and they are usually treated at misdemeanors. [10] What these bills will do is (a) federally preempt the prerogatives of the individual states which have the primary duty to provide law enforcement and to punish crime; and (b) increase the punishment of simple battery to a sentence, as a new federal felony, of up to 10 years in prison.

Further, while the bills' findings declare that hate crime "poses a serious national problem," (sec. 2, Findings) the facts contradict that.

Taking the FBI figures from 2004, as an example, there were 1,367,009 crimes of violence in America; yet, after extrapolating out crimes based on race (which already can be prosecuted under federal law under 18 U.S.C. sec. 245(b)) only some 358 crimes of violence based on "hate" occurred because of such things as religion or sexual orientation. [11]

Further, the testimony of a proponent of H.R. 1592 illustrates why there is no national epidemic of hate crimes. According to the prepared statement by Jack McDevitt, an Associate Dean at the College of Criminal Justice of Northeastern University, who testified in favor of H.R. 1592, if we take the total universe of all reported "hate-crimes" for 2005, (which itself is a tiny fracture of all crime to begin with) we find that approximately two-thirds of them did not involve any actual acts of physical violence against the victim (i.e. the vast majority involved such things as "vandalism" or attempts "to intimidate," while only "18.7 percent were simple assaults, and 12.7 percent [were] aggravated assault"). [12]

Thus, the actual number of victims subjected to physical violence as a "hate-crime," compared to the total number of violent crimes occurring, is incredibly small. This is not to say that we should refrain from prosecuting those crimes; to the contrary, state laws already provide ample means to prosecute crimes of violence. Rather, it means that the assertion that violent hate crime is a "serious national problem" and that it is a rising social epidemic, is statistically without merit, and is contradicted by all the known facts.

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[9] The bills also include the prohibiting of crimes of "attempt" which extend to use of arson, a firearm or explosives in an "attempt[] to cause bodily injury ..." Interesting, these much more serious criminal acts are prohibited only in the event of an "attempted" assault; but strangely, the bills do not expressly prohibit those crimes where the victim is actually injured by the use of fire, explosives, or a firearm.

[10] For instance, in Virginia, under Virginia Code section 18.2-57, assault and battery is a Class 1 misdemeanor, including attacks of violence against teachers. However, battery against someone because of their "race, religious conviction, color, or natural origin," or because they are one of a list of government or public safety personnel, creates a low-grade felony, with a mandatory six months confinement.

[11] Memorandum of Alliance Defense Fund to Members of Congress, April 9, 2007.

[12] Testimony of Associate Dean Jack McDevitt, April 17, 2007, page 5.

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B. Expressive conduct and speech can be prosecuted under these bills

Proponents of these bills argue that the proposals affect only criminal, violent conduct, and do not implicate expression, speech, or religious activities. However, this is not correct.

First, there is no guarantee that the First Amendment will provide a sanctuary against the potential abusive use of H.R. 1592 or S. 1105 in criminal prosecutions against persons whose only involvement is expressive conduct. The Supreme Court has denied First Amendment protection, as an example, to "fighting words,"[13] and permits criminal prosecution for verbal advocacy that is determined to constitute "incitement to imminent lawless action."[14]

In a 2002 case, the Supreme Court suggested another possible exception to First Amendment protection, namely, in the crime prevention arena. In *Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton*, 536 U.S. 150 (2002) the Court indicated that "evidence of a special crime problem" in door-to-door solicitations could have resulted in the Court affirming (rather than striking down, as it did) a local law that made it a misdemeanor for home solicitation visitors (like religious callers) to visit homes for evangelistic or other purposes without first obtaining a license. To the extent that it could be shown (or at least argued) that "hate-crimes" constitute a "special crime problem," then exceptions to Free Speech protection could be carved out by courts that follow the language of *Watchtower Bible & Tract Society of New York*. The findings in the texts of both H.R. 1592 and S. 1105 make that very assertion of a "special crime problem," arguing that hate-crime is a "serious national problem" and that such offenses "savage the community sharing the traits" of the victim.

At a minimum then, under existing Supreme Court jurisprudence, H.R. 1592 and S. 1105 could apply to various forms of expression that are deemed to be verbal "incitement" or "fighting words" without infringing the First Amendment. Thus, the "Davis amendment" to H.R. 1592, added to the bill in the Judiciary Committee, is vacuous. The net effect of that amendment, in essence, is a congressional statement that the bill will be construed by federal judges according to their view of the prevailing law regarding First Amendment rights of free speech and free exercise of religion, a result that changes nothing.

Second, when coupling the bill with the existing conspiracy provisions of federal law, expressive conduct could be held to violate this proposed legislation. See: 18 U.S.C. section 371 (general conspiracy provision). To add further concern, the United States Supreme Court has declared, in *United States v. Recio*, 537 U.S. 270 (2003), that a criminal conviction for "conspiracy" can occur even when there was no possibility of actual harm or injury to a specified victim or to the public.

Third, to the extent that H.R. 1592 and S. 1105 are interpreted to create new civil rights for persons deemed to be victims, based on their sexual orientation, gender identity, or religion, then mere expression or speech could be held to constitute a

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[13] *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942).

[14] *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

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conspiracy to "oppress, threaten or intimidate" such a person in violation of 18 U.S.C. 241 (conspiracy against rights), even without the causing of any physical injury; such conduct would be punishable by a maximum sentence of 10 years in prison.[15]

Proponents of the bills may point to the Supreme Court decision in *Wisconsin v. Mitchell*, 113 S. Ct. 2194 (1993) as proof that they do not violate the First Amendment. In *Mitchell*, the Court affirmed a state law that merely enhanced the penalties ("singles out for enhancement") criminal conduct that was inspired by hatred for the race, religion, color, disability, sexual orientation, national origin, or ancestry of the victim. Unlike the state law in *Mitchell* (which, as the Court noted, was consistent with the discretion of sentencing judges who, in deciding a penalty, routinely look to a wrong-doer's motivation, or especially egregious bad faith in committing the crime) H.R. 1592 and S. 1105 are not "enhancement" provisions at all; rather, they create a new, federal criminal statute, with new substantive elements of a new federal crime, together with a separate punishment. And one of the criminal elements of this new crime is the *viewpoint* of the accused regarding matters of sexual orientation, gender identification, or religion.

On the other hand, H.R. 1592 and S. 1105 do conflict with the reasoning of the Supreme Court in *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992), where the Court struck down a local law that prohibited the displaying of any symbol which would be likely to provoke a violent response (i.e. *fighting words*) on the basis of race, color, creed, religion, or gender. As the Court noted there, the law would have been constitutional had it forbidden all fighting words uttered in public or by the use of symbols; but selecting only those violence-provoking expressions because they were motivated by the categories of race, color, creed, religion etc. (but leaving, untouched, all other categories like political affiliation or union membership) meant that the law committed content-based censorship, and violated the Free Speech provision of the First Amendment. In the same way, H.R. 1592 and S. 1105 have "cherry-picked" only certain areas of concern for "hate" inspired conduct (sexual orientation etc.), while rejecting all others. An elderly woman beaten severely because the offender hates senior citizens will not be prosecuted under this bill; but someone holding an anti-homosexual placard at a protest rally, and who then trips a man "perceived" to be homosexual, causing a skinned knee, could be investigated by the FBI and prosecuted under this new federal crime statute. Yet, in *R.A.V.* the Supreme Court flatly warned that "the government ... [may not] target conduct on the basis of its expressive content."

On their face, H.R. 1592 and S. 1105 violate the above quoted rule announced by the majority opinion in *R.A.V.* However, the volume and vehemence of concurring opinions in that case, rejecting the "content based" censorship reasoning of the majority opinion, places some of the *R.A.V.* ruling in doubt. This confusion only adds to the dangers of these "hate-crimes" bills. Uncertainty breeds conflicting, and often, undisciplined decisions by federal judges. If H.R. 1592 or S. 1105 are passed, some

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[15] TITLE 18--CRIMES AND CRIMINAL PROCEDURE - PART I—CRIMES -CHAPTER 13--CIVIL RIGHTS, Sec. 241. **Conspiracy** against rights -

If two or more persons conspire to injure, ***oppress, threaten, or intimidate*** any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured -- They shall be fined under this title or imprisoned not more than ten years, or both ... (emphasis added).

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judges will undoubtedly permit criminal prosecution of persons whose only crime is a public pronouncement against certain sexual practices, or a critique of the theological defects of another religion or cult, provided only that some vague, emotional or mental injury is claimed by the "victim." (See section C. below).

C. The "bodily injury"problem: mere emotional distress or mental injuries as bodily injury under these bills

The term "bodily injury" is a central term in the bills: they both prohibit anyone from "willfully caus[ing] bodily injury ... because of the actual or perceived religion ... sexual orientation, gender identity ..." of the victim.

Before addressing the serious problem with the bills in their use of the "bodily injury" language, it should be made clear the ease with which the criminal *intent* requirement ("willfully") can be proven. Criminal intent can be found to exist even though the jury reaches that decision based entirely on circumstantial evidence; jury members are permitted to *infer* the existence of criminal intent from various circumstantial facts. *United States v. MacPherson*, 424 F.3d 183 (2nd Cir. 2005).

Regarding the "bodily injury" language in the bills, it is critical to notice that (a) "bodily injury" is not defined, and (b) that neither bill requires that "bodily injury" be construed to mean *only* physical injury. The later is important because "bodily injury" can easily be judicially construed to include mere physic or psychological harm.

Federal law is replete with examples of "bodily injury" being defined as mere mental injury or impairment. If the existing federal definitions of "bodily injury" from other statutes are adopted by those federal judges who will be construing this kind of hate-crimes legislation, then H.R. 1592 or S. 1105 could be held to extend to *any conduct or expression* (not just violent actions) *motivated by ideas* regarding sexual orientation, gender identity or religion which *may arguably be said to "cause" mere mental or emotional distress to the alleged "victim."*

In the federal criminal code, 18 U.S.C. section 1365 (crimes of malicious mischief -tampering with consumer products) defines "bodily injury" as including "illness," or "impairment of the function of a ... mental faculty ..." An identical definition is also used in 18 U.S.C. section 1864 (crimes on public lands - hazardous or injurious devices on federal lands) as well as in 18 U.S. C. section 831 (crimes involving explosives and other dangerous articles).

Further, bodily injury has been held to include, in other criminal contexts, such things as "mental trauma," or "impairment of the function of a ... mental faculty." *United States v. Rivera,* 83 F.3d 542, 547-48, (1st Cir. 1996).

In the context of civil damages, federal law has defined "bodily injury" to include "injury, sickness, disease ... *shock, mental anguish, or mental injury* ..." 14 C.F.R. 440.3 (a)(1) (Financial responsibility for licensed launch activities involved in commercial space transportation).

Complaints of such vague, "mental" or emotional "injuries" could then be used to assert that they were "caused" by the "hate" speech of a person who preached against the "victim's" homosexuality, or sexual practices, or against his or her adherence to a religious cult.

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Further, H.R. 1592 and S. 1005 do not require any physical act of violence in the alleged "causing" of such "bodily injury." Verbal or expressive conduct, found to be "inciting," could suffice. Even attempts to talk a family member out of a religious cult could be deemed to be a "willful caus[ing]" of mental trauma to the cult member sufficient to constitute "bodily injury," under the bill, exposing the well-intentioned family member to criminal prosecution under federal law.

Testimony offered in support of H.R. 1592 during the Subcommittee hearing would suggest that these kinds of emotional, psychological "injuries" for persons who feel victimized because of their sexual orientation or religion could, indeed, be characterized as a form of "bodily injury" in criminal prosecutions under this bill. Frederick M. Lawrence, Dean in the George Washington University Law School stressed the "psychological trauma of being singled out" that is one result of a hate-crime, and pointed to a "significantly greater level of negative psycho-physiological symptoms" among hate-crime victims. [16] Jack McDevitt, Associate Dean at the College of Criminal Justice, Northeastern University emphasized the "emotional, psychological and behavioral impact" on victims of hate crimes, and "increased fear ... and greater likelihood of experiencing intrusive thoughts ..." [17]

Thus, the use, in H.R. 1592 and S. 1105, of "bodily injury" (and the failure in those bills to even require a "serious" bodily injury as a precondition) opens religious communicators up to prosecution for allegedly "caus[ing] bodily injury" to members of homosexual or religious groups where the only "injury" is a vague, psychological one.

D. The "causation" problem for biblical communicators and broadcasters

H.R. 1592 and S. 1105 would criminalize anyone who willfully "causes" bodily injury to another "because of" the sexual orientation, religion etc. of that other person. Courts could find a sufficient link of causation between expressive conduct, including broadcasting, and a resulting "bodily injury," (a dangerously overly-broad phrase as we indicate above) to justify prosecution under the requirements of H.R. 1592 or S. 1105. This is partly true because the bills do not require that the injury be a "physical" one, nor do they require that the person charged with the crime *actually and directly* cause the injury to another. Causation is one of the law's trickiest philosophical ideas: it is susceptible of being stretched to encompass a relationship of cause and effect that is remote or tangential. In at least one case, legal "causation" has been held to exist between a radio broadcast, and a resulting traffic death.

In *Weirum v. RKO*, 15 Cal.3d 40, 123 Cal.Rptr. 468, 539 P.2d 36 (1975), the Supreme Court of California held a radio station liable for broadcasting a promotional event which was held to have caused some teenage listeners to participate in a high-speed chase on the Los Angeles freeways, which ended in the death of a motorist. The Court held there was a connection between the station's broadcast and the fatal accident sufficient to hold the broadcasters responsible for the ensuing traffic death.

In criminal cases, it is not always necessary to prove that the conduct of the defendant was the only, or even the major factor in producing the harm to the victim. As one state court put it, merely showing that the act was something akin to a "contributing"

[16] Summary of Statement By Frederick M. Lawrence, April 17, 2007, page 3.
[17] Testimony of Associate Dean Jack McDevitt, April 17, 2007, pages 6 and 7.

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factor in producing the injury is sufficient. *Stephenson v. State*, 648 N.E. 2d 395 (Ct. App. IN 1995).

With this in mind, it could easily be argued that a religious broadcaster was the causal "incitement" for an "injury" to a homosexual, or to a member of a criticized religious group.

E. Religious communicators have little protection under this bill

During debate over H.R. 1592 in the House Judiciary Committee, Representative Pence introduced an amendment that simply stated: "Nothing in this section limits the religious freedom of any person or group under the Constitution." However, that provision was rejected.

Nor does the "Davis Amendment" to that bill, which was added in the Judiciary Committee, secure the religious freedom rights of religious communicators. That amendment provides: "Nothing in this Act, or the amendments made by this Act, shall be construed to prohibit any expressive conduct protected from legal prohibition by, or any activities protected by the free speech or free exercise clauses of, the First Amendment to the Constitution."

During debate over this amendment, its author, Representative Davis, seemed to concede that the amendment provided no guarantee that a minister giving a sermon might not be subjected to prosecution under H.R. 1592:

> Mr. Pence. Would the gentleman yield?
>
> Mr. Davis. Well, reclaiming my time to follow up on that point, and I will yield to Mr. Pence or any other member-
>
> Chairman Conyers. [Presiding.] The gentleman is out of time. I will grant him 1 additional minute.
>
> Mr. Davis. Yes. Just to ask one question, Mr. Chairman.
>
> Following up on Mr. Nadler's excellent point, is there some provision of the Constitution that deals with religious 206 freedom other than the exercise clause and the establishment clause, that would clearly be referenced by my amendment?
>
> And I would yield to any member who identifies-
>
> Mr. Gohmert. Well, if the gentleman would yield, even with-I am sorry.
>
> Mr. Davis. I will yield.
>
> Mr. Gohmert. Even with your amendment, you still have to go back to the "rule of evidence" at page 15 of the underlying bill.

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> And it says that these things may not be introduced as substantive evidence at trial unless the evidence specifically relates to the offense.
>
> And if I understood the gentleman's amendment-and I will put the question back to you-if a minister preaches that sexual relations outside of marriage of a man and woman is wrong, and somebody within that congregation goes out and does an act of violence, and that person says that that minister counseled or induced him through the sermon to commit that act, are you saying under your amendment that in no way could that ever be introduced against the minister?
>
> Mr. Davis. No.
>
> Chairman Conyers. The gentleman's time has again expired.
>
> Mr. Gohmert. And he answered no before the time ran out. [18]

In practical effect, this Davis amendment is a mirage: it merely guarantees that whatever the federal courts determine to be the scope of protection for "expressive activity" under the Constitution will then be the protection given to persons who may be charged with hate-crimes under the bill. But the federal courts do not need such language to apply First Amendment rules to Congressional acts; they already possess the jurisdictional authority to weigh federal laws against First Amendment guarantees. That amendment adds nothing; nor does it provide a remedy against problematic interpretations of religious rights (or the lack thereof) by federal judges.

The *real problem* is that the courts have not sufficiently protected religious expression in the face of general criminal laws. The Davis amendment does nothing to change that fact.

In *Employment Division, Dept. of Human Resources v. Smith*, 494 U.S. 872 (1990), the Supreme Court construed the Free Exercise of Religion Clause of the First Amendment to mean that in any conflict between the provisions of a generally applicable criminal law, and the faith-based conduct of a religious person, the criminal law would prevail, and the religious person would lose. Despite a storm of scholarly criticism of the *Smith* case, it is still the law of the land.

In the application of H.R. 1592 or S. 1105 persons of faith can expect little help under the Free Exercise clause if they are charged with a violation.

F. This legislation would violate constitutional principals of federalism

Congress does not possess any generalized right to federalize crimes within the states. To the contrary, the general "police power" to define and then prosecute crime within the several states is a right reserved to the states. H.R. 1592, and its counterpart in the Senate, both violate this basic tenet of constitutional federalism. That federalism

[18] Transcript, page 206: http://judiciary.house.gov/Media/PDFS/Transcripts/transcript070425.pdf

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principal, prohibiting Congress from legislating generally in the field of violent crime (absent some special impact on interstate commerce) was reaffirmed by the Supreme Court in *United States v. Morrison*, 529 U.S. 598 (2000) (striking down the Violence against Women Act). The Court made it clear that alleged gender-based acts of violence against women had no constitutionally significant "economic" impact on interstate commerce sufficient to grant Congress the authority to legislate in that area. The court stated unequivocally: "Gender-motivated crimes of [redacted] are not, in any sense of the phrase, economic activity." The Court's reasoning, set forth below, makes it abundantly clear that "hate-crimes" legislation of the type currently being proposed would fail this constitutional test: [19]

> We accordingly reject the argument that Congress may regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce. The Constitution requires a distinction between what is truly national and what is truly local. Lopez, 514 U.S., at 568 (citing Jones & Laughlin Steel, 301 U.S., at 30). In recognizing this fact we preserve one of the few principles that has been consistent since the Clause was adopted. The regulation and punishment of intrastate [redacted] that is not directed at the instrumentalities, channels, or goods involved in interstate commerce has always been the province of the States. See, e.g., Cohens v. Virginia, 6 Wheat. 264, 426, 428 (1821) (Marshall, C. J.) (stating that Congress "has no general right to punish murder committed within any of the States," and that it is "clear _ that congress cannot punish felonies generally"). Indeed, we can think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims.8 See, e.g., Lopez, 514 U.S., at 566 ("The Constitution _ withhold[s] from Congress a plenary police power"); id., at 584_585 (Thomas, J., concurring) ("[W]e always have rejected readings of the Commerce Clause and the scope of federal power that would permit Congress to exercise a police power"), 596_597, and n. 6 (noting that the first Congresses did not enact nationwide punishments for criminal conduct under the Commerce Clause).

[19] H.R. 1592 and S. 1105 both attempt to shore up their defects in this regard, but wholly fail to do so. As the Court stated above in *Morrison*, the act of violence must be "directed at the instrumentalities, channels or goods involved in interstate commerce." Instead H.R. 1592 and S.1105 simply require that the wrongful acts have some incidental involvement with interstate travel. Both bills miss the point of the Supreme Court's reasoning that only criminal conduct that is directed "at" the very infrastructure of interstate travel or "at" the goods that traverse between states can be regulated by Congress.

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II. The "Hate" Component of Hate-Crimes

A. Federalizing categories of forbidden dissent regarding sexual orientation, gender identification, and religion

If this bill is passed, sexual orientation and gender identity will become federally protected rights. Further, opposition to those sexual identifications, or opposition to religions or religious cults, even faith-based opposition, will be characterized as federally defined "hate." That kind of massive policy shift by the federal government has far-reaching, and damaging, affects.

Legislation proposed in the past will undoubtedly be reintroduced, including a move to include sexual orientation and gender identity as protected categories in all public and private employment, housing, insurance provisions, and other regulations. Private employers who have faith-based objections will have no recourse (see section B. below).

Even more troublesome is the fact that H.R. 1592 and S. 1105 provide federal funding for the "prevention" of hate in local communities; how exactly will federally defined "hate" be prevented? Section 4 (b)(2) provides that the federal government "shall work closely with grantees [of funds] to ensure that the concerns of affected parties, including community groups and schools ... are addressed through the local infrastructure ..."

Public schools, civic groups, after-school programs, and public libraries could be utilized as venues for overly broad statements about the new "federal policy" opposing those who comment negatively about sexual practices, sexual orientation, or gender identity, or who criticize competing religious belief systems.

B. The movement toward hate speech regulation

Of all the dangers of these bills if they are passed, the most pernicious, long term one would be their function as a platform for future hate-speech regulation (likely denominated as "tolerance" laws, or "anti-intimidation" bills).

There are three reasons why this would likely occur with the passage of H.R. 1592 or S. 1105.

The first reason is the kind of "law of gravity" that sometimes accompanies radical new legislative provisions. Once the "hate" paradigm is imbedded in federal criminal law, it will be easier to propose civil sanctions (or even criminal ones) for conduct that is more clearly expressive, and which communicates unpopular, politically incorrect positions on matters ranging from feminism, to sexuality, sexual orientation, or religion. The rejection of the Pence amendment says volumes about the reluctance of its proponents to guarantee the freedom of Americans to express religious-based criticism of these newly protected classes. Further expansions of federal protections for these newly devised classes of sexual orientation or gender identification (and the diminishing of the rights of faith-based persons to object to them) are already being proposed: H.R. 2015, ("Employment Non-Discrimination Act of 2007") has been introduced by Representative Barney Frank (D-MA). His bill would include special employment protection for "actual

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or perceived sexual orientation or gender identity," terms that have been lifted from H.R. 1592 and S. 1105.

Second, there is a pattern of developing international law that has been used to silence, or obstruct religious free speech on the grounds of promoting "tolerance" or preventing "intimidation. In Canada Christians have been prosecuted for bumper stickers, letters to a newspaper editor, and even for a letter sent by a Bishop to his own diocese; In Sweden, a pastor was prosecuted for the content of his pulpit sermon; and in Australia pastors were charged with violating a religious "Tolerance Act" when they conducted a seminar critical of Islam. [20]

In *Owens v. Saskatchewan* (Human Rights Commission) 2002 SKQB 506 (CanLII) a judge determined that a bumper sticker which labeled homosexuality as forbidden and quoted Bible passages was illegal because it "expose[s] homosexuals to hatred and affronts their dignity," thus finding a violation of the human rights code. While the ruling was overturned on appeal, the willingness of a judge to find no free speech violation in the enforcement of those anti-speech regulations is telling.

Recently, leaders in the European Parliament have called for an investigation and possible prosecution of the nation of Poland for what they described as its national, religion-based "homophobia." [21] Homosexual publications in Europe lauded the move, stating: "It is the homophobic statements by leading politicians that create the climate in which hatred and violence thrive ..." [22]

Given the tendency of the Supreme Court to embrace international law in its interpretation of the federal Constitution (particularly in the social context of homosexuality), future legislative initiatives that begin to obstruct the right of the faith community to express Bible based critiques of social behavior, relationships, practices, and religions may well find our federal courts supportive of those kind of laws. In *Lawrence v. Texas*, 539 U.S. ___ (2003) our Supreme Court, in striking down laws outlawing homosexual conduct, departed from the "Judeo-Christian" perspective of a prior majority opinion of that same Court in the *Bowers* case, and cited affirmatively the contrary policies of the international community:

> The sweeping references by Chief Justice Burger to the history of Western civilization and to Judeo-Christian moral and ethical standards did not take account of other authorities pointing in an opposite direction. A committee advising the British Parliament recommended in 1957 repeal of laws punishing homosexual conduct. The Wolfenden Report: Report of the Committee on Homosexual Offenses and Prostitution (1963). Parliament enacted the substance of those recommendations 10 years later. Sexual Offences Act 1967, §1.

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[20] NRB Pubic Policy Action Paper – *Hate Crimes Legislation: Paving the Way for the Thought Police*, January 2006.
[21] EUobservor.com , April 25, 2007.
[22] UK Gay News (Europe) April 25, 2007

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> Of even more importance, almost five years before *Bowers* was decided the European Court of Human Rights considered a case with parallels to *Bowers* and to today's case. An adult male resident in Northern Ireland alleged he was a practicing homosexual who desired to engage in consensual homosexual conduct. The laws of Northern Ireland forbade him that right. He alleged that he had been questioned, his home had been searched, and he feared criminal prosecution. The court held that the laws proscribing the conduct were invalid under the European Convention on Human Rights. *Dudgeon* v. *United Kingdom,* 45 Eur. Ct. H. R. (1981) ¶52. Authoritative in all countries that are members of the Council of Europe (21 nations then, 45 nations now), the decision is at odds with the premise in *Bowers* that the claim put forward was insubstantial in our Western civilization.

The policies of the international community, which have proven themselves to be notoriously hostile to the free exercise of religious expression, is America's future, if we do not stand firmly against those kinds of official projects of engineered political correctness.

Third, judging by the mounting hostility against conservative evangelical Christians in the mainstream media, they may well be the most likely target of future hate speech suppressions. Last year, a respected former foreign correspondent, Chris Hedges, released his book, *American Fascists: The Christian Right and the war on America.* In it, Mr. Hedges argues strongly for the passage of hate-crimes legislation; and he blames the failure to pass such bills on "bitter opposition from the Christian Right." Mr. Hedges also fiercely attacks respected Christian leaders, including several who are members of National Religious Broadcasters. Yet, while Mr. Hedges' profession as a journalist is protected by the First Amendment, in the same book he seems to openly advocate hate-speech regulation against born-again Christians: Mr. Hedges declares that the "Christian Right ... should no longer be tolerated." He writes that they "must be held accountable ... forced to include other points of view to counter their hate talk in their own broadcasts ... they must be denied the right to demonize whole segments of American society ... [t]hey must be made to treat their opponents with respect ..." Christian broadcasters, according to Mr. Hedges, oppose hate crimes laws because, in his view, they are the real violators: "they spew hate talk over the radio, television, and Internet," he writes.

Chris Hedges is not a fringe voice. His opinions are part of a growing group of mainstream journalists who are suggesting that evangelical Christians are, at a minimum, to be feared, and optimally should be closely regulated. In April of 2007, Paul Krugman penned an op-ed in the *New York Times* ("For God's Sake") decrying a co-called *conspiracy of evangelical Christians to infiltrate the federal government.* In the May 2005 issue of *Harper's Magazine* The National Religious Broadcasters were accused of being purveyors of "hate" and compared to Hitler. On March 8th of that same year an op-ed in the *Los Angeles Times* by William Dowell, a former correspondent for *Time* magazine, drew parallels between Christian conservatives and Al Qaeda.

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CONCLUSION

For all of the foregoing reasons, H.R. 1592 and S. 1105 should be vigorously opposed. While some of the dangers mentioned here would be an incremental (rather than an immediate) result of the passage of these "hate-crime" bills, that does not make them any less dangerous to our civil liberties. And in a certain sense, incremental encroachments on our most precious and fundamental rights of religious belief and expression may be the most disguised, and therefore, the most dangerous kind of threat of all.

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9to5, National Association of Working Women
207 E. Buffalo Street, Suite 211, Milwaukee, Wisconsin 53202
• (414) 274-0933 • Fax (414) 272-2870

June 15, 2009

Members of the United State Senate
Washington, DC 20510

Dear Senator:

On behalf of the members and constituents of 9to5, National Association of Working Women, I urge you to support the Matthew Shepard Hate Crimes Prevention Act (S 909).

9to5 is a 35 year old national membership-based organization of low-income women working to improve policy on issues related to ending discrimination, strengthening the safety net, and creating good jobs with policies that promote family-flexibility. 9to5 has long supported hate crimes legislation to address acts of violence motivated by predudice and hate. We strongly support the Matthew Shepard Hate Crimes Prevention Act.

The Matthew Shepard Act will expand existing federal hate crimes law to include protections for those targeted because of real or perceived sexual orientation, gender, gender identity or disability. Further, it will remove overly burdensome obstacles to federal prosecution. The bill allows the federal government to assist local law enforcement in the investigation and prosecution of hate crimes, or to become involved when local law enforcement is either unable or unwilling to take appropriate action. The Attorney General or other high-ranking Justice Department officials would be required to approve all federal prosecutions, in order to avoid duplicating state efforts.

Acts of violence motivated by prejudice and hate are attacks not only on the individuals who are the victims of the specific criminal acts. Hate crimes represent acts of violence and intimidation against entire communities of people, based solely on who they are.

The time is now for Congress to expand and strengthen existing hate crimes law. Please support this vital legislation and sign on as a co-sponsor. Thank you for your consideration. Feel free to contact me if you'd like to discuss this matter further.

Sincerely,

Linda A. Meric

Linda A. Meric
Executive Director

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OCA | EMBRACING THE HOPES AND ASPIRATIONS OF ASIAN PACIFIC AMERICANS

May 14, 2009

Dear Senator:

On behalf of OCA, a national organization with over 80 chapters and affiliates dedicated to advancing the social, political and economic well-being of Asian Pacific Americans (APAs), I urge you to support the Matthew Shepard Hate Crimes Prevention Act.

Current law limits federal involvement in hate crimes cases to those involving crimes motivated by race, ethnicity, religion, or national origin. This Act will expand this law to include crimes that are motivated by a victim's actual or perceived gender, sexual orientation, gender identity, or disability. It will give federal government jurisdiction to prosecute hate crimes in states where current law is inadequate and also provide greater access and grants to assist federal authorities to investigate hate crimes.

