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CRIMES AGAINST AMERICA'S HOMELESS: IS THE VIOLENCE GROWING?

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME AND DRUGS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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ADDITIONAL SUBMISSIONS FOR THE RECORD

Submissions for the record not printed due to voluminous nature, previously printed by an agency of the Federal Government, or other criteria determined by the Committee, list:

National Coalition for the Homeless, attachment 6, Nationalhomeless.org/publications

Reports—Hate Crimes Against the Homeless: America's Growing Tide of Violence 2009

CRIMES AGAINST AMERICA'S HOMELESS: IS THE VIOLENCE GROWING?

WEDNESDAY, SEPTEMBER 29, 2010

U.S. SENATE,
SUBCOMMITTEE ON CRIME AND DRUGS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:01 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Benjamin L. Cardin, presiding.

Present: Senator Cardin.

OPENING STATEMENT OF HON. BENJAMIN L. CARDIN, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator CARDIN. Good morning, everyone. The Crime Subcommittee of the Senate Judiciary Committee will come to order.

I first want to thank Senator Specter, the Chairman of the Crime Subcommittee, for allowing me to conduct today's Subcommittee hearing. This is a subject that has been a priority for our Committee, and I appreciate Senator Specter's leadership.

When I hear the horrific stories about murders, assaults, and rapes committed against our Nation's homeless, I ask myself: Is this really America? When I hear the story of Norris Gaynor being beaten to death by baseball bats while sleeping on a park bench, I ask myself: Where is all this violence coming from?

When I heard about John McGraham being doused with gasoline and set ablaze, I was shocked and horrified that this could happen to a fellow human being and just wondered where we are heading.

Now, these are just two examples of a larger problem. Last fall, I introduced the Hate Crimes Against the Homeless Statistics Act with Senator Collins in an effort to get uniform data collection on this type of violence. My bill would only require data collection on bias-motivated crimes against the homeless. What that means is I want the Federal Government to track how many crimes are being committed against the homeless just because they are homeless.

Currently, the Hate Crime Statistics Act of 1990 requires the Department of Justice to collect data information from law enforcement agencies of crimes that manifest evidence of prejudiced based upon race, religion, sexual orientation, ethnicity, disability, gender, or gender identity. However, that was not always the case. When the law was first passed in 1990, the FBI was only required to collect data about crimes based upon race, religion, sexual orientation, and ethnicity. Then in 1994, Congress added disability, and just re-

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cently the Congress amended the statute again requiring data collections on gender and gender identity.

Now, there are some individuals that believe that data collection is unnecessary. I disagree. I think the best way to develop a strategy to deal with a problem is to make sure that you have accurate information in order to be able to act.

The National Coalition on Homeless has been documenting these bias-motivated acts of violence for over 11 years. According to their numbers, bias-motivated crimes against the homeless are pervasive and growing. Just last year, 43 people died, making 2009 the deadliest year for attacks on homeless people.

Now, one might think that 43 is not such a great number. But when you compare that number to the information that we have on other acts under the Hate Crimes, that number is much, much larger than the others that have suffered death as a result of hate crime activities.

According to the FBI hate crime statistics, seven homicides were classified as hate crimes in 2008. In that same year, 27 fatal attacks occurred on homeless persons, according to the National Coalition for the Homeless. The National Coalition for the Homeless has done an amazing job trying to track and document all those crimes from the greater public. But they are not law enforcement. We need to have consistent information that is collected by the FBI so that we know the extent of the problem relative to other areas of concern.

According to the Department of Housing and Urban Development's latest report to Congress, approximately 640,000 persons were homeless on any given night in 2009, and roughly 1.5 million people, or one out of every 200 Americans, spent at least one night in a shelter during 2009. Veterans account for about 20 percent of our homeless population. Families displaced because of domestic violence make up 28 percent of our homeless population. But the fastest-growing number of people who are homeless by demographics are families with children. It is our responsibility to strengthen programs to reduce the number of homeless in all categories here in America.

As we see the number of families increase, we also see the number of available shelters decrease. For example, in Baltimore County, we have seen a rise in homeless families, but a lack of space to provide them with safe housing. According to recent statistics, shelter space increased 25 percent last year. But according to the Maryland Department of Social Services, the number of homeless parents seeking emergency housing has more than doubled in the past 5 years.

So here is what we do know. We know that violence is occurring against this population. We know that the unhoused population in America is growing. One can make an educated guess that these two facts may lead to more victims. But I do not want to guess. I want to get the facts. That is why I believe Congress should enact the law to allow us to get the information.

This Nation was founded on the principles that Government must seek a more perfect union for the people and the Government must provide for the general welfare so that every man and woman

can live in security and liberty. America's homeless are mothers and fathers, brothers and sisters, veterans and workers.

Robert Kennedy once said if you make some contribution to someone else to improve their life, that is what you should be doing. What will history say about us on this issue? Did we the people help to promote the general welfare of the homeless? What steps did we take to stop the violence?

America's homeless deserve the same respect and dignity that we share sitting here today. I look forward to the testimony of our witnesses as we develop a record in this Committee to take action to protect America's vulnerable.

With that, let me first turn to my colleague, Representative Eddie Bernice Johnson. I had the opportunity to serve with her when I was in the House of Representatives. She is a passionate leader on issues of people who need our help. She has been the voice of many people who otherwise would not be heard in the chambers of the Congress. It is an honor to have her before our Committee.

STATEMENT OF HON. EDDIE BERNICE JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Representative JOHNSON. Thank you very much, Senator Cardin, and thank you for inviting me to testify on this important issue.

Each year there are hundreds of individuals who are targets of violent crime based solely on their appearance, means, or lifestyle. Each and every violent crime is traumatic. However, hate crimes are not only meant to physically harm the victim, but degrade all individuals of similar identity. They instill a pervasive sense of fear within that community.

Over the past few years, there has been a great deal of attention given to enhanced enforcement of hate crimes. Unfortunately, there has been a significant omission during this debate. One of the most frequent but least discussed categories of hate crimes are those which target the homeless.

Between 1999 and 2010, there were more than 1,000 bias-motivated attacks committed against the homeless; 291 of these attacks were homicides. That is more than twice the number of homicides committed in all other hate group categories combined.

The thread that holds all these crimes together is the sheer violence and disregard for human life. In April of last year, a homeless woman confined to a wheelchair was repeatedly raped in Seattle, Washington. The man who raped her told her, "I can rape you and get away with it...You're homeless? No one cares about you."

Last year in my home State of Texas, a 41-year-old homeless man was sitting on a bench near the University of Texas at El Paso. Four unknown males assaulted him and lit him on fire. He survived but lives with serious burns. This was one of six non-fatal attacks that involved setting a homeless individual on fire. These six attacks occurred in 2009 alone.

In 2009, there were 43 homeless men and women who were murdered because they were homeless; 90 percent of those deaths were caused by stabbing, blunt force, or strangulation.

A misconception is that these attacks happen to belligerent bums. However, many of these individuals were sought out by their attackers. Some victims never even spoke to their attacker before they were killed.

In the 110th Congress, I introduced the Hate Crimes Against the Homeless Statistics Act. This bill was reintroduced in this Congress along with a Senate companion bill which is sponsored by Senators Cardin and Collins. The sole purpose of this bill is to direct the FBI to add the category of homelessness to their hate crimes statistics.

The National Coalition for the Homeless has done an outstanding job collecting data on homeless hate crimes over the past 10 years. However, Federal recognition is essential in order to understand and curb this type of violence.

The Federal Government has fallen behind the States on this issue. Currently, there are four States who already recognize homelessness as a category of hate crime. Several more have legislation pending, and this is not just in Democrat politically run States. Florida had a Republican-elected Governor and a Republican legislature at time their homeless hate crimes bill was signed into law.

If Congress continues to not take a stance on this issue, we send the message that we are willing to look the other way. Treating homeless individuals rudely or inhumanely is seen as acceptable by far too many Americans. It is the one group where it is still acceptable in most circles to disparage. How do we end this if even Congress is unwilling to treat these individuals equally?

Senator Cardin, I thank you for being a true leader on this issue and for allowing me to testify in front of this Committee today.

[The prepared statement of Ms. Johnson appear as a submission for the record.]

Senator CARDIN. Well, Congresswoman Johnson, thank you for your testimony, but more importantly, thank you for your leadership on this issue in the Congress, and I am glad you pointed out that this is bipartisan legislation.

We do have a letter that I am going to ask unanimous consent to be made part of the record by Congresswoman Ros-Lehtinen in support of this legislation, and from Senator Collins, who cosponsored the bill with me, we have a letter from Senator Collins in support of the legislation that would require the FBI to collect information concerning attacks against the homeless. Without objection, those two letters will be made part of the record.

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

Senator CARDIN. I want to share with you a blurb that I found in a popular men's magazine that is absolutely appalling. It reads, "Hunt the homeless. Kill one for fun. We are 87 percent sure it is legal."

Now, has society become so desensitized to the glorification of violence that an ad like that could appear in a magazine in our country? To me this is just shocking that something like this could happen in the United States.

You mentioned what happened in Texas. It was not one episode; it was several episodes. The same thing has happened in Maryland. I would hope that we were beyond this, but until we get the information as to whether ads like this are having impact, it is difficult,

I think, for us to develop a strategy to deal with it. That is the reason I introduced the legislation. I note your concerns. I think we need to develop a workable strategy to protect all our vulnerable citizens, and the homeless, just because they are homeless, are being victimized, and that needs to stop in America.

Thank you for your testimony. I appreciate it very much and look forward to working with you.

Representative JOHNSON. Thank you.

Senator CARDIN. We will now turn to our second panel, and I will introduce them in the order in which they will be speaking, and you all can come forward and take your seats.

First we have Professor Brian Levin, an associate professor of criminal justice and director of the Center for the Study of Hate and Extremism at California State University, San Bernardino, where he specializes in the analysis of hate crimes, domestic and international terrorism, and related legal issues. He is a leading academic expert on violence against the homeless and has contributed to the National Coalition for the Homeless 2010 report entitled, "Hate Crimes Against the Homeless: America's Growing Tide of Violence."

We have Richard Wierzbicki, who is the commander in the Department of Law Enforcement at the Broward County Sheriff's Department in Fort Lauderdale, Florida. Since September 2008, he has headed the Broward Sheriff's Hate Crimes Task Force. He testified this year in front of the Florida House and Senate subcommittees in favor of adding the homeless to the Florida's hate crimes statute.

We have Simone Manning-Moon, who is the sister of Norris Gaynor, who died at the age of 45 after he was brutally attacked and killed by three teenagers by bats in Fort Lauderdale in 2006. This incident was caught on a surveillance camera on the campus of Florida Atlantic University. The three offenders who were involved in the beatings of two other homeless men received sentences ranging from 15 years to life in prison.

We have David Muhlhausen, an expert on the criminal justice programs at the Heritage Foundation. He has testified frequently before Congress on the efficiency and effectiveness of law enforcement grants administered by the United States Department of Justice. Mr. Muhlhausen joined Heritage in 1999 after serving on the Senate Judiciary Committee, which is certainly a major part of your resume, where he specialized in crime and juvenile justice policies, but perhaps the most important part of his resume, he has a doctorate in public policy from the University of Maryland, Baltimore County, and a bachelor's degree in political science and justice studies from Frostburg State University.

Erik Luna is a professor of law and an alumni faculty fellow at the Washington and Lee University. Upon graduation from law school, Professor Luna was a prosecutor in the State San Diego District Attorney's office. He has served as the senior Fulbright scholar to New Zealand, where he taught at the Victoria University Law School and conducted research on sentencing alternatives. Professor Luna graduated summa cum laude from the University of Southern California, received his J.D. with honors from Stanford Law School, where he was editor of the Stanford Law Review.

We will start with Mr. Levin, Professor Levin.

STATEMENT OF BRIAN H. LEVIN, PROFESSOR, CALIFORNIA STATE UNIVERSITY, SAN BERNARDINO, SAN BERNARDINO, CALIFORNIA

Mr. LEVIN. My name is Professor Brian Levin, and I am director of the nonpartisan Center for the Study of Hate and Extremism at California State University, San Bernardino, where I teach in the Department of Criminal Justice. And let me just add I am a full professor, if I may. While I am here in that capacity, I would also like to note that I serve as an unpaid independent adviser to the National Coalition for the Homeless. I want to personally thank Chairman Benjamin L. Cardin, Ranking Member Lindsey Graham, Chairman Arlen Specter, and the other members of the Committee for the privilege of testifying on the scourge of violence directed against homeless Americans. I have analyzed hate crime for almost 25 years, written extensively on the topic, compiled national hate crime statistical surveys, testified before the House, authored Supreme Court briefs, trained law enforcement, and have advised policymakers throughout North America and Europe.

The National Coalition for the Homeless has worked tirelessly for the last 28 years to not only end homelessness but to ensure broad protection of homeless individuals. Since 1999 the NCH has monitored and recorded acts of violence against our country's homeless.

My testimony today in support of Senate bill 1765, the Hate Crimes Against the Homeless Statistics Act," will address issues relating to the inclusion of homeless status as a category in hate crime statutes, but specifically its inclusion in Federal data collection undertaken pursuant to the Hate Crime Statistics Act. Access to this type of objective official data is crucial for a society to assess the scope of criminality, implement policies, allocate resources, and craft legislation. From the onset it is important to consider that over the last three decades, both penalty enhancement laws and specifically data collection statutes have been expanded to cover additional group categories as new information arose to support such inclusion. It is my hope that the outline I provide today regarding the characteristics and prevalence of anti-homeless hate violence will correct a glaring error in current Federal efforts.

The homeless face a rate of victimization that far exceeds that of other groups. Indeed, it is probably among the highest in the Western industrialized world. The more reliable hate crime statistics arising from homicide data and victimization studies indicate that we have a vulnerable population here, not just for crime in general, but for hate violence as well.

Two key questions need to be addressed regarding the issue of discriminatory violence against the homeless. First, does the actual level of bias violence against the homeless justify a statutory change? And, second, does the category of homelessness fit the traditional framework of hate crime legislation and share material similarities with currently covered groups?

It must be stressed that the modest data collection proposal presented here today does not increase punishment or change broad policies. Because we already have an operational national framework for hate crime data collection, it does not require us to create

an additional bureaucracy. What it does allow us to do is get essential information about a qualitatively distinct form of crime that significantly affects a distinct class of victims.

Emma Lazarus' poem, "The New Colossus," is inscribed on our Statue of Liberty. It says: "

Give me your tired, your poor, your huddled masses yearning to breathe free, The wretched refuse of your teeming shore. Send these, the homeless, the tempest-tost to me. I lift my lamp beside the golden door!"

However, today, unfortunately, studies indicate that America is not necessarily a hospitable place for our homeless citizens. Studies and surveys repeatedly indicate an annual risk of criminal victimization as high as 66 to 82 percent, as I said, about the highest for any subgroup in the Western world.

One thing that I think is key here—and I believe it is important to differentiate—is that we are talking about hate violence. We have excluded in this research acts, of insurance fraud where homeless people were targeted for death in Los Angeles, or, for instance, a case in New York, where we saw homeless people being kidnapped to deal drugs for notorious drug dealers.

What we have seen over the last decade is a clear and disturbing pattern that shows the homeless population face an additional risk of discriminatory violence. These unprovoked hate attacks primarily by domiciled young assailants are not motivated by robbery, personal disputes, or drug dealing. These bias motivated attacks have claimed the lives of over 288 men and women nationally over the last decede. It is the homicide data that is regarded as the most reliable and useful, and I think we have to separate it out from other data and, indeed, compare apples to apples and oranges to oranges.

In closing, I would just like to say this: I can only marvel at how proud my departed refugee Russian immigrant grandmother and World War II era POW father would be to see the country they loved so very much—and indeed my son who I brought here from California, to see the majesty of your chamber—working to extend the promise of Emma Lazarus' vision to embrace yet a new generation of Americans who, like my grandmother and my POW father who fought the Nazis, who like them need protection from the scourge of unrestrained violent prejudice.

I want to thank you so much. I am so honored to be here and to answer any questions that you may have in the brief time that we have here today.

[The prepared statement of Mr. Levin appear as a submission for the record.]

Senator CARDIN. Professor Levin, thank you for being here. It is nice to have your son with us here also today.

I think we will just proceed down the witness table, so next we will hear from Simone Manning-Moon.

STATEMENT OF SIMONE MANNING-MOON, DECATUR, GEORGIA

Ms. MANNING-MOON. Thank you, Senator Cardin. It is an honor to be here today.

To Honorable Members of the Committee, my name is Simone Manning-Moon. I extend warm greetings and my gratitude for the

opportunity to speak before you today. I also bring greetings from my parents, Sam and Georgia Gaynor, who still miss and grieve for their son Norris—my brother. It is a tragic twist of irony that my big brother wanted only to live a rather anonymous existence and mind his own business, and yet we are here today before this esteemed Committee in our Nation's capitol to discuss him and to put a name and a face to him—or rather, to all of those who find themselves in my brother's position, claiming the sky as their temporary ceiling.

Despite all that would come later, my parents demonstrated their love for us in the most supreme way. Though not related by blood, we were both adopted when my parents had so much love to give and wanted children to give it to. We knew from an early age that we were adopted and loved immeasurably. We grew up under the tutelage of a United States Chief Petty Officer in the Navy and a mother who imparted a family structure which included study habits, responsibility for household chores, and a respect for those in authority. We were, in effect, no different than I suspect many of you who underwent the same upbringing. This with perhaps one exception: my brother was troubled. No one could quite pinpoint the issue. He was often hyperactive, sometimes angry, and seemed to look for something he did not have, and yet he expressed satisfaction with his surroundings. I took my cues—and much advice—from him oftentimes. Once my parents sat us down and earnestly explained the circumstances of how we came to be their children, going so far as to offer to help us if we wanted to find our "real" parents. I remember staring at my brother Norris when he declared his logic at the table: Why would we look for parents when we already had them? When those "real" parents gave us up? He was not interested. And because he was my big brother, nor was I. We were raised with high expectations, a low tolerance for things unproductive and considered foolish. And, therefore, it was no surprise when, upon my brother's high school graduation, he was expected to move in the direction of manhood and self-sufficiency. After all, this was our family mantra.

At that point, Norris' tumultuous journey began. He faced many things: his service in the United States Army, incarceration, drug abuse, the realization that he was not mentally healthy, and his struggles to find himself. For as many years as he was homeless, he was a contributing, upstanding member of society. He worked every day, kept himself in great physical condition, and otherwise lived what you may call a normal existence. But he was not well. Eventually he came to see that. I suppose I should be grateful that he realized many things before wooden bats and rake handles snuffed out his life.

Norris Jay Gaynor. Not "the homeless guy who was murdered that night;" not "the one they beat to death;" not "that homeless fatality." I implore you to actually say his name: Norris Gaynor. Son, brother, uncle. The one upon whom I called on for counsel and who called me from pay phones so that he could give me advice.

I beg your pardon.

The son my parents referred to as not "homeless, but simply far from home." My brother Norris who, when our younger brother Jerome died of liver cancer many years ago when we were 12 and 13,

huddled in a corner with me to talk about how much we were going to miss him.

Norris the artist. Norris the political news junkie in his later years, who knew more about local, State, and Federal politics than I did, and who missed, because of some notion that it was OK for people to beat and kill those on the street, what would have been the most important Presidential election of his lifetime—by mere months. He surely would have continued to discuss it to this day and apply his honed critical thinking skills to the State of Washington in 2010. How ironic that he of all people is not here to witness the current state of affairs.

His name is Norris Jay Gaynor. He was born in 1960. He was raised in a fine family. He had his problems, but he manned up and declared that he would not be a burden on anyone. When he learned later in his life that due to a variety of circumstances he could apply for Social Security benefits, he refused. "I can't do that," he would say. "I'm physically able to take care of myself." This is the person those men killed that night. This is the so-called bum. And the supreme irony? The taxpayers are now taking care of his bat-wielding murderers. And make no mistake: He was murdered because he was homeless. He was attacked because he was asleep on a park bench, minding his own business.

To the direct point of the proposed legislation we are discussing today, he was murdered because people resented the homeless and thought that they could continue to prey on them and get away with it.

I thank you for your time.

[The prepared statement of Ms. Manning-Moon appear as a submission for the record.]

Senator CARDIN. Well, let me thank you for your testimony. We hear statistics and it is important to understand that every one of those statistics is a person and a family. Norris Jay Gaynor was a person, a brother, a son, and we thank you for sharing your relationship with him so that we understand that we are not just talking about one person; we are talking about a family, and many families in this country.

Professor Erik Luna.

STATEMENT OF ERIK LUNA, PROFESSOR OF LAW, WASHINGTON AND LEE UNIVERSITY SCHOOL OF LAW, LEXINGTON, VIRGINIA

Mr. LUNA. Thank you very much, Senator Cardin——

Senator CARDIN. I think your mic is not on.

Mr. LUNA. Got it. Thank you. Thank you, Senator Cardin. Thank you for the opportunity to come and speak today on this very important topic.

The plight of America's homeless is truly heartbreaking and has only become worse in recent years as a result of the Nation's financial crisis and the rise of home foreclosures and evictions. The happenstance that has left many people homeless underscores the proverb "There but for the grace of God go I." And the compassion and tireless efforts of advocates for the homeless, including those in this room, confirm the fundamentally good-hearted nature of the American people.

Against this background, it is hard not to be flabbergasted and repulsed by the crimes of violence committed against the homeless, as described in media accounts and in the recent report by the National Coalition for the Homeless. The same can be said of the brutal acts that propelled the federalization of so-called hate crimes: the murders of Matthew Shepard in Wyoming and James Byrd, Jr., in Texas.

These events greatly disturbed conscientious citizens across the Nation. No decent American could argue against the investigation, prosecution, conviction, and punishment of those who commit such crimes. And, of course, that was never a question before this august body, nor was it a genuine issue among decent scholars, policy analysts, and the general public. Instead, the problem was the alleged necessity and the potential consequences and the ultimate constitutionality of the Hate Crimes Prevention Act.

Now, that statute is not directly at issue today. Instead, as has been noted, the hearing is concerned with whether to amend a 20-year-old, the Hate Crime Statistics Act, to include "homeless status" as a protected class for purposes of Federal law enforcement's tracking of hate crimes across the Nation.

Here I would like to briefly discuss the collection of hate crime statistics, including hate crimes against the homeless, and the justification for federalizing hate crimes, including those against the homeless.

The first issue goes to the heart of the bill before the Senate and is a question with regards to hate crime statistics in general. The second issue, though not directly before this body, looms over this entire hearing.

The guidelines promulgated pursuant to the Hate Crime Statistics Act described a hate crime as a "criminal offense committed against a person or property which is motivated, in whole or in part, by the offender's bias." In turn, bias is defined as a "preformed negative opinion or attitude toward a group of persons based on their race, religion, disability, sexual orientation, or ethnicity/national origin." The guidelines then provide a series of criteria that might support a finding of bias, and many of these items seem commonsensical. Others are less obvious or might raise legal questions if used at trial, such as whether a "substantial portion of the community where the crime occurred perceived that the incident was motivated by bias." It is hard to imagine the evidentiary basis, let alone constitutional argument, for admitting testimony or documents about popular sentiment in order to prove that a crime has been committed.

The guidelines also provide vignettes intended to demonstrate the appropriate classification of hate crimes. The vignettes would raise some serious constitutional issues if they involved an actual hate crime prosecution in Federal courts, but that is not actually what is going on here. Consistent with the Congressional mandate, the FBI guidelines make clear that their purpose is for data collection only.

And this does not guarantee accurate classification. Offenders have all sorts of motivations, conscious and unconscious, including cynical beliefs about those who are in some way different from themselves. When hate crimes turn on one-word slurs or non-

verbal expressions, the classifier is placed in the position of guesstimating the level of bias in the sometimes murky, often adrenalin-filled circumstances of a criminal episode. The standard of proof vaguely resembles "probable cause," the amount of evidence needed to conduct a search and seizure, for example, rather than the constitutionally mandated standard for conviction at trial.

But again, this is of no constitutional moment when the goal is categorization of statistics rather than condemnation of defendants. And the inherent limitations of these statistics are—or should be—understood and acknowledged by policymakers; and as long as any errors in classification are random, the data provided under the Hate Crime Statistics Act give a reasonable overall picture with all the caveats attached.

A far larger problem lies with the data provided by advocacy groups, who use disparate or loose standards, or no real standards at all, in gathering and presenting their data. Some groups count as hate crimes all reports, even if they do not amount to a criminal offense or only involve bias-motivated comments, and regardless of the source of information. Unfortunately, some of these problems appear to exist in the National Coalition for the Homeless' recent report, which is otherwise very laudable, on crimes against the homeless.

There seems to be a conflation of two potentially overlapping but importantly distinct concepts: crimes against the homeless and hate crimes against the homeless.

The vignettes in the report often share two common things: they are extremely sad, and I want to emphasize that; but they are often based on limited or no hard facts indicating that the incidents were motivated by bias against the homeless; or in some cases that a crime had even been committed. Instead, the incidents are often loaded with speculation or honest acknowledgments that the facts and motives remain unclear.

In fact, one incident in the report listed as a non-lethal attack did not involve an attack at all, but instead detailed an admittedly repulsive Internet posting that in and of itself could never be the basis for a prosecution under the Constitution.

Now, to be clear, the authors of the report may have additional information, evidence that would lead a reasonable and prudent person to conclude that the episodes were not only crimes but were hate crimes and based on criminal motivate, in whole or in part. But this information is not always obvious from the report.

Let me also be clear that I do not believe that the well-intentioned advocates for the homeless are trying to mislead anyone, and I assume the report is aimed at raising public awareness rather than raising constitutionally dubious legislation. But I do believe that Congress will eventually be called to add homeless status to the Hate Crimes Prevention Act, and for all I know, the lobbying process may have already begun. For this reason, I think all of the concerns that were raised with regards to federalizing hate crimes in general should be considered, not with regards to this particular act.

Now, I know I am running short on time, so I will not go through those objections. Instead, let me just briefly mention what I believe would be somewhat of a surprise. I have no per se objection to

homeless status being added to group characteristics in the Hate Crime Statistics Act. Indeed, I generally and strongly encourage the collection and dissemination of empirical data as a means to inform public judgments on criminal justice policy. In fact, I believe the bill at issue today does not go far enough to ensure full and accurate information about the commission of and response to crimes motivated by legislatively identified animus or bias. What is missing from our collective knowledge is whether the Hate Crimes Prevention Act, last year's legislation, is justified by the failure of State and local officials to prosecute crimes of violence that fall within the definition of a hate crime.

To remedy this sort of information gap, Senator Hatch has previously proposed a study to look into the question of State default. Maybe this study would show a trend of under-enforcement by State and local prosecutors and insufficient punishment for crimes of violence, evincing a need for some type of Federal action. Or maybe it would affirmatively demonstrate that State and local officials are assiduously fulfilling their obligations, that bias-motivated offenders are receiving just and effective punishment, and that the Hate Crimes Prevention Act is entirely unnecessary. Either way, the American people and their elected representatives would be in a better position to evaluate this contentious area of criminal justice policy.

Again, thank you for the opportunity to speak today, and I look forward to answering any questions that you might have.

[The prepared statement of Mr. Luna appear as a submission for the record.]

Senator CARDIN. Professor Luna, thank you very much for your testimony.

We will now turn to Commander Richard Wierzbicki.

STATEMENT OF RICHARD WIERZBICKI, COMMANDER, HATE CRIMES/ANTI-BIAS TASK FORCE, BROWARD COUNTY SHERIFF'S OFFICE, FORT LAUDERDALE, FLORIDA

Mr. WIERZBICKI. Thank you, Senator. I am honored to testify today on behalf of the Broward County Florida Sheriff's Office. Sheriff Al Lamberti sends his regards and has submitted a statement for the hearing record.

I am a longstanding member of the Nation's law enforcement community with over 32 years of public service and can attest to our profession's interest in advancing strategies that enhance the prevention, investigation, and prosecution of crimes committed against the homeless population, including crimes motivated by bias. Rigorous and widespread collection, reporting, and analysis of bias-motivated crime data is one such solution. That is what the Hate Crimes Against the Homeless Statistics Act, introduced by yourself and Senator Collins, would accomplish. That is why the Broward County Sheriff's Office, the largest accredited Sheriff's Office in the United States, fully supports this legislation.

As a law enforcement officer, I have dealt with crimes committed against homeless people motivated by bias. For example, James Cunningham, a 54-year-old homeless man, was attacked in Pompano Beach, Florida, in October 2009. The attack was recorded on video and posted on YouTube by one of the offenders. The video

showed two attackers shoving, taunting, and dragging Mr. Cunningham down a Pompano Beach street by the ankles as two other men held his arms and laughed.

This dramatic incident reflects the intensity of bias that some hold against people experiencing homelessness. Many other lower-order incidents against homeless people occur routinely, but escape attention in part because the victims may not report them out of a belief that law enforcement officers will not investigate them sufficiently, or equally troubling, because members of the general population have come to accept victimization as an inevitable consequence of homelessness.

Use of crime statistics generally is a staple of effective law enforcement practice. The availability of data about bias-motivated crimes is instrumental in inspiring community action to protect various population groups subjected to bias and is critical to law enforcement agencies for developing plans of action, deploying resources, and measuring our progress.

Take our experience in Broward County, Florida. I led the Hate Crimes/Anti-Bias Task Force created in 2008 by Sheriff Lamberti as a direct response to data in the Florida Attorney General's annual hate crimes report, which indicated that our county, Broward County, led the State in reported hate crimes and has for several years. The data told us where the crimes were occurring, who was being targeted, and why they were being attacked. Based on the data, we were then able to decide how and where to deploy resources to combat hate. For example, the data revealed that several houses of worship were vandalized with offensive symbols associated with hate. We responded in part by co-hosting and implementing a "Keeping your Religious Institution Safe" seminar for clergy and congregation members alike.

Regrettably, our Attorney General's hate crimes report—no different than similar reports in many other States—did not tell us anything about bias-motivated crimes against the homeless population because such data is not collected as part of uniform crime reporting, even though those of us who have worked the beat know full well that such crimes occur. By lacking such data, our task force simply could not plan a meaningful response to bias-motivated crimes against our large homeless population.

The true extent of bias-motivated crimes against the homeless population will never be known if we do not achieve multi-State reporting of such crimes through the existing national hate crime data collection and reporting system. Passage of the Hate Crimes Against the Homeless Statistics Act would remedy these gaps in information and consequent deficiencies in law enforcement practice.

From an operations standpoint, I foresee absolutely no difficulty arising from the inclusion of the homeless population as a covered group by the Federal Hate Crimes Statistics Act. Further, the addition of the homeless population to the Hate Crimes Statistics Act will in no way impede efforts to collect and report data on bias-motivated crimes committed against currently covered groups.

In conclusion, it is my strong conviction that it must become standard practice for all law enforcement agencies to vigorously collect data on the number and types of incidents of bias-motivated crimes against homeless victims. When the homeless population is

left out of national hate crime data collection and reporting, we fail in our responsibility to protect all Americans equally.

Thank you.

[The prepared statement of Mr. Wierzbicki appear as a submission for the record.]

Senator CARDIN. Thank you very much for your testimony.

At this point I would ask unanimous consent to place in the record a statement from Al Lamberti, the Broward County Sheriff's Office, and from Governor O'Malley of Maryland, and a statement from the National Law Center of the Homeless and Poverty, all in support of the legislation that has been referred to.

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

Senator CARDIN. Thank you again for your testimony.

Mr. Muhlhausen.

STATEMENT OF DAVID B. MUHLHAUSEN, PH.D., RESEARCH FELLOW IN EMPIRICAL POLICY ANALYSIS, CENTER FOR DATA ANALYSIS, THE HERITAGE FOUNDATION, WASHINGTON, D.C.

Mr. MUHLHAUSEN. Thank you. My name is David Muhlhausen. I am research fellow in the Center for Data Analysis at the Heritage Foundation. I thank Chairman Cardin, Ranking Member Graham, and the rest of the Committee for the opportunity to testify today about crimes against the homeless. The views I express in my testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

My spoken testimony will concentrate on two points.

My first point is that while every case of a violent act committed against an innocent homeless person is tragic and should be prosecuted to the fullest extent of the law, the prevalence of these crimes does not rise to a level that requires formal data collection by the Federal Government.

According to a recent report by the National Coalition for the Homeless, 2009 was the deadliest year in a decade for the murder of homeless persons by housed or domiciled individuals. By the coalition's own count, there were only 43 of these homicides in 2009. To properly understand the prevalence of homeless murders, we need to present the 43 murders as a percentage of all murders recorded by the Federal Bureau of Investigation.

In 2009, the FBI counted 15,241 murders in the United States. The 43 murders counted by the National Coalition for the Homeless represents 0.28 percent of all murders recorded by the FBI. Conversely, all other murders accounted for 99.72 percent of the total. Needless to say, the number of murders of the homeless by domiciled individuals is a minuscule fraction of total murders.

A second way of putting the number of homeless murders in perspective is to express it as a rate per 100,000 homeless persons. The United States Department of Housing and Urban Development estimated that there were over 643,000 homeless individuals in a single point in time in 2009. The entire population of the United States was over 307 million people. Based on these populations figures, the national murder rate of the homeless by domiciled individuals is 6.7 incidents per 100,000 homeless persons. The murder rate for the national population was five incidents per 100,000 resi-

dents. While the homeless murder rate is higher than the national rate, the difference is neither startling nor a justification for the Federal Government to begin formally collecting statistics on these crimes.

Other subpopulations, like black males, face higher murder rates. While the National Coalition for the Homeless interpreted its data as presenting shocking, alarming, and disturbing findings, it produces no such startling numbers to support its goal of persuading the Federal Government to collect data on these crimes.

My second point is that the Hate Crimes Against the Homeless Statistics Act of 2009 is unnecessary. When Congress considers the need for collecting data on any social phenomenon, the nature of the evidence presented to Congress should be instrumental to the decisionmaking process. A wrong assessment of the evidence can lead Congress to waste valuable resources. An objective and fair analysis of the data presented by the coalition simply does not provide support for the Hate Crimes Against the Homeless Statistics Act. Nevertheless, crimes against the homeless, like all other ordinary street crimes, should be prosecuted to the full extent of the law by State and local governments.

While some may argue that the lack of reliable and objective data on the number of crimes committed against the homeless by domiciled individuals is justification enough for Federal intervention, such logic leads the Federal Government down the unending road of collecting data on any perceived social problem, whether or not the problem warrants attention by the Federal Government. The Hate Crimes Against the Homeless Statistics Act of 2009 is unnecessary.

Thank you.

[The prepared statement of Mr. Muhlhausen appear as a submission for the record.]

Senator CARDIN. Thank you very much for your testimony.

Mr. Muhlhausen, I was listening to your testimony, and I thought you were testifying in support of my bill at some point. It seems like we need to have good information to make decisions. I appreciate you mentioning the statistics from the advocacy community. The issue is whether we have the same numbers as to the number of people who are being victimized because they are homeless versus the other statistical information we have about violent crime, which is collected in a different manner. It seems to me we are comparing apples to oranges, and the purpose of this bill, as I pointed out, is to get uniform information.

And, second, it seemed to me that your testimony at times drifted toward your concern about the hate crimes law itself as to whether there should be a separate identification of crimes that are committed because of a person's protected status, and that debate has been one that we have had in Congress, and the majority of the Congress has acted to say that, yes, every violent act, every criminal act should be held accountable under our criminal justice system. Every single one. But when a person is victimized solely because of their race or solely because of their gender or their gender identity or their disability, that presents an inherent problem in our country that needs to be dealt with and needs to be identified and cannot go unchallenged. And that to me was the reason

why the majority in Congress passed the hate crimes, signed into law, and we have amended it over time.

Now, that is not the debate today. The debate today—and I want to get, if I could, into Mr. Wierzbicki—is to whether we have adequate information in order to make good judgments. And I was impressed by your testimony that it would be very little additional burden to your agency to identify this information for the FBI data collections.

Mr. WIERZBICKI. Yes, Senator. All it amounts to is checking under a different box. We would add the homeless into the category, check a box, and change the software, and it is pretty much a done deal.

Senator CARDIN. Now, I also applaud your efforts with the Hate Crimes/Anti-Bias Task Force. You have recognized that you have an issue that you need to deal with in Broward County. You have already identified the specific case of Mr. Cunningham, but I take it that you are seeing crimes, violent crimes, committed against individuals solely because they are homeless.

Mr. WIERZBICKI. That is correct.

Senator CARDIN. They are not being targeted for robbery; they are not being targeted for an anger assault. They are being targeted because they are perceived by the attacker as a worthy victim because they are homeless.

Mr. WIERZBICKI. The beatings in Broward County, the attackers, it was almost a sport to them, and the attacks were very violent. And I know research shows that a lot of the attacks are more violent because the attackers view them as subhuman and they have no place to retreat. So that is why Sheriff Lamberti decided we need to do the right thing and support the homeless inclusion into the Florida hate crimes statute.

Senator CARDIN. And, of course, it is underscored by the type of ads that you see in this magazine, you know, announcing that there would be a National Hobo Convention, that there will be floats, music, a vat of stew, and, yes, hobos, kill one for fun. Is that like you have a right to do that?

Mr. WIERZBICKI. Yes, it is unfortunate that we have sunk that low in our society. But one of the other things I mentioned when I was in Tallahassee, somebody came up to me and he said, "Have you heard the new Jacksonville radio show?" I said, "What are you talking about?" He said, "It is called bum on bum." And the actual radio producers go out on the streets of Jacksonville and encourage two homeless men to fight each other, and I think the winner gets some kind of prize.

Senator CARDIN. Well, I think in order to counter the strategy, there are a lot of things we need to do, but we also need to have accurate information.

Professor Luna, I was impressed by your testimony, and we had a hearing before the Judiciary Committee, I think it was just 2 weeks ago, dealing with rape and the reporting of rape crimes in America, and that we did not have consistent information as to the number of domestic violence cases that are taking place in this country. And one of the reasons that we did not have uniform definitions and we had the discretion of the investigating law enforce-

ment officer, and the general view there was that it would be good to have that information.

When the FBI is collecting data under the hate crimes, we get uniform reporting. It is not perfect, but it is certainly the best we have. So as I understand your testimony, having the information would be useful in developing strategies.

Mr. LUNA. Agreed. I have absolutely nothing against this bill itself. And I understand that you are not interested in getting into the discussion about what occurred last year, and if and when that point comes, I am sure there will be lots of testimony about that, whether to add it to the Hate Crimes Act that currently exists.

I totally agree that it is a good thing to have that kind of information. It is a good thing to have some uniform standards. And my wish would be that the advocates, who, again, are tireless and they are doing—they are doing God's work in working for the homeless, no doubt. But I wish that they would be using the type of standards in reporting and identifying crimes that are utilized by the FBI through its delegated authority. And going through the report, as I said before, there are—each of these incidents is—it is disgusting. There is no doubt about that. But there is a question: Are these actual hate crimes as defined either under the Hate Crime Statistics Act or under the bill, the law that was passed last year. And there are some real doubts about that.

And I also think that it would be important—again, I mentioned Senator Hatch's—he has been a long time asking for this. And I am not interested in it because I have a political axe to grind. I have no political axe to grind. But I would like to know whether or not the local and State officials are, in fact, defaulting on their obligation to prosecute these crimes. And from what I see, in both hate crimes reports, aside from the homeless, and also the reports presented by the National Coalition for the Homeless, I see law enforcement putting effort into this and prosecuting individuals and investigating it to the extent that they can. If there is a problem, the problem is that the homeless, and for understandable reasons, have some concern about presenting this information to the police. And this bill itself is not going to do anything to encourage the homeless to report their crimes if, in fact, they have some fear or if they do not know the various channels by which to report this information. That I think would be a good step.

Senator CARDIN. Well, I think I am going to leave it at that. I think we are in agreement that getting reliable information is important. I do not know the relative accuracy of the information because we do not have uniform reporting nationwide, and that is what I would like to see. So I do not reach a judgment as to the accuracy of the information that has been presented. But I do know I would feel much more comfortable, before I am called upon to act, to have that uniform information that the legislation that Senator Collins and I have introduced would do.

Mr. Muhlhausen, let me see if I understand. Would you object to having uniform national information on status crimes—that is, we will not characterize them as hate crimes right now, but if we were to ask for uniform information as we so under the hate crimes statute for victims of racial violence or religious attacks, and homeless

I add to that, do you object to getting that information done on a national level as compared to just information about crimes?

Mr. MUHLHAUSEN. Well, in general, I think it is a good thing to collect information, but one of my questions is that I doubt that this report that was just issued, I guess, last month rises to a level to justify Federal legislation; and, second, that—where do we draw the line? Anytime any group——

Senator CARDIN. Let me just stop you for 1 second. I believe that you would find the statistical information on most of the status crimes that I have talked about—in other words, violence based upon race. If you take it on the murder rate, you would not isolate enough to make it a statistically worthy venture because that is not the main thrust of the use of the information. It is to deal with violence against individuals solely because of race to try to deal with the underlying problems in our community of racial tensions and violence.

My question to you is: Is it useful to have that information? Or do you oppose knowing the amount of violent acts against individuals based upon race, based upon religion, based upon gender or gender identification?

Mr. MUHLHAUSEN. I do not oppose collecting the basic information. What I am——

Senator CARDIN. Why don't you add homeless to that?

Mr. MUHLHAUSEN. Well, what I am concerned about is that the data presented—it was presented in a way to suggest there was a rising tide of violence, and in fact, there is no tide. It is——

Senator CARDIN. We do not know that. I mean, I will go so far——

Mr. MUHLHAUSEN. Based on the evidence.

Senator CARDIN. Well, we do not——

Mr. MUHLHAUSEN. That we have.

Senator CARDIN. If you base it upon the information that has been presented by the advocacy community, then we do have a rising problem, that there has been an increased amount of violence, and that it is statistically much higher than other protected classes, if you accept their information.

I am going to agree with you. I do not know whether that is accurate relative to the other protected classes or not. That is what we are trying to find out.

Mr. MUHLHAUSEN. Well, I think a good thing to find out is, if this bill were to move, how about add Senator Hatch's recommendation, what Professor Luna talked about, and collect prosecution information. What is going on? Are these crimes being prosecuted? Because I think these crimes, when they are committed, they should be prosecuted.

Senator CARDIN. We do not disagree with that, but it reminds me of people who complain that we should not try to stop wars because we cannot stop all wars or we should not fight for human rights because we cannot end all human rights abuses. I mean, you make progress where you can make progress.

Mr. MUHLHAUSEN. Well, I think the fact is that there are other segments of society that are probably far more victimized. I mean, just read the report, and, you know, it is like——

Senator CARDIN. I am for making progress in every area we can.

Mr. MUHLHAUSEN. Burglars target people with homes. We are not concerned about that. I mean, what about crimes against people with homes?

Senator CARDIN. We are concerned about that.

Mr. MUHLHAUSEN. We are not collecting statistics on that necessarily as a hate crime.

Senator CARDIN. But we do have uniform statistics on that. The problem—we do have uniform crime statistics that are available nationwide. The problem is it is not divided as to the homeless today. So I take issue with you. I think we do have good information on burglaries in this country. We do not on attacks against the homeless. That is the purpose of the bill, is to get that information. That is why I was trying to figure out your objections, and you say you do not object to having good information, you say you do not object to having it isolated into protected classes. So I am going to leave it at that because I just interpret from your comments that you want to be opposed to this bill, which is your right to do it, but I do not see any rational distinction if you support collecting information on crimes, if you support collecting information against people because of their race, et cetera. Then we can debate whether homeless is important enough or not, and that is an issue for Congress to make a judgment on. Thank you.

Professor Levin, let me just try to get you engaged in this discussion, because, you know, one of our principal objectives is to try to understand the homeless and try to reduce the number of people that are homeless. What is concerning me is that we see a lot of military people returning who end up homeless. We see domestic violence leading to the homeless population. We see people with addictions becoming homeless.

Is there a trend here that we should be concerned about as we try to protect the people from becoming homeless, but those who become homeless, to get the services they need to protect them not only against violence but to protect their basic needs?

Mr. LEVIN. Absolutely, and with unemployment notionally at 9.6 percent and the difficult landscape housing situation, which has been well documented by this body, the Senate, I think it is important to recognize that many people who thought that they would never be homeless including veterans and families have, in fact, become homeless.

What I am even more astounded by, with all due respect to my fellow panel members, is how there are those who could be against merely collecting data.

The other thing that I would like to address is that I think it would be nice to have some common sense prevail here. As Professor James Weinstein from Arizona said, Kristallnacht was more than merely the sum of the assaults, murder and arsons that took place on the evenings of November 9 and 10, 1938. These are offenses against a pluralistic democracy. The criminal law consistently looks at context: the target, the timing, the location, and the motive of offenses. Indeed, motive—as the Supreme Court held, by the way, in a case where I wrote two briefs, *Wisconsin* v. *Mitchell*—is something that the Government can indeed punish by statute, not just with regard to sentencing. And we have as a society decided that discrimination, as the United States Supreme Court said

in *Roberts* v. *U.S. Jaycees*, is a scourge that the Government has an obligation to eradicate.

So when we talk about the fact that there are homicides out there—for instance, there are a lot of homicides committed against African-American males. However, above and beyond that risk, there is an additional risk from people who are attacking individuals for discriminatory urposes and that not only places victims in great peril, it undermines institutions and processes of our pluralistic democracy. I pursue this position for the same reasons that I stood with my conservative friends of goodwill in support of the Church Arson Prevention Act, because burning a church in a pluralistic society such as ours is different than burning a barn. We also have to note that many of the homicides in our society involve what we would call routine personal relationships, bar fights and intimate violence—these are horrible crimes. But the notion of random attacks by people who select others because of a status characteristic is something that is also distinctly egregious. And, indeed, the trial judge in *Barclay* v. *Florida,* which went up to the United States Supreme Court, I think said it quite well. He said, "I, like so many American Combat Infantry Soldiers, walked the battlefields of Europe and saw the thousands of dead American and German soldiers, and I witnessed the concentration camps where innocent civilians and children were murdered in a war of racial and religious extermination. to attempt to initiate such a war in this country is to horrible to contemplate. . . ."

So I think when we are looking at data, we have to understand, for instance, that in our society we look at context. Robbing a bank is treated under Federal legislation differently and enumerated differently than robbing a liquor store because of the additional threat to our eonomic system.

Sexual assault of all kinds is egregious, but sexual assault of a minor is something that we extend more punishment to. Similarly, being disorderly outside the Senate building is treated differently than being disorderly on an airplane.

So it is important to recognize that the criminal law has consistently throughout our nation's history taken into account motive, context, offender status, victim status and—recidivism, for instance. We treat people who commit crimes more than once differently than we treat first offenders. Here we already have a group of people who are being horrendously victimized and face an additional risk on top of that.

I have appended to my testimony a whole list of studies. Are there limitations geographically? Are there limitations in a variety of ways? Yes. But in the same way that a smoke alarm sends out a credible message that something is wrong, I believe that we have enough data to indicate that there is an additional problem. And, indeed, the kind of offenders that we are seeing commit these bias attacks are different and may very well need a different type of deterrence. For instance, reckless driving is a threat that is out there, but drunk driving is as well and treated differently. And as we can see here—and I would like to say that this does leave out 1 year, so let us even bump up an estimate for the FBI documented homicides to maybe 110. We are seeing a scourge, and within that offenders who resemble very much the types of offenders who commit

the "mainstream" traditional hate crimes—thrill attackers, turf protectors, and hardened bigots.

What I believe we are seeing is a shift from traditional targets like gays, Jews or African-Americans to others, in part because the homeless are still regarded as socially acceptable targets for aggression. And one of the things that the research has shown, as Professor Robin Williams—emeritus of Cornell, maintains, is that these offenders act on a printed circuit of stereotypes. Some like neo-Nazi skinheads seek out and attack the homeless numerous times, including most recently in Cincinnati, Ohio. These offenders act on cleansing their communities, as part of an Aryan notion of purification. We also see people including many non-skinheads who maybe 20 years ago would have defended their communities against African-Americans moving in.

Most commonly, we see a slew of young offenders—indeed, the majority who are under age 20 who often attack in part for excitement and peer validation. The notion that we cannot benefit, particularly our local police departments, our human relations institutions, and our schools by more data to track locations, offenders and recidivism, astounds me. When Boston put forth enforcement of hate crime laws, they, at least for decades, did not find any recidivism. So I think we should study this, whether or not we eventually decide to enhance penalties. But I do think we have to say that by offender and victim characteristics and, indeed, the way these crimes affect whole communities, these random stranger-based crimes, particularly with crimes like this, for example, and there is much not capture by existing raw numbers: is overkill . It is not like most crimes where a meaningful act of compliance on the part of the victim can limit their risk. Here we are seeing overkill with imprecise weapons of opportunity by lynch mobs of youth, and we have to collect more data. Indeed, it is the very fact that the data has some limitations that we need consistent, uniform law enforcement data.

Last point. Even the New York City Police Department, which I was a proud member of and am a third-generation former officer, reclassifies about 10 percent of its initial hate crimes every year, and I even have the documentation here for you.

Senator CARDIN. Well, thank you, Professor. I appreciate that.

Let me just again, Ms. Manning-Moon, your brother, Norris Jay Gaynor, it seems like he made peace with his lifestyle, that he was proud that he was taking care of himself on the streets. I am impressed by the fact that he did not want to take Government benefits because he thought he could take care of himself. So he did not really ask much from this country.

Ms. MANNING-MOON. No, he did not. If he did realize on some days that he needed help, his innate notion that he should not rely on the Government or anyone—and he has actually said that to me many times—took over and won out.

In fact, there was a gentleman who wrote a piece after my brother's death, an op-ed piece in one of the Florida newspapers saying that he had befriended my brother over the past couple of years and that he would sit on the park bench and talk with him about—and my brother would give opinions about the museum clock that stopped beating. And at one point this gentleman tried to accom-

pany my brother to a facility that could get him some help, and he ended up bolting from that for what might be a variety of reasons, but, you know, knowing him the way I do, it would be largely because he wanted to stay independent. He did not want to be a burden on anyone.

It is ironic that his killers, who fit the profile that Professor Levin just described, actually had many of, if not more of, the problems that my brother had in his younger years. But they somehow never carried the accompanying notion that they were to man up and try to take care of themselves. That was a memo that was never received by them, I suppose.

Senator CARDIN. Well, your brother had a right, though, to expect that the country that he lived in, which is the envy of the world for promoting liberty and justice and opportunity for all of its citizens, a model democracy, that that country would do everything in its power to prevent the type of hate activity that has burdened so many countries over the history of the world, which the United States—we have had our share. Don't get me wrong. But we have always responded to it. And we embrace diversity in America. We do. That is our strength. This is a Nation of diversity, and we have a responsibility to do everything we can to keep people safe.

Ms. MANNING-MOON. Yes, Senator. Thank you for that. I would also like to augment Professor Levin's comment specifically regarding the recidivism or lack of recidivism issue with those who fall into this category of attacker. The local newspaper described one of the convicted killers of my brother and attacker of two others that night as someone whose friends said routinely went out seeking homeless people to beat and attack. So this was not uncommon at all, and if we think about what the value would be of having legislation that would actually help the law enforcement department in Broward County and elsewhere track, understand, have on their radar this type of behavior, imagine what the possibilities would be if that had happened earlier, that tracking had happened earlier. And Brian Hooks—is his name—would have been identified earlier as someone who is prone to this type of behavior.

Senator CARDIN. Well, I have opportunities to travel throughout Maryland frequently and talk to the people of our State, and I can tell you that they want us at the national level to do everything we can to reduce the number of homeless, particularly those who are homeless because of a circumstance such as domestic violence or the fact that they have come back from serving our Nation in war and cannot make the transition back; they need help in order to do that. So they want us to do that, but they also understand that this Nation needs—its first priority is to protect its citizens and that when someone is brutally attacked or put in harm's way solely because they have no roof over their heads at night, that is not America. But they want to know the facts in order—they want us to act upon good information.

Ms. MANNING-MOON. Well, I appreciate that, Senator, and I would just say on a passionate note on behalf of both my father and myself, I wholeheartedly support the gathering of data to make a determination. And I must say that anything that I hear that promotes the concept of not gathering information so that we can

keep a disjointed conclusion is a rather unintelligent argument. You have to gather the data first in order to come to your conclusions. This is what I have been taught all my life. So I wholeheartedly support this legislation.

Senator CARDIN. Thank you. Well, I want to thank all five of our witnesses. I think this has been extremely helpful. I particularly, again, appreciate Ms. Manning-Moon putting a face on the issue. When you have national statistics or numbers, they get lost at times and you realize that they are really people and families, and that is very important.

Commander Wierzbicki, I appreciate your testimony. To hear from the law enforcement directly—you are on the front lines. You are out there battling every day, and we very much appreciate the efforts that you are making, and please express our appreciation to your fellow people who are out there, police officers or the sheriff's department doing the work.

I thank the other three witnesses for their expertise on this subject and trying to help us figure out what we should do next. The purpose of this hearing was to gather information from you all as to what Congress can do to carry out our principal responsibility of protecting the people of this Nation. I found the hearing very helpful, and we will decide next how to proceed, and we thank you for your testimony.

The Committee record will stay open for 1 week in the event that there are additional questions that are asked by any of our members. We would ask, if that is the case, that you try to reply as quickly as possible.

With that, the Subcommittee will stand adjourned. Thank you all very much.

[Whereupon, at 11:16 a.m., the Subcommittee was adjourned.]

[Additional material is being retained in the Committee files, see Contents.]

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

QUESTIONS AND ANSWERS

Written Questions of Senator Tom Coburn, M.D.

Brian Levin, Professor, California State University, San Bernardino

U.S. Senate Committee on the Judiciary

September 29, 2010

1. In your testimony, you stated that some of the victimizations against homeless people relate to spatial vulnerabilities, such as the actual physical lack of protection provided by shelter, and the frequent location of the homeless in either high crime or isolated places where access to telephones or immediate assistance is limited. How are law enforcement agencies to differentiate between crimes in which the victim is targeted because he or she is homeless and crimes in which a homeless victim is targeted because of these other reasons?

2. You also said that addictions, engagement by some in dangerous survival or impulsive behaviors, and ill-chosen personal associations are also contributory risk factors. How are law enforcement agencies to differentiate between crimes in which the victim is targeted because he or she is homeless and crimes in which a homeless victim is targeted because of these other reasons?

Answer:

Senator Coburn thank you for the opportunity to address these important questions as to how law enforcement agencies can differentiate between crimes against the homeless according to a perpetrator's motive. The criminal law and police, even outside the context of hate crime, consistently delve into offender motivation, as well as other situational factors, to distinguish between crimes and non-crimes, as well as between different offenses with varying penalties.

Before going into specific line officer issues, it is important to analyze the central role motive determinations make in the criminal law. Motive is defined as, "The circumstance tending to establish the requisite *mens rea* for a criminal act and is the inducement which impels or leads the mind to indulge in the criminal act." Black's Law Dictionary, 6th Ed. (West, 1990). Thus, oftentimes, motive is either (1) crucial to establishing whether or not the requisite level of intent exists, or (2) a required element of an offense, such as with specific intent crimes. In these circumstances police routinely analyze motive in making initial determinations about crimes. Burglary, a specific intent crime, for instance is not merely entering a building without privilege to do so. It requires that the police make an additional finding: that the purpose or motive for the offense was the commission of another crime once the suspect is inside. Similarly, theft, is not just the taking of another's personal property, but rather, doing so with the additional purpose of depriving the owner of it for the benefit of the thief. *Id.* In oral argument during the hate crime case of *Wisconsin v. Mitchell*, 508 U.S. 476 (1993), Supreme Court Justice Antonin Scalia noted how an underlying motive can make all the difference as to whether something is even punishable as a crime at all:

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"I'm certainly entitled to wish the enemy well in a war that my country's engaged in. But if I perform the act [of disclosure of secret information]...with the motive of helping the enemy....The only thing that makes it treason is that I do it with the motive of helping the enemy."

Similarly, it is a crime to threaten the life of the president, but law enforcement must assess whether the speaker's actions and the context of his words render a particular utterance either a crude political statement or a bona fide illegal threat. *Watts v. United States*, 394 US 705 (1969). Lastly, if someone strikes another person, motivated by a reasonable belief that he is lawfully defending himself, police are likely not to arrest the him.

As front line enforcers of the law, police routinely rely on various apparent crime indicators to make arrest and data collection determinations. These include physical evidence, statements, the *modus operandi* and preparatory behavior of the perpetrator, the relationship or lack thereof between the parties, and a common sense assessment of relevant available information. In addition departmental training, policies and the guidance of supervisors and prosecutors provide valuable assistance to line officers.

This kind of analysis is made regarding hate crime in general, as well as bias attacks against the homeless in particular. For instance, police may have to assess a variety of situational factors relating to why Orthodox Jews walking to synagogue on a Saturday are attacked. Were they robbed? Who were the attackers? Who else did these attackers target previously and what did they do in those instances? Similarly, was a church school vandalized by students seeking to dodge a Latin test, or was it part of a pattern of crimes committed by anti-Christian bigots bent on interfering with religious education?

We know quite a bit about why homeless people become crime victims and the characteristics of those crimes that are, and are not hate crimes. When homeless people were killed for insurance proceeds as part of a fraud scandal in Los Angeles or kidnapped to deal drugs in sealed apartments in Brooklyn those were clear examples of non bias motivated crimes. Similarly, personal disputes between homeless people are not either. However, we know that there are clear repetitive patterns where neo-Nazi skinheads target homeless people for attack and where domiciled juveniles and young adults attack homeless people for merely the thrill, turf claims, or peer validation. These facts are routinely available to responding line officers and constitute the majority of the hate crime attacks on the homeless.

The FBI in its free police training guide defines a hate or bias crime as a "criminal offense committed against a person or property motivated, in whole or in part by the offenders bias against" a particular racial, religious or other enumerated group. The FBI and other trainers list some factors, that while not individually conclusive, are important for police to consider in analyzing possible hate crimes. These include:

Incriminating statements made by the suspects during the commission of the crime,
Hate symbols,

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An offender's past history,
A pattern of similar victimizations,
Community perceptions,
A history of local conflict between group members,
Possession of self made or purchased videos or literature promoting violence against targeted victims,
Evidence of hate group involvement,
The absence of any other apparent motive,
The relationship or lack thereof between victim and offender,
The victim and offenders are from different groups,
Attacks that are particularly degrading or violent beyond what is necessary to achieve compliance,
A common sense assessment of the totality of the circumstances.

Not all attacks against the homeless are hate crimes. However, responding police can take into account various obvious indicators to aid them in making common sense assessments of motive, which in many cases the attackers want to telegraph in the first place.

Thank you again for this opportunity and feel free to contact me if I can be of any further assistance. As a former New York City police officer I always appreciate the chance to add a police perspective to policy deliberations.

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November 1, 2010

Committee on the Judiciary
Subcommittee on Crime and Drugs
United States Senate
Washington, DC 20510-6275

RE: Responses to Written Questions Submitted by Senator Tom Coburn, M.D.

Dear Committee Members:

Thank you for the invitation to testify at the Senate Committee on the Judiciary, Subcommittee on Crime and Drugs hearing entitled "Crimes Against America's Homeless: Is the Violence Growing," held on September 29, 2010.

I appreciate the written questions submitted by Senator Tom Coburn, and I will do my best to respond to these queries.[1] However, I would like to reiterate that I find the plight of America's homeless to be heartbreaking, and it is impossible not be repulsed by the crimes of violence committed against the homeless, as described in media accounts and the recent report by the National Coalition for the Homeless.[2] Moreover, I have no abiding objections to the bill at issue in the hearing, the Hate Crimes Against the Homeless Statistics Act.[3] As a general matter, I encourage the gathering and dissemination of data and other relevant information as a means to enlighten policy judgments on criminal justice,[4] so long as policymakers understand and acknowledge the limitations of data collection and the conclusions they may draw from the resulting statistics. My principal concern is not the gathering and dissemination of crime data, but instead the enactment of substantive[5] "hate crimes" laws, especially by the federal

[1] All opinions expressed and any errors herein are my own.

[2] *See* NATIONAL COALITION FOR THE HOMELESS, HATE CRIMES AGAINST THE HOMELESS: AMERICA'S GROWING TIDE OF VIOLENCE (Aug. 2010); Eric Lichtblau, *Killings of Homeless Rise to Highest Level in a Decade*, N.Y. TIMES, Aug. 18, 2010.

[3] Hate Crimes Against the Homeless Statistics Act, S. 1765, 111th Cong. (2009). *See also* Hate Crimes Against the Homeless Statistics Act, H.R. 3419, 111th Cong. (2009). For important criticisms of the Hate Crimes Statistics Act of 1990, see JAMES B. JACOBS & KIMBERLY POTTER, HATE CRIMES: CRIMINAL LAW & IDENTITY POLITICS 39-44, 69-74, 146-47 (1998). *See also* PHYLLIS B. GERSTENFELD, HATE CRIMES: CAUSES, CONTROLS AND CONTROVERSIES 166-71, 284 (2d ed. 2010).

[4] *See, e.g.*, Erik Luna, *Transparent Policing*, 85 IOWA L. REV. 1107 (2000) (encouraging the collection and distribution of criminal justice information in order to make police decision-making more accessible and accountable to the public, thereby helping to democratize the law enforcement process).

[5] I take no position here as to the propriety of allowing evidence of bias as a factor at sentencing.

government. As stated in my written testimony and restated in this letter, I have grave doubts about the alleged necessity and constitutionality of the federal Hate Crimes Prevention Act.[6]

Immediately below, I have listed each of Senator Coburn's questions in bolded italics, followed by my response in regular font.

1. ***In your testimony, you explain that the FBI's hate crime data collection guidelines state that classifications of a crime as bias-motivated may come down to whether a "substantial portion of the community where the crime occurred perceived that the incident was motivated by bias." How does one prove that the community perceives a crime as bias-motivated?***

To be clear, my written testimony did not claim that the classification of an offense as a hate crime "may come down to" community perception. Rather, I stated that the guidelines promulgated by the FBI's Uniform Crime Reporting (UCR) Program

> provide a series of criteria that might support a finding of bias. Some of the listed items seem commonsensical, like the presence of bias-related markings at the scene of the crime (e.g., a swastika painted on the door of a synagogue). Others are less obvious or might raise serious legal questions if used at trial, such as whether a "substantial portion of the community where the crime occurred perceived that the incident was motivated by bias." It is hard to imagine the evidentiary basis (let alone constitutional argument) for admitting testimony or documents about popular sentiment in order to prove that a crime has been committed.[7]

My testimony referred to this *community perception* factor precisely because I believe it is a questionable basis for classifying an offense as a hate crime. I have similar concerns about other criteria, such as the fact that "a historically established animosity existed between the victim's and the offender's groups."[8] Like community perception, the use of historical group animosity as courtroom proof would be problematic under the rules of evidence and dubious as a matter of constitutional law. But this is of no legal moment if the goal is to categorize data rather than condemn defendants. It is, however, a reason for caution. Again, policymakers need to understand and acknowledge the limitations of data collection under the UCR guidelines and be wary in drawing any conclusions from the statistics.

Indeed, Senator Coburn's question may help demonstrate the limitations of data collection. Although the FBI documents list community perception as a factor or question to ask in determining whether a hate crime has been committed,[9] these documents do not offer a

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[6] *See* Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, Pub. L. No. 111-84, §§ 4701-13, 123 Stat. 2190, 2835-44 (2009).

[7] Testimony of Erik Luna, *Crimes Against America's Homeless: Is the Violence Growing?*, Hearing Before the Subcomm. on Crime and Drugs of the S. Comm. on the Judiciary, 111th Cong., at 2 (2010) [hereinafter "Luna Testimony"].

[8] FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE, HATE CRIME DATA COLLECTION GUIDELINES 6 (rev. ed. 1999) [hereinafter "GUIDELINES"].

[9] *See id.* at 5; FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE, TRAINING GUIDE FOR HATE CRIME DATA COLLECTION 23 (1996) [hereinafter "TRAINING GUIDE"].

methodology for making this specific determination. Instead, the FBI's *Training Guide for Hate Crime Data Collection* suggests a general two-tier procedure for law enforcement agencies in their collection of hate crime data: A "Responding Officer" makes an initial determination as to whether there is any indication that the offender was motivated by bias, and if so, a "Second Level Judgment Officer" then carefully reviews the facts of the incident to determine whether, in fact, a hate crime has been committed.[10] According to the *Training Guide*, among the questions that a Second Level Judgment Officer should answer is whether "a substantial portion of the community where the crime occurred perceive[s] that the incident was motivated by bias."[11]

Again, the FBI documents do not describe how community perception should be measured, and the examples and exercises that follow the listed factors/questions do not seem to involve issues of community perception.[12] Assuming the boundaries of the relevant community could be ascertained with some degree of certainty—a presumption that may be erroneous in some circumstances—a reliable measure of whether that community perceived the incident as motivated by bias would require more than just a conversation with a few neighbors. In turn, a statistically meaningful public opinion poll would almost certainly be a non-starter as inefficient and financially prohibitive. Ultimately, however, I have been unable to ascertain what is (or is believed to be) an appropriate, efficient, and realistic methodology. In an effort to respond to Senator Coburn's question, I called the FBI's Criminal Justice Information Services Division, which is responsible for the UCR Program. Although the Unit Chief was very cordial, he was reluctant to give me an answer that, in turn, would be provided in writing to the Committee Members. Instead, he suggested that the Committee send a formal inquiry to FBI Director Robert Mueller regarding the methodology for proving that a community perceives a crime as bias motivated, which would allow the agency to fully vet and respond to the question.[13]

a. *What should the standard of proof be to establish bias and include these crimes in hate crime statistics?*

The FBI's *Hate Crime Data Collection Guidelines* describe a hate crime (or bias crime) as a "criminal offense committed against a person or property which is motivated, in whole or in part, by the offender's bias." In turn, bias is defined as a "preformed negative opinion or attitude toward a group of persons based on their race, religion, disability, sexual orientation, or ethnicity/national origin."[14] The guidelines then state that "before an incident can be reported as a hate crime, sufficient objective facts must be present to lead a reasonable and prudent person to conclude that the offender's actions were motivated, in whole or in part, by bias."[15] This last quote, though not explicitly labeled as such, would appear to be the *standard of proof* for

[10] *See* TRAINING GUIDE, *supra*, at 19-23.

[11] *Id.* at 23.

[12] *See* TRAINING GUIDE, *supra*, at 24-26; GUIDELINES, *supra*, at 7-8.

[13] Phone Conversation with Greg Scarabro, Unit Chief, Uniform Crime Reporting Program, Criminal Justice Information Services Division, Federal Bureau of Investigation, October 28, 2010.

[14] GUIDELINES, *supra*, at 2. *See also* TRAINING GUIDE, *supra*, at 17.

[15] GUIDELINES, *supra*, at 4. *See also* TRAINING GUIDE, *supra*, at 22.

reporting an offense as a hate crime. As stated in my written testimony, this standard vaguely resembles "probable cause"—the amount of evidence needed to conduct a search and seizure, for instance[16]—rather than the constitutionally mandated standard for conviction at trial. To be sure, the foregoing is descriptive, while Senator Coburn's question asked for a normative judgment—that is, what *should* the standard of proof be to establish bias sufficient to include an offense in the federal hate crimes statistics. Unfortunately, I cannot provide a clear-cut response, as the answer depends on the intended use of these statistics.

If the goal is determine how many incidents involved hate crimes that could be proven as such at trial, then the appropriate standard for the bias element (like all elements of crime) would be proof beyond a reasonable doubt.[17] This approach might effectively limit the number of reported incidents to cases where defendants are not only convicted of an offense in court but are found guilty of a legislatively enacted hate crime. Like other offenses, not all hate crimes are solved, not all suspects are apprehended, and not all defendants are convicted—and even relatively successful cases may end with plea agreements that avoid hate crime convictions. The issue is further complicated by, *inter alia*, the fact that hate crime statutes differ as to the conduct criminalized and the groups covered. State and federal governments do not have identical definitions of hate crimes, and, in fact, the federal Hate Crimes Statistics Act and the FBI guidelines appear to employ a different hate crime formulation than that provided by the federal Hate Crimes Prevention Act.[18]

In contrast, a low or ambiguous standard of proof risks over-inclusion, with incidents listed as hate crimes based on questionable evidence of bias or, worse yet, facts that do not clearly demonstrate that a crime has been committed. As discussed in my written testimony, advocacy groups use disparate or loose standards, or no real standards at all, in the gathering and presentation of data.[19] The U.S. Justice Department's Bureau of Justice Assistance has recognized the "widespread disparities between the hate crime data provided by public interest

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[16] *See* U.S. CONST. amend. IV; Brinegar v. United States, 338 U.S. 160, 175-76 ("Probable cause exists where 'the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed.").

[17] *See* Apprendi v. New Jersey, 530 U.S. 466 (2000).

[18] The Hate Crimes Statistics Act calls for the collection of data "about crimes that *manifest evidence of prejudice based on* race, religion, sexual orientation, or ethnicity," Hate Crimes Statistics Act, Pub. L. No. 101-275, 104 Stat. 140 (1990) (emphasis added); while the FBI guidelines define as a hate crime a "criminal offense committed against a person or property which is *motivated, in whole or in part, by the offender's bias*." GUIDELINES, *supra*, at 2. The Hate Crimes Prevention Act, however, makes it a crime to "willfully cause[] 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, national origin, gender, sexual orientation, gender identity, or disability of any person. 18 U.S.C. § 249(a)(1), (2) (emphasis added). The relevance of these linguistic differences is the subject of debate, as is the appropriate interpretation of the "because of" terminology in the Hate Crimes Prevention Act. *Compare* Letter of the U.S. Commission on Civil Rights to the Hon. Joseph Biden, Jr., et. al., Regarding S. 909, June 16, 2009, *reprinted at* 155 Cong. Rec. S7509-06, S7514 (claiming that "because of" language would, *inter alia*, make every rape a federal hate crime); *with Senate Committee on the Judiciary Holds a Hearing on the Matthew Shepard Hate Crime Prevention Act of 2009*, CQ Transcriptions, June 25, 2009, *available on Westlaw at* 2009 WL 1804153 (U.S. Attorney General Eric Holder, Jr. denying this interpretation in response to questions by Senators Orrin Hatch and Jeff Sessions) [hereinafter "Holder Testimony"].

[19] *See, e.g.*, JACOBS & POTTER, *supra*, at 46-50; GERSTENFELD, *supra*, at 170-71; BUREAU OF JUSTICE ASSISTANCE, U.S. DEPARTMENT OF JUSTICE, A POLICYMAKER'S GUIDE TO HATE CRIMES 8-10 (1997) [hereinafter "POLICYMAKER'S GUIDE"].

groups."[20] Some organizations count all incidents as "hate crimes"—even if they do not amount to a criminal offense or only involve bias-motivated comments, and regardless of the source of information.[21]

The relevant standard of proof thus represents a judgment call for lawmakers and law enforcers, who must decide whether under- or over-inclusive reporting is more problematic and which standard of proof along an evidentiary continuum—more or less, from "reasonable suspicion"[22] to "proof beyond a reasonable doubt"—strikes an appropriate balance in light of the potential categorization errors. This should be a non-delegable decision for policymakers, fully cognizant of the limitations of data collection and the conclusions they may draw from the resulting statistics. For what it is worth, however, the approach taken pursuant to the Hate Crime Statistics Act does not seem inherently unreasonable to me. If nothing else, it provides a single standard for data collection and avoids the terminological problems of the Hate Crimes Prevention Act.[23]

b. ***Will it take more law enforcement or prosecutor resources to prove that these incidents are motivated by bias?***

This question appears to raise two separate issues: [1] the resources required to classify (appropriately) incidents as hate crimes for statistical purposes, and [2] the resources required to investigate a purported hate crime and prosecute it as such in court. As for the former question, the FBI has stated that "[h]ate crime reporting should not … require large new commitments of personnel and other resources by local, state, and federal UCR data contributors."[24] This is because the approach adopted by the FBI "incorporates hate crime data into the already established nationwide UCR program," requiring only "the addition of a single new data element to [the existing system] to provide the capability for flagging criminal incidents as bias motivated."[25]

During the September 29th hearing, Commander Richard Wierzbicki of the Broward County (Florida) Sheriff's Office testified

> From an operations standpoint, I foresee absolutely no difficulty arising from the inclusion of the homeless population as a covered group by the Federal Hate Crimes Statistics Act. Further, the addition of the homeless population to the Hate Crime

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[20] POLICYMAKER'S GUIDE, *supra*, at xv.

[21] *See, e.g.*, *id.* at 8-10; JACOBS & POTTER, *supra*, at 46-50. Unfortunately, these problems appear to exist in the NCH's well-intentioned and otherwise laudable reports, which sometimes fail to differentiate between crimes against the homeless and hate crimes against the homeless. *See* Luna Testimony, *supra*, at 4-7.

[22] "Reasonable suspicion"—the evidentiary requirement for police to conduct a "stop and frisk"—represents the lowest constitutional standard of proof (qua burden of persuasion) in American criminal procedure. *See, e.g.*, Alabama v. White, 496 U.S. 325, 330-31 (1990).

[23] *See supra* note 18. *But see supra* note 3 (noting criticisms of the Hate Crimes Statistics Act).

[24] GUIDELINES, *supra*, at 2. *See also* TRAINING GUIDE, *supra*, at 6.

[25] TRAINING GUIDE, *supra*, at 6.

> Statistics Act will in no way impede efforts to collect and report data on bias-motivated crimes committed against currently covered groups.[26]

Commander Wierzbicki reaffirmed this point when Senator Cardin stated that he was "impressed by your testimony that it would be very little additional burden to your agency to identify [the necessary] information for the FBI data collections."

> Yes, Senator. All it amounts to is checking under a different box. We would add the homeless into the category, check a box, and change the software, and it is pretty much a done deal.[27]

Although I am unable to assess the claims by either the FBI's data collection division or Commander Wierzbicki, I have no reason to doubt them. Instead, I would note in passing that the simplicity of a classification system and relevant instrument may raise concerns about the validity of any results.[28] Moreover, the appropriate application of any set of guidelines and research instrument requires a training regime, for instance, which involves the allocation of resources. But again, I have no reason to doubt claims about the limited nature of any resource commitments for the collection of hate crime data. And absent an unexpectedly large price tag for such efforts, I believe the benefits would likely outweigh the costs given my general support for the collection and dissemination of criminal justice information.

I cannot reach the same conclusion with regard to the prosecution of apparently bias-motivated offenses under hate crime statutes, especially the federal Hate Crimes Prevention Act. This is not simply because the investigation and prosecution of hate crimes cases are inordinately expensive. To be sure, hate crimes cases are more resource intensive than other cases, involving not only the costs associated with proving that crimes are motivated by bias but also the expenditure of resources to train police and government attorneys on how to investigate and prosecute statutory hate crimes.[29] Yet like the costs associated with gathering and disseminating

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[26] Unedited Hearing Transcript, *Crimes Against America's Homeless: Is the Violence Growing?*, Hearing Before the Subcomm. on Crime and Drugs of the S. Comm. on the Judiciary, 111th Cong., at 37 (2010) (testimony of Commander Wierzbicki).

[27] *Id.* at 45.

[28] For the FBI's "Hate Crime Incident Report," see http://www.fbi.gov/about-us/cjis/ucr/reporting-forms/hate-crime-incident-report-pdf. For the FBI's "Quarterly Hate Crime Report," see http://www.fbi.gov/about-us/cjis/ucr/reporting-forms/quarterly-hate-crime-report-pdf.

[29] The U.S. Department of Justice, through the Bureau of Justice Assistance (BJA), has initiated several programs to support police and prosecutors in enforcing hate crime statutes. *See, e.g.*, U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE, ADDRESSING HATE CRIMES: SIX INITIATIVES THAT ARE ENHANCING THE EFFORTS OF CRIMINAL JUSTICE PRACTITIONERS (2000), *available at* http://www.ncjrs.gov/pdffiles1/bja/179559.pdf (describing some examples of "BJA-funded projects in this area," which include summits, training programs, videos, resource guides, and pamphlets for all law enforcement, civil leaders, prosecutors, and victims involved with hate crimes); *see also id.* at 8 ("In early 2000, BJA will send a copy of the video (in excess of 14,000 copies) to every state, county, and municipal law enforcement agency in the nation."); *id.* at 9 (noting that federal funding will be used to "print 450,000 copies of the publication (including the pocket insert) and distribute them to police departments and victims advocates across the nation"); *id.* at 10 (describing how "[w]hen completed, the more than 100-page resource guide will be bound in a 3-ring binder to facilitate updating," and distributed "to all 3,100 local and state prosecutor's offices in the country"). While the "breadth of these projects demonstrates law enforcement's commitment to creating and creativity in developing a multifaceted approach to hate crimes," it also shows the vast amount of "BJA provided funds and support to [these] projects targeting law enforcement." *Id.* at 6. Although the BJA admitted that "the number of hate crimes is small compared with that of other violent crimes," the federal government still spends significant resources to train state and local law enforcement on how to investigate and prosecute these crimes. *Id.* at 5. *Cf.* H.R. REP. NO. 111-86, at 16 (2009), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_reports&docid=f:hr086.111 (estimating $10

data, these expenses might well be acceptable if the investigation and prosecution of ostensibly bias-related offenses as hate crimes were both necessary and constitutional. Neither is true, however, at least with regard to the federalization of bias-motivated offenses under the Hate Crimes Prevention Act.

As discussed in my written testimony,[30] hate crimes do not represent an "epidemic" as some advocacy groups and politicians have argued. After 2001, the amount of hate crime incidents reported by the FBI has remained roughly the same, despite an increase in the number of reporting agencies and a constantly growing American population. To this day, the number of bias-motivated crimes represents miniscule fraction of the total number of offenses in the nation.[31] Moreover, there is no evidence that state and local law enforcement fail to prosecute vigorously bias-motivated crimes under traditional criminal statutes or pursuant to hate crime provisions that now exist in most jurisdictions. Nor is there evidence that offenders who commit bias-motivated crimes get off easy in state criminal justice systems. Despite arguments that the Hate Crimes Prevention Act was necessary to deal with the "scourge" of bias-motivated violence—as well as claims that it was "vital," "crucial," and "necessary" to serve the federal government's "strong" interest in this area[32]—the statute has generated a grand total of zero federal prosecutions.[33]

Not only was the Hate Crimes Prevention Act superfluous, however, but it also raises significant policy and constitutional questions. As noted in my written testimony, it is unlikely in the extreme that the federalization of hate crimes will deter violent acts or in any other way protect communities from bias-motivated offenses.[34] Instead, the few federal prosecutions that may ensue in the coming years might only perpetuate rather ameliorate intergroup animosities, provoking concerns of group favoritism in federal law enforcement, regardless of whether such claims are legitimate or baseless, as well as providing fodder for racists, xenophobes, anti-

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million in costs associated with the Hate Crimes Prevention Act from 2010-2014). Moreover, prosecutors have "acknowledged that bias crime cases" are "harder to prosecute than 'ordinary' criminal cases" because they require "evidence of the perpetrator's motivation in addition to evidence that the perpetrator had committed the underlying offense." JEANNINE BELL, POLICING HATRED: LAW ENFORCEMENT, CIVIL RIGHTS, AND HATE CRIME 161 (2002); *see also id.* at 161-70 (describing the difficulties prosecutors face in prosecuting civil rights crimes as opposed to ordinary crimes); Anti-Defamation League & Cook County Hate Crimes Prosecution Council, *Hate Crimes Data—Collection and Prosecutions: Frequently Asked Questions* 3 (acknowledging that hate crimes charges are generally more difficult to prove than other crimes and noting that "[s]ome prosecutors have expressed a reluctance to prosecute bias crimes because of the additional evidentiary burden at trial"), *available at* http://www.adl.org/combating_hate/hatecrimes_qa/hatecrime_qa2.asp. According to one prosecutor, "In 99 percent of cases, other substantive criminal charges, [such as] malicious destruction of property, can be brought without having to get into looking for evidence of motivation to show to the judge or the jury." BELL, *supra*, at 162.

[30] *See* Luna Testimony, *supra*, at 7-14.

[31] *See, e.g.*, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS ONLINE, at tbls. 3.106-3.109, 3.112-3.114, *available at* http://www.albany.edu/sourcebook/; *see also supra* note 29.

[32] *See* Luna Testimony, *supra*, at 8-9.

[33] To be sure, desuetude tends to weaken arguments against the law on fiscal grounds. *See supra* note 29. But again, the key point here is that a year's experience helps demonstrate that the Hate Crimes Prevention Act was unnecessary. Ironically, a recent case described by the media as a federal "hate crimes" prosecution did not include charges under the Hate Crimes Prevention Act. *See* United States v. Pierkarsky, 2010 WL 3211700 (M.D. Pa.); *Two Found Guilty of Hate Crimes Related to Death of Immigrant*, Oct. 15, 2010, *available at* http://www.cnn.com/2010/CRIME/10/14/pennsylvania.hate.crime/index.html?hpt=T1.

[34] *See* Luna Testimony, *supra*, at 9-10.

Semites, and so on. Most of all, the Hate Crimes Prevention Act raises serious constitutional issues of free speech, due process, double jeopardy, equal protection, and, as discussed in my testimony, federalism and the limited, enumerated powers of Congress. For these and other reasons, I believe the Hate Crimes Prevention Act is unjustifiable, even if it does not take more federal resources to prove that alleged hate crimes were motivated by bias.

c. ***Is there any reason to not also collect statistics for other victims of crimes that might be motivated by bias such as members of the military, pregnant women, or members of a certain political party? If not, why not?***

No, I have no fundamental objection to collecting data for other victims of crimes that might be motivated by bias. Once again, I encourage the gathering and dissemination of data and other relevant information as a means to enlighten policy judgments on criminal justice, so long as policymakers understand and acknowledge the limitations of data collection and the conclusions they may draw from the resulting statistics. When such information is used appropriately, it can help inform policy judgments, like allocating law enforcement resources, determining policing methods and patrol routes, and ensuring responsiveness to community concerns and attentiveness to crime victims (all within constitutional bounds). This information may also be helpful to civic organizations, religious groups, and other private actors who seek to reduce the causes and consequences of crime through their own good works.

So if there were some sort of *prima facie* showing that a non-trivial number of crimes had been motivated by group bias—let's say that crimes against libertarians like myself were on the rise, motivated by animosity against classical liberalism—there would be no inherent reason for me to oppose the collection and dissemination of data regarding this specific type of victimization. Conceivably (I guess), law enforcement might use this information to increase patrols around the Cato Institute, for instance, or to be prepared for bias-motivated violence at a convention of the Libertarian Party.

What I could not agree with, however, would be the creation of a new crime where anti-libertarian bias was an element of the offense, for instance, or the addition of "libertarian status" to an existing statutory scheme. It is one thing to gather and distribute data on bias-motivated offenses, where the main concern is the value of the statistics and the validity (and efficiency) of the method of data collection. Statistics do no work on their own, nor do they work any constitutional injury. But it is an entirely different matter to prosecute and convict individuals precisely because of their alleged bias, which, as mentioned, raises serious concerns of both law and policy. So while the collection and dissemination of data raise no legal issues of consequence and the resulting hate crime *statistics* can cause no harm in and of themselves, hate crime *statutes* have the potential to do both.

What is more, there is no logical limit to the number or types of groups that might be included in a hate crimes statute, and the attempts to do so demonstrate the symbolic politics involved, the *me-too-but-not-you* attitude of some advocacy groups, and the dubious nature of the entire hate crimes endeavor. Perhaps the nation's most prominent institutional advocate of

hate crime laws, the Anti-Defamation League (ADL)—a group that was formed "to stop the defamation of the Jewish people and to secure justice and fair treatment to all"[35]—has suggested that hate crimes statutes should be limited to immutable characteristics and that homelessness may not meet this standard.[36] But, of course, religion is not an unchallengeable characteristic, either; people convert to new religions or reject their previous faiths all the time. If immutability was the standard, bias-motivated offenses against Jews, Christians, Muslims, etc., should not be covered by hate crime statutes.

Likewise, some advocacy groups that lobbied Congress for the passage of the Hate Crimes Statistics Act in 1990 argued *against* the inclusion of violence against women as a hate crime. Among other things, they claimed that the key to genuine hate crimes is that the victims are "interchangeable," while an act of violence against a woman tends to be based on the victim's specific identity.[37] Ironically, this parameter for hate crimes would exclude the murders of Rabbi Meyer Kahane and Dr. Martin Luther King, Jr., for instance, given that the victims were selected precisely because of the their personal identity and were not interchangeable with other members of their religion or race.[38] More recently, U.S. Attorney General Eric Holder, Jr. testified that the Hate Crimes Prevention Act was designed to cover groups that had historically been targeted for violence.[39] But if a history of discrimination and violence is the guide, a litany of other groups (e.g., members of lower socio-economic classes, union/non-union workers, and purported/actual communists) could be covered by the federal hate crimes statute as well. In the end, there is no limit to the groups that may seek special status under hate crimes laws, other than the sway that each group holds in the political process.

* * * * *

Again, thank you for the invitation to testify at the September 29th hearing and for the opportunity to respond to Senator Coburn's written questions. Please feel free to contact me if I can provide further information or answer any other questions.

Sincerely,

Erik Luna

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[35] *See* "About the Anti-Defamation League," *available at* http://www.adl.org/about.asp?s=topmenu.

[36] *See* Kate Davidson, "Debating Homeless Hate Crimes," NPR, Oct. 18, 2009, *available at* http://www.npr.org/templates/story/story.php?storyId=113916951; Eric Lichthlau, *Attacks on Homeless Bring Push on Hate Crimes Laws*, N.Y. TIMES, Aug. 8, 2009.

[37] *See, e.g.*, ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH, HATE CRIMES STATUTES: INCLUDING WOMEN AS VICTIMS 12 (1990); *see also* JACOBS & POTTER, *supra*, at 72-73; Joseph M. Fernandez, *Bringing Hate Crimes into Focus—The Hate Crimes Statistics Act of 1990*, 26 HARV.C.R.-C.L. L. REV. 261, 275 (1991); Marguerite Angelari, *Hate Crime Statutes: A Promising Tool for Fighting Violence Against Women*, 2 AM. U. J. GENDER SOC. POL'Y & L. 63, 82-87 (1994).

[38] JACOBS & POTTER, *supra*, at 73. This definition would also exclude "hate crimes where a victim and offender knew one another." *Id.*

[39] *See* Holder Testimony, *supra* (response of General Holder to questions by Senator Sessions).

Senator Coburn's Follow-up Questions for David Muhlhausen

Question 1: In your testimony, you say that "policymaking is too often influenced by shaky data and questionable statistics." Would this problem be exacerbated or improved by adding homeless people to those covered by the Hate Crime Statistics Act?

While adding homeless people to the Hate Crime Statistics Act (HCSA) will most likely result in more accurate data on "hate crimes" against the homeless compared to the data collected by homeless advocacy groups, this addition does have a downside. The inclusion of the homeless in the HCSA only opens the door wider for advocacy groups to assert that crimes against other groups need to be added to the HCSA.

Why should not all crimes based on prejudices be included in the HCSA? Crimes based on prejudices against women, the elderly, children, and members of the U.S. armed services are excluded from the HCSA. Arbitrarily excluding some groups inevitably leads to these groups feeling left out and resentful that their victimization is not as appreciated as the victimization of groups awarded special status under HCSA. In other words, the groups left out will likely "resent the selective depreciation of their victimization."[1] This resentment only encourages omitted groups to advocate for their inclusion as a special class.

Further, the additional statistics-gathering requirements will only make the data collection process more burdensome for local law enforcement. In addition, the inclusion of more groups devalues the hate crime classification by eventually making the category indistinguishable from ordinary street crime.[2]

Question 2: Why should the act cover the homeless, but not members of the military, pregnant women, members of a certain political party, etc.?

Oddly, the list of groups covered by the HCSA and federal criminal sentencing law are not coterminous. Crimes based on gender and military service are covered by federal criminal sentencing law, yet excluded from the HCSA. What message does this send to how Congress values crimes against women and members of the military? Alternatively, the proposed Hate Crimes Against the Homeless Statistics Act would require the FBI to collect data on hate crimes against the homeless, even though these crimes are not covered by federal criminal sentencing law.

The proponents of the Hate Crimes Against the Homeless Statistics Act often base their argument on the vulnerability of the homeless population. While living on the streets increases the vulnerability of the homeless, there are other groups just as vulnerable and, perhaps, more deserving of special status. What about pregnant women and young children? How about members of the U.S. armed services? The future of our society depends on women and children. The safety of our nation depends on members of the U.S. armed services. Given the vital roles that women, children, and members of military fulfill in our society, are they not just as worthy to be included in the HCSA? What does their omission say about our society? The disparity reveals the arbitrary nature of the decisions to include or exclude certain groups from special status.

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Question 3: Compared to other crimes, will it take more police or prosecutor resources to prove incidents are motivated by bias and collect statistics related to them?

Additional statistics-gathering requirements will only make the data collection process more burdensome for local law enforcement. While some may argue that the addition of the homeless to the HCSA only amounts to requiring local law enforcement to merely check a box on a form, this view is overly simplistic. To check that box, law enforcement has to go beyond investigating the verifiable facts of the criminal incidents, such as establishing the identity of the offender. In addition to their normal responsibilities, law enforcement is being asked to engage in the subjective reading of the minds to determine if offenders are motivated by hate. In many instances, such diversions waste law enforcement resources that could be better spent investigating other crimes.

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[1] James B. Jacobs and Kimberly Potter, *Hate Crimes: Criminal Law & Identity Politics*, (Oxford: Oxford University Press, 2001), p. 8.
[2] *Ibid.*

64876.014

Broward Sheriff's Office
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954.831.8900 • **www.sheriff.org**

Pride in Service with Integrity

October 13, 2010

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

Dear Senator Leahy:

Please find enclosed responses to the questions Senator Tom Coburn, M.D. and Senator Amy Klobuchar had following my testimony at the Senate Committee on the Judiciary, Subcommittee on Crime and Drugs hearing entitled "Crimes Against America's Homeless: Is the Violence Growing?".

As requested, an electronic version was sent to Ms. Julia Gagne. If you require any additional information, please feel free to contact me at 954.849.6422.

Sincerely,

Richard Wierzbicki, Commander
Hate Crimes / Anti Bias Task Force

RW/ls
Enclosure

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Written Questions of Senator Tom Coburn, M.D.
Richard Wierzbicki, Commander, Broward County Sheriff's Office
U.S. Senate committee on the Judiciary
September 29, 2010

Q. In your testimony, you said that, "[w]hen the homeless population is let out of national hate crime data collection and reporting, we fail in our responsibility to protect all Americans equally." In your view, do we also fail in that responsibility by not collecting data on individuals who are victims of crime because they are members of the military? Or pregnant? Or members of a certain political party? If not, why not?

A. No, under the categories you have listed, we do not fail in our responsibility to protect all Americans equally. In my 28 years as a law enforcement officer, protecting the citizens of the State of Florida and Broward County, I have not experienced bias motivated hate directed towards the victims of crimes from the groups you have listed.

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Crimes Against America's Homeless: Is the Violence Growing?
September 29, 2010
Questions for the Record from Senator Amy Klobuchar

Questions for Richard Wierzbicki, Commander, Hate Crimes/Anti-Bias Task Force, Broward County Florida Sheriff's Office

Q. Your written testimony discusses the importance of raising law enforcement awareness regarding crimes against the homeless, and mentions that St. Petersburg College is developing a course that will help law enforcement work with homeless individuals to encourage them to report crimes. Can you describe the kind of specialized training you think may be helpful for law enforcement regarding crimes against the homeless?

A. Some of the areas of training that may be beneficial for law enforcement officers in dealing with the homeless community are:

- Defining "homelessness"
- Law enforcement, business and community response to the homelessness issue
- Law Enforcement's safety concerns when dealing with the homeless population
- Legal issues – what can and cannot be done
- Homelessness task forces around the country – best practices and case studies
- Strategies to reduce homelessness
- Services available to the community, homeless, law enforcement and social/community organizations

Q. Your written testimony mentions the importance of data collection on hate crimes because it has allowed you to target your response to hate crimes – for example, focusing on religious institutions that were frequently the subjects of hateful vandalism. What kind of data collection is done by the Florida Attorney General – and how are the data collection requirements implemented at the local level? How did you target your response as a result?

A. The Florida Attorney General's Annual Hate Crimes Report shows the number of Hate Crimes committed against persons, but also the nature of the factors motivating the offenses. This includes Hate Crimes motivated by a person's race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, mental or physical disability or advanced age of the victim. These include crimes like homicide, robbery, sexual assault, assault, battery and kidnapping. The Annual hate Crimes Report also collects data on crimes against property such as vandalism, burglary and arson. The data is submitted to the Florida Attorney

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General's Office via individual law enforcement agencies throughout the State of Florida. The data is collected by the individual agencies through their Uniform Crime Reporting (UCR) information system and sent to the Attorney General's Office. After the Report is compiled, it is sent to the law enforcement agencies throughout the State. At the Broward County Sheriff's Office, any report labeled a Hate Crime is sent to our Task Force and mapped so we can see any patterns developing and prepare an appropriate response.

SUBMISSIONS FOR THE RECORD

SENATOR BENJAMIN L. CARDIN (D-MD)

SENATE JUDICIARY COMMITTEE – CRIME SUBCOMMITTEE

"Crimes against America's Homeless: Is the Violence Growing?"

SEPTEMBER 29, 2010

Good Morning. When I hear the horrific stories about murders, assaults and rapes committed against our nation's homeless I ask myself: is this America? When I heard the story of Norris Gaynor, being beaten to death by baseball bats while sleeping on a park bench, I asked myself, where is all this violence coming from? When I heard about John McGraham being doused with gasoline and set ablaze - I was shocked and horrified that this is how fellow human beings are treating each other.

These are only two examples of a larger problem. Last fall, I introduced the Hate Crimes Against the Homeless Statistics Act with Senator Collins in an effort to get uniform data collection on this type of violence. My bill will only require data collection on bias motivated crimes committed against the homeless. What that means is; I want the federal government to track how many crimes are being committed against the homeless just because they are homeless.

Currently, the Hate Crimes Statistics Act of 1990 requires the Department of Justice to collect data from law enforcement agencies about "crimes that manifest evidence of prejudice based upon race, religion, sexual orientation, ethnicity, disability, gender or gender identity." However, it was not always this way. When the law was initially created in 1990, the FBI was only required to collect data about crimes based upon race, religion, sexual orientation and ethnicity. Then in 1994, Congress added

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disability. And just recently, the congress amended the statute again, requiring data collection on gender and gender identity. Now there are some individuals that believe this data collection is unnecessary. I disagree. The best way to develop effective strategies to deal with an issue is first to have accurate information.

The National Coalition for the Homeless has been documenting these bias motivated acts of violence for over 11 years. According to their numbers, bias motivated crimes against the homeless are pervasive and growing. Just last year 43 people died–making 2009 the deadliest year for attacks on homeless people. Now, one might think that 43 individuals killed over a year in our country is a relatively small number. But what I found out is if you compare this number to the number of other hate crime deaths – the results are astonishing.

According to FBI hate crimes statistics, 7 homicides were classified as a hate crime in 2008. In that same year 27 fatal attacks occurred on homeless persons, according to the National Coalition for the Homeless. The National Coalition for the Homeless has done an amazing job trying to track and document all of these crimes for the greater public, but they are not law enforcement. Right now, we are unable to determine how severe this problem is on a national level without establishing a baseline for meaningful comparison. Data collection provides the needed information to policy makers, law enforcement, and communities so they can make informed decisions on how to best proceed within their community.

According to the Department of Housing and Urban Development's latest report to Congress, approximately 643,000 persons were homeless on a given night in 2009

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while roughly 1.56 million people, or one in every 200 Americans, spent at least one night in a shelter during 2009. Veterans account for about 20% of our homeless population. Families displaced because of domestic violence make up 28% of our homeless population. But do you know who the fastest growing segment of the homeless population is --- families with children. It is our responsibility to strengthen programs to reduce that number.

As we see the number of families increase, we see the number of available shelters decrease. Take Baltimore County for example – they too have seen a rise in homeless families but lack the space to provide them with safe housing. According to recent statistics, shelter space jumped by nearly 25% last year. According to the Maryland Department of Social Services, the number of homeless parents seeking emergency housing has more than doubled in the past five years.

So, here is what we do know. We know that violence is occurring against this population. We know that the un-housed population in America is growing. One could make an educated guess that these two facts may lead to more victims. But I don't want to guess. I want facts. I hope this hearing will shed some light on this urgent matter and alert the American public to this behavior.

This nation was founded on the principle the government must seek a "more perfect union" for the people, and that the government must promote "general welfare" so that every man and woman can secure the blessings of liberty. America's homeless are mothers and fathers, brothers and sisters, veterans and workers. Robert Kennedy once said that "If you've made some contribution to someone else, to improve their life

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... that's what you should be doing." What will history say about us on this issue? Did *we the people* help to "promote the general welfare" of the homeless? What steps did we take to stop the violence? America's homeless deserve the same respect and dignity that we share sitting here today. I look forward to the testimony today.

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Statement of Senator Susan M. Collins

Hearing on the Hate Crimes Against Homeless Statistics Act (S.1765)

Committee on the Judiciary - Subcommittee on Crime and Drugs

September 29, 2010 @ 10:00 a.m.

Senator Cardin, I gratefully acknowledge your leadership for introducing the Hate Crimes Against the Homeless Statistics Act, and welcomed the opportunity to co-sponsor this legislation with you.

The 1990 Hate Crimes Statistics Act requires the Attorney General to collect data regarding crimes that manifest evidence of prejudice based upon race, religion, disability, sexual orientation, or ethnicity. This Act added "homeless status" to the list of categories for the purpose of acquiring data for research and statistical purposes.

The homeless population is one of the most vulnerable populations in our society. Approximately 3.5 million people a year are likely to experience homelessness. Between 1999 and 2007, there were 218 documented fatal attacks against homeless persons. This far exceeds the number of fatal hate crimes reported in all legally-recognized hate crime categories combined. Veterans account for about 20% of the homeless population, and about 28% of homeless families are displaced because of domestic violence.