For APAs, the murder of Vincent Chin 27 years ago still haunts our community. Vincent, a Chinese American man, was beaten to death by two autoworkers who blamed Asians for the economic woes of U.S. autoworkers. For this brutal hate crime, the two men were sentenced to only three years of probation and $3,780 in fines and court fees but never served one day in prison. Although Vincent's murder galvanized the APA community to launch its first nationwide pan-ethnic movement to stop anti-Asian violence and hate crimes, we are still reminded today how much more needs to be done to stop these crimes from occurring. With the current economic crisis, there are growing tensions around employment and many times people act in desperation and lash out in hatred. We want to prevent anyone from ever becoming a victim like Vincent Chin.

The Matthew Shepard Hate Crimes Prevention Act is a comprehensive and measured response to a problem that continues to plague our nation - violence motivated by prejudice. These crimes are especially destructive because their perpetrators seek not only to harm the immediate victim, but to make a statement to an entire community.

We urge you to support this vital piece of legislation by signing on as a co-sponsor.

Respectfully,

George C. Wu
Executive Director
OCA

Founded in 1973 as the Organization of Chinese Americans. OCA is a national organization dedicated to the social, political, and economic well-being of Asian Pacific Americans in the United States.

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June 25, 2009

The Honorable Patrick Leahy, Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

On behalf of the hundreds of thousands of members of People For the American Way, we write in strong support of the Matthew Shepard Hate Crimes Prevention Act of 2009 (S. 909). The House overwhelmingly passed similar legislation (H.R. 1913) this April with a 249-175 bipartisan majority.

The 110th Congress bill (H.R.1592) passed by a vote of 237-180 on May 5, 2007. Senator Kennedy's companion bill (S.1105) was referred to the Senate Judiciary Committee and had 43 cosponsors by the time of the amendment vote that September. On September 25, Senators Kennedy and Smith introduced S. 1105 as Amendment 3035 to the FY 2008 Department of Defense authorization bill (H.R. 1585). Two days later, the Senate successfully invoked cloture to close off debate on the amendment. The final vote was 60-39 (60 required). The amendment itself passed by voice vote, but never made it to the President's desk.

The freedom from discrimination that this legislation speaks to is a basic right that all Americans should enjoy. S. 909 recognizes that failing to provide appropriate protections for victims of discrimination because of their disability, sexual orientation, gender, or gender identity is a heinous affront to the American ideal of "equal protection under the law." People For the American Way has joined those urging Congress to expand the current federal law to protect victims of hate crimes based on disability, sexual orientation, gender, or gender identity. In addition, we have advocated extending the protections of present law to **all** hate crimes victims.

S. 909 is desperately needed to strengthen and close loopholes in current law and is supported overwhelmingly by the civil rights community, as well as by religious and law enforcement organizations. As we engage in actions across the world to protect the human rights of all individuals, it is imperative that we continue to protect those same rights of all Americans here at home.

This bill would strengthen existing federal law in two very important ways. First, it removes the requirement that victims of violent bias-motivated crimes be engaged in a federally protected activity (such as voting) when the crime is committed – thereby making it easier for federal authorities to prosecute or assist local authorities in prosecuting hate crimes. Second, S. 909 expands the definition of hate crimes to include those motivated by the gender, disability, sexual orientation, or gender identity of the victim.

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Because the federal government's jurisdiction under S. 909 is limited to the most serious violent crimes, state and local authorities will continue to prosecute most hate crimes – as they do now. However, the bill provides for important backup where state and local authorities cannot or will not act, and allows federal authorities to assist in local prosecutions to ensure that justice is served. To ensure appropriate restraint at the federal level, the Attorney General or his designee must approve all federal hate crime prosecutions and consult with state and local law enforcement officials before undertaking prosecution against any defendant.

Again, People For the American Way strongly supports the Matthew Shepard Hate Crimes Prevention Act of 2009 (S. 909). If you have questions or would like additional information, please contact Terri Schroeder at (202) 577-9952.

Sincerely,

Michael B. Keegan
President

Marge Baker
Executive Vice President for Policy
and Program Planning

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Written Testimony
Prepared for the Senate Judiciary Committee
June 23, 2009

By
Family Research Council
Tony Perkins
President

The Family Research Council strongly opposes the enactment of a Federal hate crimes law (H.R. 1913).

Hate crime laws force the court to guess the thoughts and beliefs which lie behind a crime, instead of looking at the crime itself, in order to prosecute and convict someone of a hate crime. Violent crimes are already punishable by law. "Hate crime" laws put the perpetrator's thoughts and beliefs on trial. Hate crime laws are tantamount to federally prosecuting "thought crimes." The Family Research Council believes that all crime should be prosecuted to the fullest extent of the law, and that every violent crime has some form of hate behind it. All around the country, crimes are being prosecuted in the state justice systems. American justice is being done. There is simply no need for a federal hate crimes law.

Even more distressing is the impact that Federal hate crime laws could have upon religious communities. Examples from Europe and Canada have shown what hate crime laws can do to the Christian community. In some countries, pastors have been threatened for what they preach in the pulpit and passing out the Bible can lead to hate crime prosecution. While the bill before us is ostensibly limited to acts which cause "bodily harm," it would put us on a slippery slope toward the punishment of so-called "hate speech" as well.

A federal hate crime law is unnecessary and violates the First and Fourteenth Amendments to the Constitution.

Unnecessary and Ineffective

Expanding the Federal hate crime law would not only be unnecessary, it would be ineffective. When H.R. 1913 was presented in the House of Representatives, it listed 10 Congressional findings. Section 2.1 of the bill states that Congress has found that:

> "The incidence of violence motivated by the actual or perceived race, color religion, national origin, gender, sexual orientation, gender identity, or disability of the victim poses a serious national problem."[1]

However, the statistical data does not support such a finding. The FBI's statistics on hate crime actually show a decrease in the number of hate crimes being reported even though

[1] 111th Congress. H.R. 1913, Local Law Enforcement Hate Crimes Prevention Act of 2009.

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there is an increase in the agencies reporting such crime. In the most recent year for which statistics are available, 2007, the FBI found that 7,624 hate crime incidents were reported.[2] Racially motivated incidents were 50.8% of the total, followed by religiously motivated incidents at 18.4%, then ones motivated by "sexual orientation" bias at 16.6%.

In 2007, there were 90,427 forcible rapes and 16,929 murders reported.[3] Less that one tenth of one percent of the national crime total for those offenses consisted of "hate crimes." This does ***not*** (emphasis added) constitute a serious national problem or warrant Federal interference.

Another reason that the numbers do not prove a serious national problem is that the statistics include reports of "intimidation." The Hate Crimes Reporting Act of 1990 required that the FBI interpret hate crimes more broadly to include acts of intimidation. Of the hate crime offenses reported, 28.5% of them were intimidation related, and when it came to crimes against persons, 47.4% of them were intimidation related. To use these statistics and claim they constitute a ***serious national problem*** (emphasis added), which this bill would address, is misleading.

The bill presented to the House of Representatives on April 2, 2009 also made the finding that "Existing Federal law is inadequate to address this problem" (Sec 2:4). Not only have we just shown that there is no ***serious national problem*** (emphasis added), 44 states, plus the District of Columbia, have their own form of hate crime law. A 1990 law (Public Law 101-275) required the Federal government to begin collecting statistics on so-called "hate crimes" from states and local governments, but did not provide for any federal prosecution of them. A 1994 law (Public Law 103-322) provided for "sentencing enhancement" (that is, higher penalties) for existing Federal offenses that are found to be motivated by "hate," but did not actually create a new category of offense. H.R. 1913 would, for the first time, allow the Federal government to prosecute any alleged "hate crime" that occurs anywhere in the country, regardless of the other circumstances--thus effectively usurping the primary responsibility of states and localities for law enforcement. Federal hate crimes bureaucrats can intervene and claim jurisdiction in localities which lack "hate crime" laws, or where those laws are judged not to be zealously enforced.

Proponents of "hate crime" legislation have not presented evidence that state and local authorities are failing to prosecute such crimes. Ironically, in the most high-profile case cited in calls for hate crimes legislation, the murder of the homosexual Wyoming college student Matthew Shepard, the killers were convicted and sentenced to double life sentences without parole even in the *absence* of any "hate crime" law. Only the pleas of Shepard's parents persuaded the judge to spare Shepard's murderers from the death penalty. There is also no evidence that federalizing hate crimes would effectively deter them.

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[2] FBI 2007 Hate Crime, Incidents and Offenses. http://www.fbi.gov/ucr/hc2007/incidents.htm. Oct 2008
[3] FBI 2007 Crime in the United States. http://www.fbi.gov/ucr/cius2007/data/table_01.html. Sept. 2008

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Threat to the First Amendment

Violent attacks upon people or property are already illegal, regardless of the motive behind them. With "hate crime" laws, however, people are essentially given one penalty for the actions they engaged in, and an *additional* penalty for the particular (and highly selective) attitudes and thoughts that allegedly motivated those actions.

Motive-based analysis and intent-based analysis are not the same thing. For example, with the crime of manslaughter, intent based analysis looks at whether the perpetrator intended the result. Hate crime legislation takes into account what the offender thinks, feels, or believes about the victim, regardless of whether the perpetrator intended the result.[4] This is why hate crimes can be referred to as "thought crimes."

H.R. 1913 authorizes the U.S Attorney General to assist in the investigation of any felony that is motivated by "prejudice based on the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of the victim" or is a violation of any state, local, or tribal hate crime laws (Sec 3:a:1:C). While the bill only authorizes direct federal prosecution in the case of violent crime, the ability of the government to intervene in any violation of state or local hate crime laws opens the door to federal involvement in prosecuting "hate speech."

As previously mentioned, 44 states plus the District of Columbia have hate crime laws already in place. Many of these states include acts of intimidation or perceived intimidation in the categories permissible to prosecute. New Jersey, for example, makes it a hate crime merely to communicate in a manner likely to cause annoyance or alarm.[5]

The definition of "hate crimes" in section 280003(a) of the Violent Crime Control and Law Enforcement Act of 1994, which is incorporated into H.R 1913, does not limit hate crimes to crimes of violence. This definition paves the way for future amendments to the law under which people could be prosecuted for speech that causes others to feel intimidated. This has already happened in Canada. In 1997, the Canadian Broadcast Standards Commission, a broadcasting watchdog endorsed by the Canadian Radio-Television and Telecommunications Commission (equivalent to the FCC), ruled a Focus on the Family broadcast on the issue of homosexuality was an "abusively discriminatory comment on the basis of sexual orientation contrary to the provisions of Clause 2 of the *CAB Code of Ethics*."[6] The Criminal Code in Canada states "everyone who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace" and "everyone who, by communicating statements, other than in private conversation, willfully

[4] Alliance Defense Fund, Memorandum to Members of Congress. Glen Lavy, April 20, 2007 pg. 3
[5] N.J.S.A 2C:16-1(a),2C:33-4
[6] CBSC Decision 96/97-0155, http://www.cbsc.ca/english/decisions/decisions/1997/971216i.htm

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promotes hatred against any identifiable group" is liable for up to two years imprisonment.[7]

Canada's identifiable groups are very similar to the groups identified in H.R 1913 as far as race, religion, ethnic origin or sexual orientation is concerned. It is not hard to see the possible implications of hate crime legislation being enacted in the United States. A profound concern is the implication that "thought crime" laws will have for religious freedom.

Our country guarantees religious freedom under the First Amendment. However, "thought crime" legislation will pave the way for religious persecution. The Supreme Court has "already decided that hate crimes laws are constitutional under the First Amendment, and upheld the criminal conviction of a person for hate speech when coupled with a violent act committed by other persons" (Wisconsin v. Mitchell, 508 U.S. 476 1993).

H.R 1913 does not preclude using evidence of speech and associations as "other bad acts" under the Federal Rules of Evidence. Under section 404(b) of the Federal Rules of Evidence, bad acts can be admitted to prove "motive, opportunity, intent, preparation, plan, knowledge, and identity."[8] Pastors in their pulpit can be accused of being accomplices to hate crimes because their speech is deemed hateful towards an identified group, if a parishioner (or other listener or reader) who misconstrues religious teachings decides to commit a violent crime against a member of an identified group.

At the state level, the inclusion of "intimidation" in hate crime legislation has already been broadly interpreted to include the public criticism of homosexuality, as in the case of 11 Christian protesters charged under a Pennsylvania "ethnic intimidation" law on October 10, 2004. The defendants were charged for peacefully protesting at a "gay pride" rally and faced imprisonment and huge fines before their case was dismissed. Homosexuality is defined in the Bible as a sin, and Christians have the right to peacefully speak out against sin, as guaranteed by the freedom of religion. If Congress were to pass H.R. 1913, it would be effectively labeling biblically and other religious or morally based views disapproving of homosexual conduct as a form of "hate," whether prosecutions ensue or not.

The testimony against hate crime legislation in the previous Congress is still relevant to H.R. 1913. Brad Dacus, the President of the Pacific Justice Institute, brought up the potential for "well-intentioned hate crime legislation to squelch free speech, particularly religious free speech."[9] A subjective sense of fear and or apprehension is not sufficient

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[7] Canada Criminal Code 318:4 and 319:1 http://laws.justice.gc.ca/en/showdoc/cs/C-46//20090623/en?command=search&caller=SI&fragment=Hate%20Crime&search_type=all&day=23&month=6&year=2009&search_domain=cs&showall=L&statuteyear=all&lengthannual=50&length=50

[8] Federal Rules of Evidence 2009 edition. Cornell Law. http://www.law.cornell.edu/rules/fre/rules.htm

[9] Congressional Testimony of Brad Dacus before Subcommittee on Crime Terrorism and Homeland Security. Headline: Hate Crime. April 17, 2007.

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justification to quash the right to freedom of expression. Some people claim to experience such negative feelings when exposed to religious speech against homosexuality. Dacus listed several examples in California where students were threatened with suspension for peacefully speaking out against homosexuality. In one instance, the student was beaten. In another the student was told that "he should leave his faith in the car while at school, in order to not offend homosexual students." The courts ruled against these students, finding that their speech amounted to a form of psychological assault that was just as harmful as physical. Judge Gould of the Ninth Circuit in California related it to a call for genocide.

In San Francisco, officials took action to ban religious organizations from advertising on TV because the content was deemed "hate speech," and thus a crime. In some cases, religious dialogue is being viewed as a hate crime. A pastor named Audie Yancey was summoned before a Human Relations Task Force and charged with hate speech against Muslims. Dacus urged Congress "not to allow natural feelings of sympathy for crime victims to lead you to enact sweeping legislation which will sacrifice fundamental constitutional rights on the altar of political expediency."[10]

Inequality

Thought crime laws favor some victims of violent crimes over other victims of equally violent crimes, which violates the core principle guaranteed by the 14th Amendment to the U.S. Constitution and is even carved above the entrance to the Supreme Court ("Equal Justice Under Law"). Two identical violent crimes—one a "random" act of violence and another a "hate-motivated" act of violence—will be treated unequally even though the impact on the victims is indistinguishable (or even conceivably worse for the victim and family members who are denied enhanced federal protection, solely because their distinguishing characteristic was not named in the thought crime statute).[11]

Granting greater protection to some victims than others based on a status, whether chosen or inherent, is of great concern to everyone who supports the premise of equality under the law.

Family Research Council has a particular concern regarding such laws, however, when they include "sexual orientation" and "gender identity" (a reference to cross-dressing and sex-change operations) among the categories of protection. This sends the false message that deviant sexual behaviors are somehow equivalent to other categories of protection such as race or sex. In fact, the very term "hate crime" is offensive in this context, in that it implies that mere disapproval of sexually extreme behavior constitutes a form of "hate" equivalent to racial bigotry.

Sexual orientation and gender identity are not defined in the bill. As such, it is not clear from this lack of definition what the bill authors intend for sexual orientation and gender

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[10] Ibid
[11] [11] Republican Study Committee. Rep. Jeb Hensarling, Chairman. May 3, 2007

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identity to mean or how these terms should be construed in law.[12] Since these terms are not defined by the bill itself, it is possible that someone could claim protection for their "sexual orientation" based on participation in one of the 30 paraphilias listed in the current *Diagnostic and Statistical Manual of Mental Disorders*,[13] which include pedophilia and bestiality.

Congress should stand together to support equal protection under the law and not allow for preferred protected status only for certain privileged groups.

H.R. 1913 is not only unnecessary and ultimately ineffective, but it would put freedom of speech, religious liberty, and equal protection under the law at risk.

I urge you to reject the Local Law Enforcement Hate Crimes Prevention Act of 2009.

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[12] Republican Study Committee. Rep. Jeb Hensarling, Chairman. May 3, 2007
[13] Diagnostic and Statistical Manual of Mental Disorders. Sexual Orientations. 4th Edition. American Psychiatric Association. Pp 566-582. 2000

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Religious Action Center
of Reform Judaism

The Religious Action Center pursues social justice and religious liberty by mobilizing the American Jewish community and serving as its advocate in the nation's capital.

Rabbi David Saperstein
Director and Counsel

Mark J. Pelavin
Associate Director

Cheryl Gutmann
Chair
Commission on Social Action of Reform Judaism

Rabbi Marla J. Feldman
Director
Commission on Social Action of Reform Judaism

The Religious Action Center operates under the auspices of the Commission on Social Action of Reform Judaism, a joint instrumentality of the Central Conference of American Rabbis and the Union for Reform Judaism with its affiliates:

American Conference of Cantors

Association of Reform Zionists of America

Canadian Association of Reform Zionists

Early Childhood Educators of Reform Judaism

National Association of Temple Administrators

National Association of Temple Educators

Men of Reform Judaism

North American Federation of Temple Youth

Program Directors of Reform Judaism

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May 27, 2009

Dear Senator,

On behalf of the Union for Reform Judaism, whose more than 900 congregations across North America encompass 1.5 million Reform Jews, I urge you to support the Matthew Shepard Hate Crimes Prevention Act of 2009 (S. 909) introduced by Senator Kennedy.

All violent crimes are reprehensible, but hate crimes rend the fabric of society and fragment communities. By providing federal officials the authority to investigate and prosecute cases in which violence occurs because of victims' real or perceived sexual orientation, gender identity, gender or disability, this legislation will significantly strengthen federal response to these horrific crimes.

Of course, states will continue to play the primary role investigating and prosecuting bias-motivated violence, but the Matthew Shepard Hate Crimes Prevention Act will allow the federal government to intervene in cases where local authorities are either unable or unwilling to do so. Local law enforcement will be supported by federal officials through training and technical assistance, ensuring that these egregious crimes are handled properly and that affected communities are set on a path toward healing.

We are cognizant of the range of views among faith traditions on the issue of homosexuality. While the Reform Jewish Movement is proud of its welcoming of LGBT individuals, there are, of course, faith traditions that hold different views. This legislation only applies to bias-motivated crimes and will not affect lawful public speech or preaching. In fact, in order to make certain that such concerns were addressed, a provision is included to clearly protect the First Amendment rights of all Americans.

As Jews, we cherish the biblical commandment found in Leviticus 19:17: "You shall not hate another in your heart." We know all too well the dangers of unchecked persecution and of failing to recognize hate crimes for what they are: acts designed to target and terrorize an entire community. We also take to heart the commandment "You may not stand idly by when your neighbor's blood is being shed" (Leviticus 19:16). Jewish tradition teaches the importance of tolerance and respect for others.

The Matthew Shepard Hate Crimes Prevention Act has languished for far too long. Your help is critical to ensure its passage. I ask you to vote in favor of the legislation and help bolster federal capacity to address bias-motivated violence.

Sincerely,

Rabbi David Saperstein

Resurgence on the Right

By Mark Potok, Editor

As the first months of the Obama Administration unfold, a growing consensus is emerging that a resurgence of right-wing hate groups and radical ideas is spreading across the United States. Law enforcement officials, civil rights groups, and many others have all expressed worries about this troubling trend.

This February, in the last issue of the *Intelligence Report*, the Southern Poverty Law Center reported on the continued growth of hate groups, whose numbers have risen by more than 50% since 2000. It attributed that growth mainly to fears about non-white immigration, but pointed out that the rise of a black man to the White House also appears to have contributed. And it said the ongoing economic meltdown, which some have already blamed on racial minorities and undocumented Latino immigrants, could well add to a worsening situation.

Two months later, a Department of Homeland Security report, "Rightwing Extremism: Current Economic and Political Climate Fueling Resurgence in Radicalization and Recruitment," was leaked to the press. Dated April 7, the report mirrored many of the conclusions of the SPLC and added that "rightwing extremists [could] attempt to recruit and radicalize returning [military] veterans." (The *Report* has written extensively about the problem of extremists in the military.)

Already, there is evidence of the violence that an expansion of the radical right may portend. Some of it is chilling.

- In late April, a man shot to death two Okaloosa County, Fla., sheriff's deputies responding to a domestic disturbance call. Officials said Joshua Cartwright was interested in militia groups and that his wife told police that he was "severely disturbed" by Obama's election.
- Three days before the DHS report was issued, a gunman in Pittsburgh killed three police officers. Internet postings by the suspect in the months before the murders suggest the man was motivated by racist and anti-Semitic ideology, antigovernment conspiracy theories, and a fear that Obama would pass confiscatory gun laws.
- Around the same time, a Marine who had earlier been arrested for armed robberies near Camp Lejeune, N.C., was indicted for threatening Obama. Kody Brittingham's journal allegedly contained neo-Nazi propaganda and a plan to assassinate the then president-elect.
- On Jan. 21, the day after Obama's inauguration, a white man in Brockton, Mass., allegedly murdered two black people and planned to kill as many Jews

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as he could that night. Police said the man told them he'd been reading white supremacist websites and believed that whites were facing a genocide.

- Last December, a woman who had just shot her husband to death in Belfast, Maine, told police that James Cummings was "very upset" with Obama's election, had been in touch with white supremacist groups, and had talked of building a "dirty bomb" chock full of deadly radioactive materials. Police found many of the components for that bomb, along with an application for the neo-Nazi National Socialist Movement filled out by Cummings.
- And in late October, two racist skinheads were arrested in Tennessee and charged in connection with an alleged plot to murder more than 100 black Americans, beheading some of them, and then assassinate Obama.

The government report was met with howls of outrage from pundits, politicians and others on the right who characterized it as an attack on conservatives and veterans — an absurd contention for anyone who actually read the document. Televangelist Pat Robertson, the gay-bashing founder of the Christian Coalition, even said the DHS report "shows somebody down in the bowels of that organization is either a convinced left winger or somebody whose sexual orientation is somewhat in question."

These expressions of anger were disingenuous at best. The reality is that many of these same people have done their best to pour fuel on the flames of incipient antigovernment fury, feeding the same kind of white-hot popular anger that animated the militia movement of the 1990s, with all its violence.

MSNBC commentator Pat Buchanan recently said Obama would face a "bloodbath" if he legalized undocumented workers. U.S. Rep. Michele Bachmann (R-Minn.) fears Obama will set up "re-education camps for young people." U.S. Rep. Spencer Bachus (R-Ala.) warns there are 17 "socialists" in the Congress. FOX News' Glenn Beck calls Obama a fascist, a Nazi and a Marxist, and even refloated militia-era conspiracy theories about secret concentration camps for patriots.

People like Beck — who described himself as a mere "rodeo clown" when he was called out on such statements — may be craven opportunists pandering for ratings. It really doesn't matter. Their lunatic rants, planted in the rich soil of social discontent, make it that much harder for our country to advance toward a better future.

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Testimony of

Rabbi David Saperstein

Director and Counsel,

Religious Action Center of Reform Judaism

On

Mathew Shepard Hate Crimes Prevention Act (S.909)

Before the

Senate Committee on the Judiciary

Senator Patrick J. Leahy, Chairman

June 25, 2009

Thank you for the opportunity to address you regarding the urgent need for increased protections against violent, bias-motivated crimes. I am Rabbi David Saperstein, Director of the Religious Action Center of Reform Judaism. The Center is the public policy arm of the Union for Reform Judaism, whose more than 900 congregations across North America encompass 1.5 million Reform Jews, and the Central Conference of American Rabbis, whose membership includes more than 1800 Reform rabbis. I want to recognize the contributions that my staff, most particularly Jason Fenster, made in helping to prepare this testimony. The Reform Jewish Movement is the largest in American Jewish life, and we have strongly supported the Matthew Shepard Hate Crimes Prevention Act (S. 909) for a decade. We commend Senators Kennedy, Collins, Snowe, Leahy and Specter for their vital leadership on this issue, as on so many others. We agree with them: It is time to see this bill passed and enacted into law.

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We are here today remembering too many violent acts, too many children taken from parents, too many parents taken from children, and too many families and communities shaken by violent acts of hate. Most recently, the nation was shocked and horrified by the murder of Officer Stephen Tyrone Johns at the United States Holocaust Memorial Museum. That day, Rabbi Eric Yoffie, President of the Union for Reform Judaism remarked, "That today's shooting at the United States Holocaust Museum should take place at a site expressly created to teach the world about the destruction and devastation brought about by human evil deepens the resonance of this terrible act." The bigotry and hatred evident in this attack, and the others discussed at this hearing, vividly reaffirm the ever-present dangers of violent hate crimes.

We have no illusions about this bill. We know that it will not end hate crimes overnight. But we believe that crimes based on race, ethnicity, nationality, religion, disability, gender, and, yes, crimes based on sexual orientation and gender identity, are crimes against our communities, against the values of our nation and against all of humanity. A crime born of intolerance tears at the very fabric of our freedoms. Hate crimes are more than mere acts of violence. They are more than murders, beatings and assaults. Hate crimes are nothing less than attacks on those values that are the pillars of our republic and the guarantors of our freedom. They are a betrayal of the promise of America. They erode our national well-being. Those who commit these crimes do so fully intending to pull apart the too-often frayed threads of diversity that bind us together and make us strong.

They seek to divide and conquer. They seek to tear us apart from within, pitting American against American, fomenting violence and civil discord.

We take to heart the commandment "You may not stand idly by when your neighbor's blood is being shed" (Leviticus 19:16). Too much blood has been shed and too many lives have been lost. We must not continue to permit the senseless loss of life caused by hatred and bigotry. The Matthew Shepard Hate Crimes Prevention Act will give law enforcement officials the tools they need to ensure that hate crimes are handled appropriately so terrorized communities need not live in constant fear of violence.

This legislation would provide support to local law enforcement from federal officials through training and technical assistance, ensuring that these egregious crimes are handled properly and that victimized communities are set on a path toward healing. Of course, states will continue to play the primary role in investigating and prosecuting bias-motivated violence, but this legislation will grant the federal government the authority to intervene in cases where local authorities are either unable or unwilling to do so.

The murder of Luis Ramirez in Shenandoah, Pennsylvania last July is one shocking reminder of the need for federal assistance in the prosecution of hate crimes. Luis was viciously attacked by teenagers who shouted racial epithets at him as they brutally assaulted him, punching him to the ground and kicking him in the head, leaving him unconscious. Afterwards, according to a report by the Leadership Conference on Civil Rights Education Fund titled "Confronting the New Faces of Hate: Hate Crimes in

America 2009," one of the assailants reportedly yelled (expletives omitted) "Tell your...Mexican friends to get...out of Shenandoah or you'll be...laying next to them." Luis, a father of two, died two days later, and his attackers, despite clear evidence of bias-motivation, were convicted only of simple assault.

Surely, this is not justice. Surely, the values we hold as a nation demand more. Surely, such intolerance, hatred, and violence cannot be condoned in our society. Our federal government has a responsibility to seek justice for families of victims and to work to protect our communities from hate-motivated violence. In Luis' case, the Department of Justice has jurisdiction to bring charges because the assault took place on a public road, and they have indicated that they may yet do so. Had the assault occurred in private space, only a few feet away, the federal government would have no recourse. The Matthew Shepard Hate Crimes Prevention Act would remove the barrier regarding federally protected activity and to help ensure that these horrific offenses are handled appropriately.

The data that exists regarding hate crime statistics is troubling. First, we are well aware that hate crimes are underreported. The LCCR-EF report stated, current numbers "almost certainly understate the true numbers of hate crimes committed. Victims may be fearful of authorities and thus may not report these crimes. Or local authorities do not accurately report these violent incidents as hate crimes and thus fail to report them to the federal government."

Prime among the under-reported populations are the disability community. According to the aforementioned report, "the biggest reason for underreporting of disability-based hate crimes is that disability-based bias crimes are all too frequently mislabeled as "abuse" and never directed from the social service or education systems to the criminal justice system." Vulnerable communities should be safe from violence and should be safe to report those claims and be protected by the appropriate authorities.

Perhaps more troubling are reports that hate crimes committed against victims because of their sexual orientation have risen to their highest level in five years. Victims from the LGBT community have been the third most frequent target of hate crimes for the past decade, behind Blacks and Jews. Regardless of a given community's views on the LGBT community, the presence of continued intolerance and violence is disgraceful. It should not and cannot exist in an America where are people are treated equally, where all people are deserving of respect and dignity.

While the Reform Jewish Movement proudly welcomes LGBT individuals, there are, of course, faith traditions that hold different views. To be clear, this legislation only applies to bias-motivated crimes and will not affect lawful public speech or preaching, and therefore need not be of concern to any religious community. In fact, in order to make certain that such concerns were addressed, specific language is included in Section 10 that reads, "Nothing in this Act shall be construed to prohibit any constitutionally protected speech, expressive conduct or activities (regardless of whether compelled by, or

central to, a system of religious belief), including the exercise of religion protected by the First Amendment and peaceful picketing or demonstration."

Let me be as clear I know how to be: as a Rabbi and Lawyer who has taught Church/State law at the Georgetown University Law Center for 30 years, I can say with conviction that the beliefs or words of any person, clergy or otherwise, will not be prosecuted. This legislation is concerned with hate *crimes*. It deals with violent conduct and attempts at bodily injury, not the preaching or sermons of members of the clergy. This is a "belt and suspenders" approach to protecting religious liberty, and should address all reasonable concerns.

We are cognizant of the range of views among faith traditions on the issue of homosexuality. While we hope that those faith traditions who are not accepting of LGBT individuals will recognize that spark of divinity in every person, their rights to free speech and free exercise of religion will *not* be affected by this legislation.

Despite the attention focused on opposite views, it should be clear that there are a large number of religious organizations and denominations, the Reform Jewish Movement included, who have come together to support the Matthew Shepard Hate Crimes Prevention Act. In all, 48 national faith-based organizations joined a sign-on letter sent to Senators earlier this month affirming,

> "Hate is neither a religious nor American value. The sacred scriptures of many different faith traditions speak with dramatic unanimity on the subject of hate. Crimes motivated by hatred or bigotry are an assault not only upon individual victims' freedoms, but also upon a belief that lies at the core of our diverse faith traditions – that every human has inherent value and that every life is sacred" (See attachment for the full letter and endorsing organizations).

The Jewish people specifically know all too well the dangers of unchecked persecution and of failing to recognize hate crimes for what they are: acts designed to target and terrorize an entire community. Furthermore, we find in our textual tradition a call to combat hatred and speak up for justice and righteousness. In *Kedoshim*, the Holiness Code, we are commanded, "You shall not hate another in your heart" (Leviticus 19:17) and shortly thereafter we read "you shall love your neighbor as yourself." (Leviticus 19:18). Hatred breeds hate and we must strive for a community, a nation, and a world driven by love for our fellow person.

In closing, our nation *must* have the ability to respond. That is what this bill is about. It grants us the ability to protect the pluralism that lies at the core of our democracy. It grants us the ability to stand as one nation, with the victims and survivors of hate crimes and to say, this crime against you was a crime against all of us, and we will not rest until justice is done. It grants us the ability to give our loftiest ideals their greatest form of

expression in a law that seeks to protect all Americans from ever being targeted on the basis of race, religion, ethnicity, gender, disability, sexual orientation or gender identity.

In this spirit, I urge you to vote out the Matthew Shepard Hate Crimes Prevention Act, put into law true family values of tolerance, respect and love.

Attachments:

1. Matthew Shepard Hate Crimes Prevention Act Faith Sign-On Letter
2. "Confronting the New Faces of Hate: Hate Crimes in America." Leadership Conference on Civil Rights Education Fund, 2009. http://www.civilrights.org/publications/hatecrimes/lccref_hate_crimes_report.pdf
3. "Questions and Answers about the Hate Crimes Bill for People of Faith." The Third Way Culture Program, May 2009. http://www.thirdway.org/data/product/file/203/Hate_Crimes_QA.pdf

Life Cycle Institute
Suite 300, Maloney Hall
The Catholic University of America

June 23, 2009

Judiciary Committee
United State Senate

Re: S. 909, Matthew Shepard Hate Crimes Prevention Act

Dear Chairman Leahy and Members of the Committee:

I am thankful for the invitation to comment on this important legislation, which I strongly endorse. I am Director of the Life Cycle Institute at The Catholic University of America and associate professor in the university's Department of Politics. As an activist I work with Catholic and other religious public policy groups and am on the board of Catholics in Alliance for the Common Good.

Assaults and similar attacks based on sexual orientation are among the most common hate crimes in the United States—and often, too, among the most violent. Crimes directed purposely against minorities, moreover, demand special federal attention within our system of justice because majorities easily become complacent regarding minority rights. Federal hate crimes laws expand resources available in state and local jurisdictions to prosecute such crimes. They also enable federal prosecution in cases where local authorities are unable act.

As Roman Catholic who is active with various religiously-oriented public policy organizations, I also am very much able to appreciate the importance of this legislation from the perspective of my faith. I am aware that a few well-meaning members of some faith communities have expressed concerns about this legislation. Such concerns reflect misperceptions about the bill's content. The bill includes explicit protections for religious liberty, such that no religions are in any way compromised about what they may preach or believe about homosexuality.

Indeed, the need for this legislation is obvious, as its overwhelming support among legislators makes clear. Would that every American could someday reverence the dignity of all human beings as they are created by the hand of God. Sadly events continue to document how far this nation must yet go toward that divine measure. Time and again we have seen the horrible spectacle in American history—indeed, in our own time—of gay and lesbian Americans hunted down, murdered, mutilated, attacked, and discriminated against. Existing laws and rights have proven insufficient remedy for diminishing these targeted attacks.

Senators, through your hands each day pass many important pieces of legislation. I assure you that the Matthew Shepard Hate Crimes Prevention Act will rank in history among the most significant.

Stephen F. Schneck, Ph.D.
Director, Life Cycle Institute
The Catholic University of America

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Statement of Charles E. Schumer
Senate Committee on the Judiciary
Matthew Shepard Hate Crimes Prevention Act
June 25, 2009

Thank you Mr. Chairman for holding this morning's hearing. I would also like to thank Senator Kennedy for his dedicated leadership on this bill, as well as the Attorney General for returning to the Committee on this bill's behalf.

We have tried for over a decade to get this legislation passed and signed into law. Indeed, today the Matthew Shepard Hate Crimes Prevention Act has the bipartisan support of 43 cosponsors in the Senate – of which I am one – as well as the support of over three hundred organizations from a variety of fields and ideological leanings.

According to FBI statistics, 7,624 hate crimes were reported in 2007. However, experts tell us that only a small fraction of hate crimes ever go reported. Therefore, some groups estimate that 50,000 to 200,000 hate crimes are committed each year.

Whatever the number – every hate crime is unacceptable. Hate crimes impact entire communities. They are crimes inflicted not merely on an individual, but on a particular group, and must be treated as such.

It is the responsibility of the federal government to address this issue by arming prosecutors with the tools they need to seek justice, promote order and provide all Americans with equal protection of the law.

Let us be clear, this bill does not criminalize speech, free expression or hateful thoughts. It seeks only to punish action – harmful and violent action that cuts against our society and against the very meaning of what it is to be an American.

Furthermore, this is not about special rights for any particular group. Actually, quite to the contrary, it seeks to promote equal rights for all Americans – black and white, Jew and Christian, gay and straight. This is about going after violent criminals who act out of hate.

In 2000, my home state of New York passed its own Hate Crimes Act that, similarly to the bill we're discussing today, seeks to protect people of different race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation by putting greater penalties on hate motivated violence.

I'm happy to say that, with the passage of this bill, my home state has seen a steady decline in hate crimes over the last decade, with the number of crimes dropping from 845 in 1995 to 493 in 2007.

But even as the aggregate number of hate crimes drops, we are seeing hate crimes against particular groups increase. Specifically, hate crimes targeting Hispanic Americans rose 40 percent from 2003 to 2007. According to a recent AP story, the number of LGBT people killed in hate-motivated incidents increased by 28 percent last year, resulting in the highest number of killing since 1999.

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Indeed, late last year there were two particularly egregious crimes of hate perpetrated in New York. The first was the murder of an Ecuadorian man named Marcelo – targeted by hate filled teens in search of an immigrant to attack.

The second was the murder of another Ecuadorian man and father of two named Jose Osvaldo – walking home with his arm around his brother. The perpetrators yelled anti-gay and anti-Hispanic slurs as they attacked him with an aluminum baseball bat.

This Act sends a message to perpetrators; it says "we will not tolerate your acts of aggression and violence towards targeted communities or individuals merely for being themselves."

What message will it send to America if we fail to pass it? I wonder and I worry.

I urge my colleagues to support and pass it.

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TERROR FROM THE RIGHT

75 PLOTS, CONSPIRACIES AND RACIST RAMPAGES SINCE OKLAHOMA CITY

A SPECIAL REPORT FROM THE SOUTHERN POVERTY LAW CENTER'S INTELLIGENCE PROJECT

At 9:02 a.m. on April 19, 1995, a 7,000-pound truck bomb, constructed of ammonium nitrate fertilizer and nitromethane racing fuel and packed into 13 plastic barrels, ripped through the heart of the Alfred P. Murrah Federal Building in Oklahoma City. The explosion wrecked much of downtown Oklahoma City and killed 168 people, including 19 children in a day-care center. Another 500 were injured. Although many Americans initially suspected an attack by Middle Eastern radicals, it quickly became clear that the mass murder had actually been carried out by domestic, right-wing terrorists.

The slaughter engineered by Timothy McVeigh and Terry Nichols, men steeped in the conspiracy theories and white-hot fury of the American radical right, marked the opening shot in a new kind of domestic political extremism — a revolutionary ideology whose practitioners do not hesitate to carry out attacks directed at entirely innocent victims, people selected essentially at random to make a political point. After Oklahoma, it was no longer sufficient for many American right-wing terrorists to strike at a target of political significance — instead, they reached for higher and higher body counts, reasoning that they had to eclipse McVeigh's attack to win attention.

What follows in a detailed listing of major terrorist plots and racist rampages that have emerged from the American radical right in the years since Oklahoma City. These have included plans to bomb government buildings, banks, refineries, utilities, clinics, synagogues, mosques, memorials and bridges; to assassinate police officers, judges, politicians, civil rights figures and others; to rob banks, armored cars and other criminals; and to amass illegal machine guns, missiles, explosives and biological and chemical weapons. Each of these plots aimed to make changes in America through the use of political violence. Most contemplated the deaths of large numbers of people – in one case, as many as 30,000, or 10 times the number murdered on Sept. 11, 2001.

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Here are the stories of plots, conspiracies and racist rampages since 1995 – plots and violence waged against a democratic America.

July 28, 1995
Antigovernment extremist Charles Ray Polk is arrested after trying to purchase a machine gun from an undercover police officer, and is later indicted by federal grand jury for plotting to blow up the Internal Revenue Service building in Austin, Texas. At the time of his arrest, Polk is trying to purchase plastic explosives to add to the already huge arsenal he's amassed. Polk is sentenced to almost 21 years in federal prison.

October 9, 1995
Saboteurs derail an Amtrak passenger train near Hyder, Ariz., killing one person and injuring scores of others. An antigovernment message, signed by the "Sons of Gestapo," is left behind. The perpetrators remain at large.

November 9, 1995
Oklahoma Constitutional Militia leader Willie Ray Lampley, his wife Cecilia and another man, John Dare Baird, are arrested as they prepare explosives to bomb numerous targets, including the Southern Poverty Law Center, gay bars and abortion clinics. The three, along with another suspect arrested later, are sentenced to terms of up to 11 years in 1996. An appeals court upholds Lampley's sentence the following year. Baird is released in August 2004, while Ray Lampley — who wrote letters from prison urging others to violence — is slated to be freed in January 2006.

December 18, 1995
An Internal Revenue Service (IRS) employee discovers a plastic drum packed with ammonium nitrate and fuel oil in a parking lot behind the IRS building in Reno, Nev. The device failed to explode a day earlier when a three-foot fuse went out prematurely. Ten days later, tax protester Joseph Martin Bailie is arrested. Bailie is eventually sentenced to 36 years in federal prison.

January 18, 1996
Peter Kevin Langan, the pseudonymous "Commander Pedro" who leads the underground Aryan Republican Army, is arrested after a shootout with the FBI in Ohio. Along with six other suspects arrested around the same time, Langan is charged in connection with a string of 22 bank robberies in seven Midwestern states between 1994 and 1996. After pleading guilty and agreeing to testify, conspirator Richard Guthrie commits suicide in his cell. Two others, Kevin

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McCarthy and Scott Stedeford, enter plea bargains and do testify against their co-conspirators. Eventually, Mark Thomas, a leading neo-Nazi in Pennsylvania, pleads guilty for his role in helping organize the robberies and agrees to testify against Langan and other gang members. Shawn Kenny, another suspect, becomes a federal informant. Langan is sentenced to a life term in one case, plus 55 years in another. Thomas is sentenced to eight years in prison, and is released in early 2004.

April 11, 1996
Antigovernment activist Ray Hamblin is charged with illegal possession of explosives after authorities find 460 pounds of the high explosive Tovex, 746 pounds of ANFO blasting agent and 15 homemade hand grenades on his property in Hood River, Ore. Hamblin is sentenced to almost four years in federal prison, and is released in March 2000.

April 12, 1996
Apparently inspired by his reading of a neo-Nazi tract, Larry Wayne Shoemake kills one black man and wounds seven other people, including a reporter, during a racist shooting spree in a black neighborhood in Jackson, Miss. As police close in on the abandoned restaurant he is shooting from, Shoemake, who is white, sets the restaurant on fire and kills himself. A search of his home finds references to "Separation or Annihilation," an essay on race relations by National Alliance leader William Pierce, along with an arsenal of weapons that includes 17 long guns, 20,000 rounds of ammunition, several knives and countless military manuals.

April 26, 1996
Two leaders of the Militia-at-Large of the Republic of Georgia, Robert Edward Starr III and William James McCranie Jr., are charged with manufacturing shrapnel bombs for distribution to militia members. Later in the year, they are sentenced on explosives charges to terms of up to eight years. Another Militia-at-Large member, accused of training a team to assassinate politicians, is later convicted of conspiracy. Starr is released from prison in 2003, while McCranie gets out in 2001. The last member, Troy Allen Kayser (alias Troy Spain), draws six years in prison and is released in early 2002.

July 1, 1996
Twelve members of an Arizona militia group called the Viper Team are arrested on federal conspiracy, weapons and explosive charges after allegedly surveilling and videotaping government buildings as potential targets. All 12 plead guilty or are convicted of various charges, drawing sentences of up to nine years in prison. The plot participants are all released in coming years, with Gary Curds Baer, who drew

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the heaviest sentence, freed in May 2004.

July 27, 1996
A nail-packed bomb goes off at the Atlanta Olympics, which is seen by many extremists as part of a Satanic "New World Order," killing one person and injuring more than 100 others. Investigators will later conclude the attack is linked to 1997-1998 bombings of an Atlanta-area abortion clinic, an Atlanta gay bar and a Birmingham, Ala., abortion facility. Suspect Eric Robert Rudolph — a reclusive North Carolina man tied to the anti-Semitic Christian Identity theology — flees into the woods of his native state after he is identified in early 1998 as a suspect in the Birmingham attack, and is only captured five years later. Eventually, he pleads guilty to all of the attacks attributed to him in exchange for life without parole.

July 29, 1996
Washington State Militia leader John Pitner and seven others are arrested on weapons and explosives charges in connection with a plot to build pipe bombs for a confrontation with the federal government. Pitner and four others are convicted on weapons charges, while conspiracy charges against all eight end in a mistrial. Pitner is later retried on that charge, convicted and sentenced to four years in prison. He is freed from prison in 2001.

October 8, 1996
Three "Phineas Priests" — racist and anti-Semitic Christian Identity terrorists who feel they've been called by God to undertake violent attacks — are charged in connection with two bank robberies and bombings at the two banks, a Spokane newspaper and a Planned Parenthood office. Charles Barbee, Robert Berry and Jay Merrell are eventually convicted and sentenced to life terms. Brian Ratigan, a fourth member of the group arrested separately, draws a 55-year term.

October 11, 1996
Seven members of the Mountaineer Militia are arrested in a plot to blow up the FBI's national fingerprint records center, where 1,000 people work, in West Virginia. In 1998, leader Floyd "Ray" Looker is sentenced to 18 years in prison. Two other defendants are sentenced on explosives charges and a third draws a year in prison for providing blueprints of the FBI facility to Looker, who then sold them to a government informant who was posing as a terrorist.

January 16, 1997
Two anti-personnel bombs — the second clearly designed to kill arriving law enforcement and rescue workers — explode outside an abortion clinic in Sandy

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Springs, Ga., a suburb of Atlanta. Seven people are injured. Letters signed by the "Army of God" claim responsibility for this attack and another, a month later, at an Atlanta gay bar. Authorities later learn that these attacks, the 1998 bombing of a Birmingham, Ala., abortion clinic and the 1996 Atlanta Olympics bombing, were all carried out by Eric Robert Rudolph, who is captured in 2003 after five years on the run. Rudolph avoids the death penalty by pleading guilty in exchange for a life sentence, but simultaneously releases a defiant statement defending his attacks.

January 22, 1997
Authorities raid the Martinton, Ill., home of former Marine Ricky Salyers, an alleged Ku Klux Klan member, discovering 35,000 rounds of heavy ammunition, armor piercing shells, smoke and tear gas grenades, live shells for grenade launchers, artillery shells and other military gear. Salyers was discharged earlier from the Marines, where he taught demolitions and sniping, after tossing a live grenade (with the pin still in) at state police officers serving him with a search warrant in 1995. Following the 1997 raid, Salyers, an alleged member of the underground Black Dawn group of extremists in the military, is sentenced to serve three years for weapons violations. He is released from prison in 2000.

March 26, 1997
Militia activist Brendon Blasz is arrested in Kalamazoo, Mich., and charged with making pipe bombs and other illegal explosives. Prosecutors say Blasz plotted to bomb the federal building in Battle Creek, the IRS building in Portage, a Kalamazoo television station and federal armories. But they recommend leniency on his explosives conviction after Blasz renounces his antigovernment beliefs and cooperates with them. In August, he is sentenced to more than three years in federal prison. Blasz is released in early 2000.

April 22, 1997
Three Ku Klux Klan members are arrested in a plot to blow up a natural gas refinery outside Fort Worth, Texas, after local Klan leader Robert Spence gets cold feet and goes to the FBI. The three, along with a fourth arrested later, expected to kill a huge number of people with the blast — authorities later say as many as 30,000 might have died — which was to serve, incredibly, as a diversion for a simultaneous armored car robbery. Among the victims would have been children at a nearby school. All four plead guilty to conspiracy charges and are sentenced to terms of up to 20 years. Spence enters the Witness Protection Program. Carl Jay Waskom Jr. is released in June 2004. Shawn and Catherine Adams, a couple, are expected to be freed in 2006, and Edward Taylor Jr. in early 2007.

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April 23, 1997
Florida police arrest Todd Vanbiber, a member of the neo-Nazi National Alliance's Tampa unit and the shadowy League of the Silent Soldier, after he accidentally sets off pipe bombs he was building, blasting shrapnel into his own face. He is accused of plotting to use the bombs on the approach to Disney World to divert attention from a planned string of bank robberies. Vanbiber pleads guilty to weapons and explosives charges and is sentenced to more than six years in federal prison. He is released in 2002. Within two years, Vanbiber is posting messages on neo-Nazi Internet sites boasting that he has built over 300 bombs successfully and only made one error, and describing mass murderer Timothy McVeigh as a hero.

April 27, 1997
After a cache of explosives stored in a tree blows up near Yuba City, Calif., police arrest Montana Freemen supporter William Robert Goehler. Investigators looking into the blast arrest two Goehler associates, one of them a militia leader, after finding 500 pounds of petrogel explosives — enough to level three city blocks — in a motor home parked outside their residence. Six others are arrested on related charges. Goehler, with previous convictions for rape, burglary and assault, is sentenced to 25 years to life in prison.

May 3, 1997
Antigovernment extremists set fire to the IRS office in Colorado Springs, Colo., causing $2.5 million in damage and injuring a firefighter. Federal agents later arrest five men in connection with the arson, which is conceived as a protest against the tax system. Ringleader James Cleaver, former national director of the antigovernment Sons of Liberty group, is eventually sentenced to 33 years in prison, while accomplice Jack Dowell is sentenced in a separate trial to serve 30 years. Both are ordered to pay $2.2 million in restitution. Dowell's cousin is acquitted of all charges, while two other suspects, Ronald Sherman and Thomas Shafer, plead guilty to perjury charges in connection with the case.

July 4, 1997
Militiaman Bradley Playford Glover and another heavily armed antigovernment activist are arrested before dawn near Fort Hood, in central Texas, just hours before they planned to invade the Army base and slaughter foreign troops they mistakenly believed were housed there. In the next few days, five other people are arrested in several states for their alleged roles in the plot to invade a series of military bases where the group believes United Nations forces are massing for an assault on Americans. All seven are part of a splinter group of the Third Continental Congress, a kind of militia government-in-waiting. In the end, Glover

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is sentenced to two years on Kansas weapons charges, to be followed by a five-year federal term in connection with the Fort Hood plot. The others draw lesser terms. Glover is released in 2003, the last of the seven to get out.

December 12, 1997
A federal grand jury in Arkansas indicts three men on racketeering charges for plotting to overthrow the government and create a whites-only Aryan People's Republic, which they intend to grow through polygamy. Chevie Kehoe, Daniel Lee and Faron Lovelace are accused of crimes in six states, including murder, kidnapping, robbery and conspiracy. Kehoe and Lee will also face state charges of murdering an Arkansas family, including an 8-year-old girl, in 1996. Kehoe ultimately receives a life sentence on that charge, while Lee is sentenced to death. Lovelace is sentenced to death for the murder of a suspected informant, although in early 2005 he will be up for resentencing because of court rulings. Kehoe's brother, Cheyne, is convicted of attempted murder during a February 1997 Ohio shootout with police and sentenced to 24 years in prison, despite his key role in helping authorities find his fugitive brother in Utah in June 1997 after the shootout. Cheyne went to the authorities after Chevie began talking about murdering their parents and showing sexual interest in Cheyne's wife.

January 29, 1998
An off-duty police officer is killed and a nurse terribly maimed when a nail-packed, remote-control bomb explodes outside a Birmingham, Ala., abortion facility, the New Woman All Women clinic. Letters to media outlets and officials claim responsibility in the name of the "Army of God," the same entity that took credit for the bombings of a clinic and a gay bar in the Atlanta area. The attack also will be linked to the fatal 1996 bombing of the Atlanta Olympics. Eric Robert Rudolph, a loner from North Carolina, is first identified as a suspect when witnesses spot his pickup truck fleeing the Birmingham bombing. But he is not caught until 2003. He ultimately pleads guilty to all four attacks in exchange for a life sentence.

February 23, 1998
Three men with links to a Ku Klux Klan group are arrested near East St. Louis, Ill., on weapons charges. The three, along with three other men arrested later, had formed a group called The New Order, patterned on a 1980s terror group called The Order (a.k.a. the Silent Brotherhood) that carried out assassinations and armored car heists. New Order members plotted to assassinate a federal judge and civil rights lawyer Morris Dees, blow up the Southern Poverty Law Center that Dees co-founded and other buildings, poison water supplies and rob banks.

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Wallace Weicherding, one of the men, came to a 1997 Dees speech with a concealed gun but turned back rather than pass through a metal detector. In the end, all six plead guilty or are convicted of weapons charges, drawing terms of up to seven years in federal prison. New Order leader Dennis McGiffen is released in July 2004, the last of the six to regain his freedom.

March 18, 1998
Three members of the North American Militia of Southwestern Michigan are arrested on firearms and other charges. Prosecutors say the men conspired to bomb federal buildings, a Kalamazoo television station and an interstate highway interchange, kill federal agents, assassinate politicians and attack aircraft at a National Guard base — attacks that were all to be funded by marijuana sales. The group's leader, Ken Carter, is a self-described member of the neo-Nazi Aryan Nations. Carter pleads guilty, testifies against his former comrades, and is sentenced to five years in prison. The others, Randy Graham and Bradford Metcalf, go to trial and are ultimately handed sentences of 40 and 55 years, respectively. Carter is released from prison in 2002.

May 29, 1998
A day after stealing a water truck, three men shoot and kill a Cortez, Colo., police officer and wound two other officers as they try to stop the suspects during a road chase. After the gun battle, the three — Alan Monty Pilon, Robert Mason and Jason McVean — disappear into the canyons of the high desert. Mason will be found a week later, dead of an apparently self-inflicted gunshot. The skeletal remains of Pilon are found in October 1999 and show that he, too, died of a gunshot to the head, another apparent suicide. McVean is not found, but most authorities assume he died in the desert. Many officials believe the three men intended to use the water truck in some kind of terrorist attack, but the nature of their suspected plans is never learned.

July 1, 1998
Three men are charged with conspiracy to use weapons of mass destruction after threatening President Clinton and other federal officials with biological weapons. Officials say the men planned to use a cactus thorn coated with a toxin like anthrax and fired by a modified butane lighter to carry out the murders. One man is acquitted of the charges, but Jack Abbot Grebe, Jr., and Johnnie Wise — a 72-year-old man who attended meetings of the separatist Republic of Texas group — eventually are sentenced to more than 24 years in prison.

July 30, 1998

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South Carolina militia member Paul T. Chastain is charged with weapons, explosives and drug violations after allegedly trying to trade drugs for a machine gun and enough C-4 plastic explosive to demolish a five-room house. The next year, Chastain pleads guilty to an array of charges, including threatening to kill Attorney General Janet Reno and FBI Director Louis Freeh. He is sentenced to 15 years in federal prison.

October 23, 1998
Dr. Barnett Slepian is assassinated by a sniper as he converses with his wife and children in the kitchen of their Amherst, N.Y., home. Identified as a suspect shortly after the murder, James Charles Kopp flees to Mexico, driven and disguised by friend Jennifer Rock, and goes on to hide out in Ireland and France. Two fellow anti-abortion extremists, Loretta Marra and Dennis Malvasi, make plans to help Kopp secretly return. Kopp, also suspected in the earlier sniper woundings of four other physicians in Canada and upstate New York, is arrested in France as he picks up money wired by Marra and Malvasi. He eventually admits the shooting to a newspaper reporter — claiming that he only intended to wound Slepian — and is sentenced to 25 years in prison. Marra and Malvasi go to prison for almost three years after pleading guilty to federal charges related to harboring a fugitive.

June 10, 1999
Officials arrest Alabama plumber Chris Scott Gilliam, a member of the neo-Nazi National Alliance, after he attempts to purchase 10 hand grenades from an undercover federal agent. Gilliam, who months earlier paraded in an extremist T-shirt in front of the Southern Poverty Law Center's offices in Montgomery, tells agents he planned to send mail bombs to targets in Washington, D.C. Agents searching his home find bomb-making manuals, white supremacist literature and an assault rifle. Gilliam pleads guilty to federal firearms charges and is sentenced to 10 years in prison. He is expected to be released in 2008.

July 1, 1999
A gay couple, Gary Matson and Winfield Mowder, are shot to death in bed at their home near Redding, Calif. Days later, after tracking purchases made on Mowder's stolen credit card, police arrest brothers Benjamin Matthew Williams and James Tyler Williams. At least one of the pair, Matthew Williams (both use their middle names), is an adherent of the anti-Semitic Christian Identity theology. Police soon learn that the brothers two weeks earlier carried out three synagogue arsons in Sacramento, along with the arson of an abortion clinic there. Both brothers, whose mother at one point refers in a conversation to her sons' victims as "two homos," eventually admit their guilt — in Matthew's case, in a newspaper interview. But

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Matthew, who at one point badly injures a guard in a surprise attack, commits suicide in jail in late 2002. Tyler, who pleads guilty to an array of charges in the case, is not expected to be eligible for parole for some 50 years.

July 2, 1999
Infuriated that neo-Nazi leader Matt Hale has just been denied his law license by Illinois officials, follower Benjamin Nathaniel Smith begins a three-day murder spree across Illinois and Indiana, shooting to death a black former college basketball coach and a Korean doctoral student and wounding nine other minorities. Smith kills himself as police close in during a car chase. Hale, the "Pontifex Maximus," or leader, of the World Church of the Creator, at first claims to barely know Smith. But it quickly emerges that Hale has recently given Smith his group's top award and, in fact, has spent some 16 hours on the phone with him in the two weeks before Smith's rampage. Conveniently, Hale receives a registered letter from Smith just days after his suicide, informing Hale that Smith is quitting the group because he now sees violence as the only answer.

August 10, 1999
Buford Furrow, a former member of the neo-Nazi Aryan Nations who has been living with the widow of slain terrorist leader Bob Mathews, strides into a Jewish community center near Los Angeles and fires more than 70 bullets, wounding three boys, a teenage girl and a woman. He then drives into the San Fernando Valley and kills Filipino-American mailman Joseph Ileto. The next day, Furrow turns himself in, saying he intended to send "a wake-up call to America to kill Jews." Furrow, who has a history of mental illness, eventually pleads guilty and is sentenced to two life terms without parole, plus 110 years in prison.

November 5, 1999
FBI agents arrest James Kenneth Gluck in Tampa, Fla., after he wrote a 10-page letter to judges in Jefferson County, Colo., threatening to "wage biological warfare" on a county justice center. While searching his home, police find the materials needed to make ricin, one of the deadliest poisons known. Gluck later threatens a judge, claiming that he could kill 10,000 people with the chemical. After serving time in federal prison, Gluck is released in early 2001.

December 5, 1999
Two California men, both members of the San Joaquin Militia, are charged with conspiracy in connection with a plot to blow up two 12-million-gallon propane tanks, a television tower and an electrical substation in hopes of provoking an insurrection. In 2001, the former militia leader, Donald Rudolph, pleads guilty to

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plotting to kill a federal judge and blow up the propane tanks, and testifies against his former comrades. Kevin Ray Patterson and Charles Dennis Kiles are ultimately convicted of several charges in connection with the conspiracy. They are expected to be released from federal prison in 2021 and 2018, respectively.

December 8, 1999
Donald Beauregard, head of a militia coalition known as the Southeastern States Alliance, is charged with conspiracy, providing materials for a terrorist act and gun violations in connection with a plot to bomb energy facilities and cause power outages in Florida and Georgia. After pleading guilty to several charges, Beauregard, who once claimed to have discovered a secret map detailing a planned UN takeover mistakenly printed on a box of Trix cereal, is sentenced to five years in federal prison. He is released in 2004, a year after accomplice James Troy Diver is freed following a similar conviction.

March 9, 2000
Federal agents arrest Mark Wayne McCool, the one-time leader of the Texas Militia and Combined Action Program, as he allegedly makes plans to attack the Houston federal building. McCool, who was arrested after buying powerful C-4 plastic explosives and an automatic weapon from an undercover FBI agent, earlier plotted to attack the federal building with a member of his own group and a member of the antigovernment Republic of Texas, but those two men eventually abandoned the plot. McCool, however, remained convinced the UN had stored a cache of military materiel in the building. In the end, he pleads guilty to federal charges that bring him just six months in jail.

April 28, 2000
Immigration attorney Richard Baumhammers, himself the son of Latvian immigrants, goes on a rampage in the Pittsburgh area against non-whites, killing five people and critically wounding a sixth. Baumhammers had recently started a tiny white supremacist group, the Free Market Party, that demanded an end to non-white immigration into the United States. In the end, the unemployed attorney, who is living with parents at the time of his murder spree, is sentenced to death for targeting his victims because of their race.