In Maine, 750 - 800 people stay in emergency homeless shelters on any given night; 7,000 over the course of a year. The best information I have been able to obtain (because these crimes are often not reported and not tracked in any event) is that dozens of homeless Mainers are attacked each year. For example, in January three teenagers pushed two homeless men (loaded with heavy clothing and backpacks) into the 40-degree water off the Portland harbor just for sport. Fortunately, good Samaritans jumped in and saved them.

My hope is that by officially tracking these crimes, this Act will have the effect of decreasing these senseless crimes against the homeless.

64876.023

Rufus Hannah
P.O. BOX 10905
San Diego, CA 92159
September 21, 2010

Senator Benjamin Cardin
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Sen. Benjamin Cardin:

I am writing to ask you to support S.1765 - Hate Crimes Against the Homeless Statistics Act of 2009. I was a victim in the notorious Bum Fight Videos, I was unfortunately known by millions around the world as Rufus the "Stunt Bum" because of my participation in the notorious Bum Fights video series and the unspeakable violence against the homeless depicted in them leading to a world-wide epidemic of abuse against the homeless. The four teenagers that perpetrated the violence against me and my best friend Donnie Brennan caused both of us permanent injuries, including; branding of our face and hands, leg damage, loss of vision, and emotional scars. My injuries include, permanent double vision, causing my loss of the basic right of driving any vehicle for the rest of my life, in addition I have an equilibrium disorder, which keeps me from having steady balance. Donnie's permanent injuries include tattooing to his face and damage to his legs, causing him horrific shame and embarrassment and the loss of mobility to run or ride a bicycle because of the metal rod in his leg. All this pain and suffering is due to the violence perpetrated in the Bum Fight videos which screams for this legislation to protect the homeless.

The words "BUM FIGHT" in capital letters that are branded across my knuckles and the tattooing across Donnie's forehead are not just statistics, but are horrific reminders of the cruelty the homeless are exposed and subjected to everyday. The popularity of these videos glamorized the violence and as a result homeless people were brutalized and murdered across the United States, from Florida to California homeless people were sought out and tortured for sport mostly by young men, many in their teens.

As veterans that volunteered to serve this country we expected to give our lives in the line of duty to protect those here at home, not to be subjected to brutality by those we fought to protect, and even though we lost our way due to alcoholism and ended up on the streets we never imagined anyone would deliberately take advantage of us and subject us to the cruelty and humiliation. We were basically pit against each other in a similar manner to that of illegal dog fighting.

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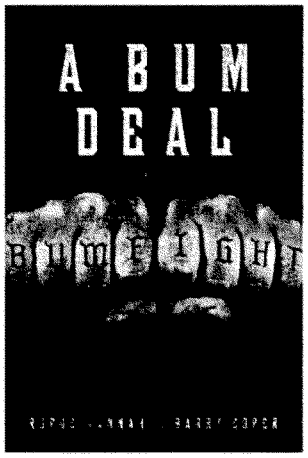
Senator Benjamin Cardin
September 21, 2010
Page 2

The purpose of this bill would amend current federal Hate Crime tracking legislation to include crimes committed against homeless individual by adding "homeless status" as a protected class.

I am available to testify under oath to the Senate Judicial hearing as a former victimized homeless person, and author of the book "A Bum Deal" ISBN: 1402244711.



I think that this is an important bill, and urge the Senate Judiciary Committee to support and pass S.1765 - Hate Crimes Against the Homeless Statistics Act of 2009. It will benefit the community at large by assisting in protecting the growing homeless population around the United States.

Thank you for your support.

Sincerely,

Rufus Hannah

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September 29, 2010

Testimony Congresswoman Eddie Bernice Johnson
Hearing before the Senate Committee on the Judiciary
Subcommittee on Crime and Drugs
"Crimes Against America's Homeless: Is the Violence Growing?"

Thank you Senator Cardin and Members of the Subcommittee on Crime and Drugs for inviting me to testify on this important issue.

Each year there are hundreds of individuals who are targets of violent crime based solely on their appearance, means, or lifestyle. Each and every violent crime is traumatic. However, hate crimes are not only meant to physically harm the victim, but degrade all individuals of similar identity. They instill a pervasive sense of fear within that community.

Over the past few years, there has been a great deal of attention given to enhanced enforcement of hate crimes. Unfortunately, there has been a significant omission during this debate. One of the most frequent, but least discussed categories of hate crimes are those which target the homeless.

Between 1999 and 2010 there were more than 1,000 bias-motivated attacks committed against the homeless; 291 of these attacks were homicides. This is more than twice the number of homicides committed in all other hate group categories combined.

The thread that holds all these crimes together is the sheer violence and disregard for human life. In April of last year, a homeless woman confined to a wheelchair was repeatedly raped in Seattle, Washington. The man who raped her told her, "I can rape you and get away with it...You're homeless? No one cares about you."

Last year in my home state of Texas, a forty-one year old homeless man was sitting on a bench near the University of Texas at El Paso. Four unknown males assaulted him and lit him on fire. He survived, but lives with serious burns. This was one of six non-fatal attacks that involved setting a homeless individual on fire. These six attacks occurred in 2009 alone.

In 2009, there were 43 homeless men and women who were murdered because they were homeless. 90% of those deaths were caused by stabbing, blunt force or strangulation.

A misconception is that these attacks happen to belligerent bums. However, many of these individuals were sought out by their attackers. Some victims never even spoke to their attacker before they were killed.

In the 110th Congress, I first introduced the Hate Crimes Against the Homeless Statistics Act. This bill was reintroduced this Congress along with a Senate companion bill sponsored by Senators Cardin and Collins. The sole purpose of this bill is to direct the FBI to add the category of homelessness to their hate crimes statistics.

The National Coalition for the Homeless has done an outstanding job collecting data on homeless hate crimes over the past 10 years. However, federal recognition is essential in order to understand and curb this type of violence.

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The federal government has fallen behind the states on this issue. Currently, there are four states who already recognize homelessness as a category of hate crime. Several more have legislation pending. These are not simply Democratically run states. Florida had a Republican-elected Governor and Legislature at time their homeless hate crimes bill was signed into law.

If Congress continues to not take a stance on this issue, we send the message that we are willing to look the other way. Treating homeless individuals rudely or inhumanely is seen as acceptable by far too many Americans. It is the one group where it is still acceptable in most circles to disparage. How do we end that if even Congress is unwilling to treat these individuals equally?

I thank Senator Cardin for being a true leader on this issue, and for allowing me to testify in front of the Committee today.

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Testimony of Al Lamberti
Sheriff of Broward County, Florida

United States Senate Judiciary Committee on the Judiciary
Subcommittee on Crime and Drugs

"Crimes Against America's Homeless: Is the Violence Growing?"

September 29, 2010

On November 7, 2007, one of our Broward Sheriff's Office veteran Deputies, Paul Rein, was brutally shot and killed by a prisoner he was transporting in a medical van to the Broward County Courthouse. The prisoner was already serving a life sentence from a previous conviction. He was able to overpower the Deputy and killed him with the deputy's own service revolver.

The suspect was captured after a homeless man, who inadvertently offered assistance to the suspect thinking the suspect needed aid himself, alerted authorities of his suspicions. The homeless man, Mark Spradley who for years lived out of his car, received a reward and was recognized and honored for his bravery and civic duty to the community.

I was personally affected by Mr. Spradley who, despite his desperate personal life circumstance, had not only the presence of mind but the compassion to selflessly reach out and offer assistance to another person who he thought needed assistance without knowing of the man's previous actions. Mr. Spradley's humanitarian effort was ironically responsible for the apprehension of a dangerous criminal.

Having spent some time with Mr. Spradley afterward it was the first time I had an opportunity to understand this man as a human being and his actions that fateful day. I suppose those encounters were the single catalyst that first brought my attention to the plight of the homeless in our society. I had previously witnessed homelessness in the streets as a 30 year veteran law enforcement officer, but never from that perspective.

In the summer of 2008, I received the annual Florida Hate Crimes Report prepared by the Florida Attorney General's Office. The report showed that Broward County once again led the State of Florida in the number of reported hate crimes despite being the most diverse county in the state. Florida also led the nation in crimes against the homeless as was reported by the National Coalition for the Homeless. At that period of time, crimes against the homeless were not catalogued and included in the Attorney General's report.

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Testimony of Al Lamberti
Sheriff of Broward County, Florida
Page 2

As an elected official with responsibilities to protect all our citizens, I decided that enough was enough and was determined that the Broward Sheriff's Office would lead the fight against hate and anti bias in South Florida. I appointed BSO Commander Rick Wierzbicki, who is testifying before your esteemed committee today, to head our Broward County Hate Crimes/Anti Bias Task Force to combat the egregious actions of those who would take advantage of some of the most vulnerable among us.

As a result of a number of unprovoked attacks against the homeless in Broward County, some of the most brutal taking place in January of 2006, I felt it was time to call attention to this matter on a statewide level by supporting legislation that would include the homeless as a category in evaluating hate crimes in the State of Florida. Up to this point, Maryland was the only state to include the homeless in their statewide legislation.

Among the most tragic cases against the homeless that drove me to support this effort was a case involving a homeless man from Fort Lauderdale, Norris Gaynor. Mr. Gaynor was also a veteran who served this country with honor. He was sleeping in a park when he was viciously attacked and killed by three teenage boys wielding bats. The State of Maryland enacted their legislation after a Maryland legislator brought it to their attention as a result of viewing the tragic incident on the internet.

In the summer of 2009, I contacted Florida State Representative Ari Porth and asked him if he would support our efforts to sponsor a bill in the Florida House of Representatives making Florida the second state to incorporate the homeless in our hate crimes statute. At that initial meeting Representative Porth, without hesitation, said he would be honored to do so. He had accepted this difficult challenge fully knowing that similar legislation had been introduced over the previous four years without success. Representative Porth filed it in the House on the Senate side with Senator Jeremy Ring. House Bill 11 was then born.

After three House and three Senate subcommittee hearings at which BSO Commander Wierzbicki offered testimony, the bill passed in all subcommittees with a total vote of 59 for passage and 2 against. It then passed on the House floor 80-28 and in the Senate 25-10. Governor Charlie Crist signed the bill into law on May 11, 2010 making Florida the second State to have the homeless protected in its Hate Crimes Statute. The bill was signed in Fort Lauderdale at the site in Esplanade Park where Norris Gaynor was murdered.

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Testimony of Al Lamberti
Sheriff of Broward County, Florida
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Adding homeless status to the Hate Crimes Statistics Act would well serve the efforts of law enforcement agencies nationwide in their battle to stem crimes against the homeless. Law enforcement investigations are often critically dependent on the use of timely and accurate statistical analysis. The successful prosecution of crimes is also often dependent on statistical analysis as well.

I fully support the legislation proposed by United States Senators Benjamin Cardin and Susan Collins to assist one of the most vulnerable segments of our population. The staggering numbers of those who already are or might become homeless range in the millions. The sobering reality is that it very well might increase during these difficult economic times. Passing this legislation that will assist with the overall problem of homelessness in our country is not only prudent, it is humane and simply the right thing to do.

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Testimony of Prof. Brian H Levin

Crimes Against America's Homeless:
Is the Violence Growing?

United States Senate: Committee on the Judiciary
Subcommittee on Crime and Drugs

Center for the Study of Hate and Extremism
Department of Criminal Justice
California State University, San Bernardino

Dirksen Senate Office Building, Washington, DC
September 29, 2010

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My name is Prof. Brian Levin, and I am director of the nonpartisan Center for the Study of Hate and Extremism at California State University, San Bernardino where I teach in the Department of Criminal Justice. While I am here in that capacity, I would also like to note that I serve as an unpaid independent advisor to the National Coalition for the Homeless. I want to personally thank Chairman Benjamin L. Cardin, Ranking Member Lindsey Graham, Chairman Arlen Specter and the other members of the committee for the privilege of testifying on the scourge of violence directed against homeless Americans. I have analyzed hate crime for almost 25 years, written extensively on the topic, compiled national hate crime statistical surveys, testified before Congress, authored Supreme Court briefs, and have advised policymakers throughout North America and Europe.

The National Coalition for the Homeless (NCH) has worked tirelessly for the past twenty-five years to not only end homelessness but to ensure the protection of homeless individuals. Since 1999 the NCH has monitored and recorded acts of violence against our country's homeless.

My testimony today in support of SB 1765, the "Hate Crimes Against the Homeless Statistics Act" will address issues relating to the inclusion of homeless status as a category in hate crime statutes as well as its specific inclusion in federal data collection undertaken pursuant to the Hate Crime Statistics Act (HCSA). Access to this type of objective official data is crucial for a society to assess the scope of criminality, implement policies, allocate resources, and craft legislation. From the onset it is important to consider that over the last two decades both penalty enhancement laws and data collection statutes have been expanded to cover additional group categories as new information arose to support such inclusion. It is my hope, that the outline I provide today regarding the characteristics and prevalence of anti-homeless hate violence will correct a glaring error in current federal efforts.

The homeless face a rate of victimization that far exceeds that of other groups. The more reliable hate crime statistics arising from homicide data and victimization studies indicate that the homeless are among the nation's most vulnerable populations, not only for crime in general, but for hate violence as well.

Two key questions need to be addressed regarding the issue of discriminatory violence against the homeless. First, does the actual level of bias violence against the homeless justify a statutory change? Second, does

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the category of homelessness fit the traditional framework of hate crime legislation and share material similarities with currently covered categories?

Violence Against America's Homeless: A National Scourge

Emma Lazarus' poem *The New Colossus* is inscribed on our Statue of Liberty:

Give me your tired, your poor, your huddled masses yearning to breathe free, The wretched refuse of your teeming shore. Send these, the homeless, tempest-tost to me. I lift my lamp beside the golden door!

Despite the promise of Lazarus' prose the reality is that homeless Americans face a grossly disproportionate risk of violent attacks. Notwithstanding various limitations, studies from the United States and Canada show a disturbing consistency regarding the prevalence of these brutal victimizations. The studies and surveys repeatedly indicate an annual risk of criminal victimization as high as 66% to 82%, about the highest for any subgroup in the industrialized world. For instance, one study of homeless females in Los Angeles found that they experience as much crime in one year as domiciled women do, over their entire lifespan. By contrast, the latest 2008 Bureau of Justice Statistics (BJS) data, which exclude the homeless, indicate a violent crime victimization rate of 19.3/1,000 persons and a property crime rate of 135/1,000 households. While we believe homeless victimization levels continue to be quite high, the available data is simply too limited to determine a conclusive trend from year to year.

Some of the victimizations against homeless people relate to spatial vulnerabilities - the actual physical lack of protection provided by shelter, and their frequent location in either higher crime areas or in isolated places where access to telephones or immediate assistance is limited. Another vulnerability relates to the disproportionate number of disabled people among the homeless population, perhaps as much as 40%, who have a degraded ability to defend themselves. Exposure to the elements and lack of resources puts even those without permanent disabilities in a physically disadvantageous position to guard against opportunistic attacks. Lastly, addictions, engagement by some in dangerous survival or impulsive behaviors, and ill chosen personal associations are also contributory risk factors.

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Homicides: A Key Indicator of Hate Violence Against the Homeless

Over the last decade a clear and disturbing pattern has emerged that show the homeless population face an additional risk of extreme violence from discriminatory "hate" attacks. I define hate crimes in a manner substantially similar to that found in the recently enacted Shepard-Byrd Hate Crime Prevention Act, 18 USC 249 (Shepard-Byrd Act). The Act, which excludes the homeless, focuses on *criminal acts that are discriminatorily committed because of the actual or perceived group status of another*. Discrimination refers to the unequal treatment of people without a sufficient basis due to their membership in a group. The term "hate crime" itself is somewhat of a misnomer, because in the United States, abstract non-threatening expressions of bigotry are not, nor should be, criminally punishable.

Unprovoked targeted "hate" attacks by predominantly domiciled young male assailants that are not primarily motivated by robbery, personal disputes, or drug dealing have claimed the lives of over 240 men and women nationally over the past decade. The data shows a disturbing prevalence of severe overkill. Methods include blunt force trauma, shootings, maiming, drowning, stabbings, and the burning of victims alive.

Our Center in conjunction with the NCH has found that there were well over twice as many homeless people killed in apparent bias related attacks than the combined total number of deaths for every other "official" hate crime category reported by the Federal Bureau of Investigation (FBI) in the last decade. From 1999-2008 (the last year with available FBI data) 245 homeless people were killed in apparent hate homicides versus 103 for all the hate crime homicides for race, religion, sexual orientation, national origin and disability combined. Note, that irrespective of which available estimate one uses, the homeless population at less than one percent of the population, is relatively small compared to other covered groups currently listed in hate crime data collection legislation, When this fact is considered, the numbers are even more staggering.

More homeless people were killed in hate attacks than there were civilian deaths in large commercial aircraft accidents over the last five years as enumerated by the National Transportation Safety Board. More homeless Americans were killed in domestic hate attacks last year, than all American civilians killed in terrorist attacks here and abroad. In 2009 alone in the United States, at least 43 homeless people were killed in hate attacks—the

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highest since 2001, when 43 people were also killed. 2009 was the fourth increase in five years. This increase, while based on admittedly small numbers, nonetheless comes at a time when overall violent crime and homicide are on a multi-year decline, with criminal homicide down a full 9% from 2005.

This anti-homeless "hate" homicide data actually exclude some of the other deadly violence that homeless people routinely experience. These include attacks involving drugs, personal disputes, robbery, insurance fraud and homeless-on-homeless violence, which we do not generally tabulate as hate crime.

While there have been many more non-homicide anti-homeless hate attacks, including rapes and aggravated assaults, the homicide data, which also represent a probable undercount, are considered the most reliable of all offense data. The homeless appear to have a higher rate of non-reporting for non-fatal crime, probably due to such factors as fear of police, fear of retaliation, disability, and more limited access to tools like cars and telephones that aid reporting. Still, the non-fatal offenses in the NCH reports are valuable nonetheless as a limited representative national sampling that document a wide range of victimizations. This broad, though incomplete, range of non-fatal cases still provide important information about locations, weapons, and victim/offender characteristics. However, the paucity of cases coupled with the incomplete nature of secondary and indirect reporting methods and sources limits the utility of the data, particularly in the area of annual trend analysis.

Because homicides come to the attention of police, media and advocacy groups there tends to be more public information available when reporting does take place. Furthermore, our available homicide data, while still quite limited is of somewhat greater utility for trend analysis, if for no other reason than the fact that they are significantly more likely to be reported. As researcher Harvey Wallace observed, "Homicide is of interest to researchers not only because of its severity but also because many professionals believe it is a fairly accurate indicator of violent crime in general." Cal State San Bernardino criminologist Dr. Steven Tibbetts elaborated:

Murder (or criminal homicide) is the most accurately measured crime because it is nearly always reported when it occurs. On the other hand,

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virtually all other serious crimes, such as robbery, rape, aggravated assault, burglary, etc., have a very high "dark figure," which means that most of the time these offenses occur, the victims do not report them to the police, for a variety of reasons.... Therefore, murder is by far the most valid and reliable measure of violent crime in the sense that it is the only violent offense that is typically reported when in happens.

While our anti-homeless "hate" homicide data has significant limitations that include unofficial sources, a low base of cases, and a high beta, its message like that of a smoke alarm should not be ignored. Of particular note are the brutal methods of death, overkill if you will, as well as a probable sustained increase in attacks that come in the face of an overall multi-year decline in both violent crime and homicide rates.

Anti-Homeless Prejudice: A Factor in Hate Crime Designation

The key criminological criteria for coverage in hate-crime law and data collection apply seamlessly to homeless status:

1. a significant additional risk of violent victimization;

2. discriminatory selection;

3. established prejudice against a socially identifiable class;

4. identical offenders such as bigoted skinheads, neighborhood defenders protecting their turf, as well as young male thrill offenders who share identifiable characteristics and motivations;

5. identical methods of attack that revolve around personal or imprecise weapons that cause substantial suffering.

As with other hate crime offenders, these attackers are typically young male "thrill offenders" seeking excitement and peer validation using feet and fists, as well as imprecise weapons of opportunity. Over the last 11 years 78% of offenders were under 25 years old and last year half were under 20. These thrill offenders, like the more hardened racist skinhead perpetrators, view attacking the homeless as nothing more than a fun communal way of simply cleaning the streets of filth, an activity to be respected rather than reviled.

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Clearly, of all those who are targeted for prejudice, homeless members of society are among the most vulnerable of all. In our highly competitive and increasingly coarse society, negative stereotypes about difference, appearance, and the worth of the poor label the homeless as disposable people. The August 2009 issue of *Maxim*, a youth-oriented magazine targeted at college-aged males, joked about the National Hobo Convention in Britt, Iowa, in a blurb titled "Hunt the Homeless." The journal quipped "Kill one for fun. We're 87 percent sure it's legal."

In numerous violent attacks assailants have referenced degrading and violent depictions in popular culture such as "Bumfights" either during their crimes or in subsequent interviews with authorities, with some even filming their crimes. "Bumfights" is a popular violent video series that sold hundreds of thousands of tapes and DVDs before going viral on the Internet. The film series sets a new low in American popular culture. It features fights between homeless men plied by the producers with alcohol, as well as sadistic assaults where terrified sleeping homeless people are startled awake and bound with duct tape. Samuel Bowhay of Grinnell College found almost 86,000 videos on YouTube last year with "bum" in the title, thousands more than videos with other derogatory prejudiced epithets. Even some computer games aimed at youth, like "Bumrise," mock injuring and degrading the homeless.

Mutability and Other Arguments

Arguments against including the homeless in hate crime laws and data collection are recycled ones that were initially used unsuccessfully against other groups, like gays and lesbians. Too many additional groups dilute the data or the laws, some argue. Others look to problematic definitional issues. However, defining homelessness has been done quite well in Senate Bill 1765, and as a practical matter will be no more difficult than defining religion, sexual orientation or disability.

Perhaps the least impressive argument relates to the mutability of homeless status. The argument states that homelessness, unlike race, is a changeable condition that most people would not want, so why offer to count it or protect on the basis of that condition. While race is indeed an immutable characteristic, and racial discrimination was an initial harm that civil rights law continues to address, mutability itself has never been a preclusive factor against the inclusion of a group in data collection or civil

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rights laws. Constitutional scholar John Hart Ely pointed out that the drafters of the Fourteenth Amendment, a significant and more rigid precursor of modern civil rights statutes, was itself left open ended, and not merely limited to race. As civil rights and later, hate crime protections evolved it has become clear that people are targeted for discrimination and violence based on various mutable characteristics as well. Even in the related and more stringent area of constitutional protection, the direction of analysis has broadened to include whether discreet and insular minorities that face stereotyping and discrimination are covered. Whatever the eventual outcome of the more narrow textual constitutional debate, the judicial and legislative record is quite clear that states and the federal government have wide authority to enact civil rights protections beyond merely immutable characteristics. Hate crime categories like religion, nationality, gender, age or disability are either mutable or potentially so. The fact that one's religion can be altered does not make it less worthy of statutory recognition, and for that reason it is covered in both federal law and by virtually every state statute. Furthermore, the fact that a particular status characteristic, like disability, is one that many would not choose has not precluded its inclusion in many statutes either.

As a practical matter mutability is a diversion from proper analysis of whether a group characteristic should be covered in hate crime laws, because many currently covered categories are in fact mutable. The main reasons for coverage are an increased risk of victimization and discriminatory victim selection. With most other types of non-hate crimes, financial gain or personal motive form the basis of victimization—thus allowing for a better opportunity at prevention, or at the very least, compliance to prevent escalation. However, when one is attacked because of an identity characteristic the risk of attack is enhanced because victims are not only attacked for what they do, but because of who they are—and for the homeless where they are as well.

As discussed earlier the homeless are particularly vulnerable for a variety of reasons. Some have suggested that this vulnerability make the homeless better suited for inclusion in vulnerable victim statutes. Vulnerability is a common characteristic of many hate victim groups, because they are often targeted by multiple assailants or for surprise attacks. Like attacks against Orthodox Jews on the way to services or homophobic street violence, however, anti-homeless violence must also be punished and recognized for the underlying discriminatory motive, which labels victims as

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appropriate targets for attack in the first place.

U.S. Hate Crime Law & Data Collection: A Trend Toward Expansion

Concomitant with the development of hate crime law and data collection has been recognition that, as emerging victimizations become apparent, statutes and policies will evolve to address them. Several years after its initial introduction under different labels, the HCSA was enacted by Congress on April 23, 1990 and signed into law by President George Bush. Upon signing the legislation, the President declared:

One of the greatest obligations of this administration and of the Department of Justice is the guarantee of civil rights for all Americans. As I said in my State of the Union Address, every one of us must confront and condemn racism, anti-Semitism, bigotry, and hate not next week, not tomorrow, but right now -- every single one of us. For hate crimes cannot be tolerated in a free society.

Prior to the enactment of the HCSA Boston, New York City, Los Angeles County, Chicago, San Francisco, Massachusetts, New Jersey and Maryland were among the first jurisdictions to compile statistics for what we now call hate crime, although nearly all initially excluded sexual orientation, disability and gender. Indeed, the passage of the HCSA was delayed for years because of opposition to the inclusion of sexual orientation.

A variety of non-governmental civil rights groups have collected data on both hate crime and hate incidents against various victim groups, starting with the Anti-Defamation League's Audit of Anti-Semitic Incidents in 1981. Eventually these surveys led to inclusion of various categories in legislation. The HCSA originally required the United States Attorney General to collect data and implement guidelines relating to certain criminal offenses "that manifest evidence of prejudice based on race, religion, sexual orientation or ethnicity...."

The Attorney General in turn tasked the FBI, which maintains the Uniform Crime Reporting (UCR) program, with the assignment of hate crime data collection under the HCSA. In 1993 the UCR published an 11 state survey of hate crime data entitled *Hate Crime Statistics, 1990: A Resource Guide*. The UCR's first statistical compilation of national, though incomplete, data began with the reporting year 1992 and continues to this

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day. In 1994 federal data collection under the HCSA was expanded to include the category of physical and mental disability with the enactment of the Violent Crime Control and Law Enforcement Act, and the FBI began collecting data on this category in 1997. Hate crime data collection became a permanent fixture of the UCR program through the passage of the Church Arson Prevention Act, which overrode a five year sunset provision. That law was signed by President Bill Clinton in July 1996. On October 28, 2009 President Barack Obama signed the Shepard-Byrd Act, 18 USC 249, which among other things, further expands data collection for future reports under the HCSA to include "gender and gender identity" as well as data on crimes involving juveniles who commit a disproportionate number of hate crimes.

The Shepard-Byrd Act also expanded federal hate crime law to punish attacks based on categories such as gender, sexual orientation, gender identity, and disability. At the state level nearly all states have criminal statutes that punish hate crime based on race, religion, and ethnicity. Only about half the states, however, protect on the basis of gender or disability. The number of states protecting these categories doubled between 1988 and 1998. About thirty states protect on the basis of sexual orientation, and coverage on that basis increased fivefold during that same ten year period. Far fewer states protect on the basis of other characteristics such as age, political affiliation, and homeless status. Five states and DC either allow greater punishment for attacks on the homeless or report such crime as a hate crime. The United States Supreme Court has consistently upheld these types of state and federal criminal civil rights laws. See, *Wisconsin v. Mitchell*, 508 U.S. 476 (1993) (Court 9-0 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).

Crime Data Collection in the United States

The UCR is a voluntary "nationwide, cooperative statistical effort" of over 17,000 law enforcement agencies that began in 1930. The UCR is best known for its annual compilation entitled *Crime in the United States*, which traditionally tracked figures for eight types of violent and property offenses reported to law enforcement. A more detailed computer-reporting system that covers many more offenses and offense characteristics, called the National Incident Based Reporting System (NIBRS) is also being

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implemented through the UCR. NIBRS constitutes 26% of the annual crime data collected by the FBI and 44% of agencies used the system in 2009 to submit their data. In 2009 the FBI reported 1,318,398 violent crimes in the United States, reflecting a 5.3% decline from the previous year, and a 7.5% decline from 2000. There were 9,320,971 reported property crimes in the United States in 2009 reflecting 4.6% decline from the previous year and an 8.4% decline from 2005. A complimentary annual victimization survey of almost 80,000 households compiled by the BJS called the *National Crime Victimization Survey* attempts to capture all crime, including unreported crime and its effects on victims.

Since 2000 hate crime reported to the FBI ranged from a high of 9,730 in 2001 and a low of 7,163 in 2004. Only one federal victimization survey was ever completed, released in November 2005 by the BJS, which estimated 191,000 hate crimes in the United States annually. In 2008, the latest available year, the FBI reported 7,783 hate crime incidents. These figures represented an increase of 159 incidents or 2.1% from the 7624 reported in 2007. Overall, non-hate crime declined less than 2% for that period. However, it is not known if the reported increase in hate crime is the result of an actual increase in cases, or instead a result of a 3.4% rise in the number of agencies participating in the program from 2007, or by reporting improvements in states with minimal previous reporting. The reporting rate for the nation was 3.46/100,000 population covered, but rates vary widely. New Jersey reported 8.5 hate crimes per100,000 hate crimes population while neighboring Pennsylvania reported a rate about ten times less. Hate crime homicides decreased by 2 from 9 to 7.

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decompressor
are needed to see this picture.

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Conclusion

As President Obama said upon signing hate crime legislation last year, "At root, this isn't just about our laws; this is about who we are as a people. This is about whether we value one another." From a purely criminological perspective physical attacks against the homeless, are indistinguishable from other hate crime-with one major exception–a higher homicide victimization rate. One of the hallmarks of our civilized society is our national commitment to the transparent collection and analysis of official data that impact the public's health, safety and welfare. With advancements in computer aided crime data collection, a checked box on a crime form now will significantly enhance our knowledge to combat a terrible evil scourge that is killing and maiming some of the most vulnerable souls in our society.

I can only marvel at how proud my departed refugee Russian grandmother and World War II era POW father would be to see the country they loved so very much working to extend the promise of Emma Lazarus' prose to embrace yet a new generation of Americans, who like them, need protection from unrestrained prejudice.

Thank you. I am honored to answer any questions that you may have.

Appendix

Hate Crime Statistics Act
Summaries of Victimization Studies of Homeless/General Population
Map: Homeless Hate Crime Legislation By State
Tables:
Comparison of Hate Motivated Homicides Against Homeless and Other Groups
Homeless Hate Victims and Offenders By Age

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Hate Crime Statistics Act, **As Amended, 28 USC § 534**

§ "[Sec. 1.] (a) This Act may be cited as the 'Hate Crime Statistics Act'.

"(b)

(1) Under the authority of section 534 of title 28, United States Code, the Attorney General shall acquire data, for each calendar year, about crimes that manifest evidence of prejudice based on race, religion, disability, sexual orientation, or ethnicity, including where appropriate the crimes of murder, non-negligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property.

"(2) The Attorney General shall establish guidelines for the collection of such data including the necessary evidence and criteria that must be present for a finding of manifest prejudice and procedures for carrying out the purposes of this section.

"(3) Nothing in this section creates a cause of action or a right to bring an action, including an action based on discrimination due to sexual orientation. As used in this section, the term 'sexual orientation' means consensual homosexuality or heterosexuality. This subsection does not limit any existing cause of action or right to bring an action, including any action under the Administrative Procedure Act or the All Writs Act [5 USCS §§ 551 et seq. or 28 USCS § 1651].

"(4) Data acquired under this section shall be used only for research or statistical purposes and may not contain any information that may reveal the identity of an individual victim of a crime.

"(5) The Attorney General shall publish an annual summary of the data acquired under this section.

"(c) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section through fiscal year 2002.

"Sec. 2. (a) Congress finds that—

"(1) the American family life is the foundation of American Society,

"(2) Federal policy should encourage the well-being, financial security, and health of the American family,

"(3) schools should not de-emphasize the critical value of American family life.

"(b) Nothing in this Act shall be construed, nor shall any funds appropriated to carry out the purpose of the Act be used, to promote or encourage homosexuality."

U.S. Overall Crime Data

United States Crime General Population (Age 12 and above)
76.5% Property Crime –23% Violent Crime

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Annual / Per 1,000 Population or Households
0.8 rape/sexual assault 3.3 injurious assault 2.2 robberies
Source: Bureau of Justice Statistics, Criminal Victimization, 2008, Criminal Victimization in the United States, 2007.

Violence Against the Homeless Characteristics

Homeless Youth (Age 15-24-Canada) Homeless Youth Victimization Rates
81.9% Criminally Victimized/Year 79.4% Multiple Criminal Victimization/Yr
62.3% Report Assault/Yr , 31.9% Sexual Assault/Yr.

General Population Victimization –Canada (Age 15-24)
39.7% Criminally Victimized/Year 18% Multiple Criminal Victimization/Yr.
12% Report Assault/Yr., 3.8% Sexual Assault/Yr.
Source: S. Gaetz (2004) Safe Streets for Whom? Homeless Youth , Social Exclusion and Criminal Victimization, Canadian Journal of Criminology and Criminal Justice

California Senate Resolution 18 Study
66% of Homeless Surveyed Criminally Victimized in 2001
72% of victims faced multiple episodes with 31% facing more than five.
75% of victims assaulted, 74% robbed (with most facing more than 1 episode), 23% raped
Source: State of California

Los Angeles Homeless Females
23% Report Physical, Sexual, or Psychological Violence in Previous 6 Months
Source: S.L. Wenzel et al. (2006). Toward a More Comprehensive Understanding of Violence Against Impoverished Women. J. Interpersonal Violence. 21(4), 820-839

San Francisco Homeless and Marginally Housed Persons
32.3% of Females and 27.1% of Males Report Physical or Sexual Assault in Previous Year
Source: M. Kushel, MD. Et al. (2003) No Door To Lock: Victimization Among Homeless and Marginally Housed Persons, Archives of Internal Medicine; 163:24920-2499

Los Angeles Homeless Females
34% Experienced Major Violence in Previous Year—Same As *Lifetime* Risk for Average Domiciled American Female
Source: S.L. Wenzel et al. (2001) Risk Factors for Major Violence Among Homeless Women, J. Interpersonal Violence 16:8 (August), 739-752

Los Angeles Homeless Females
13% of Homeless Los Angeles females report being raped in the pervious year

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Source: S. L. Wenzel et al. (2000) Health of Homeless Women With Recent Experience of Rape. J. Gen. Intern. Med. April 15 (4): 265-268

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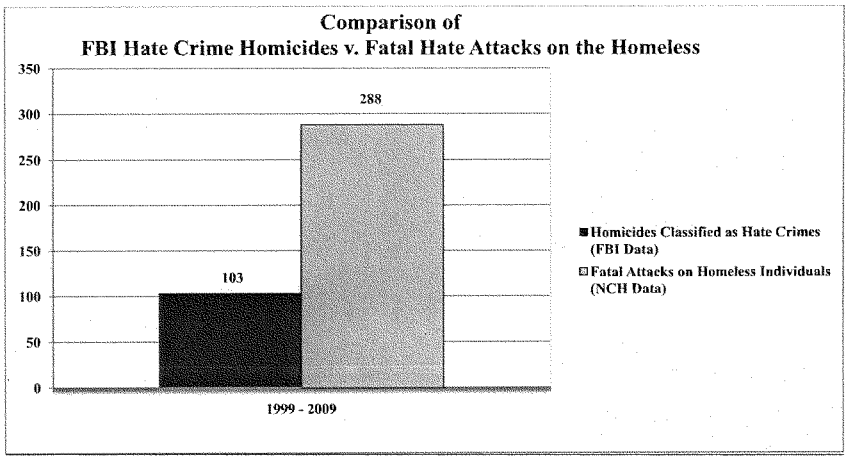

* 2009 F.B.I. data not yet available.

Source: Chart compiled by using data from the Center for the Study of Hate and Extremism (California State University, San Bernardino): Analysis of data from annual F.B.I. Hate Crime in the United States and the National Coalition for the Homeless.

Bias Crimes: A Theoretical & Practical Overview

by
Brian Levin

The violence of bias crimes must be combated by a program of legislation, data collection, procedure, coordination, and police training.

In September 1990, President Bush observed:

> Today some Americans are the victims of appalling acts of hatred. And this is a sad irony that while our brave soldiers are fighting aggression overseas, a few hate mongers here at home are perpetrating their own brand of cowardly aggression . . . . These hate crimes have no place in a free society and we are not going to stand for them.[1]

Petty Officer 3rd Class Harold Mansfield, Jr., twenty-two, served on the flight deck of the U.S.S. Saratoga while the ship was stationed in the Persian Gulf during Operation Desert Storm. After returning home, Mansfield, an African-American, was shot to death by a militant white supremacist on May 17, 1991. Mansfield left behind not only his fiancée and recently widowed mother, but also

Brian Levin, J.D., Stanford University, a former New York City police officer, has developed and participated in a variety of bias crime projects in academia and in all levels of government. He has developed training curricula for law enforcement agencies, assisted prosecutors, and prepared a study used by the U.S. House of Representatives Committee on the Judiciary in connection with its consideration of bias crime legislation. *The author gratefully acknowledges the help of the following individuals and organizations: Professor Jack McDevitt, Northeastern University, School of Applied Social Science; Lieutenant Detective William Johnston, Boston Police Department, Community Disorders Unit; Robert Purvis, National Institute Against Prejudice and Violence; Major John Cook, Maryland State Police; Elyse Rothschild, Montgomery County (MD) Human Relations Commission; Dennis de Leon, Commissioner on Human Rights (New York City); Inspector William Wallace, New York City Police Department, Bias Incident Investigating Unit; Uniform Crime Reporting Section, Federal Bureau of Investigation; Anti-Defamation League of B'nai Brith; Anastasia Steinberg, Santa Clara County District Attorney's Office; Professor Robert Weisberg, Stanford Law School; Mary Keenan, University of Pennsylvania.*

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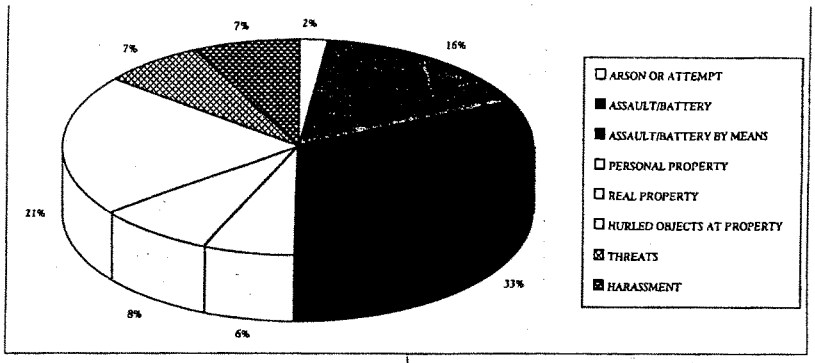
Figure 1
Boston Bias Crimes by Offense 1978 - 1991[12]



the fourth-grade class at Oklahoma City's Shidler Elementary School which had "adopted" him during the war. Only three weeks before his murder, the children, mostly black and Hispanic, had given him a hero's homecoming with flags, cake, speeches and hundreds of red, white and blue balloons.[2]

Tragedies like Mansfield's murder illustrate the pervasive intergroup conflict in this country. Other recent incidents include numerous arsons against Amish farmers,[3] the beating and painting of two minority youths in New York,[4] and the shooting at black restaurant patrons by white supremacists in Sacramento.[5] What these crimes have in common, and what differentiates them from other crimes, is that they were all motivated by prejudice and bigotry. The Federal Bureau of Investigation (FBI) describes such crimes as "bias crimes—a criminal offense against a person or property that is motivated, in whole or in part, by the offender's bias against a race, religion, ethnic/national origin group or sexual orientation group."[6]

> Bias crimes are more likely than non-bias crimes to involve physical assault.

In this article, I will describe the characteristics that distinguish "bias crimes" from what I call "non-bias crimes." In addition, I will examine the efforts undertaken by various jurisdictions to combat bias crimes, paying particular attention to the role of law enforcement. Finally, I will offer suggestions to improve the effort against bias crimes.

CHARACTERISTICS OF BIAS CRIMES

Bias crimes are more likely than non-bias crimes to involve physical assault. Overall, about 11 percent of all crimes are assaults against a person, with the rest directed against property.[7] For bias crimes, assaults consistently average more than 30 percent of total cases reported.[8] For certain victim groups such as gays and blacks, the assault ratio appears far higher. Numerous studies show that gay men are frequently victims of bias-related assaults, most of which go unreported.[9] In a study sponsored by the Department of Justice on bias crimes the criminal victimization rate of gays was found to be 400 percent greater than that of the overall population.[10] While some of the studies are imperfect and exact percentages are somewhat elusive, it is clear that a serious problem exists.[11]

Though there is almost certainly underreporting by gay victims of bias crimes,[13] the experience of other groups shows that a higher assault rate is a general characteristic of bias crimes. Jews tend to report bias crimes more often than other victimized groups. First, anti-Semitic crimes are more likely to be reported because these crimes often involve institutions such as synagogues, schools, and cemeteries which result in multiple

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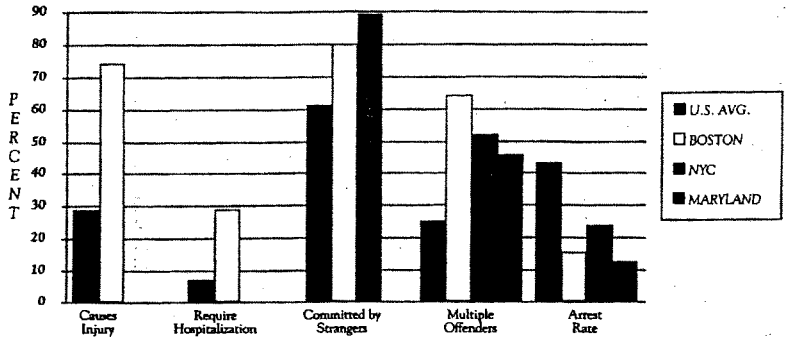
Figure 2
Comparison of Bias And Non-Bias Crimes[16]



complainants.[14] Second, the Anti-Defamation League (ADL), a private Jewish civil rights organization, has a well-established and sophisticated incident reporting system with close ties to law enforcement. Even though many of the bias crimes reported by Jews involve property, these anti-Semitic crimes are twice as likely as non-bias crimes to involve physical assault and this multiple is growing.[15]

Other studies provide further alarming evidence of the level of violence associated with bias crimes. An analysis of the Boston Police Department's bias crime statistics shows that bias-motivated assaults are more severe than their non-bias counterparts.[17] An explanation can be seen in the purpose of these crimes. The Director of Victim Services at New York's Bellevue hospital recalled, "attacks against gay men were the most heinous and brutal I encountered. They frequently involved torture, cutting, mutilation, and beating, and showed the absolute intent to rub out the human being because of his preference."[18]

In an extensive study, the National Institute Against Prejudice and Violence found that two-thirds of bias victims experience multiple attacks.[19] Indeed, a study of bias crime in Boston showed that bias crime victims generally did not file a report until after a series of incidents had occurred.[20] More often than not, bias crimes are committed not by organized hate groups, but by informal associations of unidentified strangers.[21] These strangers are much more likely to attack in groups than are non-bias offenders.[22] The high incidence of bias crimes by strangers makes it more difficult to apprehend offenders. As a result, these crimes require a disproportionate amount of police investigation and follow-up relative to other offenses.[23]

Another characteristic of bias crimes is the grievous emotional harms inflicted on victims. The National Institute's Ethnoviolence Project found that victims of "ethnoviolence"—a more expansive category than bias crimes—still experienced close to two and a half times more negative psychological and behavioral symptoms than did victims of other violence.[24] The unprovoked nature of the attacks and the potential for future attacks creates additional anxiety for these victims.[25]

> "Attacks against gay men were the most heinous and brutal I encountered," said the Director of Victim Services at New York's Bellevue Hospital.

Because the only readily identifiable reason for bias crimes is group affiliation, they have an alarming potential to ignite community disorder. Since whole groups are implicated, the scope of the violence can escalate quickly. In January 1992, for example, two minority youths from the Bronx were robbed, painted white with sneaker polish, and one had her hair cut by other youths who

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shouted it was their day to be white. In the three weeks which followed the incident, intergroup tension in the city intensified and the New York City Police Department (NYPD) documented twice the number of bias crimes than in the previous year.[26] Similarly, after a fatal mixed-race auto accident in Brooklyn in August 1991, 1,500

> A single incident can be the tragedy of a lifetime to its victim and may be the spark that rends and disrupts an entire community.

police officers were needed to contain the resulting riots which lasted for four days and resulted in 180 arrests.[27] As a 1988 New York State Task Force explained, "[a] single incident can be the tragedy of a lifetime to its victim and may be the spark that rends and disrupts an entire community."[28] The 1992 Los Angeles riots are only the most recent example of such tragedies.

Finally, bias crimes are characterized by direct interference with the free exercise of civil rights. A person who commits a bias crime is motivated, at least in part, by a bias against or hatred of a victim's perceived group. It is the potential bias crime victim's very existence that makes him a target. Because the threat is not limited to a particular activity or established relationship, the victim constantly feels vulnerable. There is little action the victim can take to remedy the situation. As a result, the victim and his group are deprived of important civil rights through force and threat.

BACKGROUND: LEGISLATIVE EFFORTS

In recent years, state legislatures have confronted the bias crime problem by enacting statutes which impose severe penalties for bias-motivated crimes.[29] However, the existence and scope of state bias crime statutes vary greatly from one jurisdiction to another. While California has over a dozen anti-bias criminal statutes,[30] Utah has none.

In general, there are two types of criminal statutes which apply broadly to bias crimes: criminal civil rights statutes and bias intimidation laws. The Massachusetts Civil Rights Act of 1979, which has served as a model for other states' civil rights statutes, illustrates the broad applicability of these statutes. It reads:

> No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, or interfere with or attempt to injure, intimidate, or interfere with or oppress or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the Commonwealth or by the Constitution or laws of the United States.[31]

In order to successfully prosecute a criminal case under this statute, the Commonwealth must establish only that the defendant used force or the threat of force to willfully and illegally hinder another in the exercise or enjoyment of a state or federal right or privilege. The statute has been used to protect rights and privileges related to travel, employment, housing, expression and public accommodations.[32] Unlike other bias statutes, this statute does not require the victim to be part of an enumerated class.[33] Furthermore, Massachusetts courts, relying on federal decisions in analogous cases, have upheld a conviction where a defendant had mixed motives and was ignorant that he had deprived the victim of a protected right.[34] Clearly, such criminal civil rights laws allow police, prosecutors and judges broad discretion in fighting bias crimes.

Bias intimidation laws, by contrast, consider bias motivations as aggravating factors with regard to certain crimes, resulting in enhanced penalties for the underlying crimes. Illinois' bias intimidation statute covers assault,

> In addition to the passage of tough laws, a successful response requires that police, prosecutors, and judges apply them effectively.

criminal trespass, and mob action.[35] Massachusetts' intimidation law covers assault, battery, and damage to real or personal property.[36] Some states require an enhanced penalty for all crimes motivated, at least in part, by prejudice. A Florida statute, for example, provides that "[t]he penalty for any felony or misdemeanor shall be reclassified. . .if the commission of such felony or misdemeanor evidences prejudice" based on race, color, ancestry, ethnicity, religion, national origin and sexual orientation.[37]

Since most cases are brought under state criminal

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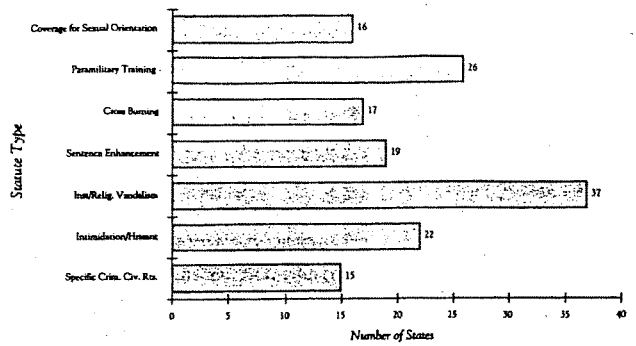
Figure 3
State Bias Laws[49]



statutes prosecutors and police have found these laws helpful.[38] As the ADL noted, heightened penalties "make it more worthwhile for prosecutors to pursue convictions."[39] In Boston, for example, a majority of bias crimes involve threats, harassment, simple assaults, and property offenses which often would not be prosecuted.[40] The Massachusetts bias intimidation law significantly increases the penalties of these offenses, making prosecution more likely. The Suffolk County District Attorney used the law to prosecute 123 cases from 1981 to 1987, resulting in 91 guilty verdicts.[41] The bias intimidation laws also send out an important message that bias-motivated acts are not merely pranks.

> The first step in dealing with bias crimes is to recognize them as such.

Other types of bias crime statutes have more limited applicability. Institutional vandalism statutes prohibit the damaging or destruction of houses of worship, cemeteries, educational facilities, community centers and the like. A related category of statutes, enacted in about 20 states, prohibits the disruption of religious services.[42] State criminal statutes prohibiting paramilitary training have been a particularly effective weapon for authorities fighting the most violent organized hate groups.[43] Other bias statutes with civil injunctions such as those found in California and Massachusetts are another effective tool.[44] Since bias victims often face repeated attacks of increasing severity, injunctive relief with criminal sanctions can prevent incidents from escalating. Judges are provided with a way to immediately deter young offenders without giving them a criminal record. Civil injunctions also give police clear written instructions relating to enforcement.[45]

Another type of bias statute, which prohibited the burning of crosses and the use of symbols such as swastikas under certain circumstances, received widespread attention after the United States Supreme Court unanimously invalidated a St. Paul, Minnesota ordinance in June 1992. The immediate impact of the *R.A.V. v. St. Paul, Minnesota*[46] decision appears limited to a narrow area of bias legislation which seeks to punish certain types of symbolic expression. During the past year several challenges throughout the country to the broader criminal civil rights and bias intimidation statutes have yielded mixed results.[47] It appears the Supreme Court will decide within the next year on the constitutionality of these types of laws as well.[48]

Unfortunately, many bias crimes are committed by youthful offenders. In New York City, the median and mean ages of bias offenders were 18 and 20 years old, compared to 27 and 25 years of age for non-bias perpetrators.[50] Thus, it is important that the laws provide

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for the relative youth of many of these offenders.

Yet one bias crime expert observed that under conventional laws, "many acts of harassment and vandalism which are motivated by prejudice. . .carry only minor penalties. . .when committed by juvenile offenders."[51] Standard punishments are often ill-suited for nonviolent youthful bias offenders. Incarceration is often disfavored due to the absence of an injury to the victim and because of prison overcrowding. In addition, imprisonment fails to address the child's underlying mental and emotional dysfunction.[52]

Recently, New Jersey became the first state to systematically address this issue. It created mandatory statewide sentencing programs which requires that juvenile bias offenders complete a rehabilitation program. The New Jersey program includes screening, monitoring, counseling, education, restitution, and cross-cultural activities.[54] After authorities in New York found young bias offenders were generally given probation or no punishment, a program of alternative community sentencing was implemented for certain low-level offenders.[55] In Montgomery County, Maryland authorities have found that structured alternative community sentencing, as well as education programs involving parents, have been successful when carefully implemented.[56] In recognition of the relative youth of many offenders, school systems have coordinated with outside agencies to implement educational workshops and to respond to incidents.[57]

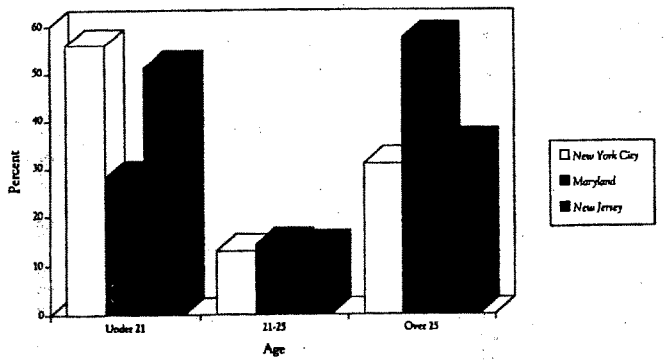
State legislatures have recognized and confronted the bias crime problem. Generally, they have enacted tough laws in response to the problem. But a successful response requires that police, prosecutors and judges apply the laws effectively. As the first in the chain of response, police play a crucial role. Most importantly, they identify bias crimes and initiate a state's legal response.[58] The next sections explore the failures and successes of the police response.

> Often victims of bias crimes do not report them to the police, believing that the crimes were not serious enough, the police would be unresponsive, or the matter is too personal.

RECOGNITION OF A UNIQUE CRIME

Researchers have found that when bias crimes "are treated only within the context of general crime problems, they may be invisible."[59] As recently as the mid-1980s, studies revealed a "pattern of denial and/or minimization" of bias crimes in most large police departments.[60] Former Los Angeles Police Chief Darryl Gates demonstrated such an attitude when he claimed, "the city has had very

Figure 4
Age of Bias Offenders[53]



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few reported [bias] incidents," observing that all of the 11 incidents involved vandalism. "Obviously," he added, "there may have been other crimes connected to this motivation, but not identified as such."[61]

Thus, the first step in dealing with bias crimes is recognizing them as such. This requires effective crime data collection, which exacts a high price. As one civil servant noted, "It's a negative thing so a lot of jurisdictions won't want to give their town a bad name."[62] Others have observed that "[i]t is far easier in the short run not to see it, or define it as something else."[63] Where effective data collection is implemented, though, new practices, policies, laws, and enforcement priorities emerge as we have seen in Boston, Maryland, and New York City.[64]

As more jurisdictions take action to assess and address bias crimes, it becomes difficult for officials in other jurisdictions to refute charges about their own bias crime problems. The passage of the federal Hate Crimes Statistics Act in 1990[65] solidified awareness of bias crimes within law enforcement. The Act requires the FBI's Uniformed Crime Reporting Section to collect data on offenses motivated by bias through its recently revamped nationwide crime reporting system. Currently, the FBI is working towards its full implementation. Virtually all of the nation's 16,000 law enforcement agencies participate in the overall crime reporting system.[66] However, with specific regard to bias crime reporting, the FBI revealed the following statistics and levels of compliance by the various states as of 1992:[67]

- 10 States: Supplied usable statistics for 1990 (4300 offenses reported nationally);[68]
- 15 States: Full participation in 1992;
- 11 States & Washington, D.C.: Partial participation in 1992;
- 13 States: Commitment to participate;
- 11 States: No participation.

While the FBI is training police representatives from every state about bias crime data collection[69] it will undoubtedly take a significant amount of time and training at the state and local level before most officers will be able to respond appropriately.

Bias crimes are a distinct category of offenses which present unique difficulties and require special attention. The increased institutional recognition has been accompanied by reforms throughout the country. In 1987, New Jersey found that its bias crime efforts were being constrained by the lack of effective data collection. After officials met with representatives from the ADL, the NYPD, and the National Organization of Black Law Enforcement Executives (NOBLE), New Jersey developed a comprehensive program to count and enforce bias crimes.[70] The Hate Crimes Statistics Act has hastened reforms at state and local levels. Indeed, a senior Maryland State Police official has observed that departments without data collection are increasingly viewed as being "behind the times."[71]

> Tracking non-criminal incidents gives the authorities valuable information about potential trouble spots and allows them to intervene early.

DATA COLLECTION PROBLEMS

Law enforcement agencies and private organizations which collect data are constrained by victim underreporting,[72] as well as by operational, definitional, and geographic factors. Victims who fail to report often believe that the incidents were not serious enough, that nothing could be done, that the police would be unresponsive, or that the matter is too personal.[73] The ADL has established a nationally respected reporting system for anti-Semitic cases. Other private organizations count criminal and non-criminal incidents using their own criteria. Because bias crime data collection has not been standardized nationally on an operational level, bias crime statistics from different jurisdictions may reflect different data collection criteria. For example, New York City recorded 525 bias crimes in 1991, while Boston recorded 218 incidents with less than one-tenth of New York's population.[74] This statistic surely reflects the Boston Police Department's more expansive bias crime definition or, more accurately, the lower hurdle for bias intent which must be met for bias crime classification.[75] Jurisdictions also differ in the types of biases covered in their data collection efforts. Oregon's bias crime data collection statute, for example, covers over a dozen categories including sexual orientation, marital status, political affiliation, association with or opposition to labor organizations, physical or mental handicap, age,

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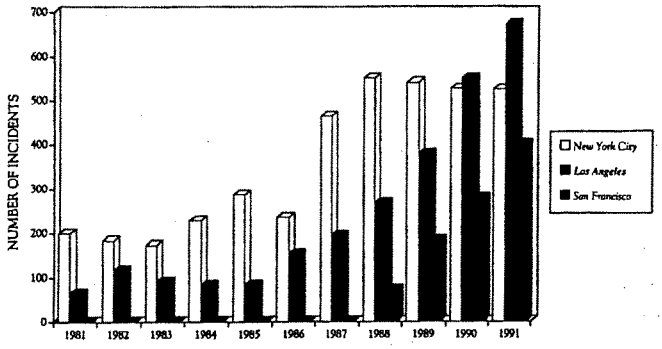
Figure 5
"Reporting Effect" Makes Cross Comparisons Difficult[78]



economic status, and social status.[76] Pennsylvania, which also maintains bias crime statistics, does not cover sexual orientation.[77]

Newer reporting systems are limited in accuracy because record keepers are unaccustomed to collecting bias crime data and generally are unaware of prejudices in their communities.[79] These problems, which also exacerbate under-reporting, result in artificially low bias crime statistics in the early stages of a data collection program. Once operational efficiency improves and under-reporting lessens, substantial increases in reported bias crimes result. Often, this appalling "trend"—representing reporting improvements rather than actual increases in bias crime levels—perversely encourages public enforcement agencies to relax their efforts for accurate data collection.[80] This "reporting effect" and the lack of uniformity among jurisdictions work against accurate cross comparisons. Some of these problems will be corrected as compliance with the Hate Crime Statistics Act increases.

A distressing corollary to the data collection problem is that reform efforts are often based on superficial numerical interpretations. This is problematic for three reasons. First, the adequacy of a given response is often tied to the number of reported cases. If a data collection system is inefficient or flawed, a small number of recorded incidents does not necessarily indicate the absence of a problem. Thus, it is hardly reassuring that most police departments report only a nominal number of cases.[81]

Second, bias crimes appear to have a higher periodic variance—meaning more variable rates of occurrence and measures of extent—than other crimes. Because community tensions can be sparked by a single incident, the natural tendency to frame a response based on crime numbers from a previous period is dangerous. Bias crimes occur because of an interplay of attitudes, demographics, economics and tensions which can erupt into seemingly spontaneous acts of violence. These situational elements should not be eclipsed by over-reliance on an incomplete portrait based on limited "numerical trends."

Third, bias crimes are most appropriately viewed as resulting from negative, ongoing community conditions, rather than merely as autonomous incidents. Thus, the proper approach to bias crime data should be proactive, rather than reactive and incident-based, and should take account of the community's overall situation.

Even though credible statistics have aided police, policymakers, and legislators to better respond to bias crimes in the more progressive jurisdictions, mere reliance on the statistics may mislead these actors about the essence of bias crimes. In 1991, for example, the NYPD reported only three bias murders and 146 bias assaults. By comparison, the department reports the same number of non-bias assaults in a typical day.[82] A black is far more likely to be victimized by another black than by a racially motivated assailant.[83] A Jew is more likely to be killed in a motor vehicle accident than to be personally victimized in an anti-Semitic incident.[84] A bias crime expert aptly observed, "Raw numbers [alone] mean absolutely nothing in this business."[85] It is the heightened violence, terror,

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personal degradation, community disorder, and potential far-reaching effects associated with bias crimes that are important.

APPROACHES TO THE PROBLEMS

No jurisdiction has achieved ideal results in dealing with bias crimes. While some have had successes, others have failed utterly. Inadequate laws and institutional barriers, along with insufficient training, data collection, and coordination all limit the effectiveness of those responding to the problem of bias crimes. Accordingly, a sensible approach would amalgamate elements of successful programs developed through trial and error in various locales.

The current system adopted by the FBI, which was adapted from an NYPD model, provides for a two-tier review.[86] A responding officer refers all questionable cases to a supervisor. The supervisor, in turn, must notify a duty captain of suspected bias incidents. A specialized unit is also informed of suspected incidents.[87] According to a NOBLE and NYPD executive, the rationale of this structure is to "take discretion away from the patrol officer."[88]

> Because of the difficulty of proving motivation, coordination between police and prosecutors is crucial.

The problem with the standard two-tier system is that its success depends on correct identification and referral by the responding officer. A former NYPD Bias Unit commander observed that the responding patrol officer is typically "the least trained and the most cynical."[89] So, the prevailing system is set up so that the officer need merely suspect a bias motive before referring the case to the supervisor. To encourage referral, there is no sanction against the patrol officer for an incorrect referral. Furthermore, there is no extra paperwork required by the street officer in these systems.

Still, according to Professor Jack McDevitt, a criminologist at Northeastern University, there is convincing evidence of a significant undercount with the two-tier system, resulting not only from victim under-reporting, but from police misidentification as well. In his examination of 452 bias incidents handled by the Boston Police Department's Community Disorders Unit, Professor McDevitt found that only 19 were recorded as bias incidents by the responding officer.[90] In New York City, the vulnerability of the two-tier method was illustrated in a dispute between African-Americans and Koreans in 1990. Responding officers initially failed to identify a store owner's assault on a customer in Brooklyn's Flatbush section as a potential bias incident. The situation erupted into a tense and sometimes violent dispute which lasted several months. A subsequent report by the city found "failure [by police] to focus on the bias aspects of the alleged assault precluded the possible involvement of units, resources and expertise."[91]

Critics of the police often cite personal prejudice as the main cause of misidentification, but there are also more benign reasons.[92] Patrol officers are conditioned to identify crimes based on the severity of injury or magnitude of property damage. They are not conditioned to respond on the basis of motive. Patrol officers respond to incidents to end harm, diffuse threats, and mitigate damages. They rarely are forced to consider the underlying causes of the crime. Often, this conditioned myopia causes officers to ignore community-wide problems. Even well-trained officers may not have sufficient time or information to understand the subtleties of a bias crime.

Boston has instituted a unique system which bypasses the problem. The Boston police had relied exclusively on a system where officers marked a bias crime box on complaint reports and described the details in the form's body. When the system, similar to what is currently used by the FBI, was found to be inadequate, a three-tier system was introduced. Now the department has an investigator from the Community Disorders Unit conduct a daily review of all crimes in which the victim is from one group and the offender from another. Each case is carefully tracked and all communications in the course of investigations are carefully logged. Crimes occurring on certain holidays, in newly integrated areas, and in predominantly gay areas receive special review from investigators. Each member of the unit is responsible for monitoring a high risk group. For example, a police officer from the unit meets regularly with representatives of the Fenway Community Health Center, a prominent gay advocacy group.[94]

Using this bias crime reporting system, Boston has the highest per capita number of bias crimes of any jurisdiction in the nation. Rather than being the most bigoted city, Boston is probably the city with the most accurate picture of its bias crime problem.[95] The bias crime data maintained by the Boston Police Department has been described as being "quite extraordinary in detail,

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thoroughness and accuracy."[96] Even so, Professor McDevitt finds that "much bias violence occuring in the city goes unreported to police."[97]

POLICY CONCLUSIONS: DATA COLLECTION, COORDINATION AND TRAINING

While implementation is far from complete, law enforcement has made strides in formulating departmental policies regarding bias crimes. Formal bias crime policies set departmental priorities and send out a clear message to officers and citizens about departmental commitment to combat bias crimes. New Jersey, Maryland, Boston, and New York City were among the first jurisdictions to implement formal police policies specifically related to bias crimes. NOBLE, the National Institute Against Prejudice and Violence, the International Association of Chiefs of Police and the ADL have been in the forefront of private organizations that have assisted police in formulating these policies. In 1985, a NOBLE survey of departments having some instances of bias crime found that only half had distinct policies and specialized reporting. Only 58 percent had special investigations for bias crimes.[98] Today, most large departments have formal bias policies, but many other departments do not.[99]

In 1992, municipal police departments reported the following:[100]

- report hate crime data 71%;
- hate crime training 64%;
- written policies/procedures 47%;
- special unit/taskforce 31%;
- increase in reported incidents between 1990-1991 36%; and
- no change in reported incidents between 1990-1991 58%.

Departments without formal bias policies should continue to adopt them, where meaningful, with private organization help. Generally these policy directives consist of a preamble, policy pronouncement and procedures for implementation:

- *Preamble*[101]
  This order sets forth policies and procedures for recognizing, responding to, and uniformly reporting criminal and non-criminal incidents motivated by hatred or prejudice which are directed against identifiable individuals or groups, and for supporting community efforts to prevent the occurrence of these incidents.

- *Model Policy Statement Introduction*[102]
  It is the policy of the Police Department to ensure that all individuals within the jurisdiction of (City) be protected in the exercise of rights and privileges provided under the laws and constitution of the State of_____ and the United States. Accordingly this department will act to ensure that all people within the City of____ be free from violence, threat, intimidation or property damage due to bias based in whole or in part on race, ethnicity, national origin, religion, sexual orientation [or other characteristic as provided for by law or department directive such as gender, age or disability]. To effectuate these aims, this department shall take an active role in promoting peace and tranquillity between all groups within our jurisdiction.

  In cases of suspected bias crimes this department will respond promptly with a full investigation and will vigorously enforce all applicable laws.

  This department will cooperate and coordinate with other appropriate agencies and community organizations to provide for a timely and comprehensive effort in regard to both criminal and non-criminal bias incidents.

  This department will collect data relating to bias crimes [and incidents].

  Coextensive with this policy, this department is implementing specific procedures for all personnel relating to suspected bias crimes. All members will be trained in these procedures and to provide for a professional response to bias crimes. Furthermore, this department will make sure that the conduct of all our personnel will reflect the department's commitment.

DATA COLLECTION

Although it may be burdensome for smaller police departments to maintain a separate unit dedicated to bias

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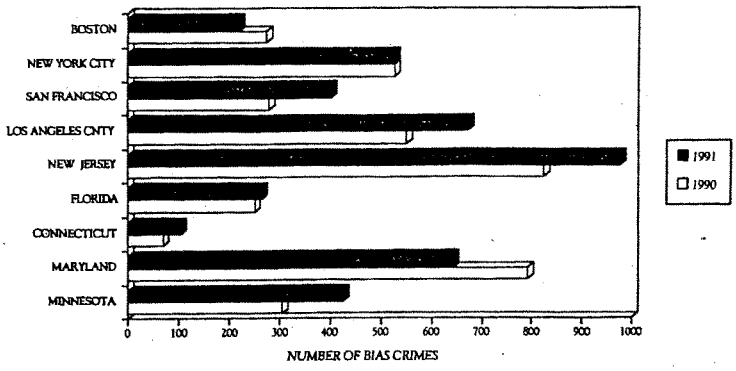
Figure 6
Bias Crimes Reported By Selected Jurisdictions (1991/1990)[93]



crime data collection and response, Boston's methods are instructive. The three-tier review and community outreach procedures are inexpensive common sense methods which will dramatically improve the quality not only of data collection, but of the overall response to bias crimes. The daily review of possible bias crimes is not a prohibitive task since the number of interracial crimes is relatively low.[103] Because anti-gay victimization often involves offenders from outside communities,[104] anti-gay crimes can be easily monitored through careful outreach and attention to particularly vulnerable communities.[105] Effectiveness is increased if the reviewing investigator is well-informed and sensitive to the problem.

Jurisdictions can help themselves to better monitor bias-related tensions by creating a system which collects information about non-criminal bias incidents. The Maryland State Police have a progressive statewide data collection program which does this. In addition to maintaining records on bias crimes, the Maryland system keeps track of bias incidents that are not considered crimes. Human Relations Commissions (HRCs) also collect such data, but these agencies frequently face severe budget cuts and a lack of police cooperation. Tracking non-criminal incidents gives the authorities valuable information about potential trouble spots and allows them to intervene early. Jurisdictions can also obtain insight into bias crimes through victimization surveys which more accurately reflect the level of bias incidents. The Bureau of Justice Statistics conducts annual criminal victimization surveys, which do not include bias crimes. This omission has led one commentator to state, "victimization surveys. . .can be useful as a supplement to [Uniformed Crime Reporting Section] figures to highlight the degree of underreporting involved in hate crime data collection."[106]

As discussed above, victims may hesitate to report bias incidents to the police; however, they may well report it to a victim support group. Thus, police should maintain contact with advocacy and community groups which may have a better understanding of the nature of a community's bias problems. For many victims, particularly gay victims or illegal aliens, concerns regarding confidentiality hamper reporting. Recent legislation in California mandates that information about bias victims in police reports remain confidential to protect victims.[107]

COORDINATION

Law enforcement has also made improvements in coordinating activity between police departments, prosecutors, private agencies and other governmental officials. The designation of a bias liaison officer by a police department is an important reform, but it is often ignored. A bias liaison officer would be especially useful to smaller police departments which do not have the resources or number of bias-related incidents to justify special bias crime units. Whatever the size of the department, a bias liaison officer can increase effectiveness in two ways. First, the officer reviews all suspicious cases, which limits the chance of police misidentification of

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bias incidences. Second, the liaison officer maintains links with other important bias crime actors such as the district attorney's office, the HRC, schools, private agencies and the mayor's office.

Placing the bias liaison or unit close to the police chief is also important since "[i]t highlights the priority given to these crimes and provides a direct communication link with the department executive."[108] In such a position, the bias liaison officer can also serve as the police department's primary contact person for religious and community groups which will allow the officer to keep abreast of community conditions.

Coordination between police and prosecutors is crucial due to the added difficulty of proving motivation. Police and prosecutor coordination has already resulted in more effective prosecution of gang crimes, sex crimes, homicide, and arson. Central to any bias crime strategy is prompt notification of prosecutors, so that police will be guided in their investigations, interrogation, and evidence collection.[109] Some jurisdictions have precise time limits regarding mandatory notification to prosecutors by police of suspected bias cases.[110] In New Jersey, prosecutors monitor bias investigations by police, because victims are frequently scared and reluctant to cooperate, and evidence regarding motivation is often intangible. Santa Clara County's District Attorney regularly organizes meetings with police and other officials as part of its newly created Intraagency Task Force on Bias Crimes.[111]

Human Relations Commissions are important because they are often aware of underlying tensions before police and prosecutors. In New York City, the HRC has several field offices, a Bias Response Team and numerous investigators throughout the city to monitor and respond to conditions. Furthermore, they can be a valuable resource for victims after incidents occur. In Montgomery County, a specialist from the HRC assists bias crime victims in all aspects of their case. The HRC representative assists with outreach, community support, counseling and restitution, and accompanies victims in their foray through the justice system. These counselors help victims overcome their trauma while making it easier for police and prosecutors to bring a successful case. In other jurisdictions, HRCs serve an important mediation function before relatively minor incidents escalate into major ones.[112] New York City HRC Commissioner Dennis deLeon believes that HRCs could be relied upon more by police departments for data, insight, and victim support in bias crimes. They often have valuable demographic data and community contacts that can assist police in formulating a proactive response.[113]

A Boston Police Department official has proposed another program for more remote and less populated areas which often lack resources—the Direct Intervention Response Team (DIRT).[114] DIRT is modeled after programs used to fight narcotics dealing. As part of DIRT, the state attorney general would be empowered to call upon the most able bias crime prosecutors, police, HRC personnel, or other individuals in the state to assist local authorities. They would form a coordinated team, including at least one ranking official from the municipality requesting the assistance. Thus, the local authorities would be viewed by citizens as part of the bias crime solution, rather than as inept or unconcerned bystanders.

> Police bias-crime training nationwide has been described as "uniformly awful."

TRAINING

Generally, law enforcement needs to improve its bias crime training. A recent survey of Los Angeles County Sheriffs Officers revealed that 36 percent felt under-trained for their current position.[115] One third of the white officers said they had a diminished tolerance for minorities[116] at the same time the state was experiencing the most dynamic demographic shift in history. Police bias crime training nationwide has been described as "uniformly awful."[117]

According to one of the most prominent bias crime instructors, bias crime training should emphasize first that these are serious crimes with devastated victims who require prompt, professional responses from police.[118] The training should also familiarize police personnel with well-articulated departmental policies and procedures. Importantly, these policies and procedures must come "from the top down" so they will not be dismissed.[119] The department's response to bias crime should be presented as part of a permanent effort being made at all levels of government. Furthermore, at least one of the instructors should be an experienced law enforcement officer who is respected in the ranks.

Bias offenses should be presented in a manner that highlights the immediate threat they pose to law enforcement, as well as to victims and our system of

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government. It is important to point out that at their extreme, bias offenders have threatened, injured, and killed police officers. The instructor should explain how bias crimes are different from other crimes, with many important aspects hidden from view. Training should also include the serial nature and terrorist aspects of bias crimes, and the heightened violence and potential for community disorder associated with bias crimes.

The heightened vulnerability felt by police, and the support system that exists for them, should be contrasted with those of bias crimes victims. The instructor should use descriptive language to convey the victims' experiences. Graphic shock photos of bias crime victims should be prominently presented. In addition, historical photos of acts of bigoted brutality should be shown. This provides a continuing historical context for these crimes, and allows the officer to see what the victim sees. Local examples should be recounted. If it is practical to have a victim make a statement, this should be done as well.

The training should be framed in a manner consistent with the officers' sense of duty, patriotism, and fairness. The instructor should emphasize the negative effects of bias crimes on the exercise of civil rights: all people must be protected if these rights are to have meaning.

In sum, a thorough training should cover the following topics:

- bias crime definition and background;
- criteria for identification;
- relevant statutes;
- civil rights and the Constitution;
- departmental policy;
- responsibilities of officers by rank;
- data collection guidelines;
- background on prejudice;
- intergroup and community awareness;
- victim support; and
- interviewing techniques.

In addition, instructors should emphasize that the patrol officers' efforts, while essential, need not be burdensome. All acts, even minor ones that involve any suspicion of bias, should be referred to the supervisor or bias liaison officer with no penalty for "false positives." They should point out that it is far easier to discard illegitimate complaints after investigation than it is to intercede in legitimate cases after the window of opportunity has passed. After all, bias crimes are cowardly acts that are easily deterred by a professional police response. The program should also have practical exercises that help officers identify bias crimes and understand the dynamics of prejudice. Finally, it is important that all questions be answered candidly.

CONCLUSION

Bias crimes are a distinct category of offenses which pose special harms to communities. Traditional laws and methods of policing are ineffective at addressing the problem. As police departments and government officials reexamine issues of brutality, diversity, public trust, and their role in the community, it is also relevant that they address the adequacy of their response to bias crimes. If police and public leaders ignore legislation, data collection, procedure, coordination, and training they will foster an attitude which allows bias violence to continue unnoticed and undeterred. ♠

NOTES

[1] AMERICAN-ARAB ANTI-DISCRIMINATION COMMITTEE, 1991 REPORT ON ANTI-ARAB HATE CRIMES 8 (1992).

[2] John Roberts, *Why Did You Kill Our Hero?*, TEACHING TOLERANCE, Spring 1992, at 14.

[3] *Rash of Arson Darkens the Image of a Quiet Amish Community*, N.Y. Times, Mar. 21, 1992, at A6.

[4] Lynda Richardson, *61 Acts of Bias: One Fuse Lights Many Different Explosions*, N.Y. Times, Jan. 28, 1992, at B1.

[5] Jim Trotter, *We Must All Be Intolerant—of Hate Crimes*, SACRAMENTO BEE, Jan. 15, 1992, at A2.

[6] FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, HATE CRIMES DATA COLLECTION GUIDELINES 4 (1990).

[7] BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, REPORT TO THE NATION ON CRIME AND JUSTICE 12 (2d ed. 1988).

[8] James Garofalo, Bias and Non-Bias Crimes in New York City:

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Preliminary Findings 11 (Nov. 9, 1990) (unpublished manuscript presented to the American Society of Criminology, on file with the author).

[9] Kevin Berrill, *Anti-Gay Violence and Victimization in the United States*, 5 J.INTERPERSONAL VIOLENCE 274, 281 (1990).

[10] PETER FINN & TAYLOR MCNEIL, RESEARCH APPLICATION REVIEW: THE REPONSE OF THE CRIMINAL JUSTICE SYSTEM TO BIAS CRIME (1987).

[11] Telephone interview with Gregory Herek, Professor, University of California at Davis (Mar. 4, 1992).

[12] Boston Police Department, Community Disorders Unit, 1992 Statistical Summary (unpublished manuscript on file with the author).

[13] According to Kevin Berrill, an expert on anti-gay hate crimes, at least six studies show 70 to 90 percent underreporting rates for gay people. Telephone interview with Kevin Berrill, National Gay and Lesbian Task Force (Dec. 1991).

[14] The New York City Police Department's Bias Incident Investigating Unit maintains separate categories on their reporting forms for anti-Semitic institutional incidents because of their prevalence.

[15] ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH, LAW ENFORCEMENT BULLETIN 1, 6 (1992). In 1991, anti-Semitic assaults outnumbered property incidents for the first time since records were kept. The Anti-Defamation League can be contacted at 823 United Nations Plaza, New York City, NY 10017.

[16] Injury and hospitalization charts and all other Boston figures are from Jack McDevitt, The Study of the Character of Civil Rights Crimes In Massachusetts (1983-1987) 5-7 (Nov. 1989) (unpublished manuscript presented to the American Society of Criminology on file with the author). Maryland figures are from MARYLAND STATE POLICE, RACIAL, RELIGIOUS AND ETHNIC INCIDENT ASSESSMENT 1990 (1991). New York City figures are from Garofalo, *supra* note 8, at 7-9, 16. U.S. average is from BUREAU OF JUSTICE STATISTICS, *supra* note 7, at 25, 32, 68; McDevitt, at 5-7. Since bias crimes are more assaultive, clearance rate is for violent crimes. Overall U.S. crime clearance rate is 21%. BUREAU OF JUSTICE STATISTICS, *supra* note 7, at 68.

[17] McDevitt, *supra* note 16, at 5-7.

[18] Berrill, *supra* note 9, at 280.

[19] NATIONAL INSTITUTE AGAINST PREJUDICE & VIOLENCE, THE ETHNOVIOLENCE PROJECT, INSTITUTE REPORT NO. 1, 5 (1986). The National Institute can be contacted at 31 S. Greene St., Baltimore, MD 21201.

[20] McDevitt, *supra* note 16, at 9.

[21] *Id.* at 10.

[22] Garofalo, *supra* note 8, at 16.

[23] *Id.* at 18.

[24] Telephone interview with Robert Purvis, Legal Director of the National Institute Against Prejudice and Violence (Feb. 2, 1992).

[25] McDevitt, *supra* note 16, at 7.

[26] Richardson, *supra* note 4.

[27] John Kifner, *Police Brace for Riots in Brooklyn*, N.Y. Times, Aug. 24, 1991, at A27.

[28] GOVERNOR'S TASK FORCE ON BIAS-RELATED VIOLENCE, NEW YORK STATE, FINAL REPORT, ES10 (1988).

[29] *See* Virginia N. Lee, *Legislative Response to Hate-Motivated Violence: The Massachusetts Experience and Beyond*, 25 HARV. C.R.-C.L. L. REV. 287 (1990).

[30] The California legislature enacted many of the state's bias statutes in response to a 1988 Attorney General task force report showing that legislation then in effect failed to deal adequately with bias crimes. OFFICE OF THE ATT'Y GENERAL, CALIFORNIA DEP'T OF JUSTICE, COMMISSION ON RACIAL, ETHNIC, RELIGIOUS AND MINORITY VIOLENCE: FINAL REPORT (1986).

[31] MASS. GEN. L. ch. 265, § 37 (1979).

[32] Lee, *supra* note 29, at 307-333

[33] MASS. GEN. L. ch. 265, § 37 (1979).

[34] Commonwealth v. Stephens, 25 Mass. App. Ct. 117 (1987).

[35] ILL. ANN. STAT. ch. 38, para. 12-(2),7.1 (Smith-Hurd 1991).

[36] MASS. GEN. L. ch. 265 § 39 (1979).

[37] FLA. STAT. ANN. § 775.085 (West 1991).

[38] *See* Lee, *supra* note 29, at 293 n.30.

[39] ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH, HATE CRIME STATUTES: A 1991 STATUS REPORT 2 (1991).

[40] Boston Police Department, *supra* note 12.

[41] Lee, *supra* note 29, at 294.

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[42] *Id.* at 22-23.

[43] ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH, ADL PARAMILITARY TRAINING STATUTE: A RESPONSE TO EXTREMISM 2 (1986).

[44] CAL. CIV. CODE § 52.1 (West 1988); MASS. GEN. L. ch. 266, § 127B.

[45] Lee, *supra* note 29, at 301-6.

[46] 112 S. Ct. 2538 (1992).

[47] State v. Plowman, No. CA A65145, 1992 WL 207677 (Or. Aug. 27, 1992) (upholding intimidation law); State v. Mitchell, 485 N.W.2d 807 (Wis. 1992), *petition for cert. filed*, 61 U.S.L.W. 3266 (U.S. Sep. 21, 1992) (No. 92-515) (holding that hate crime statute violated First Amendment). New Jersey, Florida and California courts are deciding challenges to their laws as well.

[48] State v. Mitchell, 485 N.W.2d 807 (Wis. 1992), *petition for cert. filed*, 61 U.S.L.W. 3266 (U.S. Sep. 21, 1992) (No. 92-515); State v. Wyant, 597 N.E.2d 450 (Ohio 1992), *petition for cert. filed* (U.S. Sep. 29, 1992) (No. 92-515) (holding that ethnic intimidation law is unconstitutional).

[49] National Institute Against Prejudice & Violence, (Sep. 1991)(unpublished table, on file with the author); ANTI-DEFAMATION LEAGUE, *supra* note 39, at 22-23.

[50] Garofalo, *supra* note 8, at 8.

[51] Adele D. Terrell, *Responding to the Victim of Hate Violence: A Unique Challenge for Police Departments*, NOBLE ACTIONS 4 (Dec. 1986).

[52] Anti-Defamation League of B'nai Brith, Northeastern Concept Paper 1992 (unpublished manuscript, on file with author).

[53] Maryland figures are from MARYLAND STATE POLICE, CRIMINAL INTELLIGENCE DIVISION, RACIAL, RELIGIOUS AND ETHNIC INCIDENT ASSESSMENT (1990) 13 (1991). New Jersey figures are from NEW JERSEY STATE POLICE, THIRD ANNUAL BIAS INCIDENT OFFENSE REPORT (1991). New York figures are from Garafolo, *supra* note 8, at 17. New York figures do not total 100% because some age information was unavailable.

[54] Telephone interview with Paul Goldenberg, New Jersey State Official (Feb. 1992).

[55] Peter Finn, *Bias Crime: A Special Target for Prosecutors*, THE PROSECUTOR, Spring 1988, at 14.

[56] Telephone interview with Elyse Rothschild, Montgomery County (Maryland) Human Relations Committee (Dec. 1991) [hereinafter Rothschild Interview].

[57] SANTA CLARA COUNTY: BIAS FREE SCHOOLS (1992).

[58] Elsie Scott, Remarks at the Northeast Regional Conference on Prejudice and Violence (Mar. 3, 1988) (transcript on file with the National Institute Against Prejudice and Violence) [hereinafter Scott Remarks].

[59] Chuck Wexler & Gary T. Marx, *When Law and Order Works*, 32 CRIME & DELINQUENCY 205, 217 (1986).

[60] *Id.* at 216.

[61] Letter from Daryl Gates, Chief of Police, Los Angeles Police Department, to Benjamin Ward, Police Commissioner, New York City Police Department (Sept. 17, 1985) (copy on file with author).

[62] Brian Levin, Blacks, Racial Bias Incidents and the Criminal Response (Oct. 1987) (unpublished manuscript on file with author).

[63] Wexler & Marx, *supra* note 59, at 216.

[64] Each jurisdiction has distinct policies and procedures that have served as models for other departments. *See generally* Levin *supra* note 62.

[65] 28 U.S.C. § 534 (1990).

[66] FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES, iii (1990).

[67] David Tuller, *California Says It Can't Help FBI Collect Hate-Crime Figures*, S.F. Chron., Sep. 10, 1992, at A21.

[68] Criminologists caution that even among the reporting states, this figure represents an undercount. Telephone interview with Jack McDevitt, Professor, Northeastern University (Sept. 1992).

[69] ANTI-DEFAMATION LEAGUE, *supra* note 15, at 1, 3.

[70] James Mulvihill, Remarks at the Northeast Regional Conference on Prejudice and Violence (Mar. 3, 1988) (transcript on file with the National Institute Against Prejudice and Violence).

[71] Telephone interview with John Cook, Major, Maryland State Police Criminal Intelligence Unit (Mar. 6, 1992) [hereinafter Cook Interview].

[72] A criminal statistician with the Massachusetts Uniformed Crime Reporting Unit emphasizes that victims seriously underreport to police. Interview with Daniel Bibel, Massachusetts Uniform Crime Reporting, (Jan. 7, 1991) [hereinafter Bibel Interview].

[73] BUREAU OF JUSTICE STATISTICS, *supra* note 7, at 35

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[74] New York Police Department, Bias Incident Investigating Unit, Incident Report (1991) (unpublished manuscript on file with the author) [hereinafter NYPD BIIU]; Boston Police Department, *supra* note 12.

[75] The NYPD has since changed its operational definition to include those cases where bias intent plays only a partial role. Alison Mitchell, *Police Find Bias Crimes Are Often Wrapped In Ambiguity*, N.Y. Times, Jan. 27, 1992, at B2.

[76] Or. Rev. Stat. § 181.550 (1991).

[77] Richard Anliot, Summary of 132 "Intergroup Tension Situations" Fiscal Year 1990-91 (Oct. 24, 1991) (unpublished manuscript on file with the author).

[78] Los Angeles County Commission on Human Relations, Hate Crime in Los Angeles County 1989, 1990, 1991 (1990, 1991, 1992); San Francisco Police Dept. Criminal Intelligence Division, Table (unpublished manuscript on file with the author) [hereinafter SFPD Intelligence Division]; NYPD BIIU, *supra* note 74.

[79] Bibel Interview, *supra* note 72.

[80] Berrill, *supra* note 9, at 287.

[81] McDevitt, *supra* note 16, at 6.

[82] N.R. Kleinfeld, *Bias Crime May Not Be Growing in New York City, But Horrors Are Scarring Many*, N.Y. Times, Jan. 27, 1992, at B12.

[83] BUREAU OF JUSTICE STATISTICS, *supra* note 7, at 33.

[84] *See id.* at 24, 26-7; World Almanac at 725, 940 (1992).

[85] Cook Interview, *supra* note 71.

[86] FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, TRAINING GUIDE FOR HATE CRIME DATA COLLECTION 16 (1990).

[87] New York City Police Department, Patrol Guide: Bias Motivated Incidents 2 (1984) (unpublished booklet, on file with author).

[88] Scott Remarks, *supra* note 58.

[89] Michael Markman, Remarks at the Northeast Regional Conference on Prejudice and Violence (Mar. 3, 1988) (tape on file with the National Institute Against Prejudice and Violence) [hereinafter Markman Remarks].

[90] *Id.* at 10.

[91] LAURA BLACKBURNE ET AL., REPORT OF THE MAYOR'S COMMITTEE INVESTIGATING THE PROTEST AGAINST TWO KOREAN-OWNED GROCERIES ON CHURCH AVENUE IN BROOKLYN 41 (1990).

[92] Tanya K. Hernandez, *Bias Crimes: Unconscious Racism in the Prosecution of "Racially Motivated Violence,"* 99 YALE L.J. 845, 852-54 (1990).

[93] Partial 1992 figues for New York City show that through August 31, 1992, there were 443 cases, compared to 317 for that same period in 1991 (telehone interview with Ms. Feirstein, Senior Police Administrative Aide (Oct. 1992)). Through June 30, 1992, Boston had 113 cases, compared to 90 for the same period in 1991. Maryland reported 108 cases for the first two months of 1992 versus 109 in the first two months of 1991 (telehone interview with Maryland State Police Criminal Intelligence Division (Oct. 1992)). Los Angeles County Commission on Human Relations, Hate Crime in Los Angeles County 1991 (1992). San Francisco figures are from the SFPD Intelligence Division. New York City figures are from NYPD BIIU, *supra* note 74. Boston figures were supplied by telephone interview with Lt. Detective William Johnston (Sept. 1992). All other state figures are from the relevant srate crime reporting divisions, available in the author's files. Also, Pennsylvania just released its report showing 235 cases in FY 1990-91, which rose to 378 for FY 1991-92. PENNSYLVANIA ATTORNEY GENERAL, HATE CRIMES REPORT 1990-1992 (1992).

[94] Interview with Brian Flynn, Detective Sergeant, Boston Police Department, Community Disorders Unit (Mar. 1992) [hereinafter Markman Remarks].

[95] Boston has the oldest and most comprehensive bias crime data collection system in the nation.

[96] McDevitt, *supra* note 16, at 2.

[97] McDevitt, *supra* note 16, at 3.

[98] ELSIE SCOTT, ARLENE WILLIAMS, RACIAL AND RELIGIOUS VIOLENCE: A MODEL LAW ENFORCEMENT RESPONSE; A FINAL REPORT 92 (National Organization of Black Law Enforcement Executives, Sep. 1985).

[99] *See generally* ANTI-DEFAMATION LEAGUE OF B'NAI BRITH, HATE CRIME: POLICIES AND PROCEDURES FOR LAW ENFORCEMENT AGENCIES (1988).

[100] ADL, *Mayors Conference Release Hate Crime Report*, ADL on the FRONTLINE 6 (Sep. 1992).

[101] San Francisco Police Department, Special Order 88-06 (1988).

[102] *See also* ANTI-DEFAMATION LEAGUE OF B'NAI BRITH, *supra* note 99; SCOTT & WILLIAMS, *supra* note 98..

[103] REPORT TO THE NATION ON CRIME AND JUSTICE, *supra* note 7, at 33.

[104] Garofalo, *supra* note 8, at 6.

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Chapter Thirteen

The Characteristics of Hate-Crime Victimizations in the United States

Brian Levin

Unlike most of the other 14,086 murders in the United States in 1998, the slayings of James Byrd in Jasper, Texas, and Matthew Shepard in Laramie, Wyoming, garnered extraordinary national attention (FBI, 1999). Byrd, an African American, was decapitated and dismembered on the night of June 7 after being tied by the ankles with a metal chain to the back of a pickup truck and dragged along a desolate street by three white supremacists who had offered him a ride. Shepard, a 5 foot 2 college student with braces on his teeth weighing barely 100 pounds, was severely beaten by two local toughs and left in the near freezing cold, tied to a wooden fence on a flat plain on the edge of town (Southern Poverty Law Center, 2000)

If the significance of hate-crime were measured only by the prevalence of reported cases, it would hardly warrant a chapter in a book on criminal victimization. Of the 11,605,751 index crimes reported to the FBI in 2000, only 8,063 were hate crimes—less than .0007%. In New York City, for instance, more robberies are reported every five days than hate crimes reported in an entire year (FBI, *Crimes*, 2001; FBI, *Hate Crimes*, 2001). Hate crimes are relatively infrequent events, especially when compared to other dangerous situations faced by Americans. An African American is far more likely to be victimized by a fellow African American than he or she is to be victimized at the hands of a hate-crime offender. Similarly, a Jewish person is more likely to be killed in a traffic accident than to be the direct target of a hate crime (Levin, 1992–93). While the relative number of reported hate crimes is small—and definitions the subject of some debate—the category has nonetheless achieved broad public recognition in the United States (Jacobs and Potter, 1998).

Prepared especially for *Victims and Victimization*.

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An Incomplete Composite of a Serious Type of Victimization

Available data, which are admittedly incomplete, nevertheless paint a picture of a crime that is more serious than previously thought. Hate crimes are much more likely to be directed against persons than is overall crime. Religious hate crime, however, had the lowest proportion of person-directed attacks. Generally, hate-crime offenses appear to be primarily clustered around simple and aggravated assault, vandalism, and threats. Person-directed hate crimes appear twice as likely to result in injury than overall person-directed crime. Aggravated assaults also appear to occur with greater frequency in hate crime than they do in overall crime. Weapon use in hate-crime attacks appears to involve primarily imprecise weapons of opportunity that can be accessed spontaneously, such as fists, blunt objects, and knives. Hate-crime victims are more likely to face unknown assailants, who are most often strangers. Most, but not all, research indicates that multiple offenders are more likely in hate-crime cases. Hate crimes are most likely to occur at residences, and it appears that there is a relationship between changing racial and ethnic housing patterns and hate crime. Hate-crime frequency also appears to be related at various times to the existence of a trigger event that ignites a cycle of retaliatory violence between or against certain communities, as was the case with anti-Muslim hate crimes after the September 11, 2001, terrorist attacks.

At least 60% of hate-crime victims are male. Racial bias accounts for about 55% of reported hate crime, with 66% of those victims being African-American (FBI, *Hate Crimes*, 2001). Research indicates that the vast majority of assailants are not confirmed to be members of bigoted hate groups. Hate crimes also appear to be less likely to be reported to authorities than crime overall. Hate-crime victims often face serial victimizations, and they face greater psychological and behavioral consequences as a result of their attacks. These negative indicators last longer for hate-crime victims than they do for similarly situated victims of non-hate crime.

The enforcement of hate-crime laws varies greatly among different jurisdictions. Even in jurisdictions where hate-crime enforcement is aggressive, few offenders are caught and the number of convictions is low. There is a paucity of scholarly research relating to how hate crime affects secondary victims such as coworkers and community members, but it would stand to reason that the effect would be significant because of the perceived interchangeability of victims within a targeted group. Presumably, the terror generated by hate crime would extend beyond direct victims to those who feel that they share the characteristics and attendant vulnerability of someone targeted for a crime—particularly since assailants are most frequently unknown or strangers.

Legal Definition and Coverage

Hate crimes are those offenses where a person or property is targeted for a crime because of his or her actual or perceived group affiliation or association. In 2002, 45 states and the District of Columbia had criminal statutes punishing bias-based victimizations, but there was significant variation relating to coverage, data collection, and enforcement. Race, religion, and ethnicity or national origin are covered in all states that explicitly list categories. Over 20 states cover gender and sexual orientation, while a smaller number cover disability. Some states have created a distinct, separate offense for hate crimes that do not require the charging of an additional offense (Anti-Defamation League, 2001). California Penal Code 422.6, for example, makes it a crime to interfere through force or threat with a person's civil rights on the basis of characteristics such as race, religion, national origin, sexual orientation, disability, and gender. In contrast, New York State's hate-crime law is in the form of a penalty enhancement, which requires the charging of an underlying offense. New York's hate enhancer adds an additional period of incarceration onto the sentence for an underlying criminal conviction when a jury finds beyond a reasonable doubt that the offender discriminated on the basis of a protected status in the selection of a crime victim. In many states, victims have used civil law tools such as mediation, injunctions and stay-away orders, and monetary judgments to enforce their rights on their own (Hate Crimes Act of 2000).

The federal hate-crime penalty enhancement law protects on the basis of race, religion, national origin, sexual orientation, and disability. The law is rarely used because it requires the charging of an underlying federal crime, which limits its applicability (Hate Crime Sentencing Enhancement Act of 1994). Another federal law punishes conspiracies that deprive victims of civil rights, while others punish the interference with certain specified rights on the basis of race or other group status (18 U.S.C. 241, 245; 42 U.S.C. 363).

Hate-Crime Cases and the Supreme Court

The Supreme Court has held that hate-motivated crime may be punished more severely, but it has also established guidelines for the application of such punishments. In *Barclay v. Florida* (1983) the United States Supreme Court held that a defendant's anti-white racial animus and motivation to ignite a race war were relevant in determining punishment in a race murder case. While the government may not penalize abstract bigoted beliefs, it may introduce evidence of a defendant's constitutionally protected beliefs to show motive or to establish intentionality.

In *R.A.V. v. St. Paul* (1992), the Supreme Court invalidated a municipal "hate speech" ordinance used to prosecute a teenage skinhead for burning a

Hate-Crime Criminal Law Overview

Federal

18 USC 241
Punishes conspiracies that interfere with civil rights; no racial motivation needed.

18 USC 242
Punishes government officials who use their authority to interfere with civil rights.

18 USC 245
Punishes interference with particular enumerated rights on the basis of race, color, religion or national origin.

42 USC 3631
Punishes interference with housing rights on the basis of race, color, religion, sex or national origin.

Hate Crime Sentencing Enhancement Act (HCSEA)
Increases the penalties by approx. 1/3 for underlying federal offenses committed on the basis of race, color, religion, national origin, ethnicity, gender, disability or sexual orientation.

18 USC 247
Increases the coverage and penalties under federal law for attacks against houses of worship.

State

Hate Crime Penalty Enhancement Laws
Increases the sentences for underlying crimes when a fact finder establishes beyond a reasonable doubt that a victim or property is selected on the basis of group characteristics.

Hate Crime Stand Alone Laws
Punishes violence, threats and or property destruction on the basis of group characteristics without the necessity of charging another offense.

Cross Burning Statutes
Punishes the hostile use of a burning cross on the property of another without the owner's permission

64876.066

cross in the yard of an African-American family with several young children. While the justices unanimously rejected the statute, they were sharply divided as to their rationales. The statute read in relevant part:

> Whoever places on public or private property a symbol, object, appellation, characterization, or graffiti, including but not limited to a burning cross or Nazi swastika, which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender, commits disorderly conduct and shall be guilty of a misdemeanor. (St. Paul, Minn., Legis. Code § 292.02)

All the justices found the law impermissibly overbroad by punishing constitutionally protected speech that merely evoked anger or resentment. The First Amendment has consistently been held to protect extremely offensive speech and political discourse that fails to rise to the level of a threat, immediate incitement to criminality, or solicitation of a crime. The mere offensiveness of a belief is an impermissible basis for the government to punish its expression.