March 1, 2001
As part of an ongoing probe into a white supremacist group, federal and local law enforcement agents raid the Corbett, Ore., home of Fritz Springmeier, seizing equipment to grow marijuana and weapons and racist literature. They also find a binder notebook entitled "Army of God, Yahweh's Warriors" that contains what

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officials call a list of targets, including a local federal building and the FBI's Oregon offices. Springmeier, an associate of the anti-Semitic Christian Patriots Association, is eventually charged with setting off a diversionary bomb at an adult video store in Damascus, Ore., in 1997 as part of a bank robbery carried out by accomplice Forrest Bateman Jr. Another 2001 raid finds small amounts of bomb materials and marijuana in Bateman's home. Eventually, Bateman pleads guilty to bank robbery and Springmeier is convicted of the same charges, and both are sentenced to nine years.

April 19, 2001
White supremacists Leo Felton and girlfriend Erica Chase are arrested following a foot chase that began when a police officer spotted them trying to pass counterfeit bills at a Boston donut shop. Investigators quickly learn Felton heads up a tiny group called Aryan Unit One, and that Chase and Felton, who had already obtained a timing device, planned to blow up black and Jewish landmarks and possibly assassinate black and Jewish leaders. They also learn another amazing fact: Felton, a self-described Aryan, is secretly biracial. Felton and Chase are eventually convicted of conspiracy, weapons violations and obstruction, and Felton is also convicted of bank robbery and other charges. Felton, who previously served 11 years for assaulting a black taxi driver, is sentenced to serve more than 21 years in federal prison, while his one-time sweetheart draws a lesser term.

October 14, 2001
A North Carolina sheriff's deputy pulls over Steve Anderson, a former "colonel" in the Kentucky Militia, on a routine traffic stop as he heads home to Kentucky from a white supremacist gathering in North Carolina. Anderson, who has issued violent threats against officials for months via an illegal pirate radio station and is an adherent of racist Christian Identity theology, pulls out a semi-automatic weapon and peppers the deputy's car with bullets before driving his truck into the woods and disappearing for 13 months. Officials later find six pipe bombs in Anderson's abandoned truck and 27 bombs and destructive devices in his home. In the end, Anderson apologizes for his actions and pleads guilty. He is sentenced on a variety of firearms charges to 15 years in federal prison.

December 5, 2001
Anti-abortion extremist Clayton Lee Wagner, who nine months earlier escaped from an Illinois jail while awaiting sentencing on weapons and carjacking charges, is arrested in Cincinnati, Ohio. Wagner's odyssey began in September 1999, when he was stopped driving a stolen camper in Illinois and told police he was headed to Seattle to murder an abortion provider. He escaped in February 2001 and, while on

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the lam, mailed more than 550 hoax anthrax letters to abortion clinics and posted an Internet threat warning abortion clinic workers that "if you work for the murderous abortionist, I'm going to kill you." Wagner is eventually sentenced to 30 years on the Illinois charges, including his escape. In Ohio, he is sentenced to almost 20 years more, to be served consecutively, on various weapons and car theft charges related to his time on the run. In late 2003, he also is found guilty of 51 federal terror charges.

December 11, 2001
Jewish Defense League chairman Irving David Rubin and a follower, Earl Leslie Krugel, are arrested in California and charged with conspiring to bomb the offices of U.S. Rep. Darrel Issa (R-Calif.) and the King Fahd Mosque in Culver City. Authorities say a confidential informant taped meetings with the two in which the bombings were discussed and Krugel said the JDL needed "to do something to one of their filthy mosques." Rubin later commits suicide in prison, officials say, just before he is to go on trial in late 2002. Krugel pleads guilty to conspiracy in both plots, and testifies that Rubin conspired with him.

January 4, 2002
Neo-Nazi National Alliance member Michael Edward Smith is arrested after a car chase in Nashville, Tenn., that began when he was spotted sitting in a car with a semi-automatic rifle pointed at Sherith Israel Pre-School, run by a local synagogue. In Smith's car, home and storage unit, officials find an arsenal that includes a .50-caliber rifle, 10 hand grenades, 13 pipe bombs, binary explosives, semi-automatic pistols, ammunition and an array of military manuals. They also find teenage porn on Smith's computer and evidence that he carried out computer searches for Jewish schools and synagogues. In one of his E-mails, Smith wrote that Jews "perhaps" should be "stuffed head first into an oven." In the end, Smith is sentenced on weapons and explosives charges to more than 10 years in prison.

February 8, 2002
The leader of a militia-like group known as Project 7 and his girlfriend are arrested after an informant tells police the group is plotting to kill judges and law enforcement officers in order to kick off a revolution. David Burgert, who has a record for burglary and is already wanted for assaulting police officers, is found in the house of girlfriend Tracy Brockway along with an arsenal that includes pipe bombs and 25,000 rounds of ammunition. Also found are "intel sheets" with personal information about law enforcement officers, their spouses and children. Although officials are convinced the Project 7 plot was real, Burgert ultimately is convicted only of weapons charges and draws a seven-year sentence; six others are

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also convicted of or plead guilty to weapons charges. Brockway gets a suspended sentence for harboring a fugitive, but is sent to prison after violating the terms of his sentence.

July 19, 2002
Acting on a tip, federal and local law enforcement agents arrest North Carolina Klan leader Charles Robert Barefoot Jr. for his role in an alleged plot to blow up the Johnson County Sheriff's Office, the sheriff himself and the county jail. Officers find more than two dozen weapons in Barefoot's home. They also find bombs and bomb components in the home of Barefoot's son, Daniel Barefoot, who is charged that same day with the arson of a school bus and an empty barn. The elder Barefoot — who broke away from the National Knights of the KKK several months earlier to form his own harder-line group, the Nation's Knights of the KKK — is charged with weapons violations and later sentenced to more than two years. In 2003, Barefoot's wife and three men are charged with the murder of a former associate. Police say the murder may have been related to the alleged bombing plot.

August 22, 2002
Tampa area podiatrist Robert J. Goldstein is arrested after police, called by Goldstein's wife after he allegedly threatened to kill her, find more than 15 explosive devices in their home, along with materials to make at least 30 more. Also found are homemade C-4 plastic explosives, grenades and mines, a .50-caliber rifle, semi-automatic weapons, and a list of 50 Islamic worship centers in the area. The most significant discovery is a three-page plan detailing plans to "kill all 'rags'" at the Islamic Society of Pinellas County. Eventually, two other local men are also charged in connection with the plot, and Goldstein's wife is arrested for possessing illegal destructive devices. In the end, Goldstein pleads guilty to plotting to blow up the Islamic Society and is sentenced to more than 12 years in federal prison.

October 3, 2002
Officials close in on long-time antigovernment extremist Larry Raugust at a rest stop in Idaho, arrest him and charge him with 16 counts of making and possessing destructive devices, including pipe bombs and pressure-detonated booby traps. He is accused of giving one explosive device to an undercover agent, and is also named as an unindicted co-conspirator in a plot with colleagues in the Idaho Mountain Boys militia to murder a federal judge and a police officer, and to break a friend out of jail. A deadbeat dad, Raugust is also accused of helping plant land mines on property belonging to a friend whose land was seized by authorities over

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unpaid taxes. He eventually pleads guilty to 15 counts of making bombs and is sentenced to federal prison. Raugust is expected to be released in 2008.

January 8, 2003
Federal agents arrest Matt Hale, the national leader of the neo-Nazi World Church of the Creator (WCOTC), as he reports to a Chicago courthouse in an ongoing copyright case over the name of his group. Hale is charged with soliciting the murder of the federal judge in the case, Joan Humphrey Lefkow, who he has publicly vilified as someone bent on the destruction of his group. (Although Lefkow originally ruled in WCOTC's favor, an appeals court found that the complaint brought by an identically named church in Oregon was legally justified, and Lefkow reversed herself accordingly.) In guarded language captured on tape recordings, Hale is heard agreeing that his security chief, an FBI informant, should kill Lefkow. Hale is eventually found guilty and sentenced to serve 40 years in federal prison.

January 18, 2003
James D. Brailey, a convicted felon who once was selected as "governor" of the state of Washington by the antigovernment Washington Jural Society, is arrested after a raid on his home turns up a machine gun, an assault rifle and several handguns. One informant tells the FBI that Brailey was plotting to assassinate Gov. Gary Locke, both because Locke was the state's real governor and because he was Chinese-American. A second informant says that Brailey actually went on a "dry run" to Olympia, carrying several guns into the state Capitol building to test security. Eventually, Brailey pleads guilty to weapons charges and is sentenced to serve 15 months in prison. He is released in February 2004.

February 13, 2003
Federal agents in Pennsylvania arrest David Wayne Hull, imperial wizard of the White Knights of the Ku Klux Klan and an adherent of the anti-Semitic Christian Identity theology, alleging that Hull has arranged to buy hand grenades to blow up abortion clinics. The FBI says Hull also illegally instructed followers on how to build pipe bombs. In addition, Hull published a newsletter in which he urged readers to write Oklahoma bomber Tim McVeigh "to tell this great man goodbye." Hull eventually is found guilty of weapons violations and sentenced to 12 years in federal prison.

April 3, 2003
Federal agents arrest antigovernment extremist David Roland Hinkson in Idaho and charge him with trying to hire an assassin on two occasions in 2002 and 2003

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to murder a federal judge, a prosecutor and an IRS agent involved in a tax case against him. Hinkson, a businessman who earned millions of dollars from his Water Oz dietary supplement company but refused to pay almost $1 million in federal taxes, is convicted in 2004 of 26 counts related to the tax case. In early 2005, a federal jury finds him guilty in the assassination plot as well.

April 10, 2003
The FBI raids the Noonday, Texas, home of William Krar and storage facilities he rented in the area, discovering an arsenal that includes more than 500,000 rounds of ammunition, 65 pipe bombs and remote-control briefcase bombs, and almost two pounds of deadly sodium cyanide. Also found are components to convert the cyanide into a bomb capable of killing thousands, along with white supremacist and antigovernment material. Investigators soon learn Krar was stopped earlier in 2003 by police in Tennessee, who found in his car several weapons and coded documents that seemed to detail a plot. Krar refuses to cooperate, and details of that alleged plan are never learned. Eventually, he pleads guilty to possession of a chemical weapon and is sentenced to more than 11 years in prison.

June 4, 2003
Federal agents in California announce that former accountant John Noster, in prison since November 2002 for car theft, is under investigation for plotting a major terrorist attack. Noster was first arrested as part of a car theft ring investigation, but officials who found incendiary devices in his stolen camper continued to probe his activities. Eventually, they find in various storage facilities three pipe bombs, six barrels of jet fuel, five assault weapons, cannon fuse, a large amount of ammunition and $188,000 in cash. Law enforcement officials, who describe Noster as an "antigovernment extremist," allege at a press conference that he "was definitely planning" on an attack, but they do not elaborate.

October 10, 2003
Police arrest Norman Somerville after finding a huge weapons cache on his property in northern Michigan that includes six machine guns, a powerful anti-aircraft gun, thousands of rounds of ammunition, hundreds of pounds of gunpowder, and an underground bunker. They also find two vehicles Somerville calls his "war wagons," and on which prosecutors later say he planned to mount machine guns as part of a plan to stage an auto accident and then massacre arriving police. Officials describe Somerville as an antigovernment extremist enraged over the death of Scott Woodring, a Michigan Militia member killed by police a week after Woodring shot and killed a state trooper during a standoff. Somerville eventually pleads guilty to weapons charges and is sentenced to six years in prison.

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April 1, 2004
Neo-Nazi Skinhead Sean Gillespie videotapes himself as he firebombs Temple B'nai Israel, an Oklahoma City synagogue, as part of a film he is preparing to inspire other racists to violent revolution. In it, Gillespie boasts that instead of merely pronouncing the white-supremacist "14 Words" slogan ("We must secure the existence of our people and a future for White children"), he will carry out 14 violent attacks. A former member of the neo-Nazi Aryan Nations, Gillespie is found guilty of the attack and later sentenced to 39 years in federal prison.

May 24, 2004
Wade and Christopher Lay, a father-and-son pair of political extremists, shoot security guard Kenneth Anderson to death during the attempted robbery of a Tulsa bank. Both robbers are wounded, and are arrested a short time after fleeing the bank. At trial, Wade Lay testifies that he and his son acted "for the good of the American people" and in an effort to "preserve liberty." Other evidence shows the pair hoped to get money to pay for weapons that they intended to use to kill Texas officials who they believed were responsible for the deadly 1993 standoff between the authorities and religious cultists in Waco. Both men are convicted of murder and attempted robbery.

October 13, 2004
Ivan Duane Braden, a former National Guardsman discharged from an Iraq-bound unit after superiors noted signs of instability, is arrested after checking into a mental health facility and telling counselors about plans to blow up a synagogue and a National Guard armory in Tennessee. The FBI reports that Braden told them he'd planned to go to a synagogue wearing a trench coat stuffed with explosives and get himself "as close to children and the rabbi as possible," a plan Braden also outlined in notes found in his home. In addition, he intended to take and kill hostages at the Lenoir City Armory, before blowing the armory up. Eventually, Braden, who also possessed neo-Nazi literature and reportedly hated blacks and Jews from an early age, pleads guilty to conspiring to blow up the armory. He faces a mandatory 10-year minimum prison sentence on two separate charges.

October 25, 2004
FBI agents in Tennessee arrest farmhand Demetrius "Van" Crocker after he allegedly tried to purchase ingredients for deadly sarin nerve gas and C-4 plastic explosives from an undercover agent. The FBI alleges that Crocker, who local officials say was involved in a white supremacist group in the 1980s, tells the agent that he admires Hitler and hates Jews and the government. He allegedly also says

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"it would be a good thing if somebody could detonate some sort of weapon of mass destruction on Washington, D.C." Crocker is charged with trying to get explosives to destroy a building.

May 20, 2005
Officials in New Jersey arrest two men they say asked a police informant to build them a bomb. Craig Orler, who has a history of burglary arrests, and Gabriel Garafa, said to be a leader of the neo-Nazi World Church of the Creator and a member of a racist Skinhead group called The Hated, were charged with illegally selling 11 guns to police informants. Carafa allegedly gave one informant 60 pounds of urea to use in building him a bomb, but never said what the bomb was for. Police say they moved in before the alleged bombing plot developed further because they were concerned about the pair's activities. They taped Orler saying in a phone call that he was seeking people in Europe to help him go underground.

June 10, 2005
Daniel J. Schertz, a former member of the North Georgia White Knights of the Ku Klux Klan, is indicted in Chattanooga, Tenn., on federal weapons charges for allegedly making seven pipe bombs and selling them to an undercover informant with the idea that they would be used to murder Mexican and Haitian immigrant workers. The informant says Schertz demonstrated how to attach the pipe bombs to cars, then sold him bombs that Schertz expected to be used against a group of Haitians and, separately, Mexican workers on a bus headed to work in Florida. Schertz eventually pleads guilty to six charges — including teaching how to make an explosive device and weapon of mass destruction; making, possessing and transferring destructive devices; and possessing a pistol with armor-piercing bullets — and is sentenced to 14 years in prison.

March 19, 2006
U.S. Treasury agents in Utah arrest David J. D'Addabbo for allegedly threatening Internal Revenue Service employees with "death by firing squad" if they continued to try to collect taxes from him and his wife. D'Addabbo, who was reportedly carrying a Glock pistol, 40 rounds of ammunition and a switchblade knife when he was arrested leaving a church service, allegedly wrote to the U.S. Tax Court that anyone attempting to collect taxes would be tried by a "jury of common people. You then could be found guilty of treason and immediately taken to a firing squad." In August D'Addabbo pleads guilty to one charge of threatening a government agent in exchange for the dismissal of three other charges of threatening IRS agents.

April 26, 2007

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Five members of the Alabama Free Militia are arrested in north Alabama in a raid by federal and state law enforcement officers that uncovers a cache of 130 homemade hand grenades, an improvised grenade launcher, a Sten Mark submachine gun, a silencer, 2,500 rounds of ammunition and almost 100 marijuana plants. Raymond Kirk Dillard, the founder and "commander" of the group, later pleads guilty to criminal conspiracy, illegally making and possessing destructive devices and being a felon in possession of a firearm. Other members of the group — Bonnell "Buster" Hughes, James Ray McElroy, Adam Lynn Cunningham and Randall Garrett — also plead guilty to related charges. Although Dillard, who complained about the collapse of the American economy, terrorist attacks and Mexicans taking over the country, reportedly told his troops to open fire on federal agents if ever confronted, no shots are fired during the April raid, and the "commander" even points out booby-trap tripwires on his property to investigators.

June 8, 2008
Six people with ties to the militia movement are arrested in rural north-central Pennsylvania after task force officers find stockpiles of assault rifles, improvised explosives and homemade weapons, at least some of them apparently intended for terrorist attacks on U.S. officials. Agents find 16 homemade bombs during a search of the residence of Pennsylvania Citizens Militia recruiter Bradley T. Kahle, who allegedly tells authorities that he intended to shoot black people from a rooftop in Pittsburgh and also predicts civil war if Barack Obama or Hillary Clinton are elected president. A raid on the property of Morgan Jones, captain of the 91st Warriors Militia, results in the seizure of 73 weapons, including a homemade flame thrower, a machine that supposedly shot bolts of electricity, and an improvised cannon. Also arrested and charged with weapons violations are Marvin E. Hall, his girlfriend Melissa Huet and Perry Landis. Landis allegedly tells undercover agents he wanted to kill local magistrates and, if Clinton were elected president, planned to assassinate her in an attempt to trigger an armed revolution.

August 24, 2008
White supremacists Shawn Robert Adolf, Tharin Robert Gartrell and Nathan D. Johnson are arrested in Denver during the Democratic National Convention on weapons charges and for possession of amphetamines. Although police say they talked about assassinating presidential candidate Barack Obama, they are not charged in connection with that threat because officials see their talk as drug-fueled boasting. Police report the three had high-powered, scoped rifles, wigs, camouflage clothing and a bulletproof vest, along with the crystal methamphetamine.

October 24, 2008

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Two white supremacists, Daniel Cowart and Paul Schlesselman, are arrested in Tennessee for allegedly plotting to assassinate Barack Obama and murder more than 100 black people. Officials say Schlesselman and Cowart, a probationary member of the racist skinhead group Supreme White Alliance, planned to kill 88 people, then behead another 14. (Both numbers are significant in white supremacist circles. H is the eighth letter of the alphabet, so double 8s stand for HH, or "Heil Hitler." The number 14 represents the "14 Words," a popular racist saying.) The pair are indicted on charges that include threatening a presidential candidate, possessing a sawed-off shotgun, taking firearms across state lines to commit crimes, planning to rob a licensed gun dealer, damaging religious property, and using a firearm during the commission of a crime.

December 9, 2008
Police responding to a shooting at a home in Belfast, Maine, find James G. Cummings dead, allegedly killed by his wife after years of domestic abuse. They also find a cache of radioactive materials, which Cummings was apparently using to try to build a radioactive "dirty bomb," along with literature on how to build such a deadly explosive. Police also discover a membership application filled out by Cummings for the neo-Nazi National Socialist Movement. Friends say that Cummings had a collection of Nazi memorabilia. The authorities say Cummings was reportedly "very upset" by the election of Barack Obama.

December 16, 2008
After Kody Ray Brittingham, a lance corporal in the U.S. Marine Corps, is arrested on attempted robbery charges, a search of his barracks room at Camp Lejeune, N.C., allegedly turns up white supremacist materials and a journal written by Brittingham containing plans to kill Barack Obama. Brittingham will later be indicted for threatening the president-elect of the United States, a crime that carries a maximum penalty of five years in federal prison and a fine of up to $250,000.

January 21, 2009
On the day after Barack Obama is inaugurated as the nation's first black president, Keith Luke of Brockton, Mass., is arrested after allegedly shooting three black immigrants from Cape Verde, killing two of them, as part of a racially motivated killing spree. The two murders are apparently only part of Luke's plan to kill black, Latino and Jewish people. After being captured by police, he reportedly says he planned to go to an Orthodox synagogue near his home that night and "kill as many Jews as possible." Police say Luke, a white man who apparently had no contact with white supremacists but spent the previous six months reading racist websites, told them he was "fighting for a dying race." Luke also says he formed his racist views in

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large part after watching videos on Podblanc, a racist video-sharing website run by longtime white supremacist Craig Cobb. When he later appears in court for a hearing, Luke, charged with murder, kidnapping and aggravated rape, has etched a swastika into his own forehead, apparently using a jail razor.

April 4, 2009
Three Pittsburgh police officers — Paul Sciullo III, Stephen Mayhle and Eric Kelly — are fatally shot and a fourth, Timothy McManaway, is wounded after responding to a domestic dispute at the home of Richard Andrew Poplawski, who had posted his racist and anti-Semitic views on white supremacist websites. In one post, Poplawski talks about wanting a white supremacist tattoo. He also reportedly tells a friend that America is controlled by a cabal of Jews, that U.S. troops may soon be directed against American citizens, and that he fears a ban on guns was coming. Poplawski later allegedly tells investigators that he fired extra bullets into the bodies of two of the officers "just to make sure they were dead" and says he "thought I got that one, too" when told that the fourth officer survived. More law enforcement officers are killed during the incident than in any other single act of violence by a domestic political extremist since the 1995 Oklahoma City bombing.

April 25, 2009
Joshua Cartwright, a Florida National Guardsman, allegedly shoots to death two Okaloosa County, Fla., sheriff's deputies — Burt Lopez and Warren "Skip" York — at a gun range as the officers attempt to arrest Cartwright on domestic violence charges. After fleeing the scene, Cartwright is fatally shot during a gun battle with pursuing officers. Cartwright's wife later tells investigators that her husband was "severely disturbed" that Barack Obama has been elected president. He also reportedly believed the U.S. government was conspiring against him. The sheriff tells reporters that Cartwright had been interested in joining a militia group.

May 31, 2009
Scott Roeder, an anti-abortion extremist who was involved with the antigovernment "freemen" movement in the 1990s, allegedly shoots to death Kansas abortion provider George Tiller as the doctor is serving as an usher in his Wichita church. Adherents of "freemen" ideology claim they are "sovereign citizens" not subject to federal and other laws, and often form their own "common law" courts and issue their own license plates. It was one of those homemade plates that led Topeka police to stop Roeder in April 1996, when a search of his trunk revealed a pound of gunpowder, a 9-volt battery wired to a switch, blasting caps and ammunition. A prosecutor in that case called Roeder a "substantial threat to public safety," citing

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Roeder's refusal to acknowledge the court's authority. But his conviction in the 1996 case is ultimately overturned.

June 10, 2009
James von Brunn, a longtime and outspoken racist and anti-Semite, walks into the U.S. Holocaust Memorial Museum and allegedly shoots to death security guard Stephen Johns before he is himself shot and critically wounded by other security officers. Von Brunn is charged with murder and shooting a firearm in a federal building. Von Brunn, who earlier served six years in connection with his 1981 attempt to kidnap the members of the Federal Reserve Board at the point of a sawed-off shotgun, has been active in the white supremacist movement for more than four decades. As long before as the early 1970s, he worked briefly at the Holocaust-denying Noontide Press, which was founded by Willis Carto, a long-time anti-Semite. He also came to know many of the leaders and key thinkers of the radical right over the decades. A search of von Brunn's car after the Holocaust Museum attack turns up a notebook allegedly containing a list of other targets, including the White House, the U.S. Capitol, the National Cathedral and *The Washington Post*. In addition, a note written by von Brunn and left in his car reportedly reads: "You want my weapons; this is how you'll get them ... the Holocaust is a lie ... Obama was created by Jews. Obama does what his Jew owners tell him to do. Jews captured America's money. Jews control the mass media."

June 12, 2009
Shawna Forde — the executive director of Minutemen American Defense (MAD), an anti-immigrant vigilante group that conducts "citizen patrols" on the Arizona-Mexico border — is charged with two counts of first-degree murder for her alleged role in the slayings of a Latino man and his 9-year-old daughter in Arivaca, Ariz. Forde allegedly orchestrated the May 30 home invasion because she suspected the man was a narcotics trafficker and wanted to steal drugs and cash to fund her group. Authorities say the murders, including the killing of the child, were part of the plan. Also arrested and charged with murder are the alleged triggerman, MAD Operations Director Jason Eugene "Gunny" Bush, and Albert Robert Gaxiola, 42, a local member of MAD. Authorities say that Bush had ties to the neo-Nazi Aryan Nations in Idaho, and that Forde has spoken of recruiting its members.

June 25, 2009
Longtime white supremacist Dennis Mahon and his brother Daniel are indicted in Arizona in connection with a mail bomb sent in 2004 to a diversity office in Scottsdale that injured three people. Mahon, formerly connected to the neo-Nazi White Aryan Resistance (WAR) group, allegedly left a phone message at the office

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saying that "the White Aryan Resistance is growing in Scottsdale. There's a few white people who are standing up." In a related raid, agents search the Indiana home of Tom Metzger, founder of WAR, but he is not arrested. And, on the same day, white supremacist Robert Joos is arrested in rural Missouri, apparently because phone records show that Dennis Mahon's first call after the mail bombing was to Joos' cell phone. Joos is charged with being a felon in possession of firearms.

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The Language of Hate Crime Legislation
(As of July 2009)

STATES THAT USE "BECAUSE OF" IN HATE CRIME STATUTE

STATE	STATUTORY LANGUAGE	STATUTE	LINK
Alaska	**Because of**…	*Alaska Stat. § 12.55.155*	http://old-www.legis.state.ak.us/cgi-bin/folioisa.dll/stattx00/query=*/doc/{@4255
Arizona	Malice…**Because of**… (re. sentencing)	*Ariz. Rev. Stat. §13-702*	http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/13/00702.htm&Title=13&DocType=ARS
California	**Because of**…	*Cal Pen Code §§ 422.55, 422.76*	http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=00001-01000&file=422.6-422.865
Colorado	**Because of**…	*C.R.S. 18-9-121*	http://www.michie.com/colorado/lpext.dll?f=templates&fn=main-h.htm&cp=
Connecticut	Maliciously, and with specific intent to intimidate or harass…**because of**…("maliciously" is element of 1st/2nd degree felony; without malice it's 3rd degree)	*Conn. Gen. Stat. §§ 53a-181j- 53a-181l*	http://www.cga.ct.gov/2001/pub/Chap952.htm
Delaware	**Because of**…	*11 Del. C. § 1304*	http://delcode.delaware.gov/title11/c005/sc07/index.shtml#1304
Hawaii	**Because of** hostility toward…	*HRS § 846-51*	http://www.capitol.hawaii.gov/site1/docs/docs.asp

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Idaho	Maliciously and with the specific intent to intimidate or harass…because of…	*Idaho Code § 18-7902*	http://www3.state.id.us/cgi-bin/newidst?sctid=180790002.K
Kentucky	**Because of**…	*KRS § 532.031*	http://162.114.4.13/KRS/532-00/031.PDF
Louisiana	**Because of**…	*La. R.S. 14:107.2*	http://www.legis.state.la.us/lss/lss.asp?doc=78262
Maine	**Because of**…	*17-A M.R.S. § 1151*	http://janus.state.me.us/legis/statutes/17-A/title17-Asec1151.html
Maryland	**Because of**…or if evidence exhibits animosity because of…	*MD. ANN. Code [Crim.Law] §10-301 through 10-306*	http://www.michie.com/maryland/lpext.dll?f=templates&fn=main-h.htm&cp=mdcode;
Massachusetts	Intent to intimidate …**because of**…	*Mass. Ann. Laws ch. 265, § 39*	http://www.mass.gov/legis/laws/mgl/265-39.htm
Michigan	Maliciously, and with specific intent to intimidate or harass another **because of**…	*MCL § 750.147b*	http://www.legislature.mi.gov/(S(2fwckajz1e45un45ymptwwrn))/mileg.aspx?page=GetMCLDocument&objectname=mcl-750-147b
Minnesota	**Because of**…	*Minn. Stat. § 609.749*	http://www.revisor.leg.state.mn.us/bin/getpub.php?type=s&year=current&num=609.749

Mississippi	**Because of**...(re. the crime); Maliciously and with specific intent...because (re. what the jury must find)	*Miss. Code Ann. § 99-19-301*	http://michie.lexisnexis.com/mississippi/lpext.dll?f=templates&fn=main-h.htm&cp
Missouri	**Because of**...	*§ 557.035 R.S.Mo.*	http://www.moga.mo.gov/statutes/C500-599/5570000035.HTM
Montana	**Because of**...with the intent to terrify, intimidate, threaten, harass, annoy, or offend (check)	*Mont. Code Anno. § 45-5-221 -222*	http://data.opi.state.mt.us/bills/mca/45/5/45-5-221.htm
Nebraska	**Because of**...	*R.R.S. Neb. § 28-111*	http://uniweb.legislature.ne.gov/laws/statutes.php?statute=s2801011000
New Hampshire	Substantially motivated...**because of** hostility toward the victim's...	*RSA 651:6*	http://www.gencourt.state.nh.us/rsa/html/LXII/651/651-6.htm
New Jersey	Purpose to intimidate...**because of**...	*N.J. Stat. § 2C:44-3*	http://www.njleg.state.nj.us/
New Mexico	"Motivated by hate" which is defined "**because of** the actual or perceived"	*N.M. Comm. Subst./S.B. 38/249*	http://www.genderadvocates.org/policy/Ordinances/Laws/NewMex_HateCrim_SB0038JUS.pdf
New York	**Because of**...	*NY CLS Penal § 485.05*	http://criminaljustice.state.ny.us/legalservices/ch107_hate_crimes_2000.htm

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North Carolina	**Because of**...	*N.C. Gen. Stat. § 14-3*	http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_14/GS_14-3.html
North Dakota	**Because of**...	*§12.1-14-04*	http://www.legis.nd.gov/cencode/t121c14.pdf
Oklahoma	Maliciously and with the specific intent to intimidate or harass... **because of**...	*21 Okl. St. § 850*	http://oklegal.onenet.net/oklegal-cgi/ifetch?Oklahoma_Statutes.99+956715994066+F
Oregon	**Because of**...	*ORS § 166.155; §166.165*	http://www.leg.state.or.us/ors/166.html
Rhode Island	**Because of** hatred or animus toward the actual or perceived...	*R.I. Gen. Laws § 12-19-38*	http://www.rilin.state.ri.us/statutes/title12/12%2D19/12%2D19%2D38.htm
South Dakota	Maliciously and with the specific intent to intimidate or harass... **because of**...	*S.D. Codified Laws § 22-19B-1*	http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&Statute=22-19B-1
Tennessee	**Because of**...	*Tenn. Code Ann. § 40-35-114*	http://michie.lexisnexis.com/tennessee/lpext.dll?f=templates&fn=main-h.htm&cp
Texas	Victim selected because of defendant's bias or prejudice against a group identified by...	*Tex. Penal Code § 12.47; Tex. Code Crim. Proc.* Art. §42.014	http://tlo2.tlc.state.tx.us/statutes/cr.toc.htm
Virginia	**Because of**...	*Va. Code Ann. § 18.2-57*	http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-57