Four of the justices supported the contention that it was constitutional to punish expression whose severity went beyond merely offending someone. Since threats and so-called fighting words were traditionally held to be unprotected by the First Amendment, these justices maintained that it was constitutional for the government to punish bigoted speech selectively within these narrow categories on the basis of content. In his opinion Associate Justice John Paul Stevens argued:

> Conduct that creates special risks or harms may be prohibited by special rules. Lighting a fire near an ammunition dump or a gasoline storage tank is especially dangerous, such behavior may be punished more severely than burning trash in a vacant lot. Threatening someone because of her race or religious beliefs may cause particularly severe trauma or touch off a riot . . . such conduct may be punished more severely than threats against someone based on, say, his support of a particular athletic team. (*R.A.V.* at p. 416)

The controlling opinion, authored by Associate Justice Antonin Scalia, disagreed. These justices believed that even traditionally unprotected areas of speech cannot be punished based on the content of the idea expressed. They held that punishing certain types of threatening cross burnings such as those based on racial supremacy, but not others, such as those degrading the mentally ill, violated that principle. The *R.A.V.* decision invalidated those hate-crime laws where the criminality hinged solely on the idea expressed.

The issue of the overall constitutionality of hate-crime laws as a category was settled in *Wisconsin v. Mitchell* (1993). There, the Court unanimously upheld the constitutionality of another type of hate-crime statute—a penalty enhancement law. Specifically, the enhancement law at issue punished an offender's intentional selection of a victim or property based on the status characteristics of another person. The characteristics covered by Wis-

consin's law included race, religion, color, national origin, and ancestry. Todd Mitchell was a nineteen-year-old African-American resident of Kenosha, Wisconsin, angered over a scene in the movie *Mississippi Burning*, where an African-American child was beaten by white supremacists as he knelt to pray. Mitchell used incendiary rhetoric to incite a crowd to beat Gregory Riddick, a fourteen-year-old white passerby, viciously. Mitchell was convicted of aggravated battery and sentenced to two years for the underlying assault. He was assessed another two-year term for intentionally selecting his victim on the basis of race. He was sentenced to a total of four years incarceration out of a possible seven-year term (*Wisconsin v. Mitchell*, 1993).

In reversing the Wisconsin Supreme Court, Chief Justice William Rehnquist cited three basic reasons for affirming the statute. First, while the government may not punish abstract beliefs, it can punish a vast array of depraved motives. The Court further found that penalty-enhancement laws, unlike the statute at issue in *R.A.V.* did not prevent people from expressing their views or punish them for doing so. Lastly, the Court pointed to the severity of hate crimes, stating that they are "thought to be more likely to provoke retaliatory crimes, inflict distinct emotional harm on their victims and incite community unrest" (*Wisconsin v. Mitchell*, 1993, p. 487–88).

In June 2000, the United States Supreme Court struck down a New Jersey hate-crime law in *Apprendi v. New Jersey*. The hate-crime law at issue allowed a judge, rather than a jury, to increase the sentence of a convicted defendant beyond the maximum enumerated in the criminal code for the underlying offense on a showing of racial bias by a preponderance of the evidence. The Court held 5–4 that when a factor impacts a sentence as substantially as racial bias did in *Apprendi*, it must be established to a jury by a higher standard—beyond a reasonable doubt. The impact of the decision in the area of hate-crime law was limited because the overwhelming majority of hate-crime statutes already meet the Court's standards (*Apprendi v. New Jersey*, 2000).

Data Collection Issues and Limitations

Before analyzing existing official hate-crime data it is important to stress that much of it is incomplete because of faulty or nonexistent law enforcement data collection in many states. Because of negligible hate-crime reporting from southern states other than Virginia, Texas, and Florida there is probably an undercount of African-American hate-crime victims because they represent a greater proportion of the population of those states than they do nationally (FBI, *Hate Crimes*, 2001). In addition, there is also probably an undercount of crimes linked to traditional organized hate groups like the Ku Klux Klan. Traditional, organized hate groups like the Klan have a greater representation in rural areas in Georgia, Alabama, Mississippi,

Arkansas, Louisiana, and the Carolinas than they do in the major metropolitan areas of California and the Northeast (Southern Poverty Law Center, 2000). The aforementioned seven southern states reported less than 150 hate crimes combined while the metropolitan areas of the Northeast and California account for over 25% of all reported hate crime (FBI, *Hate Crimes*, 2001). Furthermore, there is an undercount of Asian and Pacific Islander hate-crime victims and perpetrators owing to Hawaii's failure to supply hate-crime data to the federal government. In addition various individuals with cultural distrust of police, unlawful immigration status, or language difficulties appear less likely to report cases. Lastly, while many states list gender as a protected class under hate-crime statutes, gender has not been meaningfully included in recent hate-crime data collection and enforcement efforts and is thus excluded from this analysis (Levin & Weisburd, 1994).

Boston was the first police department in the United States to develop a hate-crime police unit and data collection in 1978 (Wexler & Marx, 1986). New York began collecting "bias crime" data in December 1980, followed by Los Angeles County, San Francisco, and Chicago. Maryland was the first state to collect hate-crime data in 1981, followed by Pennsylvania in 1986 (Levin, 1992–93). Eleven states mostly in the Mid-Atlantic and Northeast had begun compiling data by the end of the decade (Bibel et al., 1992). The Anti-Defamation League (ADL), a Jewish civil rights organization began compiling private data on anti-Semitic incidents in 1979 and issues annual reports (Anti-Defamation League, 2001). By the late 1980s and early 1990s additional compilation or analysis of hate-crime victimizations was conducted by the University of California, Davis; Northeastern University; University of Maryland, Baltimore-National Institute Against Prejudice & Violence; University of Pennsylvania; Atlanta's Center for Democratic Renewal; The National Gay & Lesbian Task Force; and the Southern Poverty Law Center.

Initially introduced in 1985, the federal Hate Crime Statistics Act was signed into law by President George H. Bush on April 23, 1990. The act authorized the attorney general to direct the Uniform Crime Reporting Section (UCR) of the Federal Bureau of Investigation (FBI) to collect data voluntarily submitted to it from law enforcement agencies on hate crime committed on the basis of race, religion, ethnicity, sexual orientation, and disability. Wide variation exists between jurisdictions, with many states submitting thousands of cases, while others submit none. New Jersey, widely regarded as a leader in enforcement, counted 710 in 2000, while Alabama and Hawaii failed to report any (FBI, *Hate Crimes*, 2001).

Over the last ten years there has been a steady increase in the number of agencies officially participating in the data-collection program. However, many of these newly participating agencies merely submit forms stating that there were zero reported hate crimes, leading some to believe that many jurisdictions are inaccurately reporting zero incidents. The Bureau of Justice Statistics funded an analysis of 2,657 of the nation's 16,000 police agencies.

An estimated 37% of departments that failed to submit reports had at least one hate crime committed within their jurisdiction. The study further found that 31% of jurisdictions reporting zero hate crimes actually failed to account for hate crime in their jurisdiction. The study extrapolated that nearly 6,000 departments had hate-crime victimizations, but failed to report them. An investigation by the Southern Poverty Law Center (SPLC) indicated that at least seven states routinely report zero hate crimes when departments fail to submit reports, despite FBI prohibition of the practice. The SPLC also reported instances where obvious hate-crime cases were intentionally or accidentally not reported to the FBI. Alabama, which routinely submitted "zero" hate-crime cases for several years, failed to record the murder of Billy Jack Gaither. Gaither was killed with an ax handle and his body set on fire in rural Sylacauga, Alabama, because he was gay. State authorities acknowledged that the murder was homophobic, but still declined to follow FBI reporting procedures because Alabama's penalty enhancement law (which has no bearing on reporting requirements) excludes gays and lesbians. In 1999 in Elkhart, Indiana, 19-year-old Sasezley Richardson was murdered by white supremacists, including an Aryan Brotherhood member. A clerical error prevented the case from being reported to the FBI despite the police and prosecutor's designation of the homicide as a hate crime. In addition, Washington State authorities revealed that the FBI did not include three agencies that recorded hate crimes in 1999 in its national tally (Southern Poverty Law Center, 2001). The BJS study further found that an unidentified capital city in the southern United States forwarded 20 hate-crime incidents to state authorities, but those numbers inexplicably never were reported to the FBI (McDevitt & Weiss, 2000).

Data about hate-crime victimizations is hampered not only by instances of police misclassification but also by the refusal or inability of many victims themselves to report incidents. Many victims do not even make an initial notification to police. Analysts estimate that the actual number of hate-crime victimizations is between 36,000 to 50,000 nationally (Southern Poverty Law Center, 2001; Weisburd & Levin, 1994). The data on hate-crime victimizations come from three basic sources: government reports, scholarly research, and private monitoring groups.

Government Data Collection

There are three sources of federal empirical data on hate-crime victimizations. As mentioned earlier the UCR has prepared uniform, but partial, annual national summaries of hate-crime data since 1991 (FBI, *Hate Crimes*, 1992–2001). An analysis of 1990 data from 11 states was also compiled for the FBI under contract and released in December 1992 (Bibel et al., 1992). The FBI has recently developed a more comprehensive subset of the UCR program that collects additional information on an expanded number of

offenses. This new, more detailed data-collection system, the National Incident-Based Reporting System (NIBRS), will eventually be implemented nationally. (In 1997, 1,878 agencies from 10 states, about 6% of the U.S. population, submitted data to the FBI. In 1999, the number of agencies increased to 3,396 from 17 states, 13% of the total population.) NIBRS data on hate crime from the 2-year period 1997–1999 was published in September 2001. The third federal crime data initiative is the National Crime Victimization Survey (NCVS). The survey, which involves a comprehensive national sampling of residents who are questioned about victimizations, commenced operation in 1973 and was redesigned and renamed in 1992. The NCVS complements crime data reported to police by including both reported and unreported crimes. Hate-crime questions were recently added to the NCVS, but results are not yet available (Strom, 2001).

While national data is admittedly incomplete, it does offer interesting insights into the characteristics of hate crimes. Reported hate crimes appear to be more violent than non-bias motivated offenses. Hate motivated offenses are almost six times more likely to involve crimes against persons than are crimes generally. Nearly all of the NIBRS person-based hate crimes were clustered around three offenses: intimidation (verbal or related threats of bodily harm) (23.1%), simple assault (21.9%), and aggravated assault (12.9%). The next most common NIBRS person-based hate-crime offense was robbery (1.3%). The last four person offenses accounted for less than 1% combined (Strom, 2001).

The 2000 UCR hate-offense data is similar to that of the smaller but more detailed NIBRS sampling. As in previous years, intimidation was the most commonly reported UCR hate-crime offense at 34.9%. Vandalism and property destruction had ranked first among the NIBRS hate-crime data but was second in the UCR data set at 29.3%, followed by simple assault at 17.1%, and aggravated assault at 12.6% (FBI, *Hate Crimes*, 2001).

National data for overall crime indicates that hate crime is more likely to be violent and directed against persons than is crime overall. Part I of the UCR index for overall crime consists of eight representative offenses reported to police and is evenly divided between property offenses and person-based offenses. Person-directed or "violent" crime accounts for 12.2% of crime reported to police (FBI, *Crime*, 2001). For both hate crime and crime in general, homicide offenses are very infrequent events. The 15,517 murders and non-negligent homicides nationally recorded by the UCR in 2000 represented just .13% of the 11.6 million index crime offenses, while the 19 UCR hate-crime homicide offenses constituted .2% of the 9,430 hate-crime offenses reported in 2000 (FBI, *Hate Crimes*, 2001; *Crime*, 2001).

Aggravated assault was the most represented violent crime accounting for 7.8% of all reported Part I crimes. By contrast the FBI found that aggravated assault accounted for 12.6% of reported UCR hate-crime offenses and 12.9% of NIBRS hate-crime offenses. Since Part I of the UCR index of reported crime does not count simple assaults, it is not possible to compare

Hate-Crime Incidents by Offense

	%	#
Person Offenses	**60.0**	**1785**
Assault, intimidation	23.1	687
Assault, simple	21.9	651
Assault, aggravated	12.9	385
Robbery	1.3	38
Other property offenses	.8	24
Property Offenses	**38.3**	**1139**
Vandalism	28.0	832
Larceny/Theft	5.1	153
Burglary	3.0	88
Other property offenses	2.2	66
Other Offenses	**1.7**	**52**

(Strom, 2001)
NIBRS data 1997–99
10–17 States

Hate-Crime Statistics by Offense in 2000

	%	#
Person Offenses	**65**	**6130**
Intimidation	34.9	3292
Simple Assault	17.1	1615
Aggravated Assault	12.6	1184
Property Offenses	**34.4**	**3241**
Damage/Destruction/Vandalism	29.3	2765
Other	5.1	476
Other	**.6**	**59**

(FBI, *Hate Crimes*, 2001)
UCR data 2000
48 states and DC

the proportion of reported simple assaults to aggravated assaults for crime reported to police. However, Part II of the UCR, which tracks arrests from 6,400 agencies, includes a greater number of offenses, including assault and aggravated assault. In Part II there are 2.45 arrests for simple assault for every aggravated assault arrest. By contrast UCR 2000 hate-crime data indicate that there are 1.36 reported simple assaults for every aggravated assault, while the NIBRS hate-crime report shows the ratio of simple assault to aggravated assault to be 1.69. Not all serious crime had a higher representation in hate-crime data sets than in the data sets for overall crime. Rape and robbery represented a much greater proportion of overall crime than of hate crime (FBI, *Hate Crimes*, 2001; FBI, *Crime* 2001; Strom, 2001).

Weapon Use and Injury

The only federally compiled composite information on weapon use during hate-crime offenses is in the NIBRS data. The data on weapon use during aggravated hate-crime assaults appear to be the most reliable. Weapon use was reported in 96% of the hate-crime aggravated assaults. The most common type of weapon was a personal weapon such as hands, fists, and feet, which were used 27% of the time. Blunt objects were used 19% of the time, and firearms and knives were tied at 17% each. The use of weapons for aggravated hate assaults is almost identical to that of aggravated assaults overall as the chart on the following page illustrates (Strom, 2001).

Victims of person-based hate crimes appear twice as likely to sustain an injury as victims of person-based crimes in general.

Type of Bias Motivation 1997–1999 (NIBRS)

	Race	Religion	Ethnicity	Sexual Orient.	Disability
Person Directed	66.1%	29.9%	69.3%	56.2%	70.6%
Aggrav. Assault	14.3%	3.9%	18.5%	11.9%	11.8%
Simple Assault	24.1%	8.4%	22.8%	24.8%	41.2%
Intimidation	25.9%	16.5%	24.6%	16.4%	11.8%
Property Offenses	31.8%	68.9%	30.1%	42.2%	23.5%
Vandalism	23.1%	52.7%	20.7%	30.3%	11.8%

(Strom, 2001)

ple live in suburban areas where property crime is more prevalent than violent crime. According to the 2000 UCR data, houses of worship are the second most targeted location for religious hate crime (23%), while residences are the most common (37%). The NIBRS hate-crime data found that 29% of religiously motivated hate crime targeted residences, while commercial establishments, houses of worship, educational institutions, and open spaces all comprised about 16% each (FBI, *Hate Crimes*, 2001; Strom, 2001).

For overall hate crime in the 2000 UCR data, residences were the most frequent location, accounting for 36% of known locations, followed by streets at 20%, and schools and colleges at 12.6%. In descending order, residences, streets, and schools and colleges were the three most represented locations for hate crime motivated by race, sexual orientation and ethnicity. The NIBRS hate-crime data showed residences were the location of hate crimes 32% of the time, followed by open space at 28%, and commercial establishments at 19% (FBI, *Hate Crimes*, 2001; Strom, 2001).

The UCR 2000 hate-crime data showed this distribution of motivation: racial bias 54.5%, religious bias 17.2%, sexual-orientation bias 15.7%, ethnicity bias 12.35%, and disability bias less than 1/2 of 1%. Anti-Black incidents accounted for 66% of the cases motivated by racial bias, "anti-male homosexual" bias accounted for 68% of sexual orientation cases, anti-Hispanic cases accounted for 63% of ethnicity cases, while physical disability accounted for 56% of disability-related hate crime (FBI, *Hate Crimes*, 2001). The NIBRS data was similar: 61% of cases were racially motivated, 14.4% were religiously motivated, 11.1% ethnicity motivated, 12.7% were sexual-orientation motivated, and .6% physical disability related (Strom, 2001).

Victim-Offender Information

Person-directed hate crimes are more likely to involve offenders who are unknown or who are strangers to the victims, accounting for 56% of NIBRS

Hate Crime Incidents by Bias Motivation

	1992	1993	1994	1995	1996	1997	1998	1999	2000
Total Incidents†	6623	7587	5932	7947	8759	8049	7755	7876	8063
Agencies Participating†	6181	6551	7356	9584	11354	11221	10730	12122	11690
Bias Motivation									
Race:	4025	4732	3545	4831	5396	4710	4321	4295	4337
Anti-White	1342	1471	1010	1226	1106	993	792	781	875
Anti-Black	2296	2815	2174	2988	3674	3120	2901	2958	2884
Anti-Asian/ Pac. Islander	217	258	211	355	355	347	293	298	281
Eth./Nat. Origin:	669	697	638	814	940	836	754	829	911
Anti-Hispanic	369	472	337	516	564	491	482	466	557
Religion:	1162	1298	1062	1277	1401	1385	1390	1411	1472
Anti-Jewish	1017	1143	915	1058	1109	1087	1081	1109	1109
Anti-Christian	46	62	46	67	110	84	120	84	115
Anti-Islamic	15	13	17	29	27	28	21	32	28
Sexual Orient.:	767	860	685	1019	1016	1102	1260	1317	1299
Anti-Gay/Lesbian	760	830	664	984	991	1081	1231	1280	1257

†Year by year comparisons are discouraged because the number of agencies participating in the hate-crime data-collection program varies from year to year.
(FBI, *Hate Crimes*, 1993–2001)

hate-crime cases, compared to 47% for crime overall. The victim-offender relationship was unknown in 30% of all NIBRS hate-crime cases, a much higher percentage than that found with overall crime. For overall person-directed violent crime, the NCVS found that 45% were strangers, and 2% were unknown (Strom, 2001; Rennison, 2001).

The NIBRS person-directed hate-crime data showed that strangers represented 36% of offenders where the victim-offender relationship was known, with acquaintances accounting for 53.5%, and another 10% consisting of friends, intimates, and

NIBRS Hate-Crime Victims by Age

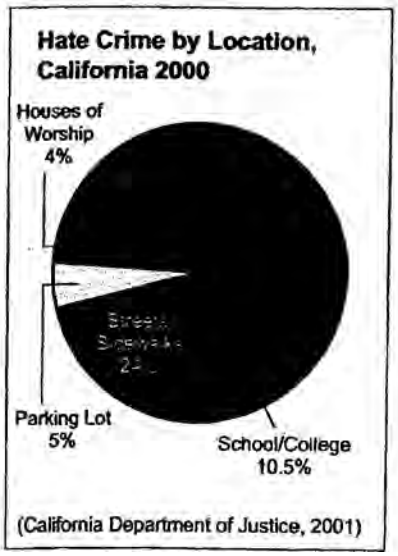
	All Hate-Crime Offenses	Person-Directed Hate Offenses
Age		
0–12	6%	8%
13–17	17%	21%
18–24	21%	23%
25–34	21%	21%
35–44	19%	17%
45 & Up	16%	10%

(Strom, 2001)

relatives combined. Acquaintance offenders committing person-directed hate-crime attacks, however, varied significantly by the age of the victim, while stranger offenders remained relatively stable. Victims of person-directed hate-crime attacks who were 12 years old or younger were targeted by acquaintances 67% of the time, for those 13–17 the frequency drops to 46%. For victims 21 and older only 21% of attacks were committed by acquaintances. For hate-crime aggravated assaults 47% of known offenders were strangers. NIBRS data further indicate that young hate-crime victims were more likely to suffer from a person-directed attack than crime victims in general. Over half of person-directed hate-crime victims were under 25 years old, while almost one-third were below 18. In contrast NIBRS data for overall crime during the same period found that only about 20% of person-directed offenses involved victims under 18, while over 40% involved victims below age 25. The NIBRS data further revealed that 62% of hate-crime victims and 65% of person-directed hate-crime victims were males (Strom, 2001).

Other Government Data

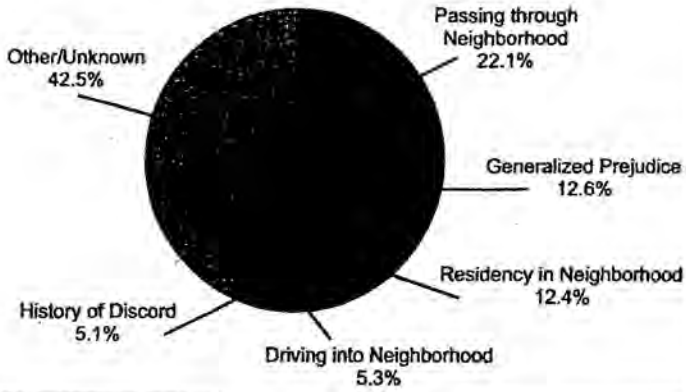
Various states with highly regarded reporting programs collect detailed supplemental hate-crime data that have not been included in federal data-collection programs. California, the nation's most populous state recently surpassed New Jersey for the most recorded hate-crime cases. While California hate-crime data were included in the 2000 UCR hate-crime report, not all information collected in California was included in federal reports. California supplemental information on hate-crime locations was similar to that collected by the NIBRS.



(California Department of Justice, 2001)

1991 Maryland data showed 71% of hate-crime "incidents" involved multiple offenders, its 1995 data indicated that only 49% did (Maryland State Police, 1992, 1996). NIBRS data diverged even more, indicating that multiple offenders were involved in only 25% of person-directed hate crimes and in about one-third of the assaults (Strom, 2001). Other results of McDevitt's (1989) study are presented below.

Analysis of Reason for Hate Crime, Boston 1983–1987



Researcher Kevin Berrill (1992) released findings of composite victimization surveys of gays and lesbians. Of those surveyed, 19% reported being beaten or battered at least once in their lives because of their sexual orientation, and 44% had been threatened because of it. Of those who were threatened with violence, over 60% were subject to serial victimizations, as were 47% of those who had been physically assaulted. Between 48 and 78% of victims of anti-gay hate crime faced multiple attacks.

This author (Levin, 1992–93) found in 1992 that hate crimes were more likely to involve attacks against persons and a higher proportion of multiple offenders. The study also found that these crimes had a significant risk of retaliatory violence that could spread throughout a metropolitan area. The study also presented Boston police data that analyzed hate crime over a thirteen-year period by type of victimization (see chart opposite page).

A 1999 victimization study by Gregory Herek, J. Roy Gillis, and Jeanine Cogan (1999) included 2,300 gays, lesbians, and bisexuals in the Sacramento, California, metropolitan area and concluded that this population faced high risk of homophobic victimization. Almost one-fifth of female respondents and over 25% of males had been subject to a homophobic hate crime or attempted hate crime during their lives. One-eighth of the females and one-sixth of the males were victimized in a hate crime in the previous

tion with meaningful data collection experienced an increase in hate crime, with some experiencing rioting (Levin, 1992–93; Levin, 1993). Lastly, people and institutions perceived to be Muslim or South Asian became a more frequent target of hate crime after the September 11, 2001, terrorist attacks. For instance Los Angeles County, California, had 92 hate crimes, including 2 homicides, committed on the basis of anti-Muslim or anti-Middle Eastern bias in the three months following September 11, 2001—compared to 12 cases for the whole of the previous calendar year (Winton, 2001).

A 2001 study by Jack McDevitt and other Boston researchers compared various characteristics of bias and non-bias victimizations in 146 cases of aggravated assault from Boston. The researchers found that bias crime attacks involve multiple offenders in 49% of the cases compared to 35% for the non-bias victim sample. The study also found that bias crime victims had no prior relationship in 83.5% of the cases compared to 68.2% for the non-bias crime sample. Bias crime victims categorized incidents as unprovoked 76% of the time compared to 53% for non-bias crime victims. Victims from both groups reported nearly identical percentages relating to hospital stays. More non-bias victims reported emergency room treatment, but the response sample to this question set was too low for the researchers to draw any conclusions (McDevitt et al., 2001). The study also found that almost identical proportions of bias and non-bias crime victims modified their behavior in response to their victimization. However, bias crime victims reported more intense and severe psychological trauma after their victimization than their non-bias counterparts. Bias crime victims were about one-third more likely to report feeling less safe after their attack and almost three times as likely to categorize overcoming their victimization as very difficult (McDevitt et al, 2001).

Prosecution Information

The Los Angeles County Human Relations Commission reported 933 hate crimes in 2000. The district attorney reviewed 214 cases, while city attorneys reviewed 65. The district attorney filed 158 hate-crime charges, with 91 against adults, and 67 against juveniles. The city attorney filed another 17 charges. The United States attorney pursued three federal hate-crime cases in 2000, all of which resulted in convictions or guilty pleas (Los Angeles County, 2001).

California has various jurisdictions where there are prosecutors specifically assigned to hate-crime cases. In 1999 there were 1,962 hate-crime events, 2,001 offenses, and 2,021 known suspects. In 1999, 1,039 cases (not all of which took place in 1999) were referred to California prosecutors. Of those referrals, 372 complaints were filed; of the cases filed, 229 resulted in convictions or guilty pleas. Hate-crime charges were involved in 174 of those convicted or offering guilty pleas (California Department of Justice, 2000).

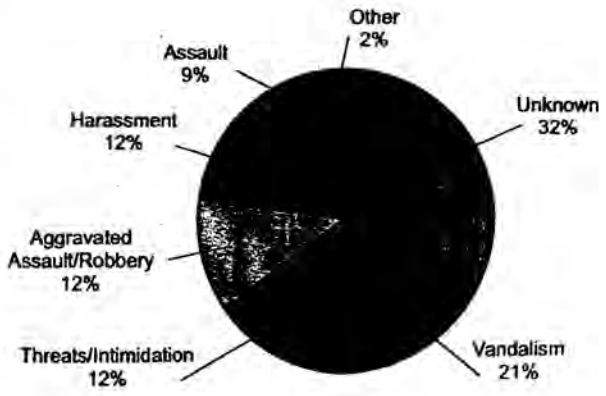
McDevitt's 1989 study of hate crime in Massachusetts tracked the disposition of 452 hate-crime cases. Of the 452 cases, 369 had known dispositions. The victim declined to pursue the case in 127 (34.4%) of those cases. Of the 242 cases that remained, no suspect was apprehended in 130 of them. An arrest was made in 15% of the cases. Only 40 cases went to criminal court, and 81% of those resulted in a conviction or guilty plea. Out of the 452 cases initially reported to police, only five actually resulted in incarceration of the defendant (McDevitt, 1989).

Monitoring Organizations

Private organizations also collect data on hate crimes and hate incidents. A coalition of gay, lesbian, and bisexual organizations counted 2,362 hate-motivated criminal events from 15 metropolitan areas, including 33 homicides in 1998. The data indicated that there were 907 assaults and attempted assaults, with 248 of them resulting in serious injuries, and 110 resulting in hospitalization. FBI UCR hate-crime data from the same year recorded 1,248 anti-gay incidents including four homicides (National Coalition, 1999; FBI, *Hate Crimes*, 1999).

A consortium of Asian organizations has produced an annual audit of anti-Asian violence over the last decade. The audit has counted between 450 and 550 incidents annually since 1994, with 486 in 1999.

Anti-Asian Hate Incidents by Offense in 1999



(National Asian Pacific American Legal Consortium, 2001)

The Anti-Defamation League has monitored anti-Semitic "incidents" for over two decades. In 2000 the ADL counted 1,606 incidents with 877 harassment, threat, and assault incidents and 729 incidents directed against property. Person-directed incidents first outpaced property incidents in 1991 and have remained in the majority every year since then. The most incidents occurred in 1994 when 2,066 were recorded (Anti-Defamation League, 2001).

Conclusion

Critics of hate-crime legislation argue that bias motivation does not create additional injuries for victims. Continuing research disputes that conclusion. "Hate crimes are inherently more harmful to the social fabric of society than comparable crimes without bias motive" (McDevitt et al., 2001, p. 698). Four aspects of hate crime contribute to differential impact on victims: (1) victim interchangeability—victims are usually hard pressed to alter the perceived status that precipitated the hate crime; an African American cannot prevent future victimizations by changing his or her ethnicity; (2) secondary victimization—the impact of bias crime extends beyond the primary victim to all members of the community who share the targeted characteristics; (3) the first two elements can interact to create violent disruption in the community; courts have noted the potential for bias crime to incite mass disturbances; (4) victims of hate-motivated batteries face a greater risk of injury than do victims of batteries overall.

Hate crimes are serious criminal events with significant consequences for victims, communities, and our pluralistic democracy. While many states have hate-crime laws, enforcement—as evidenced by data collection—varies widely by jurisdiction. Despite legislation directing that uniform national data be collected on hate crime, complete data are currently not available. Existing data and research from a variety of sources, however, create a composite that strongly suggests that hate-crime victimizations are a criminologically distinct and severe form of criminal conduct. The United States Supreme Court has upheld the constitutionality of statutes that enhance the punishment for crimes where a person is intentionally selected for victimization on the basis of group status, in part because of research showing the severe effects of hate crime.

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Commentary: Beating the homeless is cruel, not cool

Updated 3:08 p.m. EDT, Wed August 12, 2009

STORY HIGHLIGHTS

- Levin, Stoops: Homeless aren't protected by hate-crime laws or tolerance lessons
- They say new report documents disturbing level of violence vs. homeless
- They say popular culture leads some to think of hunting homeless as a sport
- Levin, Stoops: Laws must forcefully block violence against homeless

Next Article in Crime »

By Brian Levin and Michael Stoops
Special to CNN

Editor's note: Brian Levin is a professor of criminal justice at California State University, San Bernardino and director of the university's Center for the Study of Hate & Extremism. Michael Stoops is executive director of the National Coalition for the Homeless in Washington.

Brian Levin says the homeless are excluded from lessons on tolerance and aren't protected by hate crime laws.

CAMBRIDGE, Massachusetts (CNN) -- Over the last two calendar years, more Americans in the United States were killed in a little-noticed spate of unprovoked attacks than were killed by terrorists, in large commercial jet crashes or in racial hate crimes.

Since 1999, more than 240 vulnerable homeless Americans have been stabbed, beaten, drowned, shot or burned to death in a revolting display of one of the last socially tolerated prejudices, this one based on class.

Despite being prime targets of prejudice and violence, particularly in today's youth subculture, the homeless are routinely excluded from lessons related to tolerance, as well as from official data collection and hate-crime penalty enhancement laws.

A newly released report from the National Coalition for the Homeless documented 27 unprovoked, apparently bias-related homicides by attackers in the United States last year, down one from the previous year and the second-highest number of killings since 2001.

After bottoming mid-decade, the number killed has not dipped below 20 a year since 2005. In contrast, the FBI documented only 12 hate-crime homicides nationally for the two most recently available calendar years combined.

According to the NCH and the Center for the Study of Hate & Extremism, nearly 2 1/2 times more homeless people in America have been killed over the past 10 years in apparent unprovoked bias homicides than the total for all the other hate- crime homicides -- on the basis of race, religion, national origin, disability and sexual orientation -- combined.

Like other hate crime perpetrators, these attackers are typically young male "thrill offenders" seeking excitement, with 58 percent of assailants over the past 10 years falling in the 13-19 age range. In 2006, three teenagers out for fun attacked homeless people in Fort Lauderdale, Florida, with baseball bats, killing one of their victims, 45-year-old Norris Gaynor. One pleaded guilty and the two others were convicted of murder last September after the jury saw graphic surveillance tape of one of their nonlethal beatings from earlier in the evening.

These attacks exclude the large number of other types of crimes involving the homeless, such as personal disputes, homeless-on-homeless violence, robbery, drugs or murder for life insurance proceeds.

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- Schools, agencies seeing big increase in homeless families

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, In Depth: Commentaries

The August issue of Maxim, a youth-oriented magazine targeted at college-aged males, joked about last weekend's National Hobo Convention in Britt, Iowa, in a blurb titled "Hunt the Homeless." The journal quipped "Kill one for fun. We're 87 percent sure it's legal."

In previous violent attacks, some assailants have referenced degrading and violent depictions in popular culture such as "Bumfights" either during their crimes or in subsequent interviews with authorities, with some even filming the events.

"Bumfights" is a popular violent video series that sold hundreds of thousands of tapes and DVDs before going viral on the Internet. The film series sets a new low in American popular culture, featuring fights between homeless men plied by the producers with alcohol, as well as sadistic parodies of the late Australian conservationist "crocodile hunter" Steve Irwin.

These "skits" feature terrified sleeping homeless people who are startled awake and forcibly restrained with duct tape by "hunters" narrating their attacks with feigned Australian accents. Samuel Bowhay of Grinnell College found almost 86,000 videos on YouTube last month with "bum" in the title, thousands more than videos with other derogatory prejudiced epithets.

While homeless advocates lack the political and financial infrastructure often needed to institute policy reform, the frequency and brutality of the bias attacks have renewed focus on the nature of this violent form of prejudice and ways to address it.

Last week, District of Columbia Mayor Adrian Fenty signed legislation adding homeless status to the district's hate-crime law. Maryland, an early adopter of such measures in the 1980s, will join Maine in adding homeless status to its hate-crime law on October 1.

Other jurisdictions such as Alaska; Puerto Rico; Los Angeles County, California; and Seattle, Washington, also have taken various steps to recognize homeless status in their laws, data collection, educational efforts or procedures.

In almost a dozen other states, including California, Texas, South Carolina and Florida, legislation has been introduced over the past three years to add homeless status to their hate-crime laws as well. Nationally, Rep. Eddie Bernice Johnson of Texas has introduced legislation to add homelessness to federal hate-crime laws and data-collection efforts.

These efforts are long overdue. A primary purpose of hate-crime laws is the targeted deterrent message to would-be offenders that they face real punishment and social disapproval. Moreover, the key criminological criteria for coverage in hate-crime law apply seamlessly to homeless status as well:

1. a significant additional risk of violent victimization;

2. discriminatory selection;

3. established prejudice against a socially identifiable class;

4. identical offenders such as bigoted skinheads or young male thrill offenders who share identifiable characteristics and motivations.

Arguments against including provisions in hate-crime laws for the homeless are recycled ones that were initially used unsuccessfully against other groups, like gays and lesbians. Too many additional groups dilute the laws, or homelessness is a changeable condition that most people wouldn't want, they argue. The fact is, millions of Americans have changed their religious affiliation and yet, just about all hate crime laws cover faith. Disability is a characteristic that, like homelessness, most people would not seek out, yet it too is covered.

Adding the homeless to hate-crime laws, tolerance education and data-collection efforts must not be obstructed. When hate makes a fist, the laws of a civilized society must decisively block the blow in the most forceful and unambiguous way possible.

The opinions expressed in this commentary are solely those of Brian Levin and Michael Stoops.

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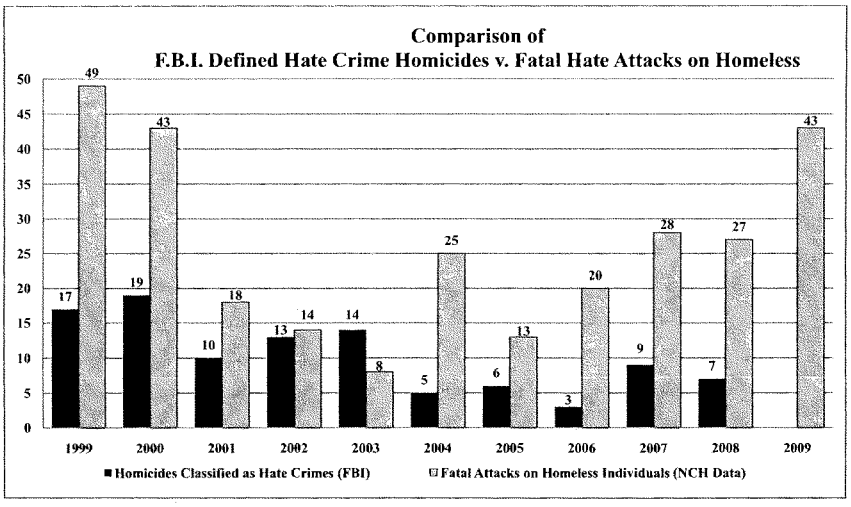

*2009 F.B.I. data not yet available.

Source: Center for the Study of Hate and Extremism (California State University, San Bernardino): Analysis of Data from the F.B.I. and the National Coalition for the Homeless.

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Hate Crimes

Worse by Definition

BRIAN LEVIN
Richard Stockton College of New Jersey

State and federal hate crime laws punish crimes involving discrimination on the basis of a person's group characteristic, such as race, religion, sexual orientation, national origin, gender, or disability. The Supreme Court has refined the definition of hate crime through decisions which affirmed one type of hate crime law, but rejected another. Punishing hate crimes is consistent with the traditional aims of our criminal justice system. Our criminal laws consistently enhance penalties for seemingly similar conduct based on the risk, severity, and context of a particular crime. Carefully drafted hate crime laws punish conduct that is objectively more dangerous to victims and society.

One of the most popular trends in criminal legislation during the past two decades has been the enactment of so-called hate crime laws. Since 1979, more than 40 states and the federal government have passed various laws punishing bigoted or discriminatory crimes. Although these laws in various forms have been popular with most legislatures, their enforcement by police and prosecutors has varied significantly depending on the jurisdiction. For instance, New Jersey's 839 reported hate crimes in 1996 exceeded the total for Alabama, Arkansas, Georgia, North Carolina, South Carolina, Virginia, Mississippi, and Arkansas combined (Federal Bureau of Investigation, 1997). In 1997, the FBI reported 9,861 hate crimes nationwide, with the majority consisting of intimidation and assaults.

In any event, the immediate acceptance of these laws by authorities is obviously significant (and variable by jurisdiction); however, it is hardly the sole measure of their legitimacy. Substantively, certain things must be established to justify the enactment and implementation of hate crime laws. Proponents must articulate a clear and constitutional definition of the prohibited conduct.

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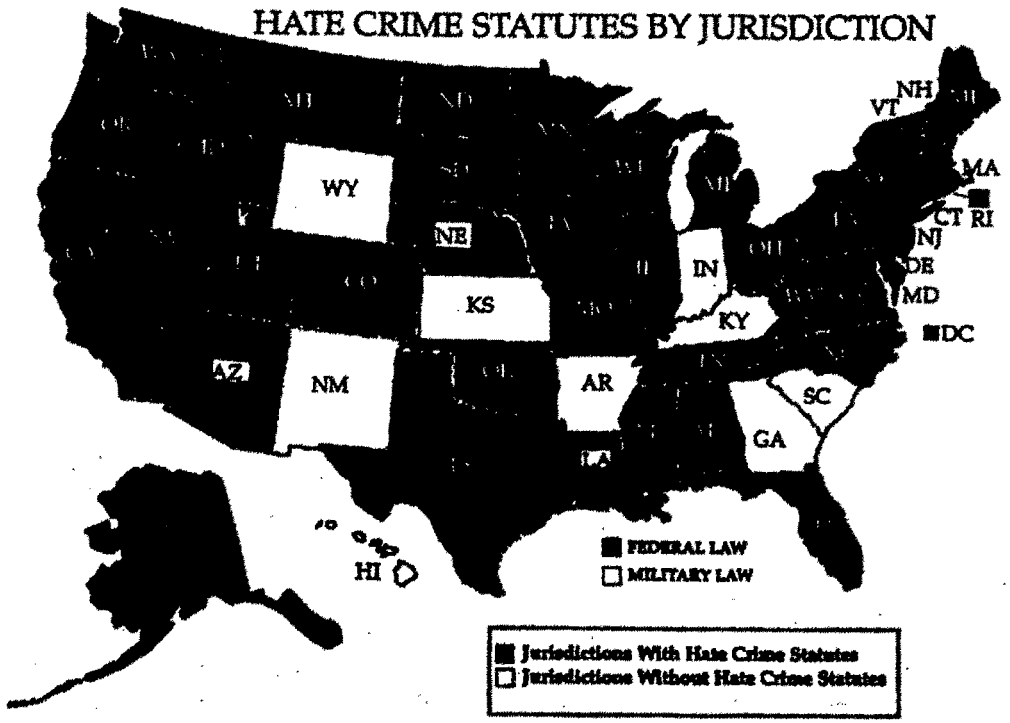

Figure 1: Hate Crime Statutes by Jurisdiction.

Proponents also should be able to establish that these offenses are coextensive with the goals and processes of the criminal justice system. Finally, hate crimes should be demonstrated to be distinct and more severe than other offenses to warrant differential punishment.

DEFINITIONS AND CONSTITUTIONALITY

Part of the problem facing hate crime law proponents is articulating exactly what a hate crime is. Commentators have labeled everything from bigoted speech to political disagreements to disparagement of agricultural products as hate crimes (Glidewell, 1998). Vague and overextended definitions not only hinder the passage and implementation of these types of statutes, they raise serious constitutional issues as well. Due process requires that a statute give citizens reasonable clarity about exactly what conduct is proscribed, and the First Amendment prevents criminal punishment for the expression of disfavored viewpoints. For these reasons, the U.S. Supreme Court has played a critical role in refining statutory definitions by overturning some types of hate crime laws while affirming others.

Generically, *hate crime* refers to those criminal acts committed because of someone's actual or perceived membership in a particular group. Today, hate crime laws actually reflect a broad category of offenses that cover prohibitions against cross burnings, desecration to houses of worship, Ku Klux Klan antimasking laws, penalty enhancements, and stand alone civil rights or intimidation statutes. It is the last two statutes—the penalty enhancements and the stand alone statutes—that are the most broadly applicable to the widest range of criminal conduct, and the ones that will be the focus of this article.

So-called hate speech laws that criminalize such things as bigoted expressions or symbols were popular among state legislatures during the first half of the century. In *Beauharnais v. Illinois*, (1952) the U.S. Supreme Court affirmed a state law that punished group-libel or bigoted statements against racial, religious, or ethnic groups. Although never technically overturned, subsequent Supreme Court decisions have clearly rejected all the foundational arguments that were relied upon in the *Beauharnais* decision, and the case is no longer regarded as sound law (see, e.g., *Texas v. Johnson*, 1989 [offensiveness is insufficient basis to punish speech]; *Smith v. Collin*, 1978 [Supreme Court refuses to deny order of Court of Appeals allowing a Nazi march]).

Any doubt about the ultimate influence of the *Beauharnais* decision was answered in 1992. In *R.A.V. v. St. Paul* (1992), the Supreme Court was asked to rule on the constitutionality of a 1989 municipal hate-speech ordinance used to prosecute a teenage skinhead for burning a cross in the yard of an African American family with several young children. The Court unani-

mously invalidated the statute, although the justices were deeply divided as to why. The St. Paul ordinance read in relevant part:

> Whoever places on public or private property a symbol, object, appellation, characterization, or graffiti, including but not limited to a burning cross or Nazi swastika, which one knows or has reasonable grounds to know arouses anger, alarm, or resentment in others on the basis of race, color, creed, religion, or gender, commits disorderly conduct and shall be guilty of a misdemeanor.

All nine justices agreed that the statute was impermissibly overbroad by punishing speech that merely evoked anger or resentment. During recent years, the First Amendment has consistently been construed by the Court as protecting offensive speech and political discourse that fails to rise to the level of a threat (*Texas v. Johnson*, 1989). The offensiveness of an idea is an impermissible basis for the government to punish the expression.

Four of the justices supported the position that it was constitutional to punish expression whose severity went beyond just offending someone. Because threats and so-called fighting words were traditionally held to be unprotected by the First Amendment, these justices maintained that it was permissible for the government to selectively punish bigoted speech within these categories on the basis of content of the idea expressed. In a dissenting opinion that foreshadowed the Court's next hate crime ruling, Associate Justice John Paul Stevens contended,

> Conduct that creates special risks or harms may be prohibited by special rules. Lighting a fire near an ammunition dump or a gasoline storage tank is especially dangerous, such behavior may be punished more severely than burning trash in a vacant lot. Threatening someone because of her race or religious beliefs may cause particularly severe trauma or touch off a riot . . . such conduct may be punished more severely than threats against someone based on, say, his support of a particular athletic team. (*R.A.V. v. St. Paul*, 1992)

The Court's controlling opinion, authored by Associate Justice Antonin Scalia, held differently. These justices believed that even traditionally unprotected areas of speech must be punished without taking into account the content of the idea expressed. They held that punishing certain types of threatening cross burnings, such as those based on racial supremacy, but not other kinds of cross burnings, such as those targeting the mentally ill, violated that principle. The *R.A.V.* (1992) decision invalidated those hate crime laws where the criminality hinged solely on the idea expressed. The ruling also

had the additional effect of invalidating speech codes at public universities throughout the United States. In 1996, the Court without comment refused to grant review of a challenge to a Florida state law that criminalized all hostile cross burning on the property of another. Unlike St. Paul's ordinance, that law did not differentiate among cross burnings on the basis of the hateful idea expressed (*State v. T.B.D.*, 1995; cert. denied, 1996).

The influence of the Supreme Court in sculpting the definition of hate crime laws became evident in 1993 in *Wisconsin v. Mitchell* (1993), where the Court was again asked to rule on the constitutionality of another type of hate crime statute—a penalty enhancement law. At issue, the enhancement law punished an offender's intentional selection of a victim or property based on the status characteristics of another person. The characteristics covered by Wisconsin's law included race, religion, color, national origin, and ancestry. Todd Mitchell, a 19-year-old African American who was a Kenosha, Wisconsin, resident, was angered about a scene in the movie *Mississippi Burning*, in which an African American child was beaten by White supremacists as he knelt to pray. Mitchell incited a crowd to viciously beat Gregory Riddick, a White 14-year-old passerby. He urged the mob to action by stating: "Do you all feel hyped up to move on some White people? You all want to fuck somebody up? There goes a White boy. Go get him."

At a criminal trial, Mitchell was convicted of aggravated battery—party to a crime—and sentenced to 2 years for the underlying assault. He was assessed another 2-year term in state prison for intentionally selecting his victim on account of race; a total of 4 years incarceration out of a possible 7-year term. On appeal, the Wisconsin Supreme Court overturned the portion of Mitchell's conviction based on the penalty enhancement provision.

In a reversal of the Wisconsin Supreme Court, the U.S. Supreme Court unanimously upheld penalty enhancements for hate crimes. The Court cited three basic justifications for affirming the statute. First, although the government may not punish abstract beliefs, it can punish a vast array of depraved motives. The Court further found that penalty enhancement laws—unlike the statute at issue in *R.A.V.*—did not prevent people from expressing their views, nor did it punish them for doing so. Finally, the Court pointed to the severe nature of hate crimes, stating that they are "thought to be more likely to provoke retaliatory crimes, inflict distinct emotional harm on their victims, and incite community unrest" (*Mitchell*, 1993).

Although a vast consortium—ranging from police fraternal organizations to the American Civil Liberties Union—filed briefs supporting the decision, not everyone was pleased with the outcome. Some prominent legal scholars contended that punishing discriminatory crimes more severely than other crimes was merely a subtly disguised legalistic end run to punish unpopular ideas. New York University law professor James Jacobs and attorney

Kimberly Potter criticized the Mitchell decision: "The very facts of that case present a defendant who is punished more severely, based on viewpoints" (Jacobs & Potter, 1998).

After the *Mitchell* decision (1993), the intentional-selection wording, presumably because of its affirmation by the Court, became the preferred lexicon for new hate crime legislation (see, e.g., Hate Crime Sentencing Enhancement Act of 1994). Following a 1-year hiatus that commenced with the *R.A.V.* decision, many state legislatures once again enacted hate crime laws, using Wisconsin's law as a model. State courts also upheld similar stand alone laws modeled after traditional federal civil rights statutes. Laws like these (such as California Penal Code §422.6) do not require the charging of an additional crime. Stand alone civil rights statutes generally punish interference with the civil rights of others. This interference, either through force or threat, is usually based on a person's membership in a particular group mentioned in the statute.

Although judicial decisions upheld the two most common types of hate crime laws, important definitional issues remained unresolved. State courts and legislatures still had to address not only what groups to cover, but also precisely how much of a role the victim's racial, religious, or other status characteristic played in the offense. In *In re M.S.* (1995), the California Supreme Court addressed the latter issue by reviewing two of the state's primary hate crime statutes—one a stand alone law and the other a penalty enhancer. Enacted in 1987, each law punished the selection of a victim because of a status characteristic such as race or sexual orientation. The court ruled that *because of* meant "the prohibited bias [against a targeted group] must be a substantial factor in the commission of the crime" (*In re M.S.*, 1995, 716).

Some legislatures further refined their hate crime laws to protect victims, also on the basis of sexual orientation, gender, and disability. By 1998, at least 20 states protected on the basis of gender, disability, or sexual orientation. To punish offenders who mistakenly attack victims from status groups that they had not intended for attack, legislatures included the language "actual or perceived" before listing status characteristics (Code of Alabama §13A-5-13, 1997; D.C. Code §22-4004, 1998 (civil remedies); 720 ILCS 5/12-7.1, 1998; Louisiana R.S. 14:107.2, 1998; Minnesota Stat. §609.595, 1997; Mississippi Code Ann. §99-19-301, 1997; Nevada Rev. Stat. Ann. §193.1675, 1997; 13 Vermont S.A. §1455, 1998; 14 Virgin Island C. §707, 1998).

CONSISTENCY WITH TRADITIONAL GOALS OF CRIMINAL JUSTICE

Although the penalty enhancer and stand alone hate crime statutes are now more clearly defined and approved by appellate courts, another important

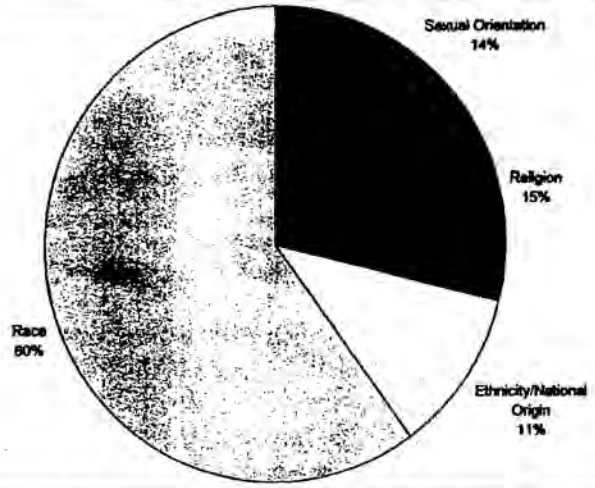

Figure 2: Number of Offenses by Bias Motivation and Suspected Offender's Race, 1997.
SOURCE: FBI-C.J.I.S.

question remains: Are these statutes and related policies beneficial and consistent with the aims of criminal law?

Careful analysis leads to the inexorable conclusion that they are. The justice system adjusts culpability for conduct according to the level of intentionality, such as purposefulness, recklessness, or negligence. However, as the *Mitchell* decision (1993) found, even within the same level of intentionality the law frequently makes distinctions based on the reason why the crime was committed. Motive often is something more than a tangential consideration, or even a factor to be considered at sentencing—it is frequently made a material element of a particular offense. For example, burglary punishes seemingly similar conduct more severely based on an offender's motive. If a person enters a building to commit another crime while inside, it is burglary. If not, it is criminal trespass—a less serious offense (American Law Institute, 1962-Present, §§221.1, 221.2).

Those who enact and enforce criminal laws traditionally have relied on other factors besides bad motives in crafting punishments for seemingly similar conduct. The situational nexus, risk, and severity of seemingly similar criminal conduct is often used to make distinctions relating to punishment. Domestic violence is treated differently by our justice system than other types of assault, drunk driving is handled differently from other types of reckless driving, securities fraud is distinguished from other frauds, and disorderly conduct on a commercial airliner is deemed more serious than when it occurs on a street corner. Both burglary and criminal trespass are punished

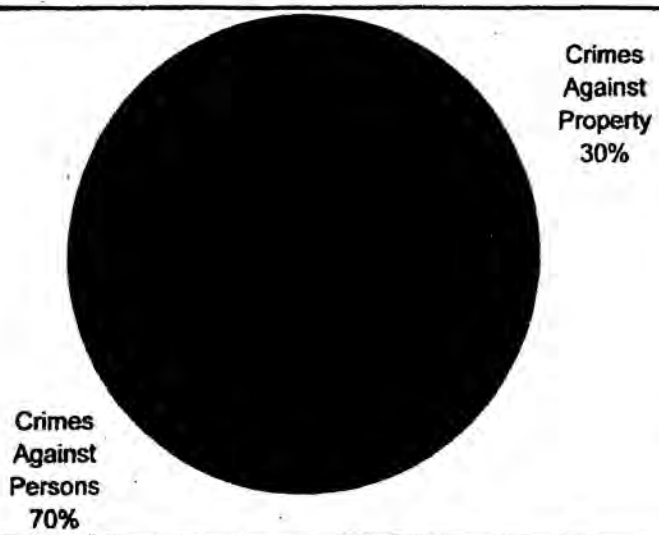

Figure 3: Number of Offenses by Type, 1997.
SOURCE: FBI-C.J.I.S.

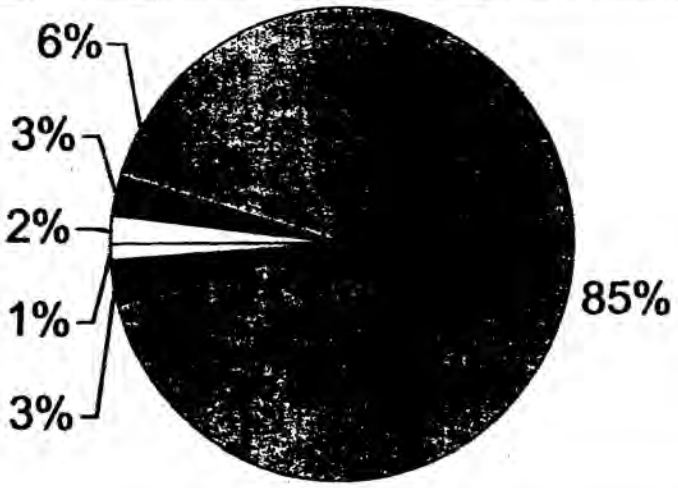

Figure 4: Percentage Distribution of Offenses by Victim Type, 1996.
SOURCE: FBI-C.J.I.S.
NOTE: Individual = 85%; business/financial institutions = 3%; government = 1%; religious organizations = 2%; society/public = 3%; other/unknown/multiple = 6%.

more severely when entry is made at night (American Law Institute, 1962-Present, §§221.1, 221.2). Many states have laws that enhance the penalty for crimes when a gun or deadly weapon is possessed during the commission of a crime (American Law Institute, 1962-Present, §221.1.2b).

The primary, although not the only, reason to make distinctions among similar offenses is that one type is more severe than another. Even if similar crimes represent the same level of threat to victims and society, there are still reasons to create separate offenses. This also includes instances where the punishments for each offense still remain identical. It may be important to make statutory distinctions (without making penalty distinctions) to encourage victim reporting, to help implement a specific type of police response, or to deter a specific type of conduct. For example, to deter and raise awareness of drunk driving, it is important to have a separate category of offenses addressing it—not just a subset of severely reckless driving with the same penalty. Even if domestic violence was incorrectly thought to be just another assault, a separate offense category would be justifiable to deter batterers, encourage victim reporting, and improve police response.

Obviously, there is a sense among many Americans that hate crimes, like domestic violence and drunk driving, are more severe offenses than similar crimes. The High Court acknowledged as much in *Mitchell* (1993) when it stated that hate crimes are

> thought to inflict greater individual and societal harm. For example, according to the State and its amici, bias-motivated crimes are more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest. The State's desire to redress these perceived harms provides an adequate explanation for its penalty-enhancement provision over and above mere disagreement with offenders' beliefs or biases. (pp. 488-498)

LEGAL AND CRIMINOLOGICAL SEVERITY

The Supreme Court referred to the possible severity of hate crimes with words such as *thought* or *perceived*. If hate crimes are to be punished more severely, it reasons that the severity of these crimes warrant special treatment. The first way that hate crimes are more severe relates to their involvement in discrimination based on a person's race, religion, sexual orientation, or other status characteristic.

Discrimination is the act of treating similarly situated people differently without a legal or sufficient basis. The Supreme Court's view of the government's role regarding discrimination is clear: "Acts of invidious discrimination . . . cause unique evils that government has a compelling interest to pre-

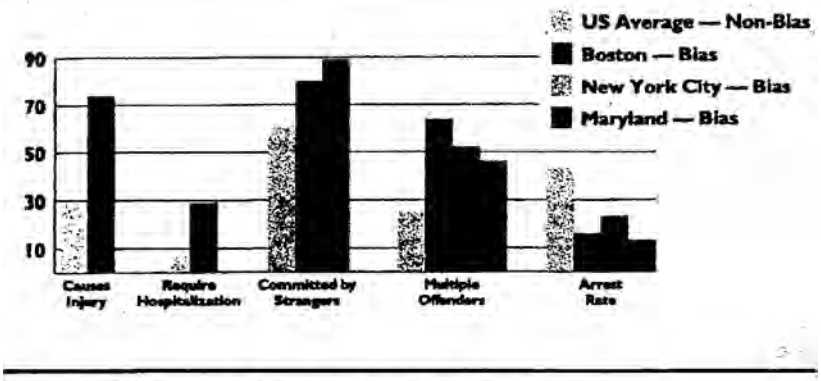

Figure 5: Comparison of Bias and Nonbias Crimes.
SOURCE: B. Levin (1992-1993).

vent" (*Roberts v. United States Jaycees*, 1984). The federal government and many states have laws that punish discrimination in employment, public accommodations, public education, and housing. It reasons that if legislatures can punish discrimination in these areas, they may also punish criminals for discriminating in the commission of offenses.

In the *Mitchell* (1993) case, court briefs presented substantial evidence that hate crimes were also criminologically more severe and risky to victims and society than nonhate crimes. Subsequent research has affirmed those findings. Studies have demonstrated that hate crimes in contrast to crimes in general are more likely to involve excessive violence, multiple offenders, serial attacks, greater psychological trauma to victims, a heightened risk of social disorder, and a greater expenditure of resources to resolve.

In comparison to crime generally, hate crimes are seven times as likely to involve attacks against persons. Hate crime assaults are twice as likely to cause injury and four times as likely to involve hospitalization than do assaults in general (B. Levin, 1992-1993; J. Levin & McDevitt, 1993). These crimes are also much more likely to involve attacks by multiple offenders.

Nationally, only about 25% of crimes in general involve multiple offenders (B. Levin, 1992-1993; J. Levin & McDevitt, 1993). In comparison, 49% of reported hate crimes in Maryland involved multiple offenders (Maryland State Police Criminal Intelligence Division, 1997). Similar to this, New York City reported that 75% of its hate crime attacks involved multiple offenders and in Boston the figure was 64% (Garafolo, 1990; B. Levin, 1992-1993). Boston researchers found that most attacks involved four perpetrators and a sole victim (J. Levin & McDevitt, 1993). Private studies of antigay attacks have revealed that between 48% and 78% involved multiple offenders (Herek

& Berrill, 1992). Traditionally, criminal laws have often treated crimes by groups more severely than crimes by lone offenders. Conspiracy and riot offenses are examples of this (American Law Institute, 1962-Present, §§ 5.03, 250.1).

Another reason that hate crimes are more severe is because they often involve serial attacks—most of which are unreported. Two Boston studies showed that hate crime attacks frequently consist of multiple victimizations that escalate in severity over time (McDevitt, 1989; Wexler & Marx, 1986). An influential study that focused on antigay attacks revealed that 68% of those threatened with violence and 47% of those actually physically attacked had been the target of multiple victimizations (Herek & Berrill, 1992). The Ethnoviolence Project (National Institute Against Prejudice & Violence, 1986) found that 65% of racial, religious, and ethnic criminal and noncriminal victimizations involved "multiple interconnected attacks," with an additional 17.5% experiencing multiple attacks in discrete incidents.

The criminal law often punishes serial offenders who commit crimes that involve the risk of future-offending conduct. For instance, subsequent convictions of drunk driving are punished more severely than initial convictions. Furthermore, laws, sentencing procedures, and postrelease community notification about child molesters appear to take the risk of repeat attacks into account. The risk of escalating future hate crime attacks is a justification for separate and more severe penalties for such crimes.

Although the 9,861 hate crimes reported in the United States in 1997 represent only a tiny fraction of all reported crime, prevalence alone is not a justification for failing to make otherwise proper distinctions between types of illegal conduct. Laws prohibiting presidential assassinations, terrorism, and the possession of weapons of mass destruction were all enacted with the apparent knowledge that those types of offenses were less common than most others.

Moreover, there is substantial evidence that hate crime is underreported. In 1992, while extrapolating from available crime data, I found that there were at least 35,000 hate crimes in the United States—several times more than what was officially reported by police. A recent Los Angeles study indicated that more than half of crimes in general are reported to police; however, only one third of hate crimes are reported (Dunbar, 1997). In a 1997 University of Washington study by Dr. Karen Franklin, of approximately 500 young adults in the San Francisco metropolitan area, one tenth of all respondents reported that they had either physically attacked or threatened individuals they perceived to be gay (Franklin, 1997). Dr. Greg Herek of the University of California at Davis conducted a hate crime prevalence study of more than 2,000 lesbians, gay men, and bisexuals. The study, one of the largest of its kind, concluded that one fourth of gay males and one fifth of lesbian females were the target of a hate crime after the age of 16 (Herek, Cogan, & Gillis, 1997).

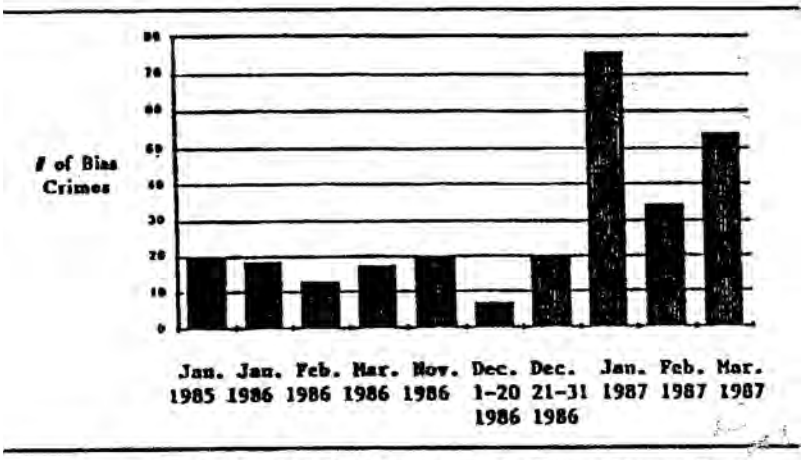

Figure 6: Backlash—New York City Bias Crimes in Wake of Howard Beach Homicide.
SOURCE: Levin (1993); New York City Police Department (1985-1987).
NOTE: The Howard Beach attack occurred December, 20, 1986. This graph shows the explosive nature of these incidents.

Another justification for treating hate crimes more severely is the grievous psychological trauma that these crimes have on victims (see, e.g., *Payne v. Tennessee*, 1991 [Court holds that effects of a specific crime on a specific victim are highly relevant considerations for a judge in determining an appropriate sentence]). Research by the National Institute Against Prejudice & Violence (1989) found that the targets of criminal and noncriminal bias attacks experienced 21% more adverse psychological and physiological symptoms than those who faced similar conduct that was not bias related. Another study by the same group found that "many victims fear for their safety and for their family's safety . . . many of them report changes in their lifestyle— where they walk, how they answer the phone, and [that] the . . . fear can totally disrupt their lives" (National Institute Against Prejudice & Violence, 1986). A more recent study concluded that hate crime victims suffered heightened and more prolonged bouts of "depression, stress, and anger than victims" of nonhate crimes. The report further concluded that hate crime victims "continued to have symptoms for as long as five years after their victimization," and crime-related psychological symptoms declined significantly among victims of nonbias crimes within 2 years of the incident (Herek et al., 1997).

The effects of hate crimes reverberate beyond individual victims, causing palpable injury to the community at large. Public injury is a traditional justification for punishing crime (*Coker v. Georgia*, 1977). The two most serious

threats to the public at large from hate crimes involve a heightening of tension along already fragile intergroup lines, and a heightened risk of civil disorder. Even in the absence of explosive civil strife, the lessening of trust and a change of behavior among affected groups in a community creates a distinct harm to the public interest that the government has an interest in preventing.

However, there is also a risk of civil disorder that is more pronounced with hate crimes than with nonhate crimes. Hate crimes may spur copycat crimes and a cycle of retaliatory violence by would-be vigilantes who retaliate along intergroup lines. For instance, after the racially motivated homicide of a Black man in Howard Beach, Queens, in 1986, the New York City Police Department (NYPD) documented more hate crimes in the month that followed than in the previous 3 months combined (NYPD, 1986-1987). In August 1991, the Boston Police Department reported 34 hate crimes following an initial incident. In July 1991, police counted 16 cases, and in September, there were 10 cases after tensions simmered. Of the 34 incidents reported in August 1991, 10 took place in only one police district, with all 10 involving attacks between Whites and Latinos— the groups involved in the initial triggering attack. Of those 10 attacks, 8 took place in the housing project where the triggering attack occurred (Boston Police Department, Community Disorders Unit, 1991)

In addition to the criminological severity and threat to social order, hate crimes represent those unique crimes where there is almost universal condemnation of the offenses by the community on moral grounds. Crimes that are an affront to the vast majority of the populace and to the moral foundations of a society deserve to be punished more severely. Clearly, there is an intangible component to hate crime that makes them worse. As Professor James Weinstein states,

> The effect of Kristallnacht on German Jews was greater than the sum of the damage to buildings and assaults on individual victims. Unlike vandalism in response to a football game, hate crimes can have a powerful in terrorem effect, particularly for members of minority groups who have been, or currently are, victims of racist violence. (Weinstein, 1992)

It was the hate motivation and context that made the dragging murder of James Byrd by apparently White assailants in Jasper, Texas, stand out as a national tragedy, rather than just a horrible local event. The same is true for the brutal murder of Matthew Shepherd, a gay Wyoming college student who was tied to a wooden fencepost, beaten, and left to die. Each atrocity not only shocked the country, it sent out a special reminder to African Americans and gay Americans, respectively, that even in 1998, they are at a special risk for lynching, no matter where they are or what they are doing. A civilized society

must decry this aspect of illegal discriminatory conduct by singling it out through criminal laws.

CONCLUSION

Because hate crimes have entered the national consciousness through the past two decades, courts and legislatures have refined their definition of *hate crimes*. Scholars have expanded our knowledge of their negative effects. The new narrowly tailored written definitions respond to a category of offenses that have been shown to be more serious than nonhate crimes. The criminological severity and element of discrimination present in hate crimes establish a public policy basis for enhancing hate crime penalties. Moreover, these justifications are also crucial to a showing of the constitutionality of these laws. The criminological data establishes that hate crime laws properly punish uniquely damaging crimes, rather than a citizen's legal rights to thoughts and speech protected by the First Amendment.

The following is a constitutionally sound model hate crime statute designed to be used by states and communities that either lack hate crime laws altogether or have laws with inadequate coverage.

MODEL HATE CRIME STATUTE

1. Anyone who intentionally selects a person or public or private property to be the target of a criminal act because of the actual or perceived race, color, religion, disability, sexual orientation, gender, or national origin or ancestry of another shall have the penalty for the underlying crime increased to the next higher offense level.
2. This statute requires that a trier of fact separately establish that the requisite elements prescribed in the law exist beyond a reasonable doubt.
3. This statute shall not apply to any state offense where the race, color, religion, disability, sexual orientation, gender, or national origin or ancestry of a victim is an element of the offense.
4. The offense by the defendant level shall be increased 2 (two) levels upon a showing of either (a) a prior conviction under this statute, or (b) the defendant acted in concert with another in the commission of the crime charged.
5. The Court shall have jurisdiction to order restitution or to enjoin the defendant from any future conduct that intimidates, threatens, coerces another from the exercise of any right secured by the constitution or laws of this state or the United States. Each violation of this order is punishable by one year imprisonment and a $5,000 (five thousand dollar) fine.
6. Anyone injured by an act charged under this statute may also institute a civil action against the offending party(ies) for injunctive or other appropriate relief,

including compensatory and punitive damages, as well as attorneys fees and costs.

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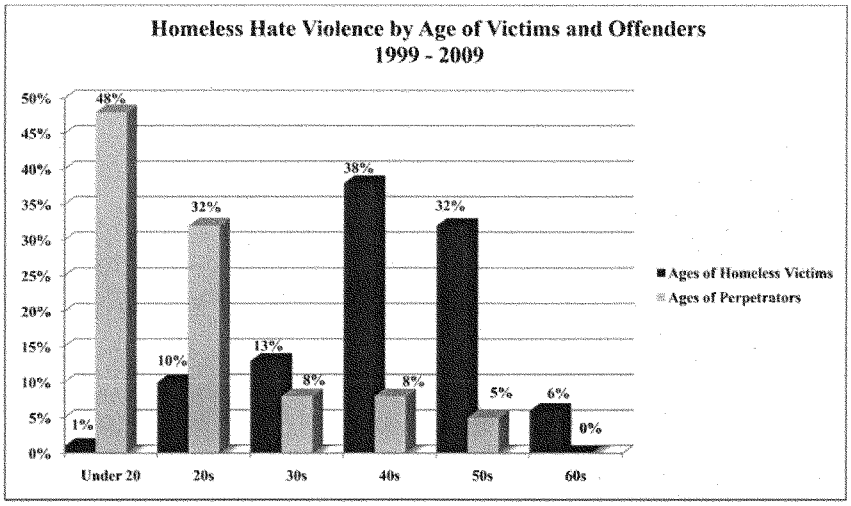

Source: August 2010, National Coalition for the Homeless: *Hate Crimes Against the Homeless*

October 3, 2010

Brian Levin, J.D.

Director, Center for the Study of Hate and Extremism, California State University

Posted: April 28, 2010 05:56 AM

As Homeless Are Brutalized, Florida Passes Hate Crime Protections

Florida is slated to become the largest state in the nation to add the homeless to its list of those protected under its hate crime law. The Florida Senate passed a bill by a vote of 25-10 today that is identical to an earlier bill that cleared the State House of Representatives by a vote of 80-28. Republican Governor Charlie Crist has previously indicated that he would sign the bill and has fifteen days to do so. Florida, with a population of 18.5 million is the nation's fourth largest state by population.

According to limited data reported to the National Coalition for the Homeless (NCH), Florida has led the nation in apparent prejudice motivated violence against the homeless for the past four years. In 2008, three homeless people were killed in these types of attacks, with another two dozen experiencing non-lethal victimizations in ten cities throughout the state. In contrast, according to the FBI, seven people were killed nationally in hate crime attacks covering race, religion, sexual orientation, ethnicity, and disability combined. Neil Donovan, Executive Director of the NCH in Washington, DC, stated, "Until today Florida has been known as one of the biggest states for crimes against the homeless, starting tomorrow it will be known as one of the states doing the most to protect them" His organization is expected to release a national report on hate crime against the homeless in late May.

Brutal Violence

This month has seen violence against the homeless make headlines across the nation. In New York surveillance video captured a homeless good Samaritan come to the aid of a woman being attacked by a knife wielding assailant, only to be stabbed himself. While not a hate crime, the bleeding wounded man was casually ignored by passersby who failed to do anything to assist him as he lay dying in the street. In Los Angeles, Ben Martin was sentenced today for setting a popular mentally disabled homeless man named John McGraham on fire with gasoline in October 2008. Yesterday, military police turned over a soldier to authorities for a brutal attack on a homeless man in Cincinnati on April 10.

Leading hate crime scholars are increasingly regarding prejudice based attacks against the homeless as hate crimes. Prof. Barbara Perry of the University of Toronto Institute of Technology and author of In The Name of Hate, believes that the homeless like other hate crime victims are attacked "because they are perceived as a threat." Northeastern University sociologist Jack Levin (no relation) contends, "When we treat attacks based on homelessness as a hate crime,

we send a message both to the perpetrator and the victim that we will no longer tolerate the cruel and inhumane treatment of our most vulnerable citizens."
Sandra Wachholz of the University of Southern Maine recently wrote,"[T]here has been a long tradition of singling out the homeless for hate motivated treatment and injurious acts."

Sunshine Hate

Two brutal Florida cases were prominently featured in a 2006 60 Minutes story by Ed Bradley which included killings of the homeless in different parts of the state by youths who sought them out for attack. In January 2006, one set of youths was captured on surveillance video attacking a homeless man with baseball bats in Fort Lauderdale. One of their other victims that night 45 year old Norris Gaynor died from extensive blunt force trauma injuries. In another Florida case featured in the story from 2005 , 53 year old Michale Roberts was beaten to death by four teenagers over a three hour period in Holly Hill. One of the attackers pointed to a popular video series, "Bumfights" as something that significantly influenced his aversion to the homeless.

Other Jurisdictions

Florida's extension of protection of the homeless under its state's hate crime law comes at a time where violence against the homeless is increasingly an issue for state legislators. In California a bill is winding through the assembly that would add the homeless to a statute that provides various civil protections to victims of hate crime, but would not increase criminal penalties. Last October, Maryland, which along with Massachusetts were the first states to implement a comprehensive hate crime response nearly three decades ago, added homelessness to its state's hate crime law, and was soon followed by the District of Columbia. Maine, the first state to make targeting the homeless a hate crime, has a more narrow statute that grants non-binding discretion to the sentencing judge. Other jurisdictions taking administrative or statutory measures recognizing hate violence against the homeless include Cleveland, Seattle, Los Angeles County, Puerto Rico and Alaska. In recent years nearly a dozen states have seen legislation introduced to cover homelessness under state hate crime law. The three most populous states, California, Texas, and New York, saw bills introduced to make homelessness a protected category under hate crime statutes. Efforts to add the homeless to federal hate crime laws have failed due to a split in the civil rights community in Washington about such reform. Advocates, like the NCH's Neil Donovon remains optimistic, "This provides a state level road map for the federal government. This is leading by example and we really have to affirm the progress done at the state level"

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October 3, 2010

Brian Levin, J.D.

Director, Center for the Study of Hate and Extremism, California State University

Posted: August 19, 2010 11:56 AM

Does Rise In Killings of Homeless Signal a Decline in Our Values?

One of the most sought after commentators on hate violence against the homeless is a celebrity and author who lacks stage experience, an advanced degree, or even a law enforcement background. Rufus Hannah's celebrity, however, is not the kind that anyone would seek. When he was drunk and homeless, a toothless and disheveled Hannah was exploited by young filmmakers, who humiliated and injured him and others to make a wildly popular youth cult video series called Bumfights. The films, now viral on the web, have been mentioned numerous times by murderous youths from coast to coast as part of their inspiration for targeting the homeless in their communities for vicious attacks. Hannah now sober, employed and the co-author of a new book, " A Bum Deal" uses his celebrity to bring the plight of the homeless to legislators and students across the country.

> "I am best known for the violence perpetrated against me and Vietnam veteran Donnie Brennan in the video called Bumfights....This violence caused us crippling injuries. I have double vision and equilibrium problems and will never be able to drive a motor vehicle. Donnie had his ankle and foot broken and has a rod and screws [implanted] and walks with a limp, always in pain."

However, the violence did not start or stop for the Army veteran when the cameras started rolling:

> "When I was homeless and living on the streets of San Diego...someone approached me with a gun and pointed it in my face. Other times I witnessed older homeless people have their shopping carts flipped over, and all their belongings scattered on the street by teenagers. The teens would throw shoes and other items at the elderly homeless people and verbally taunt them. Another incident in La Mesa, California I was tormented by young teenagers who sprayed a fire extinguisher in my face while laughing at me."

WARNING: DISTURBING CONTENT

If a society's well being is measured by its treatment of its most vulnerable residents, then, despite Hannah's efforts, America may be slipping. Last year as Maxim magazine's website "jokingly" urged its young male readers to "hunt the homeless" and "kill one for fun," hate homicides against the homeless spiraled to their highest level in a decade. According to a report released today by the National Coalition for the Homeless (NCH) 43 homeless souls were killed last year in bias motivated killings across the nation.

The table below shows that over the past eleven years, there were more than double the number of homeless hate crime deaths than that of all the other "traditionally" protected hate crime classes combined. The homeless data center on killings by domiciled perpetrators that are bias motivated and attempts to exclude acts of insurance fraud, drugs, robbery, personal animus, homeless-on-homeless events and other non-hate crime related incdents.

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hatecrimes2009-12

Hate crimes are a qualitatively unique form of victimization that center on victim identity and discriminatory selection. In 2008, the last available year with officially released data, the Federal Bureau of Investigation (FBI) reported a slight increase in the number of reported hate crime as well as in the number of participating police agencies. The FBI data which exclude the homeless counted 7,783 hate crimes in the United States and seven homicides in 2008.

The just released NCH report on homeless victims, which excludes non hate-related crimes, paints a chilling picture of the state of discriminatory violence against one of America's most vulnerable and despised populations. NCH director Neil Donovan explained, "Our report is meant to provide merely a sampling of homeless hate crimes over the past year, in dedication to the many thousands of hidden and unknown homeless victims who now live in a constant state of trauma and fear." The NCH found that there were 1,074 acts of bias motivated violence from 1999 through last year, 288 of which were homicides. While underreporting by victims and police make the non-homicide data appear to be a severe undercount, it nonetheless chronicles a vast array of brutality from 47 states, DC and Puerto Rico. Cases involve everything from mutilation, drowning, rape, blunt force trauma, shootings, stabbings, and setting victims afire. Donovan further observed, "It's unimaginable that the mere state of someone being un-housed can cause another to have feelings of hostility and animosity as strong as to demand an act of [this] brutality." Criminologists regard homicide data as the most reliably reported violent crime.

Last year the trend in anti-homeless hate violence of young male perpetrators hunting down older adults continued. In 2009 80% of the identified perpetrators were under thirty years old and 98% were male. The perpetrators range from youth with no criminal records to urban gang members to neo-Nazis. One third of the reported incidents last year resulted in death, up from one in four in prior years. Over the last decade 70% of the homeless victimized were in their 40s and 50s. Since 1999 the states with the highest number of hate incidents against the homeless are California, (213), Florida (177), Texas (64), and Ohio (59). Last year, California had the most hate violence cases with 27, followed by Florida, 16; Ohio, 13; Oregon, 8; and Texas, 7.

Hate crimes involve certain status characteristics that relate to one's actual or perceived

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identity. They place certain groups of people at a heightened risk of criminal victimization above and beyond that of the general population. Opinion polls show support for hate crime laws in general at over 70% and all but about five states have these laws on the books. The Shepard-Byrd Hate Crime Prevention Act signed by President Obama last October expanded the nation's most broadly applicable federal hate crime law to cover additional categories such as a victim's actual or perceived gender, sexual orientation, gender identity, and disability. While the homeless were not covered by the Shepard-Byrd law, several jurisdictions including Florida, Maryland, Maine, Rhode Island, the District of Columbia and Alaska have added the homeless to their hate crime laws and others such as New York, Illinois, Ohio, Virginia, South Carolina and California are considering similar reforms. Maryland Senator Ben Cardin is proposing legislation to expand federal data collection to cover homelessness.

From a purely criminological perspective physical attacks against the homeless in this country are indistinguishable from other hate crime-with one major exception. While offender characteristics, motive, deterrence, injury and weaponry are basically analogous, prevalence differs significantly. The homeless appear to face a rate of victimization that far exceeds that of traditionally covered groups. The more reliable statistics arising from homicide data and victimization studies indicate that the homeless are among the nation's most criminally vulnerable population. Our Center in conjunction with NCH has found that between 1999 and 2008 (the last year that official federally collected data is available) there were 103 homicides classified as hate crimes by the FBI. During that same period, NCH reported 288 deaths that were a result of homeless-directed hate violence. This is more than twice the number of hate crimes reported against currently protected groups--and does not even take into account the fact that the homeless population is relatively small compared to other covered groups listed in official hate crime data reports.

Rufus' coauthor and friend Barry Soper, who rescued him off the streets and got him a job, has his own suggestions for the problem. "If we are going to end hate violence against the homeless it will be not only through studies and uniform hate crime laws with severe penalties, but also through educational and cultural efforts that promote tolerance and understanding of those who suffer silently within our midsts."

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Crimes Against America's Homeless: Is the Violence Growing?

Testimony of

Erik Luna
Professor of Law, Washington and Lee University School of Law
Adjunct Scholar, The Cato Institute

Before the

Subcommittee on Crime and Drugs
Committee on the Judiciary
United States Senate

Delivered on

September 29, 2010

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Mr. Chairman, Members of the Committee and Subcommittee, thank you for the opportunity to speak today on the subject of crimes against the homeless. My name is Erik Luna, and I am a law professor at Washington and Lee University School of Law and an adjunct scholar with the Cato Institute.[1] I specialize in criminal law, criminal procedure, and allied areas of law and public policy. It is an honor to participate in today's hearing with such a distinguished group of witnesses and before an audience that includes some of the leading researchers and activists on this issue.

The plight of America's homeless is truly heartbreaking and has only become worse in recent years as a result of the nation's financial crisis and the rise of home foreclosures and evictions. As someone who has been fortunate enough to have gainful employment, a roof over my head, and food on my table, I can only imagine the desolate lives of those who have lost their jobs or are unemployable, who live on the streets and seek shelter under bridges or in cardboard boxes, and whose next meal is wholly dependent on the charity of strangers. This is all the more tragic when one recognizes that the ranks of the homeless are strewn with desperate mothers and their children, people suffering from mental illnesses and addictions, and military veterans who had put their lives on the line for this nation. The happenstance that has left many people homeless underscores the proverb "there but for the grace of God go I"—and the compassion and tireless efforts of advocates for the homeless, including those in this room, confirm the fundamentally goodhearted nature of the American people.

Against this background, it is hard not to be flabbergasted and repulsed by the crimes of violence committed against the homeless, as described in media accounts and the recent report by the National Coalition for the Homeless (NCH).[2] People doused with gasoline and set ablaze, beaten with pipes and bats, stabbed with knives and broken bottles—all exemplifying the cruelty that man can inflict upon his fellow man. The same can be said of the brutal acts that propelled the federalization of so-called "hate crimes": the murders of Matthew Sheppard in Wyoming and James Byrd, Jr. in Texas, and the attack on the National Holocaust Museum in Washington, D.C. and killing of museum security guard Stephen Johns.[3]

These events greatly disturbed conscientious citizens across the nation. No decent American could argue against the investigation, prosecution, conviction, and punishment of those who commit such crimes. Of course, that was never a question before this august body, nor was it a genuine issue of debate among scholars, policy analysts, and the general public. Instead, the problem was the alleged necessity, the potential consequences, and the ultimate constitutionality of the Hate Crimes Prevention Act (HCPA). On these points, I believe the law's opponents had, and still have, the better arguments.

The HCPA is not directly at issue today. Instead, the hearing is premised on two identical bills, S. 1765 and H.R. 3419, which would amend a twenty-year-old statute to include "homeless status" as a protected class for purposes of federal law enforcement's tracking of hate crimes

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[1] All opinions expressed and any errors herein are my own.

[2] *See* NATIONAL COALITION FOR THE HOMELESS, HATE CRIMES AGAINST THE HOMELESS: AMERICA'S GROWING TIDE OF VIOLENCE (Aug. 2010); Eric Lichtblau, *Killings of Homeless Rise to Highest Level in a Decade*, N.Y. TIMES., Aug. 18, 2010.

[3] *See* Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, Pub. L. No. 111-84, §§ 4701-13, 123 Stat. 2190, 2835-44 (2009).

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across the nation.[4] As a general matter, I have no objections to these bills in and of themselves. In fact, I strongly encourage the gathering and dissemination of statistical data and other relevant information as a means to inform policy judgments on criminal justice. If anything, the bills do not go far enough to ensure full and accurate information about the commission of and response to crimes motivated by legislatively identified animus or bias—a point that I will return to at the close of my testimony.

Before then, however, I would like to discuss two issues: (1) the collection of hate crime statistics, including hate crimes against the homeless; and (2) the justification for federalizing hate crimes, including those against the homeless. The first issue goes to the heart of the bills under consideration by Congress and is a problem with hate crime statistics in general. The second issue, though not directly before Congress, looms over this entire hearing.

1. THE HATE CRIME STATISTICS ACT AND CRIMES AGAINST THE HOMELESS

Enacted in 1990, the Hate Crime Statistics Act directs the U.S. Attorney General to acquire data "about crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity." It also requires that the Attorney General "establish guidelines for the collection of such data including the necessary evidence and criteria that must be present for a finding of manifest prejudice and procedures for carrying out the purposes" of the law.[5] The Attorney General subsequently delegated these responsibilities to the Director of the F.B.I., who then tasked the Uniform Crime Reporting (UCR) Program with the duty of establishing the necessary guidelines and procedures for collecting hate crime data.

The UCR guidelines describe a hate crime as a "criminal offense committed against a person or property which is motivated, in whole or in part, by the offender's bias."[6] In turn, bias is defined as a "preformed negative opinion or attitude toward a group of persons based on their race, religion, disability, sexual orientation, or ethnicity/national origin." The guidelines then provide a series of criteria that might support a finding of bias. Some of the listed items seem commonsensical, like the presence of bias-related markings at the scene of the crime (e.g., a swastika painted on the door of a synagogue). Others are less obvious or might raise serious legal questions if used at trial, such as whether a "substantial portion of the community where the crime occurred perceived that the incident was motivated by bias."[7] It is hard to imagine the evidentiary basis (let alone constitutional argument) for admitting testimony or documents about popular sentiment in order to prove that a crime has been committed.

The guidelines also provide vignettes intended to demonstrate the appropriate classification of hate crimes. One example involved a white male attacking a Japanese-American male, who suffered severe lacerations and a broken arm:

> The incident took place in a parking lot next to a bar. Investigation revealed that the offender and victim had previously exchanged racial insults in the bar, the offender having initiated

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[4] Hate Crimes Against the Homeless Statistics Act, S. 1765, 111th Cong. (2009); Hate Crimes Against the Homeless Statistics Act, H.R. 3419, 111th Cong. (2009).

[5] Hate Crimes Statistics Act, Pub. L. No. 101-275, 104 Stat. 140 (1990) (codified at 28 U.S.C. § 534 (2006)).

[6] FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE, HATE CRIME DATA COLLECTION GUIDELINES 2 (rev. ed. 1999).

[7] *Id.* at 5-6.

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> the exchange by calling the victim by a well-known and recognized epithet used against the Japanese and complaining that the Japanese were taking away jobs from Americans. An Anti-Asian/Pacific Islander [hate crime] would be reported based on the difference in race of the victim and offender, the exchange of racial insults, and the absence of other reasons for the attack.[8]

This vignette raises several constitutional issues if it involved an actual hate crime prosecution—whether the white male is being punished on account of his speech or thoughts, for instance, and whether the race-based elements of the prosecution violate equal protection. It also raises questions of policy and practice: Does the existence of a hate crime depend on who made the first racial insult or whose slur was more notorious? Might it hinge on who won the fight?

But consistent with the congressional mandate, the UCR guidelines make clear that their purpose is for data collection only. "Hate crimes are not separate, distinct crimes, but rather traditional offenses motivated by the offender's bias."[9] Moreover, the guidelines acknowledge the inherent difficulty in determining whether an offense should count as a hate crime:

> Because motivation is subjective, it is difficult to know with certainty whether a crime was the result of the offender's bias. Therefore, before an incident can be reported as a hate crime, sufficient objective facts must be present to lead a reasonable and prudent person to conclude that the offender's actions were motivated, in whole or in part, by bias.[10]

The guidelines also offer a number of cautions—the need for case-by-case assessment of the facts, the potential of misleading or even feigned facts, the possibility of mistaken perceptions, and the reality that subsequent findings may undercut an initial classification.[11] All told, the guidelines attempt to provide some type of standards for data collection and a basis for subsequent scrutiny of this information.

None of this necessarily guarantees accurate classification. Offenders have all sorts of motivations, conscious and unconscious, including cynical beliefs about those who are in some way different from themselves. When hate crimes turn on one-word slurs or non-verbal expressions, the classifier is placed in the position of guesstimating the level of bias in the sometimes murky, often adrenalin-filled circumstances of a criminal episode. Moreover, the standard of proof vaguely resembles "probable cause"—the amount of evidence needed to conduct a search and seizure, for instance[12]—rather than the constitutionally mandated standard for conviction at trial. But again, this is of no constitutional moment when the goal is to categorize statistics rather than condemn defendants. Moreover, the inherent limitations of these statistics are (or should be) understood and acknowledged by policymakers; and as long as errors in classification are random, the data provided under the Hate Crime Statistics Act might still give a reasonable overall picture with all caveats attached.

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[8] *Id.* at 7.

[9] *Id.* at 1.

[10] *Id.* at 4.

[11] *See id.* at 6.

[12] *See* U.S. CONST. amend. IV; Brinegar v. United States, 338 U.S. 160, 175-76 ("Probable cause exists where 'the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed.").

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A far larger problem lies with the data provided by advocacy groups, who use disparate or loose standards, or no real standards at all, in the gathering and presentation of data. Policymakers often cite these statistics, and sometimes officials act in reliance upon this information without meaningful scrutiny.[13] Among others, the U.S. Justice Department's Bureau of Justice Assistance has recognized the "widespread disparities between the hate crime data provided by public interest groups," calling upon government actors and private groups to work together on a "standard definition and reporting protocol for hate crimes."[14] To my knowledge, no such accord has been reached, and to be blunt, integrity and consistency in empirical claims have not been a strong suit for some advocates and scholars, who can claim that hate crimes are either an "epidemic" or "rare" depending on the demands of their audience.[15]

For instance, when federal statistics showed a decline in hate crimes, some of the groups that had campaigned for the Hate Crime Statistics Act suddenly denounced the federal data collection scheme. Others resorted to anecdotalism or simply proclaimed that hate crimes were on the rise. As for the statistics that advocacy groups provide, some groups count all incidents as "hate crimes"—even if they do not amount to a criminal offense or only involve bias-motivated comments, and regardless of the source of information.[16] Unfortunately, some of these problems appear to exist in the NCH's reports on hate crimes against the homeless.[17] Although its documents are well intentioned and laudable in many parts, the NCH repeatedly conflates two potentially overlapping but importantly distinct concepts: crimes against the homeless and *hate crimes* against the homeless.

For instance, the NCH's most recent report contains a table for the years 1999-2009, listing in one column *FBI Defined Hate Crime Homicides* and in the other column *Fatal Attacks on Homeless Individuals*.[18] According to the report, "The table shows that over the past eleven years, there are more than double the amount of homeless hate crime deaths than there are for all current protected people."[19] The table shows no such thing, however, but instead compares homicides motivated by racial bias, religious bias, etc., versus fatal attacks on homeless

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[13] *See, e.g.*, JAMES B. JACOBS & KIMBERLY POTTER, HATE CRIMES: CRIMINAL LAW & IDENTITY POLITICS 52 (1998). In fact, the call of today's hearing was as follows:

> Last month, the National Coalition for the Homeless released their annual report on hate crimes against the homeless population.... The report shows that the killing of homeless people has risen to the highest level in a decade.... The goal of this hearing is to discuss the rising trend of violence against this population and what response the federal government can have to it. Specifically, we will talk about the importance of collecting accurate uniform data on this and how such data can provide helpful and useful information to state and local law enforcement, policy makers and NGO's.

[14] BUREAU OF JUSTICE ASSISTANCE, U.S. DEPARTMENT OF JUSTICE, A POLICYMAKER'S GUIDE TO HATE CRIMES xv (1997).

[15] *See, e.g.*, 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, 332-34 (2001); JACOBS & POTTER, *supra*, at 46-50, 53-55.

[16] *See, e.g.*, POLICYMAKER'S GUIDE, *supra*, at 8-10; JACOBS & POTTER, *supra*, at 46-50.

[17] *See* AMERICA'S GROWING TIDE OF VIOLENCE, *supra*; NATIONAL COALITION FOR THE HOMELESS, HATE, VIOLENCE, AND DEATH ON MAIN STREET USA: A REPORT ON HATE CRIMES AND VIOLENCE AGAINST PEOPLE EXPERIENCING HOMELESSNESS 2008 (Aug. 2009) [hereinafter "HOMELESSNESS 2008"]; NATIONAL COALITION FOR THE HOMELESS, HATE, VIOLENCE, AND DEATH ON MAIN STREET USA: A REPORT ON HATE CRIMES AND VIOLENCE AGAINST PEOPLE EXPERIENCING HOMELESSNESS 2007 (Apr. 2008).

[18] *See* AMERICA'S GROWING TIDE OF VIOLENCE, *supra*, at 12; *see also id.* at 49 ("In 2009, the National Coalition for the Homeless reported that one hundred fifteen homeless people were victims of hate crimes, forty-three of which resulted in death."). *But see id.* at 10 (acknowledgement in report's methodology section that "we could not always identify the motive for each attack based on our sources"); HOMELESSNESS 2008, *supra*, at 13 (same).

[19] *Id.* (emphasis added).

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individuals, which may or may not have been motivated by homeless status and, in fact, may or may not have been homicides at all. The NCH report includes the following accounts of what it apparently believes to be homeless hate crime deaths:

> The body of Ora James Light, a fifty-one year-old homeless man, was found under Interstate 4. Light's abandoned body was found with multiple stab wounds. An eighteen year-old male, Tyler Sturdivant, originally denied any connection to Light but later admitted that he killed Light in self-defense.
>
> Anthony Chatteron, forty, was killed by three men after a verbal argument. Chatteron believed that the men had stolen from him. Chatteron died at the scene after suffering from trauma to his upper body. The men fled the scene and took off in a car with a female driver. The police have not identified the suspects.
>
> Allan McKibben was a homeless man in a wheelchair. He was found dead by a train station, without his prosthetic leg. His face had been scratched and his tongue was severely bitten. Besides that, McKibben also had injuries to his collarbone and spine. Advocates believe that the circumstances of McKibben's death indicate foul play; however, officials believe that some of his injuries may have been sustained before his death.
>
> Seventeen year-old Carlos Molina-Alvarez is charged with first-degree murder in the killing of a homeless man after repeatedly hitting him with a rock. The homeless man, Karl Chilcoat, fifty-two, suffered a crushed skull from the multiple blows from the heavy object. The attack seems to be unprovoked. Alvarez will stand trial as an adult.
>
> Los Angeles police are investigating the suspicious death of a homeless man who was found with burns marks on his upper body and face. Investigators are trying to determine whether the man suffered the burns before or after his death. Locals say the homeless man was a frequent resident of the area.
>
> While sleeping in a tent, Edward Matthews, forty-six, was fatally shot in the head. It is thought that the perpetrator may be the same individual who shot another homeless man, sixty, in the mouth eight months earlier. Both attacks appeared unprovoked and occurred in the early morning hours.[20]

These stories share two things in common: (1) they are extremely sad, and (2) there are no facts indicating that the incidents were motivated by bias against the homeless. In four of the incidents, no charges had been filed, let alone suspects apprehended. The other two incidents had not resulted in convictions, and assuming the cases do go to trial, at least one is likely to involve a claim of self-defense. To be clear, the authors of the report may have additional information—maybe suspects have been apprehended in all of the incidents, maybe the two charged defendants have been convicted, and maybe there is evidence that would lead a reasonable and prudent person to conclude that the actions were motivated, in whole or in part, by bias. But this information is not contained in the report.

Moreover, many of the incidents listed in the report (both lethal and non-lethal) are loaded with speculation or acknowledgements that the facts and motives remain unclear:

- "The attack seemed unprovoked, according to police."

[20] *Id.* at 20-26.

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- "The motive behind the attacks remains unknown, but police presumed that the violence was directly related to the victims' homelessness."
- "The attack seems to be unprovoked."
- "There does not seem to be a clear purpose for the attacks besides his housing status, as his possession were not taken."
- "Police are continuing to investigate the motive behind [the victim's] stabbing spree. The only immediate connection between the victims appears to be their homelessness."
- "Both attacks appeared unprovoked and occurred in the early morning hours."
- "Police say the young men intended to rob the homeless man who seemed like an easy target."
- "The motive remains vague, and the relation between the male attackers and the homeless man is unknown. It is believed that there was a prejudice against the homeless man because of his social position."
- "The motive and exact purpose of the beatings remains unknown."
- "The seemingly unprovoked attack on the homeless has peaked the attention of local law enforcement as this type of activity has been on the rise."
- "The precise motive behind the attack remains unclear yet police believe that the attack was unprovoked and premeditated."
- "A homeless couple was ambushed by an unknown aggressor behind a building downtown… Officers are unsure whether the couple was intoxicated or in shock, as they were both incoherent upon arrival of the police. Investigators are unsure [of] the motivation behind the attack."[21]

In one incident listed as a non-lethal attack, the victim himself said, "I don't think this guy did this to me because I'm homeless,"[22] effectively undermining the episode's classification as a hate crime. Again, the authors of the report may have additional information that goes beyond speculation and demonstrates that the incidents were not only crimes, but crimes motivated by bias against the homeless. But the report itself is often short on such information.

The NCH report might also lead the reader to wonder exactly what behavior the authors believe to be a crime or should be criminalized. For instance, the report lists the following incident under the category of "non-lethal beatings":

> Police are investigating a Craigslist.com ad posted in the "Rants & Raves" section of the website. The author threatens to beat up homeless "punks" in San Luis Obispo. Police believe the poster to be male. According to his post, he plans to drive "all you out of my city" and threatened homeless residents with a "rude awakening" when he and fifteen friends start to follow homeless people under bridges and into shelters. "We will be beating you and making sure you know we won't take it anymore," the post reads. It goes on to say, "I have nothing to lose, and only the peace and sanctity of my home town to gain." Police are searching the internet for the IP address of the computer in the hopes of locating whoever posted the comments. Even more disturbing, the author writes, "This is no joke. This is an all out threat and warning. You will be dealt with." The post concludes with, "Down with Prado. Down with the Shelter. Down with gutter punks alike." These are all references to

[21] *Id.* at 20, 22-24, 26, 30, 32-33, 35, 39.

[22] *Id.* at 31.