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Washington	Maliciously…**because of**…	*Rev. Code Wash. (ARCW) § 9A.36.080*	http://apps.leg.wa.gov/rcw/default.aspx?Cite=9A
West Virginia	Willfully…attempt to injure, intimidate …**because of**	*W.Va. Code § 61-6-21*	http://www.legis.state.wv.us/WVCODE/ChapterEntire.cfm?chap=61&art=6&section=21#06
Wisconsin	**Because of**…	*Wis. Stat. § 939.645*	http://nxt.legis.state.wi.us/nxt/gateway.dll?f=templates&fn=default.htm&vid=WI:Default&d=stats&jd=ch.%20939

STATES THAT USE "MOTIVATED BY" IN HATE CRIME STATUTE

STATE	STATUTORY LANGUAGE	STATUTE	LINK
Alabama	**Motivated by**…	*Code of Ala. § 13A-5-13*	http://www.legislature.state.al.us/CodeofAlabama/1975/coatoc.htm
Kansas	**Motivated by**…	*K.S.A. Supp. § 21-4716*	http://www.kslegislature.org/legsrv-statutes/getStatute.do
New Mexico	"**Motivated by** hate" which is defined "because of the actual or perceived"	*N.M. Comm. Subst./S.B. 38/249*	http://www.genderadvocates.org/policy/Ordinances/Laws/NewMex_HateCrim_SB0038JUS.pdf
Pennsylvania	"Malicious intention toward the…" which is defined as "**motivated by** hatred toward the…"	*18 Pa.C.S. §2710; H.B. 1493*	http://www.pacode.com/secure/data/037/chapter53/chap53toc.html
Vermont	Maliciously **motivated by** the victim's…	*13 V.S.A. § 1455*	http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=13&Chapter=031&Section=01455

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STATES THAT USE "BASED ON" IN HATE CRIME STATUTE

STATE	STATUTORY LANGUAGE	STATUTE	LINK
Arizona	Prejudice **based on**... (re. the crime);	*A.R.S. § 41-1750*	http://www.azleg.gov/search/oop/qfullhit.asp?CiWebHitsFile=/ars/41/01750.htm&CiRestriction=religion&CiBeginHilite=&CiEndHilite=&CiHiliteType=Full
District of Columbia	Prejudice **based on**...	*D.C. Code § § 22-3701*	http://michie.lexisnexis.com/dc/lpext.dll?f=templates&fn=main-h.htm&cp
Florida	Prejudice **based on**...	*Fla. Stat. § 775.085*	http://www.flsenate.gov/Statutes/index.cfm?App_mode=Display_Statute&URL=Ch0775/titl0775.htm&StatuteYear=2006&Title=%2D%3E2006%2D%3EChapter%20775

STATES THAT USE "BY REASON OF" IN HATE CRIME STATUTE

STATE	STATUTORY LANGUAGE	STATUTE	LINK
Nevada	**By reason of...**	*Nev. Rev. Stat. Ann. § 207.185*	http://www.leg.state.nv.us/NRS/NRS-207.html#NRS207Sec185
Ohio	**By reason of...**	*ORC Ann. § 2927.12*	http://codes.ohio.gov/orc/2927

OTHER

STATE	STATUTORY LANGUAGE	STATUTE	LINK
Utah	(Not typical language - Ties hate crimes to violation of civil rights)	§76-3-203.3	http://www.le.state.ut.us/UtahCode/getCodeSection?code=76-3-203.3

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STATUTORY CONSTRUCTION

"Motivated by"	"Because of"	"By Reason of"	"Based on"	Other
5	35	2	3	1
Alabama	Alaska	Nevada	Arizona* (for the crime)	Utah (ties hate crimes to violation of civil rights)
Kansas	Arizona (for sentencing)	Ohio	District of Columbia	
New Mexico** (...hate)	California		Florida	
Pennsylvania	Colorado			
Vermont	Connecticut			
	Delaware			
	Hawaii			
	Idaho			
	Kentucky			
	Louisiana			
	Maine			
	Maryland			
	Massachusetts			
	Michigan			
	Minnesota			
	Mississippi			
	Missouri			
	Montana			
	Nebraska			
	New Hampshire			
	New Jersey			
	New Mexico** (defined...)			
	New York			
	North Carolina			
	North Dakota			
	Oklahoma			
	Oregon			
	Rhode Island			
	South Dakota			
	Tennessee			
	Texas			
	Virginia		* Arizona is listed twice	
	Washington			
	West Virginia			
	Wisconsin		** New Mexico is listed twice	

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ThirdWay

FAITH IN PUBLIC LIFE

Statements of Support from Religious Leaders for the Senate Hate Crimes Bill

Dr. David P. Gushee, Distinguished University, Professor of Christian Ethics, Mercer University:

As a Christian, I believe in the immeasurable and sacred worth of every human being as made in the image of God and as the object of God's redeeming love in Jesus Christ. In our sinful and violent world, there are tragically very many ways in which this sacredness is violated. This bill deserves Christian support because its aim is to protect the dignity and basic human rights of all Americans, and especially those Americans whose perceived "differentness" makes them vulnerable to physical attacks motivated by bias, hatred and fear. The bill simply strengthens the capacity of our nation's governments to prosecute violent, bias-related crimes. I am persuaded that the bill poses no threat whatsoever to any free speech right for religious communities or their leaders. Its passage will make for a safer and more secure environment in which we and all of our fellow Americans can live our lives. For me, the case for this bill is settled with these words from Jesus: "As you did it to one of the least of these, you did it to me" (Mt. 25:40).

Rev. Dr. Derrick Harkins, Senior Pastor, Nineteenth Street Baptist Church, Washington, DC:

A strong Biblical imperative that I believe stands at the heart of my Christian faith is the preservation and protection of the inherent dignity of all persons. The Scriptures are replete with examples of God's concern and compassion for those seen as "other" by many. As an American, I know the protection of personal dignity and human rights is a principle that makes us that much stronger as a nation, and certainly does not stand at odds with freedom of expression. Passage of the Hate Crimes Bill will help to ensure the safeguards of the law for those who are victimized by acts of bias and hate. I welcome the opportunity to support this bill as an expression of my Christian witness, and my belief in our nation's highest aims for all its citizens.

Dr. Joel C. Hunter, Senior Pastor, Northland – A Church Distributed:

I would think that the followers of Jesus would be first in line to protect any group from hate crimes. He was the one who intervened against religious violence aimed at the woman caught in the act of adultery. He protected her while not condoning her behavior. This bill protects both the rights of conservative religious people to voice passionately their interpretations of their scriptures and protects their fellow citizens from physical attack. I strongly endorse this bill.

Rev. Gabriel A. Salguero, Executive and Policy Advisor, The Latino Leadership Circle:

At the heart of the Christian gospel is the belief in the intrinsic dignity of all humanity. When people are targeted for acts of violence the Church must speak out. I support the Hate Crimes bill because it provides room for free speech and religious conviction while protecting groups of people from acts of violence. As a Christian who values both love and truth I support a bill that protects the vulnerable while allowing ministers to speak freely about their faith and moral convictions. The Hate Crimes bill does not call for the sacrifice of either dignity nor conviction. It is my prayer that we continue to find ways forward that honors both freedom of speech and protection for all our citizens.

June 2009

Stephen Schneck, Director, Life Cycle Institute, The Catholic University of America:

The need for this legislation is patently obvious. Time and again we have seen the horrible spectacle in American history-indeed, in our own time-of gay and lesbian Americans hunted down, murdered, mutilated, attacked, and discriminated against. Existing laws and rights have proven little remedy in diminishing these crimes of hate. Would that every American could someday reverence the dignity of all human beings as they are created by the hand of God. Sadly events continue to document how far this nation must yet go toward that divine measure. Gay and lesbian Americans need the protection this legislation offers.

Jim Wallis, President and CEO, Sojourners:

A fundamental Christian belief is that every person is created in the image of God. Too often in our country when violence has been directed against gay and lesbian people, most Christians have been painfully silent. The hate crimes legislation now in the Senate is designed to strengthen our society's ability to prosecute these crimes. It contains additional explicit protection for free speech and religious liberty, rights which are already guaranteed by our Constitution, and allows for continued free expression of speech about controversial issues around homosexuality, gay marriage, etc. Regardless of the theological differences we may have on these issues, Christians should all agree on the fundamental protection of human rights. That is why I support this legislation.

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June 24, 2009

Dear Senator:

On behalf of the millions of church members, pastors and individuals we represent, Traditional Values Coalition voices our **strong opposition to the so-called hate crimes bill—S.909, the Matthew Shepard Hate Crimes Prevention Act.** This bill threatens our most treasured and foremost freedoms-- religious liberty and freedom of speech.

The so-called hate crimes bill will be used to lay the legal foundation and framework to **investigate, prosecute and persecute pastors, business owners, Bible teachers, Sunday School teachers, youth leaders, Christian counselors, religious broadcasters** and anyone else whose actions are based upon and reflect the truths found in the Bible, which have been protected by the First Amendment.

S. 909 ensures that crimes against a transgender, drag queen, gay or lesbian are treated more harshly than a sexual assault on a child. Under the Act, increased penalties would be given to someone who assaults a transgender or gay man etc. -- but **no additional jail time would be given to a pedophile who has molested a child!** Additionally, a mother who assaults a sex offender for molesting her child could face potential hate crime charges.

Religious Freedom in Jeopardy

S.909 broadly defines "intimidation. A pastor's sermon could be considered "hate speech" under this legislation if heard by an individual who then acts aggressively against persons based on any "sexual orientation." The pastor could be prosecuted for "conspiracy to commit a hate crime."

Supporters of S.909 claim the legislation only covers bodily injury. In actuality, it opens the door to the possibility that religious leaders or members of religious groups could be prosecuted criminally, based on their speech or protected activities under conspiracy law or the criminal code-- and could include conduct or speech that aids, abets, counsels, commands, induces, procures or causes the act to be done by another.

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Ultimately, a pastor's sermon concerning religious beliefs and teachings on homosexuality and gender confused behaviors could be considered to cause violence and will be punished or at least investigated.

During the House Judiciary Committee markup in 2007, Rep. Artur Davis (D-AL) admitted that the legislation will not protect a pastor (as well as Bible teachers, Sunday School teachers etc.,) from prosecution.

Former judge, Rep. Louie Gohmert (R-TX) stated that federal law currently stipulates that anyone who "incites" or "induces" a person to commit a violent crime against a protected class, can be prosecuted for aiding or abetting in the crime. This could include a pastor, author, counselor, religious broadcaster... who preach against the gay lifestyle.

The main purpose of this legislation is to elevate homosexuality, bisexuality, and gender identity to race. S.909 will add the categories of "sexual orientation" and "gender identity," "either actual or perceived," as new classes of individuals receiving special protection by federal law. However, none of these terms are defined in the legislation.

Sexual orientation includes heterosexuality, homosexuality, and bisexuality. Gender identity includes such gender confused behaviors as cross-dressing, transvestism and such conditions as transsexualism.

30 + Bizarre Sexual Orientations Will Receive Federal Protection

Under the so-called hate crimes bill, a multitude of **bizarre sexual orientations** will become federally-protected minority groups!

- **Necrophilia** -- a crime (sex with a corpse)
- **Pedophilia** -- a crime (sex with an underage child)
- **Prostitution** -- a crime in most states
- **Zoophilia** -- (bestiality) which is a crime in numerous states
- **Voyeurism** -- crime (sexual arousal from observing unsuspecting individuals)
- **Apotemnophilia** -- sexual arousal from the stumps of an amputee
- **Coprophilia** -- sexual arousal from feces
- **Urophilia** -- sexual arousal from urine
- **Transvestic Fetishism** -- intense sexually-arousing fantasies, sexual urges, and behaviors involving cross-dressing

The American Psychiatric Association (APA) has published 30+ such sexual orientations that, because of Congress's failure to define "sexual orientation," will arguably be protected under this legislation. These 30+ orientations are listed in the APA's Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), which is used by physicians, psychologists, social workers, nurses, and psychiatrists throughout the U.S. It is considered the dictionary of mental disorders.

For more information read TVC's paper on Why All The Hoopla Over Pedophilia?

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Fraudulent Findings Used as Justification for Law

S.909 is based on fraudulent claims that there is a national epidemic of "hate" against gays, bisexuals, transgenders/ drag queens (LGBT). S.909 makes fraudulent and ridiculous claims that:

*LGBT are fleeing across state lines to avoid persecution;
*Perpetrators are crossing state lines to commit crimes against LGBT;
*LGBT are so persecuted they have trouble purchasing goods and services or finding employment.

Surely, if there are so many gays, lesbians and cross-dressers fleeing across state lines, the highway patrol would be aware of this. Wouldn't this be national news? These are phony arguments.

However, these false claims about LGBT's fleeing across state lines are being used as a hook to justify federal involvement in local law enforcement through the Interstate Commerce Clause of the Constitution.

View TVC's video---Hate Crimes Episode 1

Misleading Statistics

Traditional Values Coalition deplores all acts of violence against any victim including homosexuals or gender confused individuals. We support vigorous prosecution of these crimes by State and local prosecutors.

However, **in a nation of 300 million people**, there is no nationwide epidemic of hate against LGBT individuals. FBI hate crime statistics for 2007 prove this. There were only 1,521 cases of "hate" against LGBT individuals. The majority of these cases involved name-calling or pushing. Only 242 actually involved bodily harm (aggravated assault). Nationwide, there were a total of 855,856 cases of aggravated assault. Aggravated assault crimes against LGBT, etc., amounted to only **0.0002827%** of those cases. This is not an epidemic by anyone's standard and does not merit federal intrusion into local law enforcement. **This legislative proposal is akin to using a cruise missile to swat a mosquito.**

We strongly oppose any legislation that puts religious liberties and free speech at risk. The so-called hate crimes bill, S.909, is based on a flawed premise – that certain categories of victims, because of their sexual orientation or gender identity, deserve special protection under federal law.

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All Committee votes and floor votes related to S.909 will be scored and reported to Traditional Values Coalitions supporters. We urge you to **OPPOSE** the so-called hate crimes bill-- S.909, the Local Law Enforcement Hate Crimes Prevention Act of 2009.

Sincerely,

Rev. Lou Sheldon

Rev Louis P. Sheldon
Chairman

Andrea S. Lafferty

Andrea Lafferty
Executive Director

Backgrounders:
YouTube - Hate Crimes Episode 1

Misleading 'Hate Crime' Statistics

Protecting 30 Bizarre "Sexual Orientations" And "Gender Identity" -- Ever-Expanding Definitions

Is Your Minister A Hate Peddler?

Congress Passes Bill Protecting Bizarre Sexual Orientations

Here We Go Again: Ridiculous 'Hate Crime' Legislation

LGBT Lies About 'Sexual Orientation' And 'Gender Identity'

Democrat Admits 'Hate Crime' Bill Will Protect 30 Sexual Orientations

Why All The Hoopla Over Pedophilia?

So-Called hate crime bill threatens religious freedom

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TVC Special Report -- The So-Called 'Hate Crimes' Bill
S. 909, The Matthew Shepard Hate Crimes Prevention Act

Traditional Values Coalition deplores all acts of violence against any victim including homosexuals or gender confused individuals. We support vigorous prosecution of these crimes by State and local prosecutors. However, we strongly oppose any legislation that puts religious liberties and free speech at risk. The so-called hate crimes bill, S.909, is based on a flawed premise – that certain categories of victims, because of their sexual orientation or gender identity, deserve special protection under federal law.

I. What Are The Facts About Examples Of Hate Crimes?

FBI statistics on "hate crimes" against a person's sexual orientation from 2007 (the latest available) reveal the following: In 2007 there were 1,521 victims of "sexual orientation" bias (Table 7). However, the breakdown of these crimes is listed as:

- 335 were crimes of intimidation (shouting or name-calling)
- 448 were crimes of simple assault (defined as pushing or shoving without physical injury)
- 242 were crimes of aggravated assault (defined as bodily harm)

(source: FBI statistics 2007)

In short, **there were only 242 crimes against a person's sexual orientation that could be considered "violent."** And, 27 of these bias crimes were directed against heterosexuals! All together, there were 9,535 victims of bias crimes in 2007. This includes bias against race, religion, sexual orientation, ethnicity/national origin, disability, or multiple-bias incidents.

The FBI statistics do not indicate how many of these "violent hate crimes" were committed by homosexuals against other homosexuals – or what provoked the violence.

Out of a total number of 855,856 cases of aggravated assault in 2007, only 242 were directed at LGBT individuals. This is only 0.0002827% of all aggravated assaults! This is not an epidemic of hate against LGBT individuals.

No Epidemic Of Hate Crimes Exists! S. 909 falsely claims in Section 2, without any evidence, that "the incidence of violence motivated by the actual or perceived race, color, national origin, religion, sexual orientation, gender, or disability of the victim poses a serious national problem."

FBI statistics from 2007 (the latest available) reveal that there is no national epidemic of hate against minorities or LGBT persons.

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Out of a nation of 300 million, there were only 1,521 hate crimes directed against a person's sexual orientation in 2007. The majority of these "crimes" involved name-calling and pushing or shoving a person.

II. What Do These Categories Mean in Legal Terms?

Intimidation is defined by the Bureau of Justice Statistics, U.S. Department of Justice, as: *"...verbal or related threats of bodily harm."* This could be something as innocuous as name-calling and shouting.

Simple assault is defined as: *"...physical attacks without a weapon or serious victim injury."* This frequently involves pushing or hitting.

Aggravated assault defined as: *"attacks in which the offender uses or displays a weapon and/or the victims suffers serious injury."* (Kevin J. Strom, Bureau of Justice Statistics, U.S. Department of Justice Special Report, September, 2001.)

"Bodily injury," the requirement for S. 909, is an incredibly broad undefined term which could mean anything from a simple assault or a domestic assault to a rape or murder. It does not fit into the FBI categories upon which they base their statistics.

In criminal law, it is standard for an assault to be defined from the victim's point of view as opposed to being based only upon the facts of the case. In short, even if a reasonable person would interpret an action as unthreatening, under S. 909, a victim could say they were in fear of bodily injury, thus triggering charges of a so-called hate crime. Local police and sheriffs are already effectively dealing with these crimes as a routine part of their jobs.

III. Other Examples Of Hate Crimes: Race And Religion

In fact, in analyzing FBI statistics, it is clear that anti-religious bias and racial bias are more serious issues than sexual orientation bias. Here's a comparison of statistics on race, religion, and sexual orientation:

Out of 1,521 bias crimes against LGBT individuals, only 242 resulted in bodily harm.

Out of 4,956 racial incidents, 908 were anti-white; 3,424 were anti-African American; and the rest were bias crimes against other races.

Out of 1,628 anti-religious bias crimes, 1,127 were against Jews; 142 against Muslims; 70 against Catholics; 67 against Protestants. The rest were against other religions.

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IV. Fake Hate Crimes Pose A Serious Problem

Homosexual activists are well-known for having staged a number of fake hate crimes throughout the years.

Homosexual activists have claimed that a 72-year-old homosexual named Andrew Anthos of Detroit was attacked by an African-American man who called him a "faggot" and struck him in the head with a metal pipe, killing him. Police later learned that Anthos had not been the victim of a hate crime. He had fallen because of a severe arthritic condition in his neck. He was also mentally ill.

In January, 2007, a homosexual student at Boise State University told police that a man had beaten him in the back of the head and swore at him. He later admitted to police that he'd faked the crime by using a stick and his fists to beat himself.

The faking of hate crimes by homosexuals goes back years. In 2000, *U.S. News & World Report* columnist John Leo documented case after case of faked hate crimes by homosexuals. One involved Jerry Kennedy, a homosexual student at the University of Georgia. Kennedy reported to police that he'd been the victim of nine hate crimes over a three-year period – including three acts of arson. He later admitted faking these. The objective of LGBT activists is to gain sympathy for their gay agenda or the passage of pro-LGBT legislation such as H.R. 1913.

V. Bogus 'Findings' In S. 909

The "Findings" section in the legislation, which is used to justify passage of S. 909, uses the same ridiculous claims that have been used for years.

Those "Findings" listed in Section 2 of the bill solemnly state (without any basis in fact) that:

Such violence substantially affects interstate commerce in many ways, including the following:

> (A) The movement of members of targeted groups is impeded, and members of such groups are forced to move across State lines to escape the incidence or risk of such violence.
>
> (B) Members of targeted groups are prevented from purchasing goods and services, obtaining or sustaining employment, or participating in other commercial activity.
>
> (C) Perpetrators cross State lines to commit such violence.
>
> (D) Channels, facilities, and instrumentalities of interstate commerce are used to facilitate the commission of such violence.
>
> (E) Such violence is committed using articles that have traveled in interstate commerce.

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Democrats were so embarrassed when Traditional Values Coalition exposed these ridiculous and untrue claims that they removed them from H.R. 1913 during the recent mark up of the House bill.

No Representative or Senator has ever tried to justify these findings as factual. Why? Because these findings are clearly false.

Proponents of S. 909 claim with a straight face, that LGBT persons (lesbian, gay, bisexual, transgender) are so persecuted by angry bigots that they are fleeing across state lines to avoid being beaten up.

These mythical LGBT persons also have trouble finding employment or engaging in "commercial activity."

But, it gets worse: Not only are LGBT persons regularly fleeing in large numbers across state lines, but they're being pursued by angry bigots across these state lines. These bigots are also apparently using "instrumentalities of interstate commerce" to commit these mythical crimes against LGBT persons. Where do these bigots purchase their "instrumentalities of interstate commerce" – at Wal-Mart?

If there were large numbers of gays, lesbians, bisexuals, and drag queens fleeing across state lines for the past decade, there would be some record of this mass migration. Surely, Highway Patrol officers of the 50 states would have seen these mass exoduses from one state to another.

All of this nonsense in the findings is a pretext to justify federal intervention in state law enforcement by invoking the interstate commerce clause of the Constitution.

Proponents should be forced to provide actual evidence of the claim that there's been this mass migration of LGBT individuals across state lines for a decade. And, they should be forced to prove that bigots are pursuing these poor terrified persons across state lines. Can they provide us with a bigot's "instrumentality of interstate commerce" seized by a Highway Patrol officer?

Watch TVC's 'Hate Crime' Video

VI. Religious Freedom is Threatened By S. 909

S.909 broadly defines "intimidation. A pastor's sermon could be considered "hate speech" under this legislation if heard by an individual who then acts aggressively against persons based on any "sexual orientation." The pastor could be prosecuted for "conspiracy to commit a hate crime."

Supporters of S.909 claim the legislation only covers bodily injury. In actuality, it opens the door to the possibility that religious leaders or members of religious groups could be prosecuted criminally, based on their speech or protected activities under conspiracy law or the criminal code-- and could include conduct or speech that aids, abets, counsels, commands, induces, procures or causes the act to be done by another. Ultimately, a pastor's sermon concerning religious beliefs and teachings on homosexuality and gender confused behaviors could be considered to cause violence and will be punished or at least investigated.

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During the House Judiciary Committee markup in 2007, Rep. Artur Davis (D-AL) admitted that the legislation will not protect a pastor (as well as Bible teachers, Sunday School teachers etc.,) from prosecution.

Former judge, Rep. Louie Gohmert (R-TX) stated that federal law currently stipulates that anyone who "incites" or "induces" a person to commit a violent crime against a protected class, can be prosecuted for aiding or abetting in the crime. This could include a pastor who preaches against the gay lifestyle.

The so-called hate crimes bill will be used to lay the legal foundation and framework to **investigate, prosecute and persecute pastors, business owners, Bible teachers, Sunday School teachers, youth leaders, Christian counselors, religious broadcasters** and anyone else whose actions are based upon and reflect the truths found in the Bible, which have previously been protected by the First Amendment, resulting in a chilling effect on religious liberties.

Rep. Gohmert explains this danger in a YouTube video.

VII. Protecting 30 + Bizarre "Sexual Orientations" And "Gender Identity" -- Ever-Expanding Definitions

The main purpose of this "hate crime" legislation is to add the categories of "sexual orientation" and "gender identity," "either actual or perceived," as new classes of individuals receiving special protection by federal law. Sexual orientation includes heterosexuality, homosexuality, and bisexuality on an ever-expanding continuum. Will Congress also protect these sexual orientations-zoophiles, pedophiles or polygamists?

Gender identity includes such gender confused behaviors as cross-dressing, she-male, drag queen, transvestite, transsexual or transgender. Under the Act, neither "sexual orientation" or "gender identity" are really defined. How can a law be enforced if the new classes receiving special protection remain undefined?

The sexual behaviors considered sinful and immoral by most major religions will be elevated to a protected "minority" class under federal law.

Once "sexual orientation" is added to federal law, anyone with a bizarre sexual orientation will have total protection for his or her activities by claiming that Congress sanctions their appearance, behavior or attitudes.

Inevitably this will negatively affect the performance of co-workers who are forced to work alongside of individuals with bizarre sex habits. Imagine working next to a person who gets sexual pleasure from rubbing up against a woman (Fronteurism) or enjoys wearing opposite sex clothing. These are "sexual orientations."

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More Than 30 Sexual Orientations Effectively Gain Federal Protection

The American Psychiatric Association (APA) has published a list of 30 + sexual orientations that, because of Congress's failure to define "sexual orientation," will arguably be protected under this legislation. These 30 + orientations are listed in the APA's *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV), which is used by physicians, psychologists, social workers, nurses, and psychiatrists throughout the U.S. It is considered the dictionary of mental disorders. Those bizarre sexual orientations include behaviors that are felonies or misdemeanors in most states or can result in death.

Among those sexual orientations are:

- **Fronteurism** -- which involves a man approaching an unknown woman and rubbing up against her buttocks. This is criminal behavior.
- **Incest** -- which is a crime (sex with a daughter or son).
- **Necrophilia** -- a crime (sex with a corpse).
- **Pedophilia** -- a crime (sex with an underage child).
- **Prostitution** -- a crime in most states.
- **Zoophilia** -- (beastiality) which is a crime in numerous states.
- **Voyeurism** -- which is a criminal offense in most states.

Non-criminal sexual orientations include such behaviors as:

- **Autogeynephilia** -- the perception of a man as being a woman;
- **Apotemnophilia** -- sexual arousal from the stumps of an amputee;
- **Coprophilia** -- sexual arousal from feces;
- **Urophilia** -- sexual arousal from urine
- **Transvestic Fetishism** -- intense sexually-arousing fantasies, sexual urges, and behaviors involving cross-dressing.

To protect a "sexual orientation" under S. 909 – while leaving that term undefined -- is to protect this whole range of bizarre sexual behaviors. It is to normalize by federal law what are still considered to be mental disorders (paraphilias) by the American Psychiatric Association.

Currently, the only place in federal law where "sexual orientation" is defined is in the 1990 "Hate Crimes Statistics Act." In that law, "sexual orientation" is defined as "consensual homosexuality or heterosexuality."

Over time, homosexual activists have expanded this definition to include bisexuals and transgendered individuals (cross-dressers, drag queens, transsexuals and she-males). The term

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LGBT (Lesbian-Gay-Bisexual-Transgender) is the acronym currently used to describe this expanded definition.

In the House, Democrats refused to define "gender," "gender identity," or "sexual orientation," legislation like H.R. 1913 and S. 909 will also protect the 30+ bizarre sexual orientations listed in our report. House Judiciary Committee Republicans offered an amendment to exclude pedophilia from the undefined "sexual orientation" reference in the bill. Democrats ridiculed the amendment and voted it down.

LGBT fanatics, however, are now claiming that the "paraphilias" listed in our report are actually different than a person's sexual orientation. This is an absurd argument.

LGBT activists – including Rep. Tammy Baldwin during H.R. 1913 debate -- refused to define "sexual orientation" because they want it to be an expandable term. They'll add new "sexual orientations" to it as they see fit. Yet, they claim that these paraphilias are not sexual orientations. If they won't define the term, how can they now assert that a person's sexual desires for children or dead people are not sexual orientations?

If a person is sexually oriented toward a certain person, object, or animal, that is clearly a sexual orientation.

VIII. A Little Historical Perspective Is Needed

During the 1970s, the American Psychiatric Association was under attack by gay activists who demanded that homosexuality be removed as a mental disorder from the *DSM*.

The *DSM* at that time listed homosexuality as a "sexual deviation" – along with other bizarre sexual orientations. The term "paraphilia" replaced the term sexual deviation in the DSM-III-R. (Nathaniel Meconaghy, "Unresolved Issues In Scientific Sexology," *Archives of Sexual Behavior*, Issue 4, 1999.)

In fact, the second edition of the *DSM*, published in 1968 said this in section 302: "Sexual Deviations: This category is for individuals whose sexual interests are directed primarily toward objects other than people of the opposite sex, toward sexual acts … performed under bizarre circumstances. … Even though many find these practices distasteful, they remain unable to substitute normal sexual behavior for them. This diagnosis is not appropriate for individuals who perform deviant sexual acts because normal sex objects are not available to them." Homosexuality was the first sexual deviation listed in section 302! (Dr. George Rekers, *Growing Up Straight,* 1982)

Gay activists, however, pressured the APA into removing homosexuality as a sexual deviation from the *DSM. Homosexuality was not removed because of scientific discoveries, but for political reasons.*

As psychiatrist Jeffrey Satinover has written in *Homosexuality And The Politics Of Truth,* the APA removed homosexuality in two steps: "At first it only removed from its list of disorders homosexuality that was 'ego-syntonic,' comfortable and acceptable to the individual, leaving

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only 'ego-dystonic' – unwanted – homosexuality as a disorder; later it removed 'ego-dystonic' homosexuality as well." (p. 65)

The *DSM* also used the term "Sexual Orientation Disturbance" to describe those homosexuals who felt uncomfortable with their same-sex attractions. That term is also gone from the *DSM*.

Satinover notes that the *DSM-IV* "has quietly altered its long-standing definitions of all the 'paraphilias' (sexual perversions). Now, in order for an individual to be considered to have a paraphilia – these include sadomasochism, voyeurism, exhibitionism, and among others, pedophilia – the *DSM* requires that in addition to having or even acting on his impulses, his 'fantasies, sexual urges or behaviors,' must 'cause clinically significant distress or impairment in social, occupational or other important areas of functioning." **

In short, the definition of a paraphilia in *DSM-IV* meant, for example, that a pedophile only needed treatment if he felt discomfort about his sexual desires or was impaired in some way. If he had no emotional problems molesting kids, he didn't need treatment. Remember that "paraphilia" actually refers to a sexual deviation from the norm of heterosexuality. Gay psychiatrists and gay psychologists have distorted the old definitions in the *DSM* for their political agendas. **

Since then, the *DSM-IV-TR* has been quietly re-written to correct this major mistake. The *DSM-IV-TR* (text revision) version states that merely acting upon pedophilia impulses is sufficient for a diagnosis of a mental disorder. (Linda Ames Nicolosi, "The Pedophilia Debate Continues – And DSM Is Changed Again," NARTH, September, 2008)

** Congressman takes to the floor to demand inclusion of "philias" in hate crime bill.

IX. S. 909 Will Inevitably Fund Increased Pro-LGBT Propaganda In Our Public Schools

This legislation provides hundreds of thousands of dollars to fund so-called anti-hate programs. This includes a series of $100,000 grants to organizations allegedly fighting "hate" in their communities.

If signed into law, this so-called hate crimes bill will be used to fund pro-LGBT teaching materials for our nation's public schools. It will be a replay of what occurred during the Clinton Administration.

During the Clinton years, TVC exposed the federal government's use of tax dollars to fund an "anti-hate" (actually anti-Christian) school curriculum. "Healing the Hate: A National Bias Crime Prevention Curriculum for Middle Schools," actually did the following:

- Compared Baptists and Pentecostals to White Supremacist groups.

- Defined "prejudice" to include the "bigoted thoughts" of religious organizations. If a church teaches homosexual sex is wrong, you see, the curriculum calls it bigotry!

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• Defined a "hate incident" as "harmful words or actions motivated by prejudice," which specifically includes "religious beliefs." In other words, if you have moral principles based on your religious faith, the curriculum says you're prejudiced!

• Defined institutionalized prejudice as widely accepted in religious groups.

U.S. Attorney General Janet Reno actually had a Department of Justice website for children K-5 teaching them to turn in their parents if they were "bigoted."

The Washington State Safe Schools Coalition produced, for their Anti-Violence Documentation Project, curricula for kindergarten children -- KINDERGARTEN CHILDREN -- to think bisexuality and sex change operations were normal! These curricula were called "age appropriate."

Under the guise of hate crime prevention, $100,000 a pop will be given to LGBT groups to create more anti-Christian pro-gay agenda materials for public schools and communities, teaching children to accept homosexuality, bisexuality and transgenderism, etc as normal behaviors.

Under the Act, the Office of Justice Programs is empowered to ensure compliance with "the local infrastructure developed under the grants." Affected parties can include "community groups and schools, colleges, and universities."

Another flaw in the bill is that affected parties are not defined. Will traditional values once again be denigrated with taxpayer dollars?

X. S. 909 Will Encourage Anti-Christian Bigotry

LGBT (lesbian, gay, bisexual, transgender) activists have worked aggressively to promote the idea that Bible Speech (opposition to the gay agenda) will lead inevitably to violent "hate" crimes. Thus, they say restrictions of such speech is justified as a way of protecting homosexuals from violence. What they're really targeting is speech against LGBT behaviors that is based upon an understanding of what the Bible says about this behavior. In short, they're targeting Bible Speech — not actual "hate speech."

For example, the International Lesbian and Gay Association (ILGA) has defined "hate crime" this way: "Hate crimes are criminal acts (such as violent crime, hate speech or vandalism) that are motivated by feelings of hostility against any identifiable group of people within a society, if systematic, rather than spontaneous, instigators of such crimes are sometimes organized into hate groups. The ILGA clearly defined hate crime to include so-called hate speech!
On the website "hatecrime.org," LGBT activists claim that pro-family organizations are engaging in hate speech when they criticize homosexual conduct and this "hate speech" allegedly leads to hate crimes and must be suppressed.

This site compares opposition to homosexuality as equal to Adolf Hitler's slaughter of six million Jews in Europe before and during World War II.

Hatecrime.org also blamed pro-family groups for the murder of gay college student Matthew Shepard. This effort to link criticism of homosexual conduct to the murder of Matthew Shepard is typical of the kind of thinking by the gay advocates.

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The San Francisco Board of Supervisors passed a resolution blaming religious groups for so-called "hate crimes" such as the murder of Mathew Shepard. In addition, the Board approved a resolution urging the local media not to carry advertisements by pro-family organizations that addressed hope for homosexuals to change.

Traditional Values Coalition's Executive Director Andrea Lafferty was verbally attacked by the President of the Human Rights Campaign (HRC). HRC accused Mrs. Lafferty of being personally responsible for the killing of Matthew Shepard. This occurred at the local Washington, D.C. Fox station.

In New York, a billboard with a Bible verse on it was taken down under pressure from city officials, who cited it as "hate speech."

In Massachusetts in 2005, parent David Parker was arrested for protesting his elementary school child having to listen to pro-LGBT propaganda! He eventually removed his child from the school. He was in court for two years and lost all of his appeals.

Pacific Justice Institute President Cites Cases Of Anti-Christian Bigotry: In his testimony before the House Committee on Crime, Terrorism, and Homeland Security on April 17, 2007, PJI President Brad Dacus cited several examples showing how hate crime laws are inevitably used to silence freedom of speech and religion.

He noted, for example, that the 9th Federal Circuit Court in California sided with homosexuals against a student in a high school in Poway who wore a T-shirt saying that homosexuality was shameful! The 9th cited California's "hate violence" statute as an excuse to silence this Christian student's religious viewpoint about gay behavior.

In addition, Slavic students in Sacramento wore anti-gay agenda T-shirts to protest the gay-inspired Day of Silence on campus. They were punished for their views.

The claim that hate crime laws against violence do not affect free speech or freedom of religion is bogus.

Dacus also noted that the Hindu American Foundation has attempted to compare opposition to Hinduism as "hate speech." The foundation claims that such hate speech could provoke a crazed gunman to attack Hindus in their temples!

Pennsylvania Hate Crime Law Puts Christians In Jail
One of the most serious attacks on free speech and religious freedom came in Philadelphia in 2004.

Eleven Christians were arrested on felony charges for preaching the Word of God at a gay pride rally. Eight charges were filed against them: three felony charges and five misdemeanors.

Charges were eventually dropped against six of the Christians, but the five left faced potential prison sentences of 47 years in jail and fines up to $90,000!

They were charged under Pennsylvania's hate crime law, which had recently added "sexual orientation" to their statute. The Christians were charged with: criminal conspiracy, possession of instruments of crime, reckless endangerment of another person, ethnic intimidation, riot, failure to disperse, disorderly conduct and obstructing highways.

The "instruments of crime" were bull horns for witnessing!

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The "ethnic intimidation" section of the hate crime statute was used against the Christians for having preached to the homosexuals in the parade and rally. Their "speech" was considered ethnic intimidation.

The charges were eventually dropped against the Christians for having no basis in fact – but their free speech and religious freedom were violated and they had to spend thousands of dollars on legal fees.

The bottom line is that hate crime laws supposedly designed only to combat violence, can easily be construed to suppress free speech as "intimidation" and an incitement to violence. The Christians arrested in Philadelphia are prime examples of this slippery slope.

9th Federal Circuit Court Says Gay Agenda Trumps Free Speech In Oakland, California
The far-left 9th Circuit Court in San Francisco has attacked freedom of speech and religion for the Christian employees of the city of Oakland, California.

The court issued a memo declaring that it sided with the city of Oakland in censoring the emails and posters of the Good News Employee Association that used words like "Natural Family," "Marriage" and "Family Values" in their materials. The 9th Circuit said the city had the right to censor those words because it made LGBT employees uncomfortable and violated the city's sexual orientation ordinance! These words were considered "statements of a homophobic nature" and "sexual-orientation-based harassment"!

These are only a few examples that show how sexual orientation and hate crime laws can be used to suppress religious freedom and free speech!

Additional Resources:

YouTube - Hate Crimes Episode 1

Misleading 'Hate Crime' Statistics

Protecting 30 Bizarre "Sexual Orientations" And "Gender Identity" -- Ever-Expanding Definitions

Is Your Minister A Hate Peddler?

Congress Passes Bill Protecting Bizarre Sexual Orientations

Here We Go Again: Ridiculous 'Hate Crime' Legislation

LGBT Lies About 'Sexual Orientation' And 'Gender Identity'

Democrat Admits 'Hate Crime' Bill Will Protect 30 Sexual Orientations

Why All The Hoopla Over Pedophilia?

So-Called hate crime bill threatens religious freedom

Why All The Hoopla Over Pedophilia?

139 C Street, S.E., Washington, DC, 20003 (202) 547-8570 www.traditionalvalues.org

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UNITED CHURCH OF CHRIST

Justice and Witness Ministries

Washington Office

June 15, 2009

Dear Senator,

I write on behalf of the United Church of Christ Justice and Witness Ministries to urge you to co-sponsor and vote for the Matthew Shepard Hate Crimes Prevention Act – S. 909. Tragically, the recent shooting at the Holocaust Museum in Washington, DC is yet another sad reminder that hate violence continues to take a terrible toll in our society.

Existing federal law is inadequate to address the significant national problem of hate crimes. Not only does current law contain obstacles to effective enforcement, but it also does not provide authority to investigate and prosecute bias crimes based on disability, gender, gender identity or sexual orientation. The Matthew Shepard Hate Crimes Prevention Act would address these gaps in current hate crimes legislation, as well as provide important and necessary assistance for investigating and prosecuting hate crimes cases. This is especially important in cases where local authorities are either unwilling or unable to take the lead in investigating and prosecuting hate-motivated crimes.

When individuals must face the daily threat of violence motivated by hatred and intolerance, our vision of a fair and just society is diminished. The United Church of Christ has long worked for the kind of just society in which all persons, no matter what their gender, race, religion, ethnicity, sexual orientation, ability or disability, can live without fear for their lives. In 1995, the General Synod of the UCC declared in a resolution, " To indulge in violence is to deny the full humanity of the person violated.... Ultimately, violence breaks faith with the belief that all human beings are created in the image of God [Genesis 1: 26-27] and are thus worthy of respect."

Unfortunately, misinformation persists about this legislation. S. 909 does not in any way violate First Amendment protections, as some opponents maintain. Rather, it targets only criminal conduct prompted by prejudice. This legislation does not prohibit lawful expression of one's religious beliefs.

No one is under the illusion that a single piece of legislation can address the complex factors and causes of violence. Nevertheless, the Matthew Shepard Hate Crimes Prevention Act is an important, measured and reasonable step toward ending the terrible reality of hate motivated violence.

As people of faith, we cannot remain silent in the face of such brutal violations of personhood. Each assault on an individual's humanity cries for response. Accurate reporting, investigation and prosecution of hate crimes are essential to addressing and preventing this violence. The Matthew Shepard Hate Crimes Prevention Act is one step in the effort to end hate crimes, but it is an essential step. We urge you to support its passage.

Sincerely,

Rev. M. Linda Jaramillo
Executive Minister
United Church of Christ, Justice and Witness Ministries

COLLEGIUM OF OFFICERS
John H. Thomas
GENERAL MINISTER AND PRESIDENT
Edith A. Guffey
ASSOCIATE GENERAL MINISTER
M. Linda Jaramillo
JUSTICE AND WITNESS MINISTRIES
Stephen L. Sterner
LOCAL CHURCH MINISTRIES
Cally Rogers-Witte
WIDER CHURCH MINISTRIES

God is still speaking.

100 Maryland Avenue NE; Rm 330, Washington, DC 20002 | Ph. 202.543.1517 • Fax. 202.543.5994 | ucc.org

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UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425 WWW.USCCR.GOV

MICHAEL YAKI
COMMISSIONER

Wednesday, June 17, 2009

Honorable Edward M. Kennedy
United States Senate
317 Russell Senate Office Building
Washington DC 20510-2101

Re: S. 909 The Matthew Shepard Hate Crimes Prevention Act of 2009

DELIVERY BY EMAIL

Dear Senator Kennedy:

We write in our individual capacities as Commissioners on the U.S. Commission on Civil Rights ("Commission") to applaud your sponsorship of The Matthew Shepard Hate Crimes Prevention Act of 2009 (S. 909) and announce our enthusiastic support for this legislation.

We are particularly encouraged that S. 909 addresses violent crimes of intolerance committed on the basis of a person's sexual orientation. Indeed, one advisory committee to the Commission found that, "hate crimes motivated by sexual orientation bias are the hate crimes most tolerated by the society."[1] In the past, the Commission has spoken with one voice against all manner of hate crimes.

Regrettably, the majority of the Commission voted on May 15th, 2009 to oppose S. 909. They did so without examination by the Commission of the bill or the underlying problems associated with hate crimes. Therefore, we urge you and other Senators to consider the Commission majority's opposition in context. Their opposition does not reflect a studied position backed by agency research, but rather reflects an extreme viewpoint that is against federal action to enforce civil rights laws, a viewpoint that has historically been rejected by bipartisan majorities of the Congress.

The Commission majority's opposition to S. 909 does not reflect a studied position of the agency. The Commission's national office staff has done no fact-finding into the extent or damage of hate crimes in recent years. Nor, to our knowledge, has the agency's national office staff done any analysis of S. 909 or reviewed the many forms of state hate crime legislation that have spread throughout the country in recent years. The past work

[1] Ohio Advisory Committee to the United States Commission on Civil Rights, *Hate Crime in Ohio*, January 1995, pg. 47.

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of the Commission's state advisory committees on hate crimes was disregarded by the majority. In short, there has been no substantive research or fact-finding concerning either S. 909 or hate crimes more generally by the Commission that our colleagues can offer in support of their position. The Commission majority's entire discussion of S. 909 lasted a few minutes during a May business meeting. The opposition of our colleagues to this legislation is, therefore, only a product of their individual ideologies rather than one deriving from Commission investigation.

The Commission majority's opposition to S. 909 is based on a flawed interpretation of the necessity of federal action to enforce civil rights laws. The root of the Commission majority's opposition appears to be their ideological opposition to the federalization of any criminal laws. Our colleagues blankly assert their opposition without any consideration of the specific benefits in S. 909 of federal jurisdiction over hate crimes and without attention to the historic importance of the federal government's leadership on civil rights issues. We do not believe the Congress should retreat from principles of federal jurisdiction on civil rights issues that have been firmly established since the 1950s. **Where state and local jurisdictions fail, history has shown that the federal government is often the last recourse to uphold civil rights. The irony of our colleague's opposition is that the 1964 Civil Rights Act and the 1965 Voting Rights Act – both enacted with overwhelming bipartisan majorities – were predicated on the necessity of federal intervention, a position rejected explicitly by our colleagues.**

It is unfortunate that the name of the U.S. Commission on Civil Rights, once renowned for its bipartisanship, scholarship and presentation of hard facts should be misused to oppose this critical legislation. We regret the agency has come to operate in such a sharply ideological manner and look forward to a time when the Commission again speaks with a bipartisan voice to advance and protect civil rights.

Senator Kennedy, we thank you for your leadership in the passage of S.909 and in so much other civil rights legislation that has benefitted the country. We wish you the best of health and success in your efforts to serve the nation. Please share this letter with others as you fight for passage of S.909.

Thank you,

Michael Yaki
Commissioner

Arlan D. Melendez
Commissioner

C: Chairman Gerald A. Reynolds
Vice Chair Abigail Thernstrom
Commissioner Peter N. Kirsanow
Staff Director Martin Dannenfelser
Commissioner Ashley L. Taylor, Jr.
Commissioner Gail Heriot
Commissioner Todd Gaziano

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Appendix—Statements on Hate Crimes by USCCR and State Advisory Committees, 1989 to date.

Statements by the U.S. Commission on Civil Rights[1]

U.S. Commission on Civil Rights, *Campus Anti-Semitism: Briefing Report* (November 2005) at 73.

- Recommendation: "5. Congress should direct the U.S. Department of Education's Office of Postsecondary Education ("OPE") to collect and report data on a broader range of anti-Semitic and other hate crimes that take place at postsecondary institutions."

United States Commission on Civil Rights, *Intimidation and violence: racial and religious bigotry in America : a restatement* (January 1990) at 26.

- "The U.S. Commission on Civil Rights concludes that the phenomenon of racial and religious violence and harassment is a continuing threat to the maintenance of a peaceful, democratic, and pluralistic society. Bigotry-bred violence and intimidation are manifestations of racism, anti-Semitism, and other forms of religious bigotry that still survive even after the years of effort spent on their eradication."

United States Commission on Civil Rights, *Recent activities against citizens and residents of Asian Descent* (1988) at 57, 58.

- "Whatever its cause, anti-Asian activity in the form of violence, vandalism, harassment, and intimidation continues to occur across the Nation. Incidents were reported in every jurisdiction visited by Commission staff and in other parts of the country as well."
- "Regardless of the total number of incidents nationwide, however, the Commission believes that available evidence must be a cause for concern and that violence and other forms of anti-Asian activity must be addressed by officials at all levels of government and by citizens through their community organizations."

See also:

United States Commission on Civil Rights Letter Requesting U.S. Department of Justice Investigation of Hate Crimes in Nevada (May 19, 2005).

[1] Most reports by the U.S. Commission on Civil Rights, as well as the State Advisory Committees to the Commission, are available online at: http://www.law.umaryland.edu/Marshall/usccr/.

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Appendix—Statements on Hate Crimes by USCCR and State Advisory Committees, 1989 to date.

Statements by the State Advisory Committees to the U.S. Commission on Civil Rights[2]

Ohio Advisory Committee to the United States Commission on Civil Rights. *Hate crime in Ohio* (January 1995) at 47.

- "Finding 6 Hate crimes motivated by sexual orientation bias are the hate crimes most tolerated by the society. The debate over whether protective civil rights status should be extended and/or recinded on the basis of sexual orientation continues to be a contentious issue in many parts of the Nation and in Ohio. What is not debatable is that violence, intimidation, and assaults on individuals because of their perceived sexual orientation is acceptable behavior."

Montana State Advisory Committee to the U.S. Commission on Civil Rights, *White Supremacist Activity in Montana* (July 1994) at 42.

- "Finding 4: Much of the hate rhetoric of white supremacists in Montana is directed against gay and lesbian persons, and violence against homosexual persons in the State because of their sexual orientation is of mueh concern. Though crimes manifesting evidence of prejudice based upon sexual orientation are reported under the Federal Hate Crimes Statistics Act of 1990, malicious intimidation or harassment because of a person's sexual orientation is not a crime under the Montana Malicious Intimidation and Harassment Act.
- "Recommendation 4: The Montana Legislature should add "sexual orientation" to the categories of persons covered by the Montana Malicious Intimidation and Harassment Act.

Indiana Advisory Committee to the United States Commission on Civil Rights, *Hate crime in Indiana: a monitoring of the level, victims, locations and motivations* (June, 1994) at 17.

- Observation "4. African Americans and gays and lesbians bear the brunt of hate crime activity. The violence, threats, and intimidation of African Americans in Indiana are profoundly out of line with this group's proportion of the State's population. Blacks are less than 10 percent of the State's population, yet the data shows them to be victims of almost half of all hate crime. And these hate crimes are not confined to any one part of the State, anti-black violence was monitored in every section of Indiana. The homosexual community in Indiana also appears to be especially targeted for hate crime. The reported hate crimes in this State on the basis of sexual orientation were almost 20 percent of all monitored hate crime."

[2] The State Advisory Committees to the U.S. Commission on Civil Rights prepare reports for the information and consideration of the Commission, but their viewpoints, findings, and recommendations are the result of their own independent fact-finding and not attributable to the Commission.

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Appendix—Statements on Hate Crimes by USCCR and State Advisory Committees, 1989 to date.

Indiana Advisory Committee to the United States Commission on Civil Rights, *Increase of hate crime in Indiana*, (August 1992) at 19.

- Committee Observation: "2. Unless legislation specifically defines, prohibits, and punishes hate crime, such activity will not get the attention it deserves from law enforcement agencies. Specific legislation compels such agencies to devote resources to these crimes"
- "Without a demand from the majority of people of goodwill for a national commitment to protect every citizen from violence and personal peril without regard to race, religion, national origin, and sexual preference, the level of bigotry and the number of hate crimes will continue to grow."

See also:

West Virginia Advisory Committee to the U.S. Commission on Civil Rights, *Civil Rights Issues in West Virginia*, (May 2003) at 35-38.

Kentucky Advisory Committee to the United States Commission on Civil Rights, *Bias and bigotry in Kentucky: Perceptions from Louisville, Lexington and Bowling Green* (September 1997) at 2.

Maine Advisory Committee to the United States Commission on Civil Rights, *Civil rights issues in Maine: A briefing summary on hate crimes, racial tensions and migrant/immigrant workers* (February, 1996) at 1-3.

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OFFICE OF ARLAN D. MELENDEZ, COMMISSIONER
UNITED STATES COMMISSION ON CIVIL RIGHTS
624 NINTH STREET, NW, WASHINGTON, DC 20425

Tuesday, June 23, 2009

Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
433 Russell Senate Office Building
Washington DC 20510

Re: S. 909 The Matthew Shepard Hate Crimes Prevention Act of 2009

DELIVERY BY EMAIL

Dear Chairman Leahy:

Thank you for holding a hearing on The Matthew Shepard Hate Crimes Prevention Act of 2009 (S. 909). We write in our individual capacities as Commissioners serving on the U.S. Commission on Civil Rights ("Commission") to voice our support for this important legislation.

We sharply disagree with the views of those, including the current majority of the Commission, who have an ideological opposition to expanding federal criminal jurisdiction to protect civil rights. We note that the 1964 Civil Rights Act, the 1965 Voting Rights Act, and other cornerstones of our nation's civil rights protections today enjoy broad bipartisan support, but at the time were subject to the same arguments about federal criminal jurisdiction. As members of the law enforcement and civil rights communities have both said in their support for S. 909, federal jurisdiction is essential if our nation is to stop hate crimes.

To underscore the lack of credence that we believe you should give to the Commission majority's position, we point out that its letter was not based on any research or recent fact-finding concerning S. 909. On the contrary, the strong, bipartisan history of the Commission and its independent advisory committees has been to push for increased protections against hate crimes, at all levels of government. There is no basis in the rich history of the Commission's work that would support our colleagues' opposition to this bill.

Attached, please find copies of a recent letter we sent to Senator Kennedy in support of S. 909, and an appendix with excerpts of past work by the Commission and its independent state advisory committees on hate crimes.

Thank you,

Arlan D. Melendez
Arlan D. Melendez, U.S.C.C.R. Commissioner

Arlan D. Melendez
Commissioner

Michael Yaki
Commissioner

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UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425 www.usccr.gov

April 29, 2009

The Honorable Nancy Pelosi
Speaker, U.S. House of Representatives
The Capitol–H-232
Washington, D.C. 20515

The Honorable John Boehner
Minority Leader, U.S. House of Representatives
The Capitol–H-204
Washington, D.C. 20515

The Honorable Steny H. Hoyer
Majority Leader, U.S. House of Representatives
The Capitol–H-107
Washington, D.C. 20515

The Honorable Eric Cantor
Minority Whip, U.S. House of Representatives
The Capitol–H-307
Washington, D.C. 20515

The Honorable James E. Clyburn
Majority Whip, U.S. House of Representatives
The Capitol–H-329
Washington, D.C. 20515

Re: H.R. 1913

Dear Madam Speaker and Messrs. Boehner, Cantor, Clyburn and Hoyer:

We write today to urge you to vote **against** the proposed Local Law Enforcement Hate Crimes Prevention Act (H.R. 1913) ("LLEHCPA"). Although time does not permit this issue to be presented for formal Commission action, we believe it is important for us to write as individual members to communicate our serious concerns with this legislation.[1]

We believe that LLEHCPA will do little good and a great deal of harm. **Its most important effect will be to allow federal authorities to re-prosecute a broad category of defendants who have already been acquitted by state juries—as in the Rodney King and Crown Heights cases more than a decade ago.**[2] Due to the exception for prosecutions by "dual sovereigns," such double prosecutions are technically not violations of the Double Jeopardy Clause of the U.S. Constitution.[3] But they are very much a violation of the spirit that drove the

[1] We have not polled the other four members of the Commission, and this letter should in no way be taken to suggest that they have taken any particular position on the measure.

[2] *See* Paul G. Cassell, *The Rodney King Trials and the Double Jeopardy Clause: Some Observations on Original Meaning and the ACLU's Schizophrenic Views of the Dual Sovereign Doctrine*, 41 U.C.L.A. L. REV. 693 (1994).

[3] *See* United States v. Lanza, 260 U.S. 377 (1922). *See also* United States v. Avants, 278 F.3d 510, 516 (5th Cir.), *cert. denied*, 536 U.S. 968 (2002) (under the "dual sovereignty doctrine," "the federal government may ...

framers of the Bill of Rights, who never dreamed that federal criminal jurisdiction would be expanded to the point where an astonishing proportion of crimes are now both state and federal offenses. We regard the broad federalization of crime as a menace to civil liberties. There is no better place to draw the line on that process than with a bill that purports to protect civil rights.

While the title of LLEHCPA suggests that it will apply only to "hate crimes," the actual criminal prohibitions contained in it do not require that the defendant be inspired by hatred or ill will in order to convict. It is sufficient if he acts "because of" someone's actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity or disability. Consider:

*Rapists are seldom indifferent to the gender of their victims. They are virtually always chosen "because of" their gender.

*A robber might well steal only from women or the disabled because, in general, they are less able to defend themselves. Literally, they are chosen "because of" their gender or disability.

While Senator Edward Kennedy has written that it was not his intention to cover all rape with LLEHCPA,[4] some DOJ officials have declined to disclaim such coverage. Moreover, both the objective meaning of the language and considerable legal scholarship would certainly include such coverage.[5] If all rape and many other crimes that do not rise to the level of a "hate crime" in the minds of ordinary Americans are covered by LLEHCPA, then prosecutors will have "two bites at the apple" for a very large number of crimes.[6]

DOJ officials have argued that LLEHCPA is needed because state procedures sometimes make it difficult to obtain convictions. They have cited a Texas case from over a decade ago involving an attack on a black man by three white hoodlums. Texas law required the three

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prosecute a defendant after an unsuccessful state prosecution based on the same conduct, even if the elements of the state and federal offenses are identical"); United States v. Farmer, 924 F.2d 647, 650 (7th Cir. 1991) (a "double jeopardy claim based on [a] prior state acquittal of murder is defeated by the 'dual sovereignty' principle").

[4] *See* Edward Kennedy, *Hate Crimes: The Unfinished Business of America*, 44 Boston Bar. J. 6 (Jan./Feb. 2000) ("This broader jurisdiction does not mean that all rapes or sexual assaults will be federal crimes").

[5] Senate Report 103-138, issued in connection with the Violence Against Women Act, stated that "[p]lacing [sexual] violence in the context of the civil rights laws recognizes it for what it is–a hate crime. *See* Kathryn Carney, *Rape: The Paradigmatic Hate Crime*, 75 ST. JOHN L. REV. 315 (2001) (arguing that rape should be routinely prosecuted as a hate crime); Elizabeth A. Pendo, *Recognizing Violence Against Women: Gender and the Hate Crimes Statistics Act*, 17 HARV. WOMEN'S L.J. 157 (1994) (arguing that rape is fundamentally gender-based and should be included in the Hate Crimes Statistics Act); Peggy Miller & Nancy Biele, *Twenty Years Later: The Unfinished Revolution in Transforming a Rape Culture* (Emilie Buchwald et al, eds. 1993) ("Rape is a hate crime, the logical outcome of an ancient social bias against women").

[6] Federal law already prohibits an array of violent conduct that is motivated by race, color, or national origin, but such conduct must be aimed at preventing the victim from engaging in certain federally-protected activities, such as attending public school. *See* 18 U.S.C. § 245(b). The LLECPA has no such limitation.

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defendants to be tried separately. By prosecuting them under federal law, however, they could have been tried together. As a result, admissions made by one could be introduced into evidence at the trial of all three without falling foul of the hearsay rule.

Such an argument should send up red flags. It is just an end-run around state procedures designed to ensure a fair trial. The citizens of Texas evidently thought that separate trials were necessary to ensure that innocent men and women are not punished. No one was claiming that Texas applies this rule only when the victim is black or female or gay. And surely no one is arguing that Texans are soft on crime. Why interfere with their judgment?

We are unimpressed with the arguments in favor of LLEHCPA and would be happy to discuss the matter further with you if you so desire. Please do not hesitate to contact any of us with your questions or comments. The Chairman's Counsel and Special Assistant, Dominique Ludvigson, is also available to further direct your inquiries at dludvigson@usccr.gov or at (202) 376-7626.

Sincerely,

Gerald A. Reynolds
Chairman

Todd Gaziano
Commissioner

Gail L. Heriot
Commissioner

Peter N. Kirsanow
Commissioner

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THE UNITED STATES CONFERENCE OF MAYORS

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CEO and Executive Director
TOM COCHRAN

May 20, 2009

The Honorable Edward M. Kennedy
United States Senate
317 Russell Senate Building
Washington D.C. 20510

Dear Senator Kennedy:

On behalf of The United States Conference of Mayors, I am writing to register the organization's strong support for the "Matthew Shepard Hate Crimes Prevention Act" which you recently introduced. America's mayors urge the Senate to quickly pass this important legislation.

The bill serves to strengthen the ability of local, federal, and state governments to investigate and prosecute hate crimes based on race, ethnic background, religion, gender, sexual orientation, and disability. Current law does not recognize violent crimes committed because of a person's sexual orientation, gender, or disability as hate crimes. Inclusion of these categories will ensure that all victims of vicious acts of violence are protected by the full strength of this nation's judicial and investigative systems.