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homeless shelters in the area. According to police, no acts of physical violence have been carried out in connection with the posting.[23]

To be perfectly clear, I find this "ad" to be totally repulsive. The posting might provide a reason for law enforcement to conduct a preliminary inquiry, within constitutional boundaries, to ensure that the poster(s) does not engage in acts of violence. But what is equally clear is that no "beating" has been committed and that any prosecution based on the posting alone would violate the Constitution. The report also describes publications, visual depictions, and video games that allegedly facilitate the social stigmatization of the homeless. Although I have not seen these materials firsthand[24] (and, quite frankly, I have no desire to do so), the words and images detailed in the report are certainly crude and callous. But based on the report's descriptions, I am reasonably confident that the First Amendment protects the materials.[25] If the report is seeking to raise public awareness and, in particular, alert parents about the existence of these materials, the goal is wholly unobjectionable. If instead the report is seeking to prompt government action—as is intimated by the inclusion of a citizen's letter hoping that "the biggest nation in the world can succeed in getting this atrocity banned"[26]—then the objective is censorship.

2. THE PROBLEMS OF FEDERALIZING HATE CRIMES

In all honestly, it seems unlikely to me that advocates for the homeless would ask lawmakers to ban speech that, although grotesque, is protected by the Constitution. What I do believe is that these well-meaning advocates will eventually call upon Congress to add "homeless status" to the HCPA—and for all I know, the lobbying process may have already begun. The first panelist at today's hearing, Rep. Eddie Bernice Johnson, has stated her intention to introduce legislation that would extend hate crimes protection to the homeless.[27] Likewise, the NCH report specifically states its purpose to create "a commitment by lawmakers to combat the hate crimes and violent acts against people who experience homelessness," as well as its disappointment that homeless status was not added to the HCPA and its recommendation that the "U.S. Department of Justice should issue guidelines, for law enforcement agencies on how to investigate and prosecute bias-motivated crimes against people experiencing homelessness."[28] If advocates and policymakers do not seek to add homelessness to the HCPA, they can disabuse me of my belief during today's hearing. If not, I think it is important to reiterate the problems of federalizing hate crimes, with reference to the potential addition of homelessness as a protected class.

A preliminary question is whether the HCPA filled a genuine need. For years now, some politicians, scholars, advocates, and journalists have referred to hate crimes as an "epidemic" or accepted this characterization, regardless of whether the statistics have shown an increase or

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[23] *Id.* at 31.

[24] The only possible exception is the television show *South Park*, which I have watched on occasion.

[25] *See, e.g.*, United States v. Stevens, 130 S.Ct. 1577 (2010); Brandenburg v. Ohio, 395 U.S. 44 (1969).

[26] AMERICA'S GROWING TIDE OF VIOLENCE, *supra*, at 86.

[27] "Congresswoman Eddie Bernice Johnson Votes to Close Gaps in Hate Crimes Law," Apr. 29, 2009, *available at* http://ebjohnson.house gov/index.cfm?sectionid=21&sectiontree=18,21&itemid=192.

[28] *See* AMERICA'S GROWING TIDE OF VIOLENCE, *supra*, at 10, 48, 63.

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decrease in bias-motivated violence.[29] Since 2001, the number of hate crime incidents reported by the Federal Bureau of Investigations has remained roughly the same—an average of 7,556 crimes per year—despite an increase in the number of reporting agencies and, of course, a continually growing American population.[30] Although we might agree that the number of hate crimes is too high (as compared to some baseline) and that every act of violence is disconcerting, the data do not show an *epidemic*, at least as the term is commonly understood—that is, a rapid spread or increase in the occurrence of something.

Nonetheless, this type of language was used to argue in favor of the HCPA, with, for instance, U.S. Attorney General Eric Holder describing "the scourge of the most heinous, bias-motivated violence."[31] General Holder testified that "we have a significant hate crime problem in the country," that the federal government "has a strong interest in protecting people from violent crimes motivated by such bias and bigotry," and that the legislation was "vital," "crucial," and "necessary" to serve that interest.[32] These claims are belied by the fact that every crime that might be prosecuted under the HCPA is already more than well covered in state penal codes. There is no evidence that state and local law enforcement fail to vigorously prosecute bias-motivated crimes under traditional criminal statutes or pursuant to hate crime provisions that now exist in virtually every jurisdiction. Nor is there evidence that offenders who commit bias-motivated crimes get off easy in state criminal justice systems.

As was repeatedly noted during last year's hearing, those responsible for the murders of Matthew Sheppard and James Byrd, Jr.—the HCPA's namesakes—were quickly apprehended and prosecuted by local law enforcement. These brutal killers were convicted and sentenced to death or life imprisonment. There is absolutely nothing that the HCPA could have added to these cases; indeed, had the murderers of James Byrd, Jr. been tried in federal court, they would not have been eligible for capital punishment. Under questioning, General Holder conceded that there was no trend of under-enforcement or poor prosecution of hate crimes in the states. The best he could do was cite a handful of cases "where a state or a local jurisdiction has failed to act in a way that I think we would all think that [a] locality should."[33]

After the hearing, Senator Sessions looked into these cases and found that each had been pursued by local enforcement.[34] Most of the cases resulted in convictions and imprisonment; those that did not were due to weaknesses in evidence not weak law enforcement efforts. Moreover, Senators Coburn and Sessions asked General Holder in writing how many hate crimes prosecutions he knew of that had gone unprosecuted in the state criminal justice systems. The Justice Department responded that it was "unable to provide an exact number of cases in which

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[29] *See, e.g.*, JACOBS & POTTER, *supra*, at 45-64; Chorba, *supra*, at 332-33; Debbie Howlett, *Some Fear Lack of Action Will Lead To Hate "Epidemic,"* USA TODAY, Oct. 12, 1999, at 6A.

[30] *See* Federal Bureau of Investigation, "Uniform Crime Reports: Hate Crime Statistics," *available at* http://www.fbi.gov/ucr/ucr.htm#hate.

[31] *See Sen. Patrick J. Leahy Holds a Hearing on the Matthew Shepard Hate Crime Prevention Act of 2009*, CONGRESSIONAL QUARTERLY TRANSCRIPTIONS, June 25, 2009, *available on Westlaw at* 2009 WL 1804153 [hereinafter "Hearing TRANSCRIPT"]; *Statement of Eric H. Holder, Jr., Hate Crimes Legislation*, C.Q. TRANS., June 25, 2009, *available on Westlaw at* 2009 WL 1816543 [hereinafter "HOLDER STATEMENT"].

[32] *Id.*

[33] HEARING TRANSCRIPT, *supra*.

[34] 155 Cong. Rec. S7667-07, 7672-7677 (statement of Sen. Sessions).

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State, local or tribal jurisdictions have failed to prosecute hate crimes."[35] So what has happened since the HCPA came into effect? This statute—intended to deal with the "epidemic" of hate crimes and the "scourge" bias-motivated violence, and described as "vital," "crucial," and "necessary" to serve the federal government's "strong" interest in this area[36]—has generated a grand total of zero federal prosecutions.

I have every reason to believe that adding "homeless status" to the HCPA would have a similar underwhelming impact. This opinion is based on, *inter alia*, the NCH report, which contains no indication that state and local law enforcement is failing to investigate and prosecute crimes of violence against the homeless. To the contrary, where there is evidence of a crime and known perpetrator(s), prosecutors appear to be charging defendants with homicide and assault and obtaining convictions and prison terms. By all accounts, the primary obstacle to greater enforcement is the failure of homeless victims to report crimes against them, a problem that has nothing to do with the absence of "homeless status" among the list of protected classes in the HCPA.

In addition to being superfluous, the HCPA—either in its current form or with the addition of homeless status—presents significant policy and constitutional questions. However, I will only briefly discuss a pair of issues in my testimony, beginning with the primary consequentialist argument for federalizing hate crimes. Some have claimed that the HCPA will "deter violent acts" and "protect our communities from violence based on bigotry and prejudice."[37] The very name of the law suggests deterrence: The Hate Crimes *Prevention* Act. This consequentialist claim is hard to accept, given that the vast majority of crimes (and, to date, all hate crimes) are prosecuted in state criminal justice systems. The murderers of James Byrd, Jr. and Matthew Shepard committed their heinous crimes despite the existence of state homicide statutes that carried the ultimate sanction—the death penalty. It seems naïve to think that the existence of a federal hate crimes law would have prevented these brutal killings.

The typical offender characteristics and/or the circumstances under which hate crimes occur make it especially unlikely that the possibility of federal prosecution will have any impact on behavior. Deterrence requires that a potential offender not only know of a criminal prohibition and attached punishment, but also believe that the costs outweigh the benefits from violating the law and then apply this understanding to his decision-making at the time of the crime. As noted in a Justice Department publication, however, the majority of offenders "merely are individuals who believe racial and ethnic stereotypes and act upon spur-of-the-moment impulses," with alcohol or drug use being a frequent factor.[38] Needless to say, these are hardly the type of well-informed, rational actors that might be deterred by a change in the U.S. Code. In the case of violence against the homeless, the vast majority of offenders were young males and, in particularly, teenage boys[39]—a group that is far less susceptible to deterrence.[40] As the Supreme Court noted a few months ago, "Because juveniles' lack of maturity and

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[35] *Id.* at S7674.

[36] *See* notes 31-32, *supra*.

[37] *See* HOLDER STATEMENT, *supra*.

[38] POLICYMAKER'S GUIDE, *supra*, at 21.

[39] *See* AMERICA'S GROWING TIDE OF VIOLENCE, *supra*, at 9, 17; Eric Lichtblau, *Attacks on Homeless Bring Push on Hate Crimes Laws*, N.Y. TIMES., Aug. 8, 2009.

[40] *See* Graham v. Florida, 130 S.Ct. 2011, 2028 (2010).

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underdeveloped sense of responsibility ... often result in impetuous and ill-considered actions and decisions, they are less likely to take a possible punishment into consideration when making decisions."[41]

In fact, the HCPA might perpetuate rather than ameliorate inter-group animosities. Some offenders are driven by ideologies of racism, xenophobia, anti-Semitism, and so on; and they hate the government, particularly the federal government.[42] By prosecuting them under a federal law that singles out the precise groups they hate, such offenders become martyrs for their cause in a proceeding that they believe confirms their suspicions. And by making their ideologies the focal point of trial, a prosecutor may be encouraging rather than deterring like-minded bigots.[43] In turn, the ordinary exercise of prosecutorial discretion—bringing charges in one case but not another—will lead to claims of group-based favoritism in hate crimes prosecutions, which has already occurred at the state level.[44] This can only stoke the flames of intergroup animosity rather than tamping down the likelihood of future bias-motivated offenses.

Although the HCPA raises serious constitutional questions—including issues of freedom of speech, due process, double jeopardy, and equal protection—I will focus here on concerns of federalism and the purported authority of Congress to enact virtually any prohibition it chooses, including bias-motivated crimes. Grounded in the text and context of the Constitution,[45] federalism limits the powers of national government and prevents federal interference with the core internal affairs of the individual states.[46] Among the areas that the Framers sought to reserve to the states was "the ordinary administration of criminal and civil justice."[47] The Constitution mentioned only a handful of crimes in its text, all of which were consistent with the design and limits of federalism.[48] It was unthinkable to the Framers that the federal government

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[41] *Id.* at 2028-29 (internal citation omitted). The Court's conclusion is supported by research on the effect of youthfulness on self-control, reasoning ability, and judgment. *See, e.g.*, Barry C. Feld, *Unmitigated Punishment: Adolescent Criminal Responsibility and LWOP Sentences*, 10 J. L. & FAM. STUD. 11, 45-61 (2007).

[42] *See, e.g.*, POLICYMAKER'S GUIDE, *supra*, at 23-24.

[43] *See, e.g.*, David Rittgers, *Hate Crime Legislation Would Backfire*, CHRISTIAN SCI. MONITOR, July 10, 2009; Craig L. Ulrich, *Hate Crime Legislation: A Policy Analysis*, 36 HOUS. L. REV. 1467 (1999); *see also* JACOBS & POTTER, *supra*, at 108-09.

[44] *See Statement of Timothy Lynch, Hate Crimes*, C.Q. TRANS., Apr. 17, 2007, *available on Westlaw at* 2007 WL 1143756:

> [T]he men and women who will be administering the hate crime laws (e.g. police, prosecutors) will likely encounter a never-ending series of complaints with respect to their official decisions. When a U.S. Attorney declines to prosecute a certain offense as a hate crime, some will complain that he is favoring the groups to which the accused belongs (e.g. Hispanic males). And when a U.S. Attorney does prosecute an offense as a hate crime, some will complain that the decision was based upon politics and that the government is favoring the groups to which the victim belongs (e.g. Asian Americans). This has happened in some of the jurisdictions that have enacted hate crime laws at the local level. For example, when then New York City Mayor David Dinkins characterized the beating of a black man by white Jewish men as a hate crime in 1992, the Jewish community was outraged. Jewish community leaders said the black man was a burglar and that some men were attempting to hold him until the police could take him into custody. The black man did not want to go to jail, so he resisted—and the Jewish men fought back. Incidents such as that illustrate that actual and perceived bias in the enforcement of hate crime laws can exacerbate intergroup relations.

[45] Specifically, federalism was enshrined in the U.S. Constitution by enumerating the powers of the federal government, see U.S. CONST. art. 1, §8; and by declaring that all other powers were "reserved to the States respectively, or to the people." U.S. CONST. amend X.

[46] *See, e.g.*, THE FEDERALIST NO. 45, at 292-93 (James Madison).

[47] THE FEDERALIST NO. 17, at 120 (Alexander Hamilton).

[48] *See* U.S. CONST. art. 1, §8, cl. 6 (counterfeiting); U.S. CONST. art. 1, §8, cl. 10 (piracy, felonies on the high seas, offenses against the law of nations); U.S. CONST. art. 3, §3 (treason).

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would adopt a full-scale penal code, let alone displace or substantially interfere with the state criminal justice systems.[49] As Chief Justice John Marshall opined, Congress "has no general right to punish murder committed within any of the States," and "it is clear that Congress cannot punish felonies generally."[50] In more recent times, the Supreme Court has reiterated these limitations on federal involvement in local criminal justice matters, given that the "[s]tates possess primary authority for defining and enforcing the criminal law."[51] Constitutional concerns are thus raised whenever Congress effects "a significant change in the sensitive relation between federal and state criminal jurisdiction."[52]

Unfortunately, Congress has assumed such power over criminal matters, occasionally with a nod to an enumerated power, usually the regulation of interstate commerce.[53] As a conceptual matter, the HCPA can be viewed as an iteration of "overcriminalization." This term refers to the constant expansion of criminal justice systems, through the creation of novel crimes, harsher punishments, broader culpability principles, and heightened enforcement, often in the absence of moral or empirical justification and without regard for statutory redundancy or jurisdictional limitations.[54] Although much of this expansion has occurred at the state level, the most virulent form of overcriminalization—and certainly the most criticized[55]—has occurred in the federal system. Congress has slowly but surely obtained a general police power to enact virtually any offense, adopting repetitive and overlapping statutes, criminalizing behavior that is already well-covered by state law,[56] creating a vast web of regulatory offenses,[57] and extending federal jurisdiction to all sorts of deception[58] or wrongdoing[59] virtually anywhere in the world.[60] At last

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[49] *See, e.g.*, RUSSELL CHAPIN, UNIFORM RULES OF CRIMINAL PROCEDURE FOR ALL COURTS 2 (1983).

[50] Cohens v. Virginia, 19 U.S. 264, 426, 428 (1821).

[51] United States v. Lopez, 514 U.S. 549, 561 n.3 (1995).

[52] *Id.*

[53] Apparently, the provisions criminalizing violence committed because of race, color, religion, or national origin are also premised on the Thirteenth, Fourteenth, and Fifteenth Amendments. *See* Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, Pub. L. No. 111-84, §§ 4707-08, 123 Stat. 2190, 2836 (2009). Although beyond the scope of my testimony, these claims are constitutionally dubious—for instance, the Fourteenth and Fifteenth Amendments seem to have little relevance to hate crimes committed by private citizens, given that the former only prohibits state action and the latter is concerned solely with the right to vote.

[54] Erik Luna, *The Overcriminalization Phenomenon*, 54 AM. U. L. REV. 703 (2005).

[55] *See, e.g.*, ABA CRIMINAL JUSTICE SECTION, THE FEDERALIZATION OF CRIMINAL LAW 59–78 (1999) (providing bibliography).

[56] One example is Congress's enactment of a federal "carjacking" statute. *See* 18 U.S.C. § 2119 (2000) (imposing federal criminal liability on those who take motor vehicles by force, violence, or intimidation); Commonwealth v. Jones, 267 Va. 284, 286 (2004) (detailing Virginia's common law definition of robbery, which prohibits the taking of any property of another by violence or intimidation); Spencer v. Commonwealth, 42 Va. App. 443, 448 (2004) ("carjacking is a species of robbery").

[57] *See, e.g.*, United States v. Park, 421 U.S. 658, 663–64, 670–73 (1975); *see generally* Paul Rosenzweig, *The Over-Criminalization of Social and Economic Conduct*, 7 HERITAGE FOUND. LEGAL MEM. 1, 3–12 (2003).

[58] *See, e.g.*, 18 U.S.C. § 1001(a)(2) (2000) (criminalizing false statements made pursuant to "any matter" within any branch of the federal government); 18 U.S.C. § 1341 (2000) (proscribing various fraudulent transactions utilizing the Postal Service or private interstate mail carriers); 18 U.S.C. § 1343 (2000) (prohibiting similar fraudulent transactions over interstate wire, radio, and television signals); 18 U.S.C. § 1346 (2000) (defining "scheme or artifice to defraud" under § 1341 and § 1343 as including a plan to "deprive another of the intangible right to honest services"); *see also* Jeffrey Standen, *An Economic Perspective on Federal Criminal Law Reform*, 2 BUFF. CRIM. L. REV. 249, 289 (1998) (citing over three hundred federal proscriptions against fraud and misrepresentation).

[59] *See, e.g.*, United States v. Welch, 327 F.3d 1081, 1090–1103 (10th Cir. 2003) (upholding a federal felony indictment for violation of Utah's commercial bribery statute, a misdemeanor under state law).

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count, there were about 4,500 federal crimes on the books,[61] with the largest portion instituted over the past four decades.[62]

The scope of the HCPA is as breathtaking as any prior feat of congressional overcriminalization. Unlike civil rights statutes—which required either state action (e.g., abuses of force by local police) or the victim's involvement in a federally protected activity (e.g., serving on a jury)[63] and were enacted at periods when there was good reason to believe that state officials would neither enforce nor abide by the law—the HCPA federalizes private acts of violence perpetrated "because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person."[64] By the law's terms, virtually every sexual assault could be a federal crime, for instance, given that such crimes are committed "because of" the victim's gender and the assailant's gender and gender preferences. Although many supporters disavowed any such intention,[65] apparently some Justice Department officials refused to disclaim this remarkably broad but textually straightforward construction of the law's coverage.[66] Under this interpretation, the addition of homeless status to the HCPA could federalize most acts of violence committed against the homeless. Not unlike the fact that burglars victimize "housed individuals" precisely because they have homes, the sad reality is that the homeless tend to be victimized because they do not have homes and must live on the streets.

But regardless of interpretation, the HCPA flouts the constitutional precept that the federal government has limited, enumerated powers. To be permissible under the commerce clause, a non-economic criminal statute must involve conduct that substantially affects interstate commerce.[67] This cannot be "based solely on that conduct's aggregate effect on interstate commerce" through a "but-for causal chain from the initial occurrence of violent crime … to every attenuated effect upon interstate commerce."[68] To hold otherwise would abolish the very idea of federalism and obliterate any line between national and local power.[69] Moreover, to allow the federalization of crimes that have only a nominal impact on interstate commerce would render unnecessary the enumeration of congressional powers in Article I, § 8 of the Constitution. In light of the historical background and accepted cannons of interpretation, a construction of the

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[60] *See. e.g.*. Pasquantino v. United States , 544 U.S. 349 (2005) (affirming a defendant's federal conviction for violating Canadian tax law through the use of interstate wires); United States v. McNab, 331 F.3d 1228 (11th Cir. 2003) (upholding federal conviction for violation of Honduran fishing regulations); Ellen Podgor & Paul Rosenzweig, *Bum Lobster Rap*, WASH. TIMES, Jan. 6, 2004, at A14 (criticizing the *McNab* prosecution and noting that the Honduran government believed that its laws had not been violated and had filed an amicus curiae brief in support of the *McNab* defendants).

[61] *See* JOHN S. BAKER, JR., REVISITING THE EXPLOSIVE GROWTH OF FEDERAL CRIMES (2008), *available at* http://www.heritage.org/Research/LegalIssues/upload/lm_26.pdf.

[62] *See* ABA CRIMINAL JUSTICE SECTION, *supra*, at 7.

[63] *See* 18 U.S.C. §§ 242, 245.

[64] 18 U.S.C. § 249(b).

[65] *See, e.g.*, HEARING TRANSCRIPT, *supra*.

[66] *See. e.g.*, Letter of the U.S. Commission on Civil Rights to the Hon. Joseph Biden, Jr., et. al., Regarding S. 909, June 16, 2009, *reprinted at* 155 Cong. Rec. S7509-06, S7514; *Testimony of Gail Heriot, Hate Crimes Legislation*, CONG. TESTIMONY, June 25, 2009, *available on Westlaw at* 2009 WLNR 12255630.

[67] *See* United States v. Morrison, 529 U.S. 598, 608-618 (2000); United States v. Lopez, 514 U.S. 549, 558-68 (1995).

[68] *Morrison*, 529 U.S. at 615, 617.

[69] *See id.* at 615-18; *Lopez*, 514 U.S. at 564-68.

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commerce clause "that makes the rest of § 8 superfluous simply cannot be correct."[70] As the Supreme Court concluded in *United States v. Morrison*,

> The regulation and punishment of intrastate violence that is not directed at the instrumentalities, channels, or goods involved in interstate commerce has always been the province of the States. 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.[71]

This description applies squarely to the acts criminalized under the HCPA, namely, non-economic, intrastate violence. The law merely asks that the offender, the victim, or the relevant act in some way implicate interstate travel or commerce—travelling on a freeway might suffice—and it allows federal jurisdiction if the act simply "affects" commerce in some oblique way (i.e., no need for a "substantial affect").[72] The federalization of crimes of violence against the homeless would be just as constitutionally dubious. But as noted, there is no evidence that such crimes are going unprosecuted in the states or that federal law enforcement has had any impact on hate crimes in general.

This brings me back to the point raised at the beginning of my testimony, namely, that the bills at issue today do not go far enough to ensure full and accurate information about the commission of and response to crimes motivated by legislatively identified animus or bias. I have no objection to homeless status being added to group characteristics in the Hate Crime Statistics Act. Once again, I am in favor of collecting and disseminating empirical data as a means to inform policy judgments on criminal justice. Given the aforementioned problems with the existing data on hate crimes against the homeless, the information gathered pursuant to the proposed bills would be enlightening. What is missing from our collective knowledge, however, is whether the HCPA is justified by the failure of state and local officials to prosecute cases of violence that fall within the definition of a hate crime. In response to separate queries by Senators Coburn and Sessions, Justice Department officials stated the following:

> 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.[73]

> 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 such compilation of data.[74]

As mentioned above, the best that the Justice Department has been able to provide is a handful of cases that it believes were under-prosecuted. To remedy this sort of information gap, Senator Hatch has previously proposed a study to look into the question of state default. Maybe this study would show a trend of under-enforcement by state and local prosecutors and insufficient punishment for crimes of violence, evincing a need for some type of federal action. Or maybe it would affirmatively demonstrate that state and local officials are assiduously

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[70] *Lopez*, 514 U.S. at 589 (Thomas, J., concurring).

[71] *Morrison*, 529 U.S. at 618.

[72] 18 U.S.C. § 249(b).

[73] 155 Cong. Rec. S7667-07, 7674 (response to Sen. Coburn's question).

[74] *Id.* (response to Sen. Session's question).

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fulfilling their obligations, that bias-motivated offenders are receiving just and effective punishment, and that the HCPA is entirely unnecessary. Either way, the American people and their elected representatives would be in a better position to access this contentious area of criminal justice policy.

* * * * *

Again, thank you for the opportunity to speak today. I look forward to answering any questions you may have.

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To The Honorable Members of the Committee:

My name is Simone Manning-Moon. I extend warm greetings and my gratitude for the opportunity to speak before you today. I also bring greetings from my parents, Sam and Georgia Gaynor, who still miss and grieve for their son Norris – my brother. It is a tragic twist of irony that my big brother wanted only to live a rather anonymous existence and mind his own business, and yet we're here today before this esteemed committee in our nation's capitol to discuss him – and to put a name and a face to him. Or rather, to ALL of those who find themselves in my brother's position – claiming the sky as their temporary ceiling.

Despite all that would come later, my parents demonstrated their love for us in the most supreme way. Though not related by blood, we were both adopted when my parents had so much love to give and wanted children to give it to. We knew from an early age that we were adopted and loved immeasurably. We grew up under the tutelage of a United States Navy Chief Petty Officer and a mother who imparted a family structure which included study habits, responsibility for household chores and a respect for those in authority. We were, in effect, no different than I suspect many of you who underwent the same upbringing. With perhaps one exception – my brother was troubled. No one could quite pinpoint the issue – he was often hyperactive, sometimes angry and seemed to look for something he didn't have, yet he expressed satisfaction with his surroundings. In fact, I took my cues (and much advice) from him. Once my parents sat us down and earnestly explained the circumstances of how we came to be their children, going so far as to offer to help us if we wanted to find our "real" parents. I distinctly

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remember staring at Norris when he declared his logic at the table: why would we look for parents when we already had them? When those "real" parents gave us up? He wasn't interested. And because he was my big brother, nor was I. We were raised with high expectations, a low tolerance for things unproductive and considered foolish. So it was no surprise when, upon Norris' high school graduation, he was expected to move in the direction of manhood and self-sufficiency. After all, this was our family mantra.

At that point, Norris's tumultuous journey began. He faced many things – his service in the United States Army, incarceration, drug abuse, the realization that he wasn't mentally healthy, and his struggles to find himself. For as many years as he was homeless, he was a contributing, upstanding member of society. He worked every day, kept himself in great physical condition and otherwise lived what you may call a normal existence. But he was not well. Eventually he came to see that. I suppose I should be grateful that he realized many things before wooden bats and rake handles snuffed out his life.

Norris Jay Gaynor. Not "the homeless guy who was murdered that night". Not "the one they beat to death". Not "that homeless fatality". I implore you to actually say his name – Norris Gaynor. Son, brother, uncle. The one upon whom I called on for counsel, and who called me from pay phones so that he could give me advice. The son my parents referred to as "not homeless, but simply far from home". My brother Norris who, when our younger brother Jerome died of liver cancer many years ago when we were 13 and 12, huddled in a corner with me to talk about how much we would miss him.

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Norris the artist. Norris the political news junkie in his later years, who knew more about local, state and federal politics than I did, and who missed, because of some notion that it was OK for people to beat and kill those on the street, what would have been the most important presidential election of his lifetime – by mere months. He surely would have continued to discuss it to this day, and apply his honed critical thinking skills to the state of Washington in 2010. How ironic that he of all people is not here to witness the current state of affairs.

His name is Norris Jay Gaynor. He was born in 1960. He was raised in a fine family. He had his problems, but manned up and declared that he wouldn't be a burden on anyone. When he learned later in his life that due to a variety of circumstances he was eligible to apply for Social Security benefits, he refused. "I can't do that", he would say. "I'm physically able to take care of myself." This is the person those men killed that night. This is the so-called "bum". And the supreme irony? The taxpayers are now taking care of his bat-wielding murderers. And make no mistake – he was murdered because he was homeless. He was attacked because he was asleep on a park bench. Minding his own business. To the direct point of the proposed legislation we're discussing, he was murdered because people resented the homeless and thought that they could continue to prey on the homeless and get away with it.

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September 29, 2010

The Honorable Benjamin L. Cardin
United States Senate
Washington DC 20510

Dear Senator Cardin:

The undersigned organizations endorse the "Hate Crimes Against the Homeless Statistics Act" (S. 1765), your legislation to extend hate crimes data collection – through the Federal Bureau of Investigation tracking system already in place – to include homeless victims.

Between 1999 and 2010, there have been 291 documented fatal attacks against homeless persons (despite the absence of uniform law enforcement reporting). This far exceeds the number of fatal hate crimes reported in all legally-recognized hate crime categories combined. While some of the attacks were simply a result of homeless persons' vulnerable position, many were perpetrated due to bias against homeless people. They range from beatings with golf clubs to setting a man on fire while sleeping. Victims of homeless hate crimes include men, women, children, youth, elders, and veterans.

It is beyond time that we improve our understanding of violent crimes against our fellow Americans due to their homeless status. Rigorous and uniform tracking and reporting of such crimes is the first step in determining future actions to prevent criminal activity.

Hate-motivated crimes against homeless persons instill fear among our homeless neighbors and serve to continue to marginalize them from society. We must learn more about where and when violent crimes against people experiencing homelessness take place, without delay, before harm against them escalates further.

Senator Cardin, we gratefully acknowledge your leadership for introducing the Hate Crimes Against the Homeless Statistics Act. We call on Congress to assure prompt passage of this important legislation.

Sincerely,

National Coalition for the Homeless
National Law Center on Homelessness & Poverty
AFL-CIO
Americans for Democratic Action
American Psychological Association
Association of University Centers on Disabilities
Buddhist Peace Fellowship
Catholic Charities USA
Center for the Study of Hate & Extremism
CenterLink: The Community of LGBT Centers
Coalition on Human Needs

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Give Us Your Poor
Helen Keller National Center
Hip Hop Caucus
International Union of Police Associations
National Advocacy Center of the Sisters of the Good Shepherd
National Association for the Advancement of Colored People
National Association for the Education of Homeless Children and Youth
National Center for Transgender Equality
National Center on Family Homelessness
The National Church Nurses Auxiliary Convention
National Coalition on Deaf-Blindness
National Congress of Black Women
National Council of Jewish Women
National Council of La Raza
National Gay and Lesbian Task Force Action Fund
National Immigrant Solidarity Network
National Network to End Domestic Violence
National Network for Youth
National Organization for Victim Assistance
National PTA
National Youth Advocacy Coalition
Presbyterian Church USA, Washington Office
RESULTS
Sisters of Mercy of the Americas
Unitarian Universalist Association of Congregations
United Church of Christ, Justice and Witness Ministries
United Methodist Church, General Board of Church and Society
United States Veterans Initiative
Universal Living Wage Campaign
Women of Reform Judaism
The Workmen's Circle/Arbeter Ring
YWCA USA

Alabama:
Federation of Southern Cooperatives
YWCA Central Alabama

Alaska:
Anchorage Neighborhood Health Center

Arizona:
Arizona Coalition to End Homelessness
Ecumenical Chaplaincy for the Homeless
The Giving Tree Outreach Program
National Lawyers Guild - Central Arizona Chapter
Primavera Foundation, Inc.

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Tucson Planning Council for the Homeless (TPCH)

Arkansas:
Arkansas Homeless Coalition
Arkansas Supportive Housing Network
The King's Outreach

California:
Community Action Partnership of San Bernardino County
Dolores Street Community Services
Friends of Prado Day Center
Interfaith Shelter Network
Los Angeles Coalition to End Hunger & Homelessness
Los Angeles Gay & Lesbian Center
Los Angeles Mission
Quinn Cottages
Sacramento Homeless Organizing Committee
St. Mary's Center
Transition House

Colorado:
Greeley Transitional House
Habitat for Humanity of Estes Valley
Harm Reduction Action Center
Interfaith Hospitality Network of Greater Denver
Metro Denver Homeless Initiative

Connecticut:
Beth-El Center Inc.
Collaborative Center for Justice, Inc.
St. Luke's LifeWorks

District of Columbia:
Charlie's Place at St. Margaret's Episcopal Church
One In Ten
SOME, Inc. (So Others Might Eat)

Florida:
Americans Ending Homelessness, Inc.
Center for Independent Living of South Florida, Inc.
Charlotte County Homeless Coalition, Inc.
Coalition for Independent Living Options, Inc.
Fanm Ayisyen Nan Miyami/ Haitian Women of Miami, Inc.
Florida Consumer Action Network
Florida Keys Outreach Coalition
Haven Drop In Center, Inc.

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Life In The Son Ministries
Miami Coalition for the Homeless, Inc.
Monroe Association of Remarkable Citizens
Pax Christi Northeast Florida
RESULTS Florida
Southernmost Homeless Assistance League

Georgia:
Fulton Atlanta Community Action Authority
Georgia Alliance to End Homelessness
Georgia Rural Urban Summit
Living Room, Inc.
Metro Atlanta Task Force for the Homeless

Hawaii:
Affordable Housing and Homeless Alliance

Illinois:
Chicago Coalition for the Homeless
Heartland Alliance for Human Needs & Human Rights
Hesed House, Inc.
PATH, Inc.
Public Action to Deliver Shelter
Project IRENE

Indiana:
Haven House Services, Inc.

Iowa:
Bio Logistics LLC

Kansas:
Inter-Faith Ministries

Kentucky:
Interfaith Hospitality Network of Northern Kentucky

Louisiana:
UNITY of Greater New Orleans

Maine:
Hope Haven Gospel Mission
Anne H. Jordan, Commissioner Maine Department of Public Safety

Maryland:
Advocacy and Training Center

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Homeless Persons Representation Project, Inc.
Immanuel United Church of Christ
Public Justice Center
Students Sharing Coalition, Inc.
United Evangelical Church, UCC
United Ministries, Inc. / Earl's Place

Massachusetts:
Independent Living Center of the North Shore & Cape Ann, Inc.
Somerville Homeless Coalition, Inc.

Michigan:
Affirmations
Gateway Community Services
Greater Lansing Homeless Resolution Network

Minnesota:
Domestic Abuse Intervention Programs
Elim Transitional Housing, Inc.
Fargo Moorhead Coalition for Homeless Persons, Inc.
Hunger Solutions Minnesota
Integrated Community Solutions, Inc.
Metropolitan Interfaith Council on Affordable Housing
Minnesota Coalition for the Homeless
Residents for Affordable Housing
Simpson Housing Services, Inc.

Missouri:
Springfield Victory Mission

Montana:
Family Promise of Gallatin Valley
The Joseph Residence at Maclay Commons
Poverello Center, Inc.

Nebraska:
SASA Crisis Center

New Hampshire:
New Hampshire Council of Churches
New Hampshire Homeless
New Horizons for New Hampshire, Inc.

New Jersey:
Atlantic City Rescue Mission
DIAL Inc.- Center for Independent Living

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NEXT STEP: People with Disabilities for Social and Economic Justice
Pride Connections Center of New Jersey

New Mexico:
New Mexico Coalition to End Homelessness

New York:
Association for Community Living
Compass House
Saint Peter Damian Fraternity
Transitional Living Services of Onondaga County, Inc.
YWCA of Binghamton & Broome County

North Carolina:
Action for Children North Carolina
Bethesda Center for the Homeless
Charlotte Emergency Housing
Good Work Inc.
Samaritan Ministries
Wilmington Interfaith Hospitality Network

North Dakota:
Minot Area Homeless Coalition
North Dakota Coalition for Homeless People

Ohio:
Cleveland Tenants Organization
Coalition on Homelessness and Housing in Ohio
Columbus Coalition for the Homeless
Domestic Violence Center
GLBT Community Center of Greater Cleveland
Greater Cincinnati Coalition for the Homeless
Neighborhood House Association of Lorain County

Oklahoma:
Tulsa Day Center for the Homeless, Inc.

Oregon:
Family Bridge
Northwest Parish Nurse Ministries
Oregon Law Center
Union Gospel Mission of Portland

Pennsylvania:
Dignity Housing
Epiphany of Our Lord Parish

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Just for Jesus Challenge Homeless Outreach
Pennsylvania Council of Churches
Project H.O.M.E.
Typed Wood Street Commons
Women's International League for Peace and Freedom - Pittsburgh

Puerto Rico:
Manos al Servicio de la Comunidad

Rhode Island:
Colonel Brendan P. Doherty, Superintendent, Commissioner, Department of Public Safety

South Carolina:
Crisis Ministries of South Carolina

Tennessee:
Interfaith Homeless Network
Nashville Homeless Power Project

Texas:
House the Homeless, Inc.
National Organization for Women, North Dallas Chapter

Utah:
Crossroads Urban Center
Salt Lake Community Action Program

Virginia:
Arlington Street People's Assistance Network
Doorways for Women and Families
United Way of Roanoke Valley
Valley Mission, Inc.

Washington:
Building Changes
Council for the Homeless of Clark County WA
Women's Housing, Equality and Enhancement League
YWCA Clark County

Wisconsin:
Hands of Faith of Beloit
Madison-Area Urban Ministry

Wyoming:
Wyoming Coalition for the Homeless

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CONGRESSIONAL TESTIMONY

Statement of
David B. Muhlhausen, Ph.D.
Research Fellow in Empirical Policy Analysis
Center for Data Analysis
The Heritage Foundation

Before the Subcommittee on Crime and Drugs of the
Committee on the Judiciary of the United States Senate

Delivered September 29, 2010

"Crime Against the Homeless: Tragic, but a Problem not Requiring Federal Action"

Introduction

My name is David Muhlhausen. I am Research Fellow in Empirical Policy Analysis in the Center for Data Analysis at The Heritage Foundation. I thank Chairman Benjamin L. Cardin, Ranking Member Lindsey Graham, and the rest of the committee for the opportunity to testify today about crimes against the homeless and the Hate Crimes Against the Homeless Statistics Act of 2009 (S. 1765). The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.[1]

My testimony focuses on the following points:[2]

- Policymakers should be cautious in accepting the validity statistics generated by homeless advocates;
- Crimes against the homeless have not risen to a level that requires formal data collection by the federal government;
- The homeless frequently commit violent and property crimes; and
- The Hate Crimes Against the Homeless Statistics Act of 2009 is unnecessary.

Policymakers should be cautious in accepting the validity statistics generated by homeless advocates. The determination of whether a social problem requires governmental action often hinges on measuring the social problem in question. Properly

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understanding a social problem requires accurately assessing its conditions and prevalence. For this reason, trustworthy statistics based on sound analysis are central to well-reasoned public policymaking.

Statistics are important in defining social phenomena as a problem and bringing the problem to the forefront of public debate. Thus, advocates of various causes are constantly attempting to generate startling statistics to grab the attention of the public and persuade policymakers to support their causes.

However, policymaking is too often influenced by shaky data and questionable statistics. A relevant example is the national estimate of the number of the homeless that affected the policy debate during the 1980s and 1990s. In 1982, Mary Ellen Hombs and Mitch Snyder of the Community for Creative Non-Violence (CCNV) estimated that 1 percent of Americans or 2.2 million Americans were homeless on any given night in 1980.[3] CCNV projected that the homeless could reach over 3 million individuals by 1983.[4] This 3 million homeless estimate was widely disseminated by the media, frequently without any objective scrutiny.[5] The methodology CCNV used to derive their estimates was based on information acquired from 100 homeless service organizations operating in 25 cities and states.[6] The CCNV methodology was not based on sound social science practices, yet it unnecessarily attracted public attention.[7]

According to Christopher Hewitt, Emeritus Professor of Sociology at the University of Maryland Baltimore County, "There is some information on the homelessness situation in several localities, but it is impossible to discover how the overall rate of 1% was calculated because in most places the rate is much lower. The 2.2 million figure appears to have been a 'guesstimate', pulled out of nowhere."[8] The CCNV's 2 to 3 million homeless figures were a striking contrast to the estimates derived by social scientists. The estimates by social scientists generally ranged from 300,000-400,000 homeless individuals on any given night during the mid-1980s and mid-1990s.[9]

Professor Hewitt was not the only social scientist to question the 2 to 3 million figures. The late Peter H. Rossi, Professor of Sociology Emeritus at the University of Massachusetts-Amherst, commented that "it is surely strange that guesstimates of the sort issued by local advocacy groups and the Community for Creative Non-Violence should be cited repeatedly in the press as serious and valid calculations."[10] Under pressure, Mitch Snyder eventually admitted that the CCNV estimate was fabricated.[11]

My reason for beginning my testimony with this subject is to remind Congress that it needs to use credible numbers and analysis when making public policy decisions.

Crimes against the homeless have not risen to a level that requires formal data collection by the federal government. According to a National Coalition for the Homeless (NCH) report, *Hate Crimes Against The Homeless: America's Growing Tide of Violence* (hereinafter referred to as the NCH report), asserts that "This years' report has the horrifying distinction of being the deadliest in a decade, at forty-three reported homicides."[12] While every case of a violent act committed against an innocent homeless

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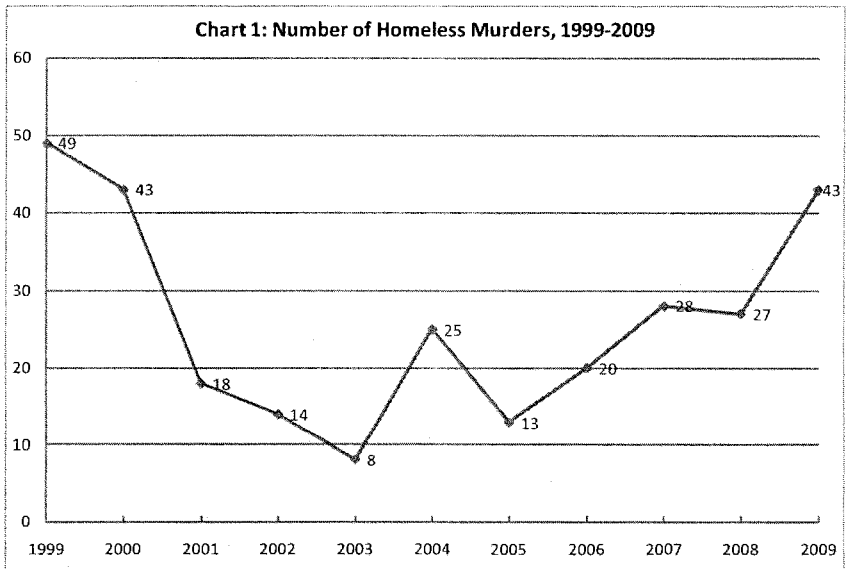
person is tragic and should be prosecuted to the fullest extent of the law, the prevalence of these crimes do not rise to a level that requires formal data collection by federal, state, and local governments.

Policymakers should be skeptical of the conclusions presented in the NCH report. First, the NCH report uses a highly questionable methodology for estimating crimes against the homeless. Using a variety of sources, the cases of violence against the homeless identified in the NCH report appear to be primarily collected from media reports and homeless advocates.[13] Media coverage is not necessarily a good or accurate measure of any social problem.

Second, the NCH report fails to acknowledge the amount of crime committed by the homeless. The NCH report only focuses on crimes committed by "housed" or domiciled individuals against homeless individuals, while it excludes crimes committed by the homeless against other homeless individuals.[14] More importantly, the report ignores the amount of crime committed by the homeless against domiciled individuals.



Source: National Coalition for the Homeless, *Hate Crimes Against the Homeless: America's Growing Tide of Violence*, August 2010.

Third, and most important, the analysis presented in the NCH report fails to make the case that the federal government should collect data on crimes against the homeless. Chart 1 presents the annual number of homeless murders counted in the NCH report from 1999 to 2009. The NCH report only counts murders of homeless individuals committed by domiciled persons. This leads one to naturally ask, "How many innocent domiciled and homeless individuals were murdered by the homeless?"

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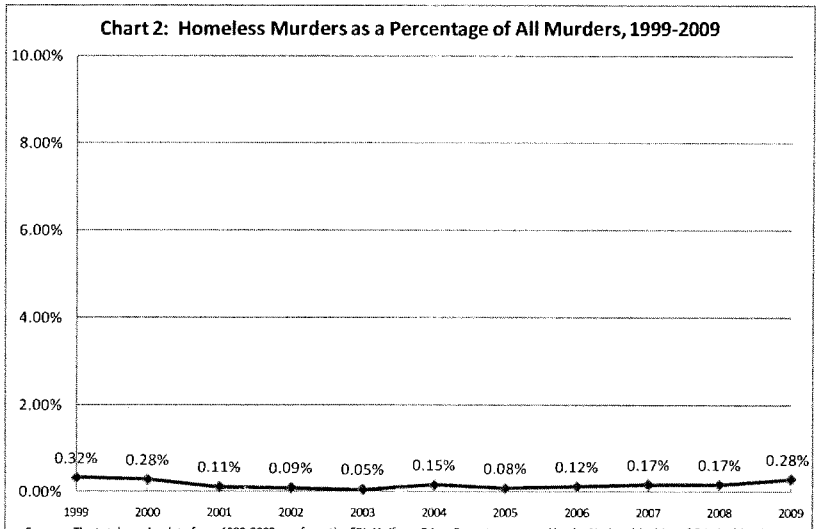
Over the course of 11 years, the NCH report counts 288 homeless murders with an average of less than 26.2 incidents per year. From 1999 to 2003 in Chart 1, the number of homeless murders counted by NCH fell from 49 to 8. From 2003 to 2009, the trend reversed. During this period, the number of homeless murders counted by NCH increased from 8 incidents to 43 incidents. While the highest number of homeless murders was recorded in 1999, NCH notes the number of homeless murders in 2009 is "[m]ost disturbing."[15]



Sources: The total murder data from 1990-2008 are from the FBI, Uniform Crime Reports, prepared by the National Archive of Criminal Justice Data, and obtained from the U.S. Department of Justice, Bureau of Justice Statistics. The murder data from2009 was obtained from the FBI, Uniform Crime Reports. The data on homeless murders was obtained from the National Coalition for the Homeless, *Hate Crimes Against the Homeless: America's Growing Tide of Violence*, August 2010.

The presentation of the number of homeless deaths in the NCH report does not display the number of homeless murders relative to the total number of all murders recorded in the nation. Chart 2 presents the NCH homeless murder counts as a percentage of all murders recorded by the Federal Bureau of Investigation (FBI). In 2009, the FBI counted 15,241 murders in the United States.[16] When observing Chart 2, please notice that the y-axis (vertical axis) ranges from 0 percent to 10 percent. Due to homeless murders accounting for such a minuscule percentage of overall murders, setting the y-axis to the standard range of 0 percent to 100 percent would make the line representing the percentage of homeless homicides indistinguishable from the x-axis (horizontal axis).

As can be seen in Chart 2, NCH homeless homicides from 1999 to 2009 never accounted from more than 0.32 percent of total murders. In 2009, homeless murders were 0.28 percent of all murders. Conversely, all other murders accounted for 99.72 percent in 2009.

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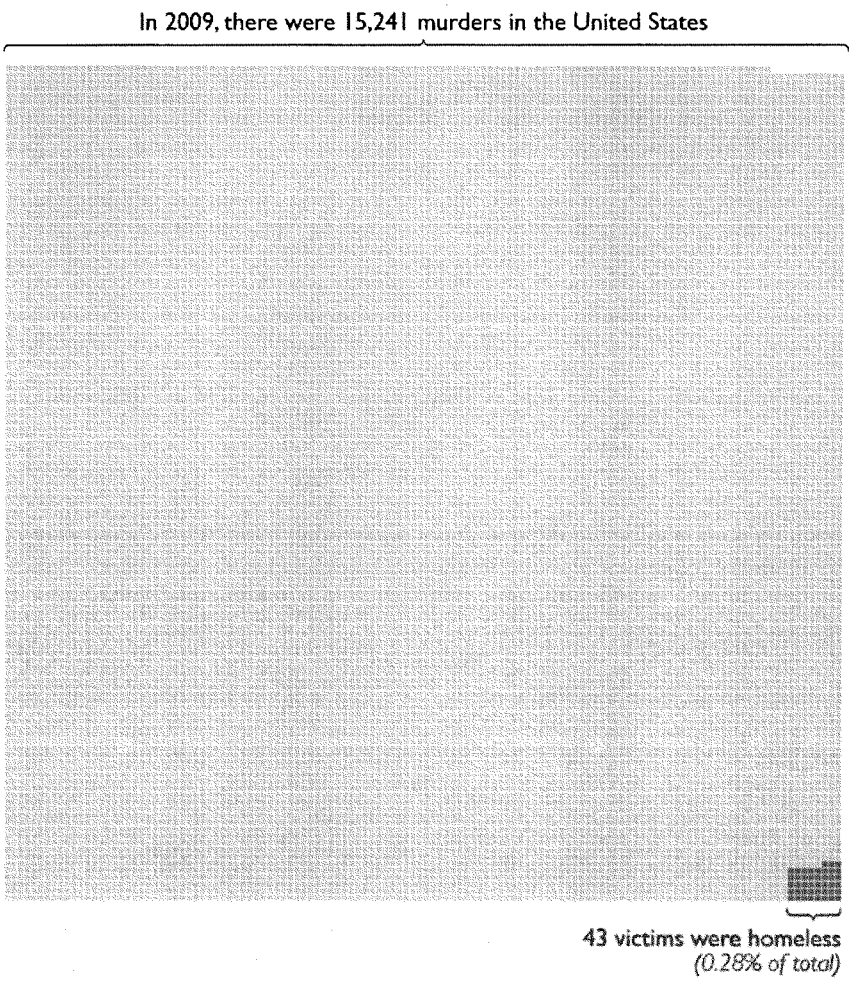

Sources: Total murders: Federal Bureau of Investigation, Uniform Crime Reports, Table 1, at *http://www.fbi.gov/ucr/cius2009/data/table_01.html* (September 22, 2010); estimate of homeless murders: National Coalition for the Homeless, *Hate Crimes Against the Homeless: America's Growing Tide of Violence*, August 2010, p. 11, at *http://www.nationalhomeless.org/publications/hatecrimes/hatecrimes2009.pdf* (September 22, 2010).