The United States Conference of Mayors, representing this nation's cities through their chief elected official, the mayor, is in a unique position to understand the effectiveness of successful federal, state, and local collaboration in achieving justice. This bill will provide us with an important tool to strengthen that partnership by allowing government at all levels to prosecute ALL hate crimes.

We greatly appreciate your steadfast commitment to this issue. We are proud to join with hundreds of law enforcement, civil rights, civic, and religious organizations in urging immediate passage of the Matthew Shepard Hate Crimes Prevention Act. If you have any questions please contact Chief of Staff Ed Somers at 202-861-6706.

Sincerely,

Manuel A. (Manny) Diaz
Mayor of Miami
President

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The Heritage Foundation
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CONGRESSIONAL TESTIMONY

"The Matthew Shepard Hate Crimes Prevention Act of 2009"

Testimony before
the Committee on the Judiciary
United States Senate

June 25, 2009

Brian W. Walsh
Senior Legal Research Fellow
The Heritage Foundation

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My name is Brian Walsh, and I am Senior Legal Research Fellow in The Heritage Foundation's Center for Legal and Judicial Studies. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

Thank you Chairman Leahy, Ranking Member Sessions, and Members of the Committee for inviting me here today to address the principles and provisions of the Matthew Shepard Hate Crimes Prevention Act of 2009 (S. 909; "HCPA"). Criminal justice reform is a central focus of my research and reform work at the Heritage Foundation. Over the past three years, I have worked with hundreds of individuals and scores of organizations across the political spectrum to build consensus for principled, non-partisan criminal justice reform. My colleagues, allies, and I have gathered substantial evidence that the criminal justice system is in great need of principled reform, particularly at the federal level, and that this reform should not be driven by partisan politics.

Unfortunately, HCPA fails to measure up to this standard and would substantially undermine constitutional federalism and the high regard in which the American public should hold federal criminal law. There are three main problems with the HCPA.

1. The Act's new "hate crimes" offenses are far broader and more amorphous than any properly defined criminal offense should be, and they thus invite prosecutorial abuse, politically motivated prosecutions, and related injustices.

2. The Act's "hate crimes" offenses violate constitutional federalism by asserting federal law-enforcement power to police truly local conduct over which the Constitution has reserved sole authority to the 50 states.

3. The Act's "hate crimes" offenses would be superfluous and likely to be counterproductive, for nearly all states have tough "hate crimes" laws and the violent conduct underlying the Act's "hate crimes" offenses has always been criminalized in all 50 states.

For these reasons, Congress should be exceedingly wary of the unnecessary, dangerously broad, and unconstitutional "hate crimes" offenses in the Matthew Shepard Hate Crimes Prevention Act.

Foundational Principles of Criminal Law

As Harvard law professor Herbert Wechsler observed half a century ago, criminal punishment is the greatest power that government routinely uses against its own citizens.[1] Criminal justice thus is far too important to allow it to fall subject to partisan political

[1] *See* Herbert Wechsler, *The Challenge of a Model Penal Code*, 65 HARV. L. REV. 1097, 1098 (1952).

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interests. Rather, it should be governed and, whenever necessary, reformed according to several sound principles that are widely acknowledged and understood by the American people. Such principles include the following:

- Because criminal punishment represents government's greatest application of power against its own citizens and is therefore especially susceptible to misuse and abuse, its scope and application should be carefully circumscribed.

- Regardless of how displeased or angry some (or even a majority of) Americans might be about certain wrongful conduct, every criminal offense and every authorization of criminal enforcement power should be restricted by the text and plain meaning of the Constitution as well as our long-established criminal-law precedents.

- Legislators and government officials must endeavor to ensure that the criminal law is worthy of the highest respect and avoid enacting laws and bringing cases that will undermine that respect.

- One of the criminal law's fundamental qualities for engendering the respect of the people it governs is fairness; an unfair criminal law, including one that is tailored to favor one set or group of Americans over another, is all but certain to do substantial damage to Americans' respect for criminal law.

Despite Americans' almost universal assent to the principles above and others like them, criminal justice policy has become increasingly politicized over the past few decades, including in Congress. This has been caused by at least three major factors. First, the American people's strongly negative reaction to the increase in crime in the 1960s and 1970s made it politically popular to be "tough on crime," with harsher criminal offenses and greater punishment indicating an elected official's *bona fides*. On average, candidates for election and reelection who are "tough on crime" can be expected to fare better at the polls than those candidates who are (or who are perceived to be) "soft on crime."

Second, efforts to combat this trend were in the past bogged down in constituent and interest-group politics, with those engaged in criminal-justice reform advocating for offenders who have committed certain categories of crime rather than for even-handed, across-the-board reforms that benefit all Americans. Some reform advocates and their constituents purposefully and consciously allied themselves with political parties.

Third, influential state and local law enforcement officials have increasingly turned to Washington to provide federal funding for local law enforcement operations. This hunt for federal funding skews the priorities of all state and local law enforcement officials and generally results in their placing undue emphasis on those issues and

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problems that receive national attention, rather than those issues and problems that pose the greatest risks and problems to local communities.

Today, a large coalition is working to reverse this politicization of criminal justice policy. My criminal-justice reform allies and I have found among members of both major political parties at the federal, state, and local levels a growing recognition of the need for reform that is both principled and non-partisan. Before the November election, for example, a coalition of groups spanning the political spectrum and working with key Members of the House of Representatives reached substantial consensus on pursuing hearings and reform proposals for federal criminal justice reform. I am hopeful that the non-partisan spirit in which we worked will establish a foundation for sound, lasting reform as well as for greater trust and cooperation among reform-minded advocates and elected officials.

A Sweeping Scope Invites Abuses

HCPA undermines such efforts. Almost without exception, when discussing efforts over the last three years to work with Members of Congress and advocacy groups across the political and ideological spectrum to redress the federalization of truly local conduct, someone raises proposed federal "hate crimes" legislation as nearly irrefutable evidence that those on the left apparently have no objection to the federalization of crime when it benefits their constituents and political interests. HCPA is precisely the sort of legislation that undermines a principled basis for resisting federal criminalization of crimes that are truly local in nature and scope, including local gang crime, sex crime, and drug offenses.

From a federalism standpoint, the HCPA's "hate crimes" offenses are virtually indistinguishable from the proposed federal "gang-crime" offenses in legislation introduced in recent Congresses that my Heritage colleagues and I have criticized.[2] Member of Congress on both sides of the aisle have communicated that they opposed on constitutional grounds the federalization of truly local crime, such as the conduct covered by the criminal offenses in these gang-crime bills. If passed, the HCPA would lay the foundation for more egregious federalization of local criminal conduct. Those who support or are considering supporting the HCPA must calculate whether they want to set a powerful precedent for the federal criminalization of, for example, truly local street

[2] *E.g.*, Written statement of Brian W. Walsh, "Gang Crime Prevention and the Need to Foster Innovative Solutions at the Federal Level," Subcommittee on Crime, Terrorism and Homeland Security of the Committee on the Judiciary of the U.S. House of Representatives on Oct. 2, 2007, *available at* http://www.heritage.org/Research/Crime/tst112707a.cfm; David B. Muhlhausen & Erica Little, "Gang Crime: Effective and Constitutional Policies to Stop Violent Gangs," The Heritage Foundation Legal Memorandum No. 20, June 6, 2007, *available at* http://www.heritage.org/Research/Crime/lm20.cfm; Erica Little & Brian W. Walsh, "Federalizing Gang Crime Remains Counterproductive and Dangerous," The Heritage Foundation Web Memo No.1486, June 5, 2007, *available at* http://www.heritage.org/Research/Crime/wm1486.cfm; Erica Little & Brian W. Walsh, "Federalizing Gang Crime is Counterproductive and Dangerous," The Heritage Foundation Web Memo No. 1221, Sept. 22, 2006, *available at* http://www.heritage.org/Research/Crime/wm1221.cfm.

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crime (committed by alleged gang members) or possession or sale of relatively small amounts of illicit drugs and other controlled substances the next time the congressional balance of power shifts.

Every decent person abhors violent crimes that are motivated by bias or prejudice. Thus, the case for congressional legislation that would expand existing federal authority already prohibiting and punishing more severely some "hate crimes"[3] may seem compelling.

The HCPA plays off of a powerful truth: Racially motivated violence is especially repugnant. The two new "hate crimes" offenses that the HCPA would create cover violent conduct that should be punished criminally—as indeed it is under the laws of every state. While a central provision of the Fourteenth Amendment ensures that no state denies the equal protection of its laws,[4] yet there is no serious argument that any particular state does not enforce its civil and criminal laws against violence in an even-handed manner today. Indeed, 45 of the 50 states have enacted "hate crimes" statutes that increase the punishment for crimes of violence and intimidation that are motivated by bias. What the benefits and problems from such motive-based statutes may turn out to be remains an open question, but the overwhelming trend in the states has been to increase such statutes in number and scope.

HCPA sweeps far more broadly than many state "hate crimes" statutes because, to begin with, neither of the two offenses in HCPA would actually require the government to prove that the accused was motivated by bias, prejudice, or hatred. The first new criminal offense in Section 7 of the HCPA merely states that the act must be "*because of* the actual or perceived race, color, religion, or national origin *of any person*," and the second similarly states that the act must be "*because of* the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability *of any person*."[5]

This amorphous standard would federalize almost all incidents of violent crime, even those that have nothing to do with bias, prejudice, or animus toward the victim because of his or her membership in a particular group. This approach of eliminating any requirement that the government must prove the defendant was motivated by bias, prejudice, or animus follows the novel approaches to "hate crimes" and bias-motivated crimes that are being promoted by some advocates and academics whose stated goal is "to continue to push to expand the legal conception of bias crime past the limited notions of what is ordinarily associated with the lay phrase hate crime."[6]

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[3] *See, e.g.*, 18 U.S.C. § 245(b) ("Federally protected activities"); Hate Crime Sentencing Enhancement Act of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 280003, 108 Stat. 1796 (1994).

[4] U.S. CONST. amend. XIV, § 1 (Equal Protection Clause).

[5] This first offense would be codified as subsection 249(a)(1) of Title 18 of the United States Code, and the second would be codified as subsection 249(a)(2).

[6] Jordan Blair Woods, *Taking the "Hate" Out of Hate Crimes: Applying Unfair Advantage Theory to Justify the Enhanced Punishment of Opportunistic Bias Crimes*, 56 UCLA L. REV. 489, 494 (2008); *see also generally* Lu-in Wang, *The Transforming Power of "Hate": Social Cognition Theory and the Harms of Bias-Related Crimes*, 71 S. Cal. L. Rev. 47 (1997) (describing the "problems" with restricting the

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Virtually every sexual assault resulting in bodily injury, for example, is committed "because of" the gender of the victim, the gender of the perpetrator, and the perpetrator's gender preferences. Many who commit robbery target women or those with real or perceived disabilities, believing that such victims may offer less resistance. It is even possible that a defendant could be deemed a "hate crimes" offender if he engaged in the violent conduct "because of" his *own* religion, gender, sexual orientation, or national origin or "because of" the religion, gender, national origin of a third party.

Further, both offenses state that it is a crime to "willfully cause[] ... or attempt[] to cause" bodily injury. The offenses would have been significantly clearer and narrower if they had been defined to punish anyone who, for example, "willfully inflicts bodily injury . . . or attempts to inflict bodily injury." The language actually used in the HCPA calls into question whether a person alleged to have incited – through words or actions – a second person to inflict bodily injury could also be charged under the theory that the first person "caused" the offense. In sum, the extent of application of the HCPA's two "hate crimes" offenses is exceedingly broad and poorly defined. The Act would federalize as "hate crimes" an enormous proportion of local violent crime.

Criminal offenses that are as ill-defined and overbroad as the "hate crimes" offenses in the HCPA invite prosecutorial abuse, politically motivated prosecutions, and similar injustices. Overbroad offenses allow prosecutors to pick and choose their defendants, tempting even well-intentioned prosecutors to succumb to public pressure to target alleged wrongdoers who are the focus of the media's attention and ire. What many law enforcement officials apparently fail to recognize is that when criminal laws are narrowly defined they serve as a public defense against accusations that a prosecution is politically motivated. Broad, vaguely defined offenses that encompass a wide range of conduct invite – indeed, beg – criticism that charges brought under them are politically motivated. This problem would be greatly exacerbated by HCPA's criminal offenses, for they would be used to provide special protections to favored groups. The unfairness of selective prosecutions benefiting some Americans more than others – whether it is real or merely perceived in any individual case – would greatly undermine the respect and confidence that federal criminal law enforcement should engender among all Americans.

Serious Constitutional Concerns

HCPA's sweeping scope raises even greater constitutional concerns than would legislation that restricted federal criminal jurisdiction to violent conduct motivated by bias, prejudice, or animus. Congress is a body of limited, enumerated powers.[7] Unless the Constitution has granted Congress the power to legislate in an area, it cannot do so.

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application of "hate crimes" offenses to conduct that actually involves the perpetrator's acting out of hatred toward the victim or victim's group); *cf.* New York v. Fox, 844 N.Y.S.2d 627, 634–35, 640 (N.Y. Sup. Ct. 2007) (upholding, despite the absence of any allegation that the defendants were motivated by bias, prejudice, or hatred, the validity and constitutionality of a prosecution under a state "hate crimes" statute).

[7] *E.g.*, United States v. Lopez, 514 U.S. 549, 552 (1996).

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Because the Constitution grants the federal government no general police power, Congress lacks the power to criminalize the vast majority of the violent, non-economic activity covered by the two principal criminal offenses in the HCPA.[8] Despite the HCPA's findings and provisions attempting to accomplish it, the Act fails in its attempt to restrict the scope of the resulting federal criminal jurisdiction to subject matters falling within Congress's enumerated powers.

The constitutional bases offered by HCPA's sponsors are unconvincing. The broader of the two new criminal offense in Section 7 of the HCPA[9] purports to rely on Congress's Commerce Clause power—i.e., the power to "regulate commerce with foreign nations and among the several states."[10] But the offense would apply to anyone who, "willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive or incendiary device, attempts to cause bodily injury to any person." This describes quintessentially violent, non-economic activity that has little or nothing to do with interstate commerce.

To be sure, probably all conduct can be shown to have some indirect or attenuated connection to interstate commerce, but such distant links are insufficient to bring conduct within Congress's commerce power. The Supreme Court has held that violent conduct that does not target economic activity is among the types of crime that have the least connection to Congress's commerce power.[11] Yet it is precisely this sort of violent, non-economic conduct that HCPA would federalize.

In an attempt to insulate this overreaching from constitutional challenge, this offense includes a list of factors, at least one of which must be satisfied. Each of these factors requires the violent conduct, the perpetrator, or the victim to have *something* to do with commerce or interstate travel; however, the final factor, which permits a conviction if the activity merely "affects interstate commerce" in any attenuated manner, is broader than the constitutional standard[12] and fatally undermines any limitation that this approach might otherwise provide.

Although some activities that would be covered by the offense could indeed involve interstate commerce in a non-trivial manner, this does not distinguish the provision from those the Supreme Court struck down in *United States v. Lopez* (1995)

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[8] Matthew Shepard Hate Crimes Prevention Act of 2009, S. 909, 111th Cong. § 7(a) (2009).

[9] Under section 7 of the HCPA, this offense would be codified as section 249(a)(2) of Title 18 of the United States Code.

[10] In addition to commerce clause language in the offense itself, the HCPA, as introduced, included statements of congressional "findings" attempting to tie the broad scope of conduct being criminalized to interstate commerce.

[11] HCPA as introduced included "findings" purporting to link the conduct being criminalized to interstate commerce. But as the Court explained in *Morrison*, "the existence of congressional findings is not sufficient, by itself, to sustain the constitutionality of Commerce Clause legislation. As we stated in *Lopez*, '[S]imply because Congress may conclude that a particular activity substantially affects interstate commerce does not necessarily make it so.'" United States v. Morrison, 529 U.S. 598, 614 (2000) (internal quotation marks omitted).

[12] *Lopez* , 514 U.S. at 559 ("We conclude, consistent with the great weight of our case law, that the proper test requires an analysis of whether the regulated activity 'substantially affects' interstate commerce.").

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and *United States v. Morrison* (2000). If this approach were permissible, Congress could claim to rely on the Commerce Clause and legislate any criminal law it wants.[13] When it comes to criminal law, Congress would no longer be a body of limited, enumerated powers but would have plenary power to criminalize any and all conduct that is already criminalized by the states.[14]

HCPA's other new criminal offense does not specify on which enumerated constitutional power the bills' sponsors rely, but the original "findings" section, as well as some supporters, suggest reliance on the enforcement clauses of one or more of the three Civil War amendments. Of these, the Fourteenth Amendment provides Congress with the greatest power, but even it only prohibits *state* action, not private conduct unrelated to state action. While Congress clearly does have authority to punish state actors for racially discriminatory conduct and to pass other civil rights statutes to ensure that states do not deny citizens the equal protection of their laws, the Supreme Court held in *Morrison* that the Fourteenth Amendment does not authorize a federal tort action against private individuals, not acting under color of law, who perpetrate violence against women.[15]

The HCPA's attempt to find its power to criminalize in the Thirteenth Amendment is also unavailing. The scope of the Thirteenth Amendment grant of power to Congress to abolish slavery and involuntary servitude includes power to eliminate "badges, incidents, and relics" of slavery and involuntary servitude.[16] While the Court has not defined the scope of that power, it has never found it to encompass conduct other than involuntary servitude and racial discrimination that denies citizens of some races the rights "enjoyed by white citizens."[17] It is not serious, then, to equate all violence that involves persons belonging to groups to which Congress wants to give preferred protections with a "badge or relic" of slavery. Further, by its very terms the HCPA would apply equally to violence against a white victim if the crime occurred "because of" his race. Whatever the Court might determine is the scope of the power to remove the relics of slavery today (and this power was much easier to conceptualize at the time the Supreme Court first addressed it in 1883 while Congress could still help remove the incidents of slavery from actual freed slaves), it cannot be so broad.

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[13] *See* United States v. Lopez, 514 U.S. 549, 564-66 (1995) (rejecting the government's claim that its "costs of crime" and "national productivity" rationales, which relied on attenuated economic effects of school gun violence, made the Gun-Free School Zones Act of 1990 a proper exercise of Congress's commerce power); Gonzales v. Raich, 545 U.S. 1, 25 (2005) (reaffirming that, in *Lopez*, the fundamentally "noneconomic, criminal nature of the conduct at issue was central to our decision" (internal quotation marks omitted)).

[14] *Lopez*, 514 U.S. at 567-58 (explaining that a holding that attenuated economic effects could serve as a basis for Congress to exercise commerce power "would require us to conclude that the Constitution's enumeration of powers does not presuppose something not enumerated...and that there never will be a distinction between what is truly national and what is truly local" (internal citation omitted)).

[15] *Morrison*, 529 U.S. at 626; *id.* at 620-21 ("[T]he Fourteenth Amendment, by its very terms, prohibits only state action.").

[16] Civil Rights Cases, 109 U.S. 3 (1883) (upholding a provision of the Civil Rights Act of 1866 barring racial discrimination in the sale or rental of property).

[17] *Id.*; *cf.* Jones v. Alfred H. Mayer Co., 392 U.S. 409, 440, 441 n.78 (1968) (quoting *Civil Rights Cases*, 109 U.S. at 25; *id.* at 39 (Harlan, J., dissenting)).

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Finally, in a similarly unavailing attempt to insulate the bill from constitutional attack, HCPA would require the Justice Department to "certify" that contemplated prosecutions under its "hate crimes" offenses meet certain conditions, such as that the state in which the conduct occurred does not object to the federal usurpation of the state's constitutional authority and jurisdiction. But the unconstitutionality of a statute cannot be "cured" by a ministerial certification or by state acquiescence to an improper assertion of federal authority. Most states joined briefs supporting the purported need for the provision in the Violence Against Women Act that the Supreme Court properly struck down at the beginning of this decade in the *Morrison* case. The limits on Congress's powers were designed to protect the individual rights of national citizens, not the states *qua* states. In short, a state can no more acquiesce to, and thereby cure, a violation of constitutional federalism than the federal courts can sanction a President's violation of the constitutional separation of powers.

Constitutional federalism is no mere theoretical nicety. Like all constitutional limitations on the power of government, constitutional federalism is a vital safeguard for the rights and liberties of the people. James Madison, the leading member of the Constitutional Convention and perhaps the greatest champion of ratification, called constitutional federalism a "double security . . . on the rights of the people."[18] Violating constitutional federalism leads to injustice, including the injustice of circumventing the constitutional right and protection against double jeopardy by trying a citizen twice for the same conduct. This problem was outlined in the April 22 letter from the chairman and three members of the U.S. Civil Rights Commission opposing the "hate crimes" bill that is the House of Representatives' companion to the HCPA.[19] This is just one of the ways that the HCPA's unconstitutional provisions would put citizens' rights at risk.

Unnecessary and Counterproductive

It cannot be over-emphasized that the fact that the federal Constitution does not authorize Congress to address particular conduct does not mean that such conduct must be left unpunished. In the case of "hate crimes," the underlying violent conduct is punishable as a crime in *every* state, regardless of the motivation of the perpetrator or identity of the victim. Further, almost every state has adopted criminal offenses that increase the penalty for certain violent crimes deemed to be "hate crimes." Irrespective of whether such enhancements are prudent and beneficial to the overall aims of justice, they do not exceed the states' authority. And they do not undermine the ultimate responsibility and accountability of state and local officials to investigate and prosecute such crime.

Violent crime is always a serious problem, but unnecessary federal criminal offenses such as those in the HCPA detract from effective state-level law enforcement strategies. Congress must tread very carefully when bringing federal criminal law to bear

[18] THE FEDERALIST NO. 51, at 291 (James Madison) (Clinton Rossiter ed., 1961).

[19] Letter from Chairman Gerald A. Reynolds *et al.*, U.S. Civil Right Commission to Speaker Nancy Pelosi *et al.*, U.S. House of Representatives, on the Local Law Enforcement Hate Crimes Prevention Act, H.R. 1913 (Apr. 29, 2009) (discussing Supreme Court precedent permitting federal prosecutors to circumvent the Double Jeopardy Clause).

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on any problem at the state and local level. Federal criminal law should be used to combat only those problems reserved to the national government in the Constitution. These include offenses against the federal government or its interests, responsibilities the Constitution expressly assigns to the federal government (such as counterfeiting), and commercial crimes with a substantial multi-state or international impact.

Federalizing the exceedingly broad category of truly local conduct that would be criminalized by HCPA's two new offenses is certain to accelerate the ongoing erosion of state and local law enforcement's primary role in combating common street crime. Doing so invites serious unintended consequences, including the dilution of accountability among federal, state, and local law enforcement agencies.[20] The best way to combat violent crime (regardless of to which group or groups its perpetrators and victims belong) is to adhere to federalist principles that respect the proper allocation of responsibilities among national, state, and local governments.

The HCPA perpetuates Congress's dangerous trend of unjustified criminalization of more and more conduct, even conduct that the Constitution assigns to the sole jurisdiction of state and local officials. Seeing as the Department of Justice itself has not been able to number all federal statutory offenses – not to mention the thousands or tens of thousands of criminal offenses in federal regulations[21] – it seems safe to say that no Member of Congress knows all of the conduct that is criminalized. The best scholarly estimate is that as of 2008 there were over 4,450 separate crimes in the federal statute books, and Congress continues to create an average of over one new crime a week.[22]

The dynamic that leads to this proliferation of unnecessary criminal law is primarily political. In its comprehensive 1998 report on the federalization of crime, the ABA noted evidence it had received that "many ... new federal laws are passed not because federal prosecution of these crimes is necessary but because federal crime legislation in general is thought to be politically popular."[23] President Obama observed a similar dynamic when he was a state legislator in Illinois.[24]

While no criminal offense is created without political support, some of the worst result from vocal constituencies leveraging high-profile crimes. The situation today, after multiple high-profile shootings, is not unlike the circumstances in which Congress federalized all carjackings. Nearly all carjackings happen within a single state, yet the

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[20] Rachel Brand, "Making It a Federal Case: An Inside View of the Pressures to Federalize Crime," Heritage Foundation Legal Memorandum No. 30, Aug. 29, 2008, p. 5, http://www.heritage.org/research/legalissues/lm30.cfm.

[21] *See* Clyde Wayne Crews, COMPETITIVE ENTER. INST., TEN THOUSAND COMMANDMENTS 2007 13 (2007), *available at* http://cei.org/pdf/6018.pdf.

[22] *See* John S. Baker, Jr., "Revisiting the Explosive Growth of Federal Crimes," The Heritage Foundation Legal Memorandum No. 26, June 16, 2008, at 1.

[23] TASK FORCE ON THE FEDERALIZATION OF CRIMINAL LAW, AMERICAN BAR ASSOCIATION, THE REPORT OF THE ABA TASK FORCE ON THE FEDERALIZATION OF CRIMINAL LAW 2 (1998).

[24] *See* Chris Sullentrop, *The Right Has a Jailhouse Conversion*, N.Y. TIMES, Dec. 24, 2006 (quoting then-U.S. Senator Barack Obama describing how some members of the Illinois state legislature factored election-year politics into their decisions whether to increase criminal penalties).

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federalization of this crime illustrates the political dynamics influencing members of both major parties and leading to the over-federalization of crime. Suburban wife and mother Pam Basu was dragged to death in 1992 near her home in Maryland.[25] She was trying to ward off carjackers and protect her two-year-old daughter who was still in the car. The heinousness of this crime translated into bipartisan support in both chambers of Congress for new federal criminalization. Legislation federalizing carjacking was introduced by a Democratic Congressman, and it was signed by a Republican president. The public outrage over the crime, fueled by extensive and incendiary media coverage, resulted in bipartisan political pressure for a new federal criminal offense that violates constitutional federalism. Despite the calls for federal criminalization, the carjackers in Basu's case were fully prosecuted and brought to justice under Maryland law that was already on the books at the time of the offense. Both men were convicted and given life sentences.[26]

The HCPA exemplifies these same dynamics. The new offenses in the Act are all based on quintessentially non-economic, violent crime – willfully causing or attempting to cause bodily injury – that is criminalized in every U.S. state and territory. No evidence exists that the states are routinely or systematically failing to enforce their laws against intentionally inflicting bodily injury, even if the victims are members of one of the groups to which the HCPA would grant greater protections and elevated status. No evidence exists that states are routinely or systematically failing to enforce their own "hate crimes" laws. Isolated cases that federal law enforcement, Members of Congress, or certain constituents would have handled differently – and even isolated cases of injustice, as improper and outrageous as they may be – do not and cannot justify ignoring constitutional limitations on Congress's authority to criminalize.

Despite what has recently been suggested in this Committee, it is far from clear that recent events, such as the tragic shooting at the U.S. Holocaust Memorial Museum, provide justification for a federal "hate crimes" statue that federalizes truly local crime. Federal law enforcement's responses to the Holocaust Museum shootings lend substantial support to the view that existing law is sufficient. As news reports and an affidavit supporting the Department of Justice's criminal complaint against the shooter indicate,[27] he targeted persons of Jewish descent and should receive society's greatest moral censure and be prosecuted to the full extent of the law. But there is every reason to believe that the Federal Bureau of Investigation, in cooperation with the D.C. Metropolitan Police Department and U.S. Park Police, will fully investigate the shooting and that the Justice Department will aggressively prosecute the shooter.[28] Indeed, the Justice Department has

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[25] *See* Graciela Sevilla, *Basu's Slayer Sentenced to Life Without Parole*, WASH. POST, Aug. 19, 1993, at B1.

[26] *See Man's Trial Moved in Carjacking Death*, WASH. POST, Mar. 23, 1993; *see also* Sevilla, *supra* note 26, at B1.

[27] Cam Simpson & Gary Fields, *Gunman Kills Holocaust Museum Guard*, WALL ST. J. (June 11, 2009); United States v. von Brunn, No. 1:09-mj-00339-AK-1 (D.D.C. June 11, 2009) (criminal complaint and supporting affidavit).

[28] Washington Field Office, Federal Bureau of Investigation, "Press Conference Regarding Shooting Incident at United States Holocaust Memorial Museum: Excerpts from Remarks Prepared for Delivery by FBI Assistant Director in Charge Joseph Persichini," June 11, 2009, http://washingtondc.fbi.gov/pressrel/2009/wfo061109.htm. It should also be noted that despite widespread and nearly hysterical commentary that this shooting is a part of some national network of right-wing terrorists, the public reports to date from the FBI's Washington field office state the contrary. The FBI

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already filed a criminal complaint against him alleging that he committed murder in the first degree (in violation of 18 U.S.C. § 1111) and that he killed in the course of possessing a firearm in a federal facility (in violation of 18 U.S.C. § 930(b) and 930(c)). If the shooter is convicted of murder in the first degree, he will face a mandatory sentence of either death or life imprisonment.

In short, the offender will be brought to justice without the HCPA and faces the harshest criminal punishments in the American criminal justice system. The Holocaust Museum shooting provides no support for the argument that the new "hate crimes" offenses are necessary or salutary.

Conclusion

To conclude, the Matthew Shepard Hate Crimes Prevention Act of 2009 (S. 909; "HCPA") fails to measure up to the basic standards that describe a criminal law that can command the trust and respect of all Americans because it is principled, constitutional, and inherently fair.[29] The HCPA would substantially undermine constitutional federalism and the high regard in which the American public should hold the federal criminal justice system. The three main problems with the HCPA's "hate crimes" offenses are that they:

1. Are far broader and more amorphous than any properly defined criminal offense should be, thus inviting prosecutorial abuse, politically motivated prosecutions, and related injustices;

2. Violate constitutional federalism by asserting federal law-enforcement power to police truly local conduct over which the Constitution has reserved sole authority to the 50 states; and

3. Would be superfluous and likely to be counterproductive, for nearly all states have tough "hate crimes" laws and the violent conduct underlying the Act's "hate crimes" offenses has always been criminalized in all 50 states.

Thank you again, Mr. Chairman, Ranking Member Sessions, and Members of the Committee for this opportunity to address the Matthew Shepard Hate Crimes Prevention Act of 2009 (S. 909). I look forward to providing additional information and answering any questions you may have.