Chart 3 heritage.org

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To better comprehend how tiny the number of homeless murders counted by NCH are compared to the total number of murders committed in the nation, Chart 3 individually represents the 15,241 murders recorded by the FBI in 2009. Each of the 15,241 individual squares represents a single murder that occurred in 2009. The darker-shaded squares in the lower right-hand corner represent the 43 homeless murders reported by NCH. While tragic, the minuscule number of homeless murders counted by NCH fails to rise to the level of a national problem that requires federal data collection. Homicides of young black males are a much more pressing problem facing our nation. In 2009, the FBI identified 639 black males under 18 years old were murdered in 2009.[17]

However, when comparing incidents of crime over time or across jurisdictions, the standard practice is to express incidents of crime as a rate. Thus, the NCH count of homeless murders is expressed as the rate of incidents per 100,000 residents in Table 1. The U.S. Department of Housing and Urban Development estimated that there were 643,067 homeless individuals during a single point-in-time in 2009.[18] The entire population of the United States was over 307 million residents in 2009.[19] Based on these population figures, the rate of homeless individuals murdered by domiciled individuals can be calculated.

The national murder rate of the homeless using the data provided by NCH translates into 6.7 incidents per 100,000 homeless persons in 2009. The national murder rate for the entire national population was 5.0 incidents per 100,000 residents. While the homeless murder rate is higher than the national rate, the difference is neither startling nor a justification for the federal government to begin formally collecting statistics on homeless murders.

Table 1: Homeless and National Murder Rate, 2009

	Homeless	Nation
Population	643,067	307,006,550
Murders	43	15,241
Murders Per 100,000	6.7	5.0

Sources: FBI, Uniform Crime Reports, 2009; National Coalition for the Homeless, *Hate Crimes Against the Homeless: America's Growing Tide of Violence*, August 2010; and U.S. Department of Housing and Urban Development, Office of Community Planning and Development, *The 2009 Annual Homeless Report*, (Washington, D.C., June 2010).

After reviewing the national trend in homeless murders, NCH presents a state-by-state breakdown of violent crime committed by domiciled individuals against the homeless. According to NCH, there was at least one violent act committed against the homeless in 23 states and the District of Columbia during 2009. For the remaining 27 states, the NCH failed to record any violent acts against the homeless.

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Table 2: Rate of Violent Acts Committed Against the Homeless by State, 2009

	State	Violent Acts Against the Homeless	Total Violent Crimes	Homeless Violent Act Rate (Per 100,000 Homeless)	Total Violent Crime Rate (Per 100,000 Residents)	State Homeless Population	Total State Population
1	Alaska	6	4,421	301.20	632.95	1,992	698,473
2	South Carolina	5	30,596	111.78	5,102.25	4,473	599,657
3	Ohio	13	38,332	102.36	1,001.97	12,700	3,825,657
4	Arkansas	2	14,959	70.13	565.97	2,852	2,643,085
5	New Hampshire	1	2,114	60.79	18.31	1,645	11,542,645
6	Utah	2	5,924	52.70	129.88	3,795	4,561,242
7	Oregon	8	9,744	46.22	52.56	17,309	18,537,969
8	Oklahoma	2	18,474	41.34	1,394.71	4,838	1,324,575
9	Mississippi	1	8,304	35.75	22.47	2,797	36,961,664
10	Dist. of Columbia	2	8,071	32.11	289.85	6,228	2,784,572
11	Florida	16	113,541	28.78	3,929.50	55,599	2,889,450
12	Illinois	4	64,185	28.46	1,740.82	14,055	3,687,050
13	Pennsylvania	4	47,965	26.50	954.58	15,096	5,024,748
14	Nevada	3	18,559	20.72	628.69	14,478	2,951,996
15	California	27	174,459	20.28	2,770.84	133,129	6,296,254
16	Texas	7	121,668	19.04	965.25	36,761	12,604,767
17	Tennessee	2	42,041	18.99	325.64	10,532	12,910,409
18	New Jersey	2	27,121	15.19	406.97	13,169	6,664,195
19	Missouri	1	29,444	14.37	118.81	6,959	24,782,302
20	Indiana	1	21,404	14.32	245.80	6,984	8,707,739
21	Colorado	2	16,976	13.10	283.52	15,268	5,987,580
22	Washington	2	22,056	8.78	343.38	22,782	6,423,113
23	Georgia	1	41,880	4.91	426.08	20,360	9,829,211
24	New York	1	75,176	1.64	384.70	61,067	19,541,453

Sources: National Coalition for the Homeless, *Hate Crimes Against the Homeless: America's Growing Tide of Violence*, August 2010; FBI, Uniform Crime Reports, 2009; and U.S. Department of Housing and Urban Development, Office of Community Planning and Development, *The 2009 Annual Homeless Report* (June 2010).

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When looking at the states, the NCH report concludes that "Florida and California are the states where violence against the homeless occurs most frequently."[20] NCH "speculates" that "the homeless population in these warmer areas is an easy target for hate crime aggressors. Generally, our data suggests that warmer year-round climates with higher concentrations of homeless individuals document more violent acts against the homeless."[21] However, NCH's analysis does not control for the size of the homeless populations within the states. Controlling for the size of the homeless populations within the 23 states and the District of Columbia allows us to determine which jurisdictions have higher rates of violent acts against the homeless.

Table 2 uses NCH and FBI data to present the violent crime rate against the homeless and general populations of the 23 states and the District of Columbia. The states are ranked by highest rate of violent acts against the homeless. While the NCH report singled out California and Florida for having the highest number of violent acts against the homeless, these states rank in the middle compared to the other states when the homeless population is taken into account. Ranked 15th out of 24 jurisdictions, California had 20.28 violent acts against the homeless per 100,000 homeless individuals. With a violent act rate of 28.78, Florida ranked 11th among the jurisdictions. The state with the highest rate of violent acts against the homeless is Alaska. Controlling for the homeless population certainly undermines NCH's hypothesis that warmer climates make the homeless more vulnerable to violent crimes.

Table 2 also presents the violent crime rate for each of the states and the District of Columbia. In general, the violent crime rates are higher than the rates of violent acts against the homeless. The exception is New Hampshire and Mississippi. Each of these states had a higher rate of violent acts against the homeless than their overall violent crime rate.

When homeless advocates claimed that there were 3 million homeless individuals in America at any given point-in-time during the early 1980s, the number was so startling that it caught the attention of policymakers and the media. While the NCH report interpreted its data as presenting "shocking," "alarming," and "disturbing" findings, it produces no such startling numbers to support its goal of persuading federal, state, and local governments to collect data on crimes against the homeless.[22] While crimes against the homeless are unfortunate and should be prosecuted to the fullest extent of the law by state and local governments, the data presented in the report does not match the level of rhetoric used in the report.

The homeless commit too many violent and property crimes. While the homeless are frequently victims of crime, the NCH report conveniently failed to address the prevalence of crime committed by the homeless. According to social science research, the homeless are generally not a collection of law abiding individuals.[23]

A survey of 432 homeless youth between the ages of 13 and 23 years of age living in the Hollywood area of Los Angeles found that 25 percent admitted to having attacked another person with a knife (17 percent since residing on the streets) and 22 percent

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reported having fired a gun at someone (14 percent since residing on the streets).[24] Another study of 200 homeless youth residing in Edmonton, Alberta, Canada, found that they reported, on average, committing 3.11 property crimes, 2.89 drug deals, and 0.87 robberies over an undisclosed period of time.[25]

Of 42 homeless youth in San Jose, California, 96 percent reported contact with the police (40 percent reported frequent police contact), 74 percent had been previously incarcerated in juvenile correctional facilities, 31 percent were gang affiliated, and 73 percent reported having stolen from a store or person.[26]

A random sample of arrest data from Austin, Texas, found that homeless males accounted for:

- 4.0 percent of violent arrests;
- 0.0 percent of murder arrests;
- 6.5 percent of rape arrests;
- 9.6 percent of robbery arrests;
- 1.4 percent of aggravated assaults;
- 9.5 percent of property crime arrests;
- 12.1 percent of burglary arrests
- 8.7 percent of larceny-theft arrests; and
- 9.5 percent of auto theft arrests.[27]

The same study compared the arrest rates of homeless men to the arrest rates of domiciled men. While the study found that domiciled men had higher rates of arrest for overall violent crime and aggravated assault, homeless men had statistically higher arrest rates for robbery.[28] The difference in murder and rape arrests rates between homeless males and domiciled males were statistically indistinguishable.[29] For property crimes, homeless men had statistically higher rates of arrest for overall property offenses, burglaries, larceny-thefts, and auto thefts.[30]

The Hate Crimes Against the Homeless Statistics Act of 2009 is unnecessary. When Congress considers the need for collecting data on any social phenomena, the nature of the evidence presented to Congress should be instrumental to the decision-making process. A wrong assessment of the evidence can lead Congress to waste valuable resources of the federal, state, and local governments. The NCH draws conclusions far beyond the data presented in its report. An objective and fair analysis of the data presented in the NCH report simply does not support the notion that the federal government needs to collect statistics on crimes committed against the homeless by domiciled individuals.

The amount of crimes committed against the homeless by domiciled individuals, let alone such incidents motivated by "hate," does not rise to the level of requiring the federal government to collect statistics on this issue. Crimes against the homeless, like all other ordinary street crimes, should be prosecuted to the fullest extent of the law by state and local governments.

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While some may argue that the lack the of reliable data on the number of crimes committed against the homeless by domiciled individuals is justification enough for federal intervention, such logic leads the federal, state, and local governments down the road of collecting data on any perceived social problem, whether the problem warrants attention or not. The Hate Crimes Against the Homeless Statistics Act of 2009 is unnecessary.

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[1]Although all opinions expressed and any errors herein are my own, I am thankful for Senior Data Graphics Editor John Fleming's assistance with the graphics for this testimony.

[2]While my testimony concentrates on the statistics used to advocate in support of the Hate Crimes Against the Homeless Statistics Act of 2009 (S. 1765), it should be noted that the congressional regulation of hate crimes, whether against homeless individuals or others raises serious constitutional questions arising from the lack of a plenary police power in Congress. See, e.g., Brian Walsh, "Federal Hate Crimes Statute: An Unconstitutional Exercise of Legislative Power," Heritage Foundation WebMemo #2416, April 29, 2009, at http://www.heritage.org/Research/Reports/2009/04/Federal-Hate-Crimes-Statute-An-Unconstitutional-Exercise-of-Legislative-Power.

[3]Mary Ellen Hombs and Mitch Snyder, *Homeless in America: A Forced March to Nowhere* (Washington, D.C.: Community for Creative Non-Violence, 1982).

[4]*Ibid.*

[5]Christopher Hewitt, "Estimating the Number of Homeless: Media Misrepresentation of an Urban Problem," *Journal of Urban Affairs*, Vol. 18, No. 3(1996), pp. 431-447.

[6]*Ibid.*, p. 432.

[7]*Ibid.*

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[8]*Ibid.*
[9]*Ibid.*, p. 434.
[10]Peter H. Rossi, *Down and Out in America: The Origins of Homelessness* (Chicago: University of Chicago Press, 1989), p. 70.
[11]Gary S. Becker, "How the Homeless 'Crisis' was Hyped," in *The Economics of Life*, eds. Gary S. Becker and Guity Nashat Becker (New York: MacGraw-Hill, 1997), pp. 175-176.
[12]National Coalition for the Homeless, *Hate Crimes Against the Homeless: America's Growing Tide of Violence*, August 2010, p. 8, at *http://www.nationalhomeless.org/publications/hatecrimes/hatecrimes2009.pdf.*
[13]*Ibid.*, p. 10.
[14]*Ibid.*
[15]*Ibid.*, p. 11.
[16]Federal Bureau of Investigation, Uniform Crime Reports, 2009, at *http://www.fbi.gov/ucr/cius2009/offenses/violent_crime/murder_homicide.html* (September 26, 2010).
[17]Federal Bureau of Investigation, Uniform Crime Reports, 2009, Expanded Homicide Data Table 2, at *http://www.fbi.gov/ucr/cius2009/offenses/expanded_information/data/shrtable_02.html* (September 26, 2010).
[18]U.S. Department of Housing and Urban Development, Office of Community Planning and Development, *The 2009 Annual Homeless Report* (June 2010), p. i.
[19]Federal Bureau of Investigation, Uniform Crime Reports, 2009.
[20]National Coalition for the Homeless, *Hate Crimes Against the Homeless*, p. 14.
[21]*Ibid.*, p. 14.
[22]*Ibid.*, pp. 8 and 11.
[23]Michele D. Kipke, Thomas R. Simon, Susanne B. Montgomery, Jennifer B. Unger, and Ellen F. Iversen, "Homeless Youth and Their Exposure to and Involvement in Violence While Living on the Streets," *Journal of Adolescent Health*, Vol. 20 (May 1997), pp. 360-367; Stephen W. Baron, "Street Youths and Substance Abuse: The Role of Background, Street Lifestyle, and Economic Factors," *Youth & Society*, Vol. 31, No. 3 (1999), pp. 3-26; Marci Schwartz, Heather Kissinger Sorensen, Seth Ammerman, and Emilie Bard, "Exploring the Relationship Between Homelessness and Delinquency: A Snapshot of a Group of Homeless Youth in San Jose, California," *Child and Adolescent Social Work Journal*, Vol. 25 (2008), pp. 255-269; and David A. Snow, Susan G. Baker, Leon Anderson, "Criminality and Homeless Men: An Empirical Assessment," *Social Problems*, Vol. 36, No. 5 (1989), pp. 532-549.
[24]Kipke *et al.*, "Homeless Youth and Their Exposure to and Involvement in Violence While Living on the Streets," p. 363.
[25]Baron, "Street Youths and Substance Abuse," p. 13.
[26]Schwartz *et al.*, "Exploring the Relationship Between Homelessness and Delinquency," p. 263.
[27]Snow *et al.*, "Criminality and Homeless Men: An Empirical Assessment," p. 537.
[28]*Ibid.*, p. 538.
[29]*Ibid.*
[30]*Ibid.*

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Bringing America Home

Statement for the Record of the National Coalition for the Homeless

to the
Subcommittee on Crime and Drugs
Committee on the Judiciary
United States Senate

Hearing on
Crimes Against America's Homeless: Is the Violence Growing?

September 29, 2010

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INTRODUCTION

The National Coalition for the Homeless is pleased to submit a statement for the record to the Subcommittee on Crime and Drugs of the Committee on the Judiciary, United States Senate, for its September 29, 2010 hearing entitled, "Crimes Against America's Homeless: Is the Violence Growing?"

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 Hate Crimes Statutes

The National Coalition for the Homeless strongly supports current state and federal hate crimes statutes. They are among the civil rights pillars of the nation. NCH believes it is important for effective crime prevention, investigation and prosecution that there be in place policies and procedures to collect statistics about, assist law enforcement investigation of, and appropriately punish offenders who commit crimes against people or their property who are intentionally selected due to their socially recognizable status characteristics.

The National Coalition for the Homeless seeks to include people experiencing homelessness as a group category in state and federal hate crimes statutes. People experiencing homelessness are a group with recognizable status characteristics who are subject to intentional selection by offenders holding biases against them. Accordingly, protection of the law should be extended to the homeless population equal to the protection extended to other groups similarly selected.

There is precedent for inclusion of the homeless population in hate crimes statutes. Currently, Florida, Maine, Maryland, Rhode Island, and the District of Columbia include homeless people as a group category in either or both state hate crimes statistics or enforcement statutes. NCH applauds these states for their early leadership and urge other state legislatures and Governors to act similarly.

Further, NCH supports the inclusion of the homeless population as a group category in federal hate crimes laws so that all members of the homeless population who are victims of bias-motivated crimes may enjoy equal protection under the law regardless of the state in which they are living.

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,

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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.

Sadly, but with a great body of anecdotal 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 reports from homeless people and their advocates that such crimes were taking place. Since 1999 to the present, 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, the reports have documented over 1,074 acts of violence committed by housed individuals, resulting in 291 deaths of homeless people – 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, youth, and elders. Though our statistics are troubling, they likely 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 11th edition of NCH's annual report, *Hate Crimes Against the Homeless: America's Growing Epidemic of Violence*, offers yet another year of chilling evidence that people experiencing homelessness are being targeted for crime due to no other motivation than animus against them. We appreciate Senator Cardin for introducing this report into the hearing record.

For its reports, NCH gathers data on violent acts committed against homeless individuals from a variety of sources. The largest source of the incidents summarized in the reports is published news reports (nationally and locally). Attached to this statement is a sample of news articles describing bias-motivated attacks against homeless people over the last several years.

Crimes against people experiencing homelessness such as documented in NCH's annual reports are rightly understood to be hate crimes, and accordingly should be classified as such minimally for hate crime data collection, and, in our view, also for enhanced penalties at sentencing.

Hate Crimes Against the Homeless Statistics Act

The National Coalition for the Homeless supports the Hate Crimes Against the Homeless Statistics Act, legislation introduced in the Senate by Senators Ben Cardin (D-MD) and Susan Collins (R-ME) (S. 1765) and in the House by Representatives Eddie Bernice Johnson (D-TX) and Ileana Ros-Lehtinen (R-FL) (H.R. 3419). The legislation would direct the Federal Bureau of Investigation to

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monitor and collect data from law enforcement agencies on hate crimes against homeless individuals and to include that data in their annual report.

The National Coalition for the Homeless recognizes the important role that data and evidence play in public policy decision-making. Accordingly, we support the addition of the homeless population as a group category in national hate crimes statistical collection and reporting procedure. Federal encouragement to state and local law enforcement agencies to begin collecting and reporting statistics on bias-motivated crimes against people experiencing homelessness will assist the public, advocates, and policymakers in better understanding the depth and breadth of homeless hate crimes, and applying that knowledge to improvements in crime prevention, investigation, and enforcement.

Support exists across the civil rights community for the addition of people experiencing homelessness to the federal hate crimes statistics statute. 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 have signed letters to Senator Cardin and Representative Johnson supporting their legislation. Among the endorsers are National Law Center on Homelessness & Poverty, National Health Care for the Homeless Council, NAACP, the National Council of La Raza, the National Gay and Lesbian Task Force, the United States Veterans Initiative, the National Council of Jewish Women, Presbyterian Church USA, United Methodist Church, and a number of community-based homeless groups and local faith-based organizations. NCH appreciates the solidarity and support of our civil rights and human needs partners.

CONCLUSION

Hate-motivated violence is a threat that people experiencing homelessness persistently face and fall victim. Every day, a perpetrator intentionally selects a victim because they either knew or believed they knew that the person was homeless. Un-housed individuals, as a target of hate, have consistently grown over the past decade. Violent, often fatal, attacks on homeless Americans now outnumber all other categories of hate crimes combined. While homeless advocates' annual reports on the subject, dating back to 1999, provide extensive documentation of instances of bias-motivated violence against homeless people, they record only a fraction of the many cases of discrimination, harassment, selective enforcement, and violence that so often are ignored or unreported.

The National Coalition for the Homeless urges Congress to add people experiencing homelessness to federal hate crimes statutes, in keeping with the spirit and history of the civil rights movement. An important first step is enactment into law the Hate Crimes Against the Homeless Statistics Act.

We must as a nation place the responsibility of tracking statistics on hate crimes against homeless people into the hands of law enforcement agencies. Doing so would assist in better quantifying the extent of bias-motivated violence against homeless people, ultimately resulting in sufficient resources to solve the problem and create the solutions.

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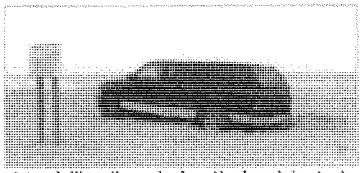
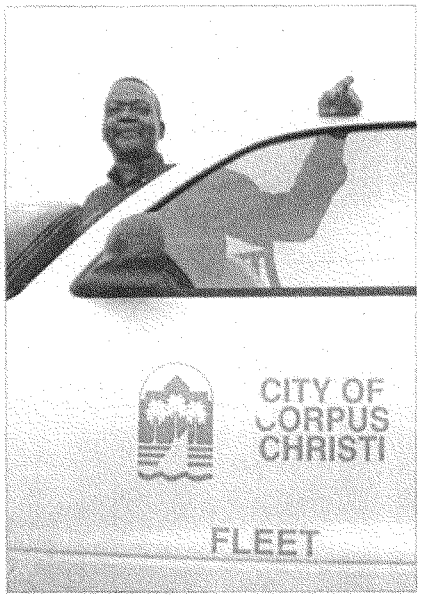
Eye on the Beach

photos by Carrie Robertson
thirdcoastphoto.com

Surveyors drive stakes into the ground marking property lines at Hayes and Gulfbreeze where beachfront property is for sale.



A truck illegally parked on the beach is stuck in the sand on April 24 near Surfside Park.



In April, J.R. Poindexter became the city's new Code Enforcement Officer covering the North Beach area. He will speak at the May 17 CCBA meeting.

Four men beat homeless man on North Beach

According to a May 3 article in the *Corpus Christi Caller-Times*, a homeless man was robbed, beaten and left naked on May 2 after four men woke him and ordered him to leave the Corpus Christi Beach area.

The incident was the second recently reported case of violence against the homeless in the Corpus Christi Beach area, said John Houston, Captain of CCPD's Criminal Investigation Division.

Randy Hazen, 32, was sleeping on a park bench near the Lexington Museum on the Bay when four men woke him at about 4 a.m. "They told him to get off 'their' beach," Houston said.

The men chased Hazen and ordered him to remove his clothes and give up his wallet, Houston said. The 32-year-old stripped down, turned over his wallet and clothes and was repeatedly punched before he ran naked into the Radisson Beach Hotel on the 3600 block of Surfside Boulevard.

In a similar incident on April 29, a 58-year-old homeless man was hit over the head by another man with a beer bottle and slashed in the stomach with the bottle's shattered remains at the 200 block of Surfside Boulevard, Houston said. The 58-year-old, who was near public restrooms when he was attacked, was taken to Christus Spohn Hospital Memorial with non-life threatening injuries, police said.

"These were the only two incidences we know of," Houston said during a phone interview on May 8. "There have been none previous and none since that we know about. We have very few leads."

gazette.com
COLORADO SPRINGS The Gazette

Homeless men say they were attacked; reports spread fear

By ANTHONY LANE and R. SCOTT RAPPOLD
2007-05-18 00:48:20

Reports that a roving gang of thugs is preying on the city's homeless are spreading fear, anger and some skepticism, but police say they have only spoken to two men claiming to have been attacked.

Neither suffered life-threatening injuries, police said.

Signs posted this week at Marian House Soup Kitchen and other places frequented by the city's homeless warn of eight attacks in recent weeks in which homeless men were "severely beaten."

Bob Holmes, an advocate for the homeless who put up the signs, said the attackers might be copying widely publicized videos showing homeless people being attacked or fighting for money.

The two attacks known to police happened May 8. Patrick Addison told officers three or four young white men wielding sticks and pipes attacked him that morning around 10:15 at Monument Valley Park, said police Sgt. Richard Pantle. Mark Luther, a friend who also is homeless, apparently went looking for the men a few hours later and was beaten.

Luther needed nine stitches on his head and suffered internal injuries, police said. Details about Addison's injuries weren't available.

Addison was intoxicated and could provide only vague information about what led to the assault or what the suspects looked like, Pantle said. He told investigators he was attacked without warning.

Police have heard rumors of other attacks, and there is another possible victim. Douglas Fortenberry was found May 6 lying on the ground in the 3000 block of Gunnison Street.

Police are investigating the case as an assault because of Fortenberry's injuries, police spokesman Lt. Rafael Cintron said, but officers have been unable to interview him because of his condition.

Fortenberry was in fair condition Thursday at Memorial Hospital, a hospital spokesperson said.

Few of the men waiting in line for dinner Tuesday evening at the Salvation Army food cart seemed to think attacks on the homeless were anything new. One man, identifying himself only as Randy, said he started staying about seven miles outside town in August when he heard reports of attacks. Others said older people and those who are isolated have been targeted, so they are staying more often in groups.

Another discounted the reports entirely, thinking other homeless people are making up stories about attacks after fights or bad falls.

A homeless man named James, speaking earlier in the day, said the attacks aren't surprising.

"You know why they do it?" he asked. "They think no one is going to care."

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This is Google's cache of http://wwww.neoch.org/grapevinearticles/81/violence_against_homeless_increasing.htm. It is a snapshot of the page as it appeared on Aug 11, 2010 07:27:52 GMT. The current page could have changed in the meantime. Learn more

These search terms are highlighted: **barbara butler gunner maynard** Text-only version

Violence Against Homeless Increasing

by Joshua Kanary

Gunner Maynard knew something was up when a black '02-'03 Pontiac Trans Am slowed down alongside him and some young men asked if he would be willing to sell his puppy. Maynard is a homeless man, and was walking his 4-month-old pit bull terrier and boxer mix, Train Avenue, on Cleveland's west side. Despite their persistence, Maynard declined and the car drove away. Intuition told him he had not seen the last of them.

Unfortunately, intuition was right.

On the evening of May 11th, the young men returned with a baseball bat and a knife. They waited until Maynard was gone to jump his wife, **Barbara Butler**, who was waiting alone at their campsite with Train Avenue. One of the attackers slammed Butler against a shed, breaking her collarbone.

"Get away from the dog before I stab you!" he snarled before he ran off to join others who had stolen the puppy.

Simultaneously, some of the other young men attacked Maynard not too far from the campsite as he returned from the store. The men assaulted him, resulting in several gashes to his head. Maynard ran to some nearby friends, but by the time he returned to the camp, the men were gone and the damage was done.

Maynard and Butler have exhausted themselves repeating this story to police, outreach workers, and media. Most people would already tired of answering the same questions and posing for the same pictures while still struggling with the difficulties that come with being homeless, but, as they both state, "We want our dog back."

These incidents (including another encounter two nights later, when the men returned and threatened to burn down the couple's camp) are the latest in a series of attacks on homeless people on the west side of Cleveland. Two men were jumped in two separate incidents in February and early April at a bridge over West 53rd. Then, on April 29th, a homeless man volunteering at the Franklin Circle Church evening meal was atacked by a group of teenagers, leaving him hospitalized with stitches in his knee.

In all cases, the attackers have been young white males, some with shaved heads, age 16-24. In some instances they were traveling on bikes. However, in the most recent incident, they were seen driving a black '02-'03 Pontiac Trans Am. Most of the attacks have occurred in the early evening hours.

Maynard and Butler are currently staying off the street and are in transition to permanent housing. Because Cleveland has become so dangerous to homeless people sleeping outdoors, the Northeast Ohio Coaltion for the Homeless has set up an Emergency Housing Fund in order to help homeless people get off the street and transition them into more stable and permanent housing.

NEOCH has also developed a safety tips flyer that it is distributing to homeless people in Cleveland. The flyer gives details of the incidents, where they occurred, what the attackers look like, and who to call in the event of an attack. The flyer's safety tips are geared toward homeless people who sleep outside, and suggests people should sleep in groups and out in the open, and should keep in daily contact with family and friends.

If you have any information regarding this incident or any other incidents, please contact the Northeast Ohio Coalition for the Homeless (NEOCH) at 216-432-0540.

If you have any information regarding this incident or any other incidents, please contact the Northeast Ohio Coalition for the Homeless (NEOCH) at 216-432-0540.

If you wish to make a donation to help Maynard and Butler, and others in similar situations, please contact NEOCH and tell them you wish to make a donation to their Emergency Housing Fund.

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April 2, 2010

Assault Is Latest Attack On Homeless People

August 12, 2007 | The Morning Call

ALLENTOWN

Police are investigating the beating of a homeless man early Saturday, the most recent of several assaults on homeless people.

Timothy Finn, 49, told police he was sleeping at the bus stop at 15th and Allen streets at 3:27 a.m. when he was awakened by three men who were yelling and cursing at him. The men struck Finn repeatedly in the face and head.

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He was taken to St. Luke's Hospital-Allentown, which said it did not have a patient admitted by that name.

Allentown police Capt. Daryl Hendricks said there have been a few other recent assaults on homeless people in the past few weeks, and police will investigate whether they are related.

He said Finn told investigators he believes he was targeted because he was homeless.

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THE MORNING CALL

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Police Look for Teens Suspected of Setting Homeless Man on Fire

Friday , October 05, 2007

Associated Press

NEW YORK —

A homeless man was critically injured Friday after being set on fire outside a New York City church where he had bedded down for the night.

Police were searching for three teenage boys in what homeless advocates say was one of the most severe and senseless attacks on a homeless victim in recent memory.

"I haven't heard of an incident like this in many years in New York," said Mary Brosnahan, executive director of the Coalition for the Homeless.

While the severity of the attack was unusual for New York, other U.S. cities have seen recent spates of violence aimed at homeless people.

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The torching of Felix Najera, 49, bewildered and stunned residents around Bethany Christian Church in upper Manhattan's East Harlem neighborhood. The 49-year-old victim was a heavy drinker who would ask passers-by for cigarettes, but otherwise was considered a harmless figure.

"It's a shame," said Gary Williams. "He doesn't bother anybody."

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Billings Gazette

Two young adults charged in Missoula footbridge homicide

TRISTAN SCOTTof the Missoulian | Posted: Sunday, December 9, 2007 11:00 pm

Two Missoula men were charged Friday with deliberate homicide for allegedly stomping a 56-year-old Navy veteran to death on a walking path, apparently without provocation.

Anthony St. Dennis, 18, a senior at Hellgate High School, and Dustin Strahan, 20, are accused of beating Forrest Clayton Salcido to death late Wednesday night. Prosecutors say both men have admitted taking part in the brutal attack.

Passers-by discovered Salcido's body Thursday morning on a path leading to the California Street footbridge. The victim lived most of his life in Missoula with his family, but often spent the nights outdoors in transient camps. He served in the military between 1971 and 1975.

Missoula County Coroner Mike Dominick said Salcido died of blunt-force trauma to the head.

St. Dennis remains in custody at the Missoula County jail on $500,000 bail. He has a previous criminal record, both as an adult and a juvenile. Strahan is jailed on $250,000 bail.

Deputy County Attorney Matt Lowy said Strahan played a less active role in the fatal attack, and was cooperative with law enforcement after initially lying to investigators.

"In contrast to Mr. Dennis, this defendant has been cooperative with law enforcement, and the state does not see that he played the same role, or as active a role, as Mr. Dennis," Lowy said.

According to court papers filed by County Attorney Fred Van Valkenburg, the men were sitting on a bench near the footbridge at around 10 p.m. on Dec. 5 when Salcido happened by.

St. Dennis started to pick a fight with the man, pushing Salcido and egging him on, according to the document. He first hit the man in the face about halfway across the bridge. Both men then continued to follow Salcido to the bridge's south side, punching him as he attempted to run away.

Salcido finally fell to the ground after a blow to his face, and the men continued beating him on the ground.

Strahan told detectives that he tried to stop St. Dennis, who stomped on the man's head "as hard as he could" between 20 and 30 times.

After the attack, the men walked to St. Dennis' house, where St. Dennis washed the blood off his tennis shoes in the bathroom and talked on the phone with some girls, according to records. Strahan told police his friend was "talking like nothing happened."

Both defendants had been drinking vodka.

Strahan said he was disturbed by the experience and told his mother what happened later on in the evening, then went to police after seeing news reports about the man's death the following day.

Strahan initially told investigators he and St. Dennis attacked Salcido because they caught him raping a woman, but later admitted the attack was random and unprovoked. Strahan said he joined in the attack after Salcido landed a punch on St. Dennis. He acknowledged Salcido was scared and had asked the men to leave him alone.

Police officers found St. Dennis Thursday night hiding in a closet at his grandmother's house in Missoula. They recovered a pair of tennis shoes covered with splotches of dried blood.

Once at the jail, St. Dennis called a woman on the phone and "made several admissions that he had killed the man on the California Street Bridge," records state. The conversation was recorded.

redding.com THE RECORD SEARCHLIGHT

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Redding police seek clues in brutal assault

By Record Searchlight staff

Tuesday, December 18, 2007

Redding police were still hunting Monday for clues in the apparent Friday night beating of a 46-year-old man who was found unconscious in the Parkview neighborhood.

Police said Tony Allen Souza of New York was taken to Mercy Medical Center after he was assaulted near the intersection of Leland Avenue and Fell Street. Cpl. Bill Schueller said Monday that Souza had been in the Redding area for about three months.

Police said that Souza was taken Friday night to Mercy suffering from a crushed skull, broken ribs, collapsed lung and was reportedly in a coma. However, a nursing supervisor said Monday morning that she did not have any information about Souza. It could not be learned if he might have been released from the hospital or transferred elsewhere.

Officers are continuing to search for the two men, who are described as white. One of them was said to be approximately 5 feet 7 inches tall and thin, and the other was 6 feet tall with short, blond spiky hair, police said. Those with any information about the assault are asked to call police investigators at 225-4214.

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More arrests in beating of homeless Akron man

Published: Monday, February 04, 2008, 9:17 AM Updated: Monday, February 04, 2008, 12:03 PM

Donna J. Miller, Plain Dealer reporter

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Summit County Jail

Heather Hiner

Two more people have been arrested in the attack on a homeless man in Akron.

Maurice Elliot Willis, 24, and Heather Susan Hiner, 25, are charged with kidnapping, felonious assault and aggravated robbery.

Police say they and four others tied John A. Rice, 36, to a chair Jan. 18 at a West Exchange Street apartment. They burned him with a heat lamp and punched and kicked him, Lt. Rick Edwards said. One used a knife to cut off Rice's boots.

Summit County Jail

Maurice Willis

Willis and Hiner were booked into the Summit County Jail over the weekend. Last week, Anna M. King, 19, and Mitchell L. Collins, 29, were charged with the same crimes. Donald Shaffer, 26, and Andrew Worley, 24, were arrested previously.

Rice spent three days in the hospital and needs continued medical care, detectives said.

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Summit County Jail

Anna King

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September 28, 2010
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Husband, 80, killed, wife shot near Youngstown church where 80-year-old slain earlier this year

LAW&ORDER

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Sixth suspect arrested in torture of man

By Beacon Journal staff report

POSTED: 04:29 p.m. EST, Feb 12, 2008

Akron police say they have arrested all six people allegedly involved in the torturing of 36-year-old man who befriended them.

Akron police Capt. Daniel Zampelli said today that the six "brutalized this man," over several hours on Jan. 18, tying him up, burning him with a lamp, and throwing apples at him in a bizarre game.

The man said members of the group urinated on him.

The man, who was hospitalized after the incident, suffered a cracked vertebrae. At the hospital, he received several staples on his head to heal wounds.

Police said today that they arrested the sixth suspect, Andrew J. Worley, 24, of Tarson Terrace in Akron, on Monday. He was charged with kidnapping, felonious assault and aggravated robbery.

Worley is in the Summit County Jail.

The five other suspects face the same charges.

Zampelli said that prior to the incident the victim befriended the six suspects and they "pretty much took over the (man's) apartment" on West Exchange Street.

The suspects attacked the man after they learned he had been evicted from the apartment, Zampelli said. Neighbors had complained about noise in the apartment, Zampelli said.

These other suspects are Heather S. Hiner, 25; Maurice E. Willis, 24; Mitchell L. Collins 29; Anna M. King, 19; and Donald E. Shaffer, 26.

All are in the Summit jail except for Shaffer, who was arrested in Texas.

Zampelli said police will seek an attempted murder charge against "many, if not all" of the six suspects.

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FrederickNewsPost.com

DETAILS OF HOMELESS MAN'S DEATH EMERGE

Originally published February 16, 2008

By Nicholas C. Stern

When members of the Frederick Police Department responded on Valentine's Day to the apartment where Willard Sigler was staying, they saw signs of a recent struggle on his body, according to court documents.

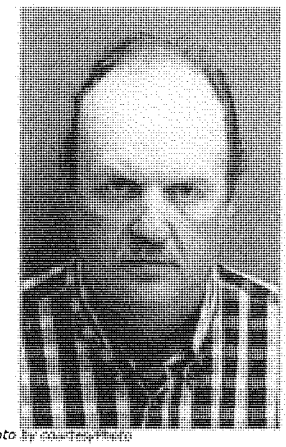

Photo by courtesy photo

Sigler

Officers arrested Sigler on Thursday and charged him with attempted murder and first-degree assault against Samuel Webster Hood Jr.

Hood, 57, was airlifted to R Adams Cowley Shock Trauma Center in Baltimore by a Maryland State Police helicopter. He died Friday, and police said the charges against Sigler will be modified to reflect murder.

Charging documents filed at the District Court of Maryland for Frederick County offer the following account:

A witness saw Sigler standing over another man in an alley west of 153 W. Patrick St.

Sigler then yelled for the witness to call 911.

The witness ran to nearby employment agency, Labor Ready, called police, and returned to the scene to find Sigler had vanished.

When police arrived, they found Hood with his skull cracked open. They also saw evidence of Hood being choked.

A windowsill in the alley and the white brick wall below had blood marks.

Information led police to Sigler's apartment at 202 W. 5th Street, above D & N Autoparts.

Officers obtained a search and seizure warrant for the apartment. They found a pair of black and white sneakers with blood spattered on them.

Police also found a black jacket streaked with white paint along with a pair of blue jeans stained and a black ball cap with blood and hair.

Sigler was later taken to Frederick Memorial Hospital, where he was checked for a shoulder injury. Officers said they saw scrapes on the center of Sigler's back.

According to court records, Sigler has a 16-year history of assault, domestic violence and drug and gun possession charges, for which he served time in prison.

Friends Lament

Arthur Lancaster works for Labor Ready and has been homeless for a year. He said he knew Hood and slept beside him on cold nights.

Lancaster said he saw Hood in the Alan P. Linton Jr. Emergency Shelter the night before he died.

"He was an obnoxious little twit who made me laugh," Lancaster said.

Theresa Davis, who is also homeless, said that Hood never disrespected her.

"He was a decent person," she said.

Laurie Wolfe, a friend of the family, said "I pray to God justice is done."

"Sammy didn't deserve that," Wolfe said, "no matter his faults."

Teresa McKenzie is married to Hood's uncle. She said Hood was known as "catdog" by his friends.

Around 5 feet tall, and weighing under 100 pounds, Hood liked to talk a lot but was harmless, McKenzie said.

McKenzie said Hood has three daughters, Beth Hood, Rachel Douglas and Jeannie Hood, and a son, Sammy Jr.

McKenzie said Hood chose to live as a homeless man.

"He loved everybody," McKenzie said, " and didn't want to start trouble."

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THE COMMERCIAL APPEAL
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Trio charged in Easter firebombing in Bartlett

2 more being sought after attack on homeless men

By Chris Conley

Wednesday, March 26, 2008

Bartlett Police on Tuesday ran down three suspects in the firebombing attack on two homeless men Easter morning and were searching for two others.

The three men charged Tuesday in the attack are scheduled to appear this morning to face charges in Bartlett City Court.

Zach Addison Parrish, 19, of Bartlett, was charged with attempted second-degree murder and attempted aggravated arson. Andrew Colin Hicks, 19, of Williston, and John Tyler Eggleston, 22, of Memphis, are charged with attempted aggravated arson.

Two other men are expected to be charged in warrants, police said.

The five men are accused of attacking the victims, one of whom suffered serious burns, early Sunday morning in a wooded area on the 8300 block of Stage Road. The two victims were staying in a tent in a wooded area behind a shopping center.

The suspects got into an argument with the two men, then left before returning later. The victims said they were pelted with Molotov cocktails, beer bottles filled with gasoline.

One bottle burst open and set fire to the clothing of one 39-year-old victim. He was taken to the Regional Medical Center at Memphis with serious burns on his head, neck and back. He has since been released.

Police were able to get a description of a pickup used in the attack and the name of a business where one suspect had worked.

"They did a diligent job chasing down leads," Bartlett Insp. J.J. Cox said of his detectives.

"They worked through the night, and it paid off," he said. "Someone could have been killed."

None of the suspects in custody has a prior criminal record.

-- Chris Conley: 529-2595

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It happened again Sent Thursday, June 12, 2008
http://www.aweber.com/archive/homelessvoice/1wEci/h/It_happened_again.htm

Wed, Jun. 11, 2008

2 homeless men victims of BB gun attack

click here for video

Two homeless men were shot early Wednesday morning with a BB gun in downtown Miami -- one as he slept and the other as he rode by on a bike, said police.

The men have been identified as John Rains and Willie Thomas, ages unknown.

The men have been treated at Jackson Memorial Hospital and released.

The shootings happened at 1:15 a.m. at Third Avenue and West Flagler Street. Thomas was sleeping on a mattress underneath Interstate 95 when he felt a pain in his upper left thigh, glanced at his lower body and realized he had been shot, said Miami police spokesman Napier Velasquez.

At the same time, another homeless man, Rains, was riding by on his bike and felt a pain in his side. He saw a silver pickup truck flash by. He pedaled his bike to the Miami police headquarters a few blocks away, walked inside and collapsed on the spot.

Both men were taken to Jackson Memorial Hospital.

The downtown area is a popular spot for homeless individuals to congregate, police said.

No one else was hurt in the attack.

Police have few clues to go on.

"Nobody in the area heard any shots at all," Velasquez said.

South Florida has seen several attacks on homeless people in recent years. In Broward County, two young men are on trial in connection with a fatal baseball-bat attack on a homeless man and similar, though not fatal beatings of two other homeless men.

http://www.miamiherald.com/news/breaking_dade/story/566070.html

By DAVID OVALLE AND ERIKA BERAS

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Santa Barbara Independent
WHO. WHAT. NOW.

The Tragic End of Gregory Ghan

Is His Murder Indicative of a Trend in Anti-Homeless Violence?

Thursday, July 24, 2008

In the early hours of May 31, two students walking by the Isla Vista Medical Clinic spotted a homeless man lying near its entrance. Unlike all the other unsheltered homeless sleeping on bits of pavement and dirt in and around Santa Barbara at night, this man was bloody. And moaning. By the time an ambulance got him to Santa Barbara Cottage Hospital, he was unconscious and his condition only worsened with time. Meanwhile, the Santa Barbara County Sheriff's Department issued a statement saying the man, 53-year-old Gregory Ghan, appeared to have been assaulted. On June 10, when family took Ghan off life support, that assault became a murder.

SB Sheriff

Gregory Ghan

Little is known about Gregory Ghan. He had a history of alcohol abuse. He was a loner, a camper, probably in Isla Vista for the Chula Vista festival. Jennifer Ferraez, a homeless outreach worker with the county, said he didn't like the shelters. Similarly, little is known about his attack, even now, eight weeks after it occurred. Sheriff's investigators have no serious suspects. They have information but are keeping most of it to themselves. They did, however, tell *The Independent* the attack was committed by two to five people. And they acknowledged there was a witness, another homeless man who goes by the name Shadow.

Wracked with guilt for not interrupting the fight, Shadow told *The Independent* some of what he saw and heard. He was sleeping behind a bush near the clinic the night of Ghan's assault when the sound of arguing and physical fighting woke him. Someone repeatedly said, "Why do you gotta kick somebody while they're sleeping?" According to Shadow, a different male then said, "You want to fucking die?" Shadow claims to have heard a bottle breaking and saw a young white male hopping around like a boxer and running off. Sometime afterward, a group of five people ran past the clinic entrance, and one reportedly said, "You're messing with our frat brother."

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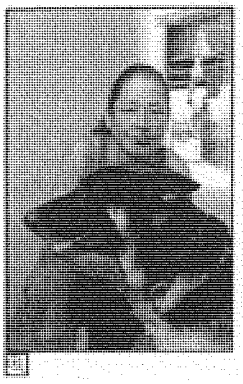
Sheriff's Department Sergeant Ross Ruth, who supervises Crimes Against Persons cases in the South County, said his team interviewed Shadow three times, but isn't convinced the perpetrators were students or young men on a meth-induced spree. Nor are they sure it was other homeless people wanting whatever government check Ghan may have had in his pocket. They're still looking for leads and hope anyone who knows anything about it will contact them.



Paul Wellman

Rescue dog: When Christhea Puglia was assaulted in Dwight Murphy Park last week, her dog stopped the attack. Homeless outreach worker Ken Williams said violent attacks against the homeless are increasing. "These are cowards hunting these people," he said.

But Santa Barbara homeless advocates say this story is bigger than Ghan's death. In recent months, they say, violent assaults on the homeless at the hands of the housed have increased, mirroring a trend taking place across America, according to the National Coalition for the Homeless and news outlets like the New York Times. Last month, a 42-year-old homeless man was beaten to death by teenagers in Cleveland, Ohio. The Associated Press reported six Bolinas, California, youths attacked and stabbed a homeless man in June. Meanwhile, five homeless individuals in Santa Barbara recounted violent assaults by non-homeless individuals since January. But because of poor relations with law enforcement, only two of them were reported to authorities.

"There's been a climate of declaring open season on people on the streets," said Father Jon-Stephen Hedges of Isla Vista's St. Athanasius Orthodox Church. "A lot of people talk publicly about the bums, like they're varmints."

Homeless man Holliman-not his actual name-said he was hanging with friends on an I.V. beach in the evening last May and decided to take a walk. He realized he'd gone too far by himself when a chubby, 30-ish white man accosted him and began hitting him. Holliman recalled the man said things like, "I have to work for a living" and "You don't have the right to get a check." He fought back and the man eventually withdrew. But half of Holliman's face was swollen and black and blue, and three ribs were broken. Hedges saw him afterward. "He was definitely smashed up," Hedges said.

Raymond Lucero, aka Pirate, said he was attacked last January while talking to a friend on lower Milpas Street. Out of the blue, he said, a skinny, six-foot-tall African-American man emerged from an alley

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carrying a log with nails sticking out of it. Lucero said the man, who did not look familiar-and he said he knows all the homeless in the area-was "cussing up a storm, and said, 'Get off the street. Get off my block.'" He took two swings at Lucero, the second breaking his elbow in multiple places. Santa Barbara police have a report of that incident, but Sgt. Mike McGrew said the investigation died due to a lack of leads.

Neither the police nor the county's Sheriff's departments have evidence of an increase in attacks on homeless by non-homeless. But since most homeless don't report, McGrew acknowledged, it's possible one exists. "I know that it does occur," McGrew said, "that people get upset [with the homeless] and yell at them. But they don't generally go to the police. That's their code."

The National Coalition for the Homeless keeps records of fatal and non-fatal assaults on the homeless. An April 2008 report, Hate, Violence, and Death on Main Street U.S.A., states that attacks on the homeless by non-homeless rose 13 percent between 2006 and 2007, with fatal attacks rising 40 percent. That translates to 160 homeless people reportedly assaulted in 2007, 28 of whom died. Sixty-four percent of the attacks are said to have been perpetrated by youths between 13 and 19 years old.

Brian Levin heads the Center for the Study of Hate & Extremism at the UC Riverside. He said with the exception of homicides, attacks on the homeless don't make it into government measurements of violent crimes. They're invisible victims, he said. And, as other groups targeted for hate get laws passed to protect them, young people are looking for newer, easier-to-hit victims. And the homeless are "one of the last groups in society that it is okay to hate," he said.

Perhaps the most recent example of this disregard for homeless in Santa Barbara is 47-year-old Christhea Puglia, who is staying at Casa Esperanza. On July 16, while she was reading a book in Dwight Murphy Field, two men approached her and asked for money. She stood up to leave. One smacked her across the face and hit her hard, knocking her down. They began kicking her, she said, and at least one got on top of her and tried to pull her pants off. Her dog woke up from his nap under the bleachers, and began barking and bit one man on the ankle, Puglia said. Her attackers fled. Puglia said her assailants were in their thirties, clean-shaven, and wearing nicer clothes than you see on the homeless. One had a moustache and a tattoo, she said. It wasn't until hours after the attack that the police took a report-at Puglia's request. No arrests have been made.

Hedges acknowledged that many find it easy to dismiss statements from the homeless. Sometimes their stories change, or mental illness or a drinking problem impair their thinking. People shouldn't ignore a story just because it's fuzzy around the edges, he said. "It doesn't mean the bruises are there because he fell down drunk," he said. "That dog won't hunt."

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TIME IN PARTNERSHIP WITH CNN

Wednesday, Oct. 22, 2008

Violence Against the Homeless: Is It a Hate Crime?

By Alison Stateman / Los Angeles

The chapel at Immanuel Presbyterian Church was filled to capacity last Saturday afternoon, with mourners moving up to the balcony. Much to the surprise of his family, hundreds of people — from infants to senior citizens — came to honor John Robert McGraham, a homeless man who was brutally murdered on Oct. 9. McGraham, 55, was doused with gasoline and set ablaze. Despite efforts of residents and shopkeepers to extinguish the flames, he died at the scene, on a sidewalk in front of a boarded-up dental office on the corner of West Third and Berendo streets in the mid-Wilshire area of Los Angeles. "They targeted him in my mind, and that's the worst kind of person," says his sister Susanne McGraham