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states that at this point they "have no information that [the shooter] had any accomplices or co-conspirators who assisted him in this act." *Id.*

[29] *See* Sen. Barack Obama, Remarks at Howard University Convocation, Washington, D.C. (Sep. 28, 2007), http://www.barackobama.com/2007/09/28/remarks_of_senator_barack_obam_26.php ("As President, I will . . . work every day to ensure that this country has a criminal justice system that inspires trust and confidence in every American, regardless of age, or race, or background.").

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WOMEN'S ORGANIZATIONS SUPPORT S 909

Dear Senator,

We, the undersigned women's advocacy organizations, write to urge your support for, the Matthew Shepard Hate Crimes Prevention Act of 2009 (S 909). As organizations devoted to women's rights and women's progress, we have a shared commitment to equal justice under the law and to protecting the right of all people to live full and free lives, without fear of bias-driven violence or intimidation. We fully support this vital legislation because we believe it provides much-needed protections and tools to combat – and help eliminate – hate and bias crimes.

Gender-Based Hate Crimes Have Devastating Consequences

Like hate violence against racial, ethnic, and religious minorities, crimes motivated by gender bias are acts of discrimination that menace individual victims and entire communities. Attacks motivated by gender bias instill a fear in their intended victims that not only threatens their lives, but also can restrict where they work, study, travel, and live. Such crimes are particularly insidious because they target individuals for who they are and thus put victims at risk at all times and in any situation.

Strengthening Current Law is Essential to Combating Hate Crimes

Existing federal hate crimes laws authorize federal involvement in the prosecution of non-federal hate crimes only in those cases in which the victim was targeted because of race, color, religion, or national origin. The Matthew Shepard Act would fill a gap in current law by authorizing the Department of Justice to investigate and prosecute certain violent crimes motivated by the victim's actual or perceived sexual orientation, gender, gender identity, or disability. In addition, the law strengthens protections against bias-motivated crimes by removing unduly rigid restrictions on when the federal government can assist local authorities in the prosecution of hate crimes. Further, the new provisions prohibiting gender-motivated hate crimes, coupled with the prohibitions against hate crimes based on race or ethnicity, will provide women of color with important protections, enabling them to challenge violent crimes fueled by prejudice based on multiple factors such as race and gender. Finally, the bill will create a valuable mechanism to provide needed additional information about the nature and the magnitude of these crimes. The bill would require the FBI to collect statistics on gender-motivated crimes from police departments across the country under the Hate Crime Statistics Act of 1990.

These changes are crucial for women who otherwise would not be afforded relief by the justice system. While local law enforcement has made significant advances in responding to crimes such as domestic violence, rape, and sexual assault, state and local prosecutors and judges may be insufficiently informed about or otherwise unable to adequately prosecute gender-motivated hate crimes and may attribute violence against women to other motives. In such cases, an inadequate response by police or prosecutors can leave survivors of sexual and domestic violence vulnerable to further violence, even murder.

Limited Federal Jurisdiction Is Needed to Fill the Gaps in Current Law

The Matthew Shepard Act would establish uniform federal protections against gender-motivated bias crimes as a backstop to existing laws in every state. Currently, only twenty-six states and the District of Columbia include gender-based crimes in their hate crimes statutes. Further, while the federal Violence Against Women Act (VAWA) addresses intimate-partner violence, it does not specifically address

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gender-motivated hate crimes. In addition, the criminal remedies available under VAWA only apply in cases of interstate domestic violence, interstate stalking, and interstate violations of a protective order. Just as Congress recognized the need for a federal remedy to address violence against African-Americans in 1968 when some local officials failed to prosecute racially-motivated crimes, so too should Congress recognize the need for a federal remedy to address violent crimes motivated by gender bias in those discrete instances in which local authorities are unable or unwilling to act.

Providing authority for the federal government to investigate and prosecute certain gender-bias crimes is not unprecedented. In 1994, Congress enacted a penalty-enhancement law for federal crimes "in which the defendant intentionally selects a victim, or in the case of a property crime, the property that is the object of the crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person." 28 U.S.C. § 994 Note. The Matthew Shepard Act would effectively complement this provision by allowing for limited federal jurisdiction in certain state bias crime cases.

Federal Jurisdiction Would Operate Only When Necessary and After Jurisdictional Prerequisites Have Been Met

Under the Matthew Shepard Act, local law enforcement officials would continue to prosecute the vast majority of gender-motivated hate crimes. However, this legislation will help ensure an appropriate law enforcement response in those cases of gender-based hate crimes when the local authorities either cannot act or fail to do so. The LLEHCPA would allow for federal prosecution when, for instance, the local police fail to respond to complaints of violence resulting from gender bias because the police are friends or relatives of the perpetrator, or when local law enforcement officials face jurisdictional obstacles over an out-of-state individual suspected of committing a gender-based hate crime. Under current law, such crimes may escape effective prosecution, leaving the victims without an appropriate remedy and the perpetrators free to continue inflicting harms propelled by gender hatred. In addition, in jurisdictions where there is a systemic failure to address violence motivated by gender bias, a federal prosecution can send a message that such a widespread violation of women's rights will not be tolerated.

This legislation would not convert every instance of domestic violence, rape, or sexual assault into a prosecution under the federal hate crime law. The law applies only to felony crimes that involve a direct connection to interstate or foreign commerce, which requires, for example, that the perpetrator or victim crossed state lines or that the perpetrator employed a weapon that traveled in interstate commerce. The legislation also limits federal involvement to those instances in which the Attorney General (or an authorized designee) not only certifies that the crime appears to be motivated by gender bias, but also confirms the need for federal intervention by certifying in each instance that local officials cannot or will not act or have requested federal assistance, or that the state prosecution was inadequate.

Further, not every violent crime against women is a bias crime, just as not every crime against an African-American is based on racial prejudice. Federal courts already routinely assess the question of gender motivation in the context of workplace discrimination claims and claims raised under other federal civil rights laws, such as 42 U.S.C. § 1983. Prosecutors and judges can rely on the same totality of

the circumstances analysis that would pertain to the other protected bases under the law – considering the language, nature and severity of the attack, absence of another apparent motive, patterns of behavior, and common sense – to determine whether a violent crime was motivated by gender bias.

A look at the actual numbers of prosecutions under state hate crimes laws further stems any concern that this legislation will open the floodgates to federal hate crimes prosecutions. States that recognize gender-based hate crimes have not been overwhelmed by prosecutions of domestic violence, rape, and sexual assault under their existing hate crimes laws. Instead, these laws have operated in a targeted way. The experience in these states demonstrates that protection against gender-motivated bias crimes is essential. As organizations committed to advocating for the rights of our constituencies which include women of every race, religion, color, ethnicity, ability, sexual orientation, and gender-identity, we believe it that this legislation is needed now.

Therefore, the undersigned women's advocacy organizations request your support for, the Matthew Shepard Hate Crimes Prevention Act (S 909), to provide adequate enforcement mechanisms to address and deter gender-motivated hate crimes and ensure that safety is guaranteed to *all*.

Sincerely,

9to5 Bay Area (CA)
9to5 Colorado
9to5 Milwaukee
9to5, National Association of Working Women
AFL-CIO Department of Civil, Human and Women's Rights
American Association of University Women
Atlanta 9to5
Break the Cycle
Coalition of Labor Union Women
Colorado Coalition Against Sexual Assault (CCASA)
Communications Workers of America, AFL-CIO
Democrats.com
Equal Rights Advocates, Inc.
Feminist Majority
Gender Public Advocacy Coalition (GenderPAC)
GenderWatchers
Hadassah, the Women's Zionist Organization of America
Legal Momentum
Los Angeles 9to5
NA'AMAT USA
National Abortion Federation
National Asian Pacific American Women's Forum
National Association of Social Workers

WOMEN'S ORGANIZATIONS SUPPORT S 909

National Center for Lesbian Rights
National Center for Victims of Crime
National Center on Domestic and Sexual Violence
National Congress of Black Women
National Council of Jewish Women
National Council of Women's Organizations
National Organization for Women
National Partnership for Women & Families
National Women's Conference
National Women's Conference Committee
National Women's Committee (NWC)
National Women's Law Center
Northwest Women's Law Center
Sargent Shriver National Center on Poverty Law
The Women's Institute for Freedom of the Press
Washington Teachers Union
Women Employed
Women's Alliance for Theology, Ethics and Ritual
Women's Law Center of Maryland, Inc.
Women's Research & Education Institute (WREI)
YWCA USA

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July 2, 2009
Senate Judiciary Committee

Statement by Wendy Wright
President of Concerned Women for America on
"Hate Crimes" S.909

On behalf of Concerned Women for America's 500,000 members nationwide, we submit this statement objecting to S.909, the Matthew Shepard Hate Crimes Prevention Act.

This legislation would violate genuine constitutional rights in an attempt to address a non-issue, create a caste-system of victims, violate the spirit of the Double Jeopardy Clause of the U.S. Constitution, and unintentionally extend privileges to individuals who engage in illegal sexual acts even against children. These serious harms to Constitutional protections and innocent victims would be perpetrated unnecessarily since violent crimes against all people are already being prosecuted in all known cases to the fullest extent of the law.

I. This bill is unnecessary and overreaches federal powers into state authority.

S. 909 states: "Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion or national origin of any person (§7 (a)(1))[1] or because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity or disability of any person (§7(a)(2)(A)).[2]

These offenses are already covered by current state statutes and are being prosecuted. Local and state police officers and prosecutors are not turning a blind eye to crimes based on bias.

As noted by Senator Jeff Sessions (R- Alabama), FBI statistics show that "hate crimes" have declined in the last 10 years. In 2007, FBI statistics reveal about 1.4

[1] Matthew Shepard Hate Crimes Prevention Act, S. 909, 111th Cong. §7(a)(1) (2009).

[2] Matthew Shepard Hate Crimes Prevention Act, S. 909, 111th Cong. §7(a)(2)(A) (2009).

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million violent crimes were committed in the United States. Of these, 1,512 were reported as "hate crimes" motivated by "sexual orientation" bias. Two-thirds were name calling, pushing or shoving, and 247 cases were aggravated assault (including five deaths) allegedly motivated by "sexual orientation." In each case, where appropriate, offenders were prosecuted to the fullest extent of the law. The victims received the exact same justice guaranteed every American. Even the murderers of Matthew Shepard, the young man whose name is on the title of the bill, received life sentences. They agreed to life sentences to avoid the death penalty sought by prosecutors.[3]

Even when looking at hate crimes statistics composed by the FBI, there is some question as to whether the crime was instigated by bias. In 2007, the FBI hate crime statistics reported 4347 bias crimes against individuals. Of these, 2045 were intimidation and 1410 were simple assault. Therefore, 892 crimes designated as "hate crimes" resulted in serious bodily injury to the victim.[4] Of the 4347 incidents against individuals, there were a reported 5542 known offenders. However, "known offender" does not mean that the FBI knows who the offender was. The FBI states that a known offender is an offender about which they know a characteristic. Therefore, the FBI is counting as "hate crimes" crimes for which they do not know the true motivation since they do not know the actual identity of the perpetrator.[5] This also means that, at least in some of the circumstances, there is conjecture as to the true reason(s) behind the crime.

The case of Matthew Shepard is a case in point. No one will dispute that his murder was brutal and cruel. However, there is solid evidence that the crime was not related to his sexual preference, including confessions from the convicted murderers. One of the confessed killers, Aaron McKinney, admitted to using methamphetamine. He had set out to rob methamphetamine from a drug dealer but was unable. Mr. McKinney stated in an interview that when he saw Matthew Shepard, he saw an "easy mark." Mr. McKinney planned to rob Mr. Shepard because Matthew was well dressed in a bar, leading Mr. McKinney to believe that Mr. Shepard had a lot of cash.

Mr. McKinney stated that drug abuse led to the viciousness of the crime, but the motivation was robbery. Jason Marsden of *The Casper Star-Tribune* stated that, while Matthew Shepard was in the hospital, one of Mr. Marsden's fellow reporters said: "This

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[3] ABC News, *New Details Emerge in Matthew Shepard Murder: Killers Talk About Crime that Shocked the Nation* (2004), http://abcnews.go.com/print?id=277685

[4] U.S. Department of Justice, Federal Bureau of Investigation, *2007 Hate Crimes Statistics* (2007), http://www.fbi.gov/ucr/hc2007/table_02.htm.

[5] *Id.*

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kid is going to be the new poster child for gay rights." Additionally, Matthew Shepard's friends, even before the authorities knew who the perpetrators were, made it well known that Matthew Shepard was openly gay and that they believed that the attack may have been "gay-bashing." His friends also called the office of the prosecuting attorney and the media, claiming that they didn't want "the fact that he is gay to go unnoticed."[6]

Further evidence indicates that most cases of violence against homosexuals is inflicted by other homosexuals. A study released by the United States Justice Department found that between 1993 and 1999, there was an annual average of 13,740 male homosexual victims of domestic violence from their partners, an annual average of 16,900 female homosexual victims of domestic violence from their partners as opposed to 1558 victims of crimes against homosexuals by heterosexuals.[7]

Well-known homosexual activist blogger Andrew Sullivan writes that "hate crimes" legislation is not intended to protect people from crime. Their intent is to increase the fundraising for liberal special interest groups' "large staffs and luxurious buildings...It's very, very powerful as a money-making tool."[8]

II. This bill creates a caste-system of victims, granting special privileges to certain people over others.

"Hate crimes" laws politicize crimes, pressuring law enforcement personnel and prosecutors to devote more resources to preferred classes at the expense of other victims. This is a far cry from the proclamation in the Declaration of Independence that "all men are created equal."[9]

This bill politicizes crimes, pressuring police and prosecutors to devote more resources to some cases at the expense of other victims. The U.S. Constitution affords equal protection to every citizen, regardless of their sexual choices. "Hate crimes" would treat victims differently because of their sexual choices. An assault on a homosexual man would trigger a harsher penalty than committing the same violent crime against a child, grandmother or soldier.

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[6] ABC News, *New Details Emerge in Matthew Shepard Murder: Killers Talk About Crime that Shacked the Nation* (2004), http://abcnews.go.com/print?id=277685

[7] Citizen Magazine Jan. 2002: 8.

[8] Andrew Sullivan, *Intent vs. Motivation,* (2009), http://andrewsullivan.theatlantic.com/the_daily_dish/2009/05/intent-vs-motivation.html

[9] U.S. Declaration of Independence

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Rather than an oversight, it was a deliberate decision to exclude other vulnerable classes of people from this "hate crimes" bill's protections. Rep. Tammy Baldwin (D-Wisconsin) stated in the hearing in the House of Representatives that the purpose of this bill was to expand equal protection to groups of people who have historically been victimized by hate and who are more vulnerable. Yet as already noted, crimes against homosexuals are not wide-spread nor are the victims any more or less vulnerable, most are committed by other homosexuals rather than out of bias, and they are fully investigated, prosecuted and punished in the states.

Representative Bob Goodlatte (R-Virginia) introduced an amendment to include senior citizens. It was unanimously defeated by the majority of Democrats on the committee.[10]

Rep. Tom Rooney (R-Florida), a former soldier, introduced an amendment that would add members of the armed forces to the protected class of citizens. Although the unanimous vote of the Democrats against this amendment was disappointing, it was overshadowed by the unprofessional and hateful sentiments from Rep. Debbie Wasserman Schultz (D-Florida). She screamed across the room at Rep. Rooney: "It is belittling to real and true victims of crime to include service members who are not victims of crime and have not historically been persecuted. Let's not be distracted from real crimes and real victims." [11]

A few weeks after this hearing, a gunman shot two soldiers at an Arkansas military recruiting station, killing Pvt. William A. Long, 23, and seriously wounding Pvt. Quinton Ezeagwula, 18. [12] When questioned, the shooter, Mr. Abdulhakim Muhammed, a Muslim, said that he considered the shootings justified.[13] His intent "was to kill as many people in the Army as he could."

Rep. Wasserman Schultz's rejection of equal protection in this bill for members of the military exposes that the intent of the bill is to create an injustice, a caste-system based on their preferred status of victims by the majority in Congress.

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[10] LAC Staff of Concerned Women for America Legislative Action Committee, *Democrots Choose to Protect only Homosexuals: Leave Pregnant Women, the Elderly, and Veterans Out in the Cold,* (2009), http://www/cwlac.org/article_852.shtml.

[11] *Id.*

[12] ArkansasTimes, *Terror Shooting Probe Broadens UPDATE* (2009), http://www.arktimes.com/blogs/arkansasblog/2009/06/terror_shooting_prober_broadens.aspx.

[13] ArkansasTimes, *Suspect Calls Saldier Shooting Justified* (2009), http://arkansasnews.com/2009/06/10/suspect-calls-soldier-shooting-justified/.

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Rep. Goodlatte proposed adding pregnant women to the special protections offered by the bill. He pointed out that 2.4 - 6.4 percent (depending on the state) of pregnant women have been violently attacked. He pointed out, "Pregnant women have been far more targeted by perpetrators than any class the proposed hate crimes bill covers." The amendment was rejected, voted down by every Democrat on the committee.

Rep. Louie Gohmert (R-Texas) and Rep. Trent Franks (R-Arizona) introduced multiple amendments aimed at protecting free and religious speech, all of which were defeated. When each one was opposed, Rep. Gohmert stated, "If this bill is just about punishing conduct, like you claim, I don't understand why there is such resistance to an amendment that only addresses speech."

III. "Gender identity" and "sexual orientation" can include illegal sexual behaviors.

"Gender identity" and "sexual orientation" are deliberately undefined in the bill. This leaves the door open for others to define those terms after the bill becomes law. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition*, lists twenty-three kinds of sexual behaviors. Without a clear definition of what these terms mean in this bill, it is conceivable that these sexual behaviors – even those deemed illegal – will be given special protection and status in the law. They include:

1. **Heterosexuality:** the universal norm: sexual interaction with the opposite sex.
2. **Homosexuality or "Gay":** sexual interaction with persons of the same sex.
3. **Bisexuality:** sexual interaction with both males and females.
4. **Transgenderism:** an umbrella term referring to and/or covering transvestitism, drag queen/kings, and transsexualism.
5. **Pedophilia:** "sexual activity with a prepubescent child (generally age 13 years or younger). The individual with Pedophilia must be age 16 years or older and at least 5 years older than the child. For individuals in late adolescence with Pedophilia, no precise age difference is specified, and clinical judgment must be used; both the sexual maturity of the child and the age difference must be taken into account." (p.571)
6. **Transsexuality:** the condition in which a person's "gender" identity is different from his or her anatomical sex.
7. **Transvestitism:** the condition in which a person is sexually stimulated or gratified by wearing the clothes of the other sex.
8. **Transvestic fetishism:** for males, "intense sexually arousing fantasies, sexual urges, or behaviors involving cross-dressing." (p. 575)
9. **Autogynephilia:** the sexual arousal of a man by his own perception of himself as a woman or dressed as a woman. (p. 574)
10. **Voyeurism:** "obtaining sexual arousal through the act of observing unsuspecting individuals, usually strangers, who are naked, in the process of disrobing, or engaging in sexual activity." (p. 575)
11. **Exhibitionism:** "recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving the exposure of one's genitals to an unsuspecting stranger." (p. 569)

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12. **Fetishism or Sexual Fetishism:** "intense sexually arousing fantasies, sexual urges, or behaviors involving the use of nonliving objects (e.g. female undergarments)." (p. 570)
13. **Zoophilia:** becoming excited by and/or engaging in sexual activity with animals. (p. 576)
14. **Sexual Sadism:** "recurrent, intense, sexually arousing fantasies, sexual urges, or behaviors involving acts (real, not simulated) in which the psychological or physical suffering (including humiliation) of the victim is sexually exciting to the person." (p. 574)
15. **Sexual Masochism:** "recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving the act (real, not simulated) of being humiliated, beaten, bound, or otherwise made to suffer." (p. 573)
16. **Necrophilia:** sexual arousal and/or activity with a corpse. (p. 576)
17. **Klismaphilia:** erotic pleasure derived from enemas. (p. 576)
18. **Telephone Scatalogia:** the compulsion to utter obscene topics over the phone. (p. 576)
19. **Urophilia:** sexual arousal associated with urine. (p. 576)
20. **Coprophilia:** sexual arousal associated with feces. (p. 576)
21. **Partialism:** "sexual arousal obtained through exclusive focus on part of the body."(p. 576)
22. **Gender Identity Disorder:** "a strong and persistent cross-gender identification, which is the desire to be, or the insistence that one is, of the other sex," along with "persistent discomfort about one's assigned sex or a sense of the inappropriateness in the gender role of that sex." (p. 576)
23. **Frotteurism:** "touching and rubbing against a nonconsenting person." (p. 570)

IV. This bill violates the spirit of the First Amendment of the United States Constitution.

This bill is not about actions, since violent crimes are currently covered in state criminal statutes. The bill covers crimes that are committed because of perceived characteristics of the victim. The way to prove what a person thinks about a specific group is to look at associations and past speech. Merely speaking negatively about sexual behavior could be construed as promoting "intimidation," "hate" and "violence." This would, effectively, inhibit free speech and expression.

The First Amendment of the United States Constitution states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."[14] More than one aspect of this Amendment would be jeopardized by this "hate crimes" bill.

"Congress shall make no law ...abridging the freedom of speech..."[15] This is a right upon which Americans have built their existence. Americans value the ability to speak their mind openly. While it is true that the current hate crimes legislation

[14] U.S. Const. amend. I.

[15] *Id.*

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covers only violent acts,[16] laws may be amended. In the FBI hate crimes data collection, the FBI includes both simple assault, where no serious bodily injury is noted, and *intimidation*.[17] Intimidation can include speech of some kind. Speech is protected even if it is unpopular, even if it will offend someone.[18] In keeping track of the reported incidences of "hate crimes" of intimidation, a door may be opening to prosecute on the basis of speech alone.

This is already occurring in countries such as Australia, as in the case of the two Dannys. In this case, two pastors in Australia (both named Danny) were required to answer a complaint of religious vilification for presenting a seminar on Islam. Despite the fact that many of the quotes utilized in the complaints were misquoted, the process took the two Dannys five years to resolve.[19] In Philadelphia, on October 10, 2004, a group of Christians protesting and handing out statements from the Bible at OutFest, an event sponsored by the homosexual community, were arrested. They were charged with multiple offenses, including ethnic intimidation. [20]

Scott Savage, a librarian at Ohio State University Mansfield, was on the first year student Reading Experience Committee. He suggested the following books: *The Marketing of Evil* by David Kupelium, *The Professors* by David Horowitz, *Eurabia: The Euro-Arab Axis* by Bat Ye'Or and *It Takes a Family* by former U.S. Senator Rick Santorum. Three teachers filed charges of discrimination and harassment against Mr. Savage, stating that by suggesting the books, he made the professors feel "unsafe."[21] He was brought up on charges at Ohio State University Mansfield because of the books that he recommended.

These cases, combined with the language of the statute, cause alarm. The language of the Senate version differs from the House bill, making the statute more far-reaching. H.R. 1913 states: "In a prosecution for an offense under this section,

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[16] Matthew Shepard Hate Crimes Prevention Act, S. 909, 111th Cong. §10(2) (2009).

[17] U.S. Department of Justice, Federal Bureau of Investigation, *2007 Hate Crimes Statistics* (2007), http://www.fbi.gov/ucr/hc2007/table_02.htm.

[18] *National Socialist Party of America v. Skokie*, 432 U.S. 43 (1977).

[19] Salt Shakers, Inc., *The Complaint Made by the Islamic Council of Victoria and Others Against Catch the Fire Ministries, Pastor Danny Nallioh and Pastor Daniel Scot* (2007), http://www.saltshakers.org.au/html/P/265.

[20] Freedom Underground, *Peaceful Christian Protestors Arrested, Charged with Thought Crimes in Philly* (2004), http://www.freedomunderground.org/view.php?v=3&t=3&aid=12528&fp=50&ep=100.

[21] Alliance Defense Fund, *OSU Librarian Slapped With "Sexual Harassment" Charge for Recommending Conservative Books for Freshmen* (2006), http://www.alliancedefensefund.org/news/story.aspx?cid=3724.

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evidence of expression or associations may not be introduced as substantive evidence at trial, unless the evidence specifically relates to that offense."[22] S. 909 reads, however: "Courts may consider relevant evidence of speech, beliefs, or expressive conduct to the extent that such evidence is offered to prove an element of a charge offense..."[23] This means that a defendant is not merely being charged for their actions, but their beliefs.

The Bible and other religious texts contain admonitions against engaging in certain sexual behaviors. If a person speaks negatively about those sexual behaviors, even quoting from sacred writings, it could be considered evidence of "hate speech." This will inhibit religious speech and, in effect, hinder the free exercise of religion.

This evidentiary clause also has some conflict with the Federal Rules of Evidence. While the statute may say: "Nothing in this Act is intended to affect the existing rules of evidence,"[24] the evidentiary provisions are inconsistent with that statement. The Federal Rules of Evidence state that even relevant evidence may be excluded if its value is outweighed by "danger of unfair prejudice, confusion of the issues, or misleading the jury..."[25] Yet, as previously stated, S. 909 allows for "speech, *beliefs and expressive conduct*" to be entered into evidence (emphasis added).[26] When a person is brought up for a "hate crime," it would be difficult to reconcile the words of S. 909 regarding evidentiary allowance with the Federal Rules of Evidence. When a person is being charged with a crime "because of" the characteristic of someone else,[27] and you allow the admission of a belief system, it is difficult to imagine not confusing the jury. Is the judge or jury judging the person or the belief? Is the judge or jury convinced that the reason that this person committed the crime was because of the victim's characteristic, or is the judge or jury so offended by the person's belief system that the judge or jury is actually judging the belief. It would seem that to allow this to be entered would be a violation of Federal Rule of Evidence 403.

Federal Rule of Evidence 404(a)(1) states:

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[22] Local Law Enforcement Hate Crimes Prevention Act of 2009, H.R. 1913, 111th Cong. §6(e) (2009).

[23] Matthew Shepard Hate Crimes Prevention Act, S. 909, 111th Cong. §10(1) (2009).

[24] Matthew Shepard Hate Crimes Prevention Act, S. 909, 111th Cong. §10(1) (2009).

[25] Fed. R. Evid. 403 (2006).

[26] Matthew Shepard Hate Crimes Prevention Act, S. 909, 111th Cong. §10(1) (2009).

[27] Matthew Shepard Hate Crimes Prevention Act, S. 909, 111th Cong. §§7(a)(1), 7(a)(2)(A) (2009).

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(a) Character evidence generally.—Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particulate occasion except:
(1) Character or accused.—In a criminal case, evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same..."[28]

What that indicates is that the Federal government believes that the prosecution should not be allowed to introduce evidence about the character of the accused, unless the accused speaks first. The only way that the prosecution should be allowed to enter character evidence is in rebuttal. Therefore, it should stand that if the accused says nothing about his character, then neither can the government. Yet, this bill attempts to change that. In S. 909, the government can use beliefs as evidence.[29] Beliefs are, in fact, a part of a person's character. By allowing beliefs to be admitted as evidence by the prosecution, S. 909 allows for the violation of the Federal Rules of Evidence regarding character evidence.

The government should not make a law to protect one group's set of rights by violating the rights of others.

V. This bill violates the spirit of the Fifth Amendment of the Constitution

The United States Constitution states: "...nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; "[30]

S. 909 violates the spirit of the Constitutional right against double jeopardy. Under this bill, a person can be charged with a criminal act (such as murder, aggravated assault, etc.) by the state and then charged again with a "hate crime" by the United States Government *for the same actions*. A person is being charged for the same incident twice, undermining the principle of double jeopardy.

This would have a disparate impact on people of lower socioeconomic status. Even if acquitted, they would bear the expense of a defense, as well as the stress, of being put on trial twice. This bill, essentially, gives prosecutors a "do-over" if the results are not what the prosecution wanted. S. 909 states:

(1) In General.—No prosecution of any offense described in this subsection may be undertaken by the United States, except under

[28] Fed. R. Evid. 404(a)(1) 2006.

[29] Matthew Shepard Hate Crimes Prevention Act, S. 909, 111th Cong. §§7(a)(1), 7(a)(2)(A) (2009).

[30] U.S. Const. Amend. V.

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the certification by the United States, except under the certification in writing of the Attorney General, or his designee, that—
(A) the State does not have jurisdiction;
(B) the State has requested that the Federal Government assume jurisdiction
(C) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence; or
(D) a prosecution by the United States is in the public interest and necessary to secure substantial justice.[31]

This means that the final verdict may not be the final verdict. If the verdict did not turn out the way that the prosecution hoped, then the state can ask that the Federal Government assume jurisdiction. Even more disconcerting is that if, for whatever reason (it is not required in this bill that the interest be *reasonable*), the Federal Government did not like either the outcome of the trial *or the sentence*, then the Federal Government could assume jurisdiction and try the person again based on the same incident. There is no test for reasonableness, there is no definition for substantial justice or Federal interest. This leaves much open to the discretion of a select few individuals who may be unduly influenced by specific groups, or even their own background.

VI. This bill violates the spirit of the Tenth Amendment to the Constitution.

The Tenth Amendment to the Constitution reads: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."[32] If the Constitution does not delegate the power to the Federal Government, that power should be deferred to the state. There is no power in the Constitution that gives the United States Government the right to prosecute state criminal offenses. In fact, S. 909 would allow for the Government to take jurisdiction even if the state does not request the assistance of the United States Government *if the Federal interest is not vindicated or it is necessary to secure substantial justice.*[33] This means that the state's authority and sovereignty over activity delegated to them by the Constitution may be taken away if Federal prosecutors do not agree with how the case was handled *or decided.*

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[31] Matthew Shepard Hate Crimes Prevention Act, S. 909, 111th Cong. §§7(b)(1)(A)-7(b)(1)(D) (2009).

[32] U.S. Const. Amend. X.

[33] Matthew Shepard Hate Crimes Prevention Act, S. 909, 111th Cong. §§7(b)(1)(C)-7(b)(1)(D) (2009).

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These significant questions and concerns about the Matthew Shepard Hate Crime Act, S. 909, raise concerns about the liberty that all Americans enjoy. This is why, in its current form, it must be opposed.

Thank you for your consideration.

Wendy Wright

President

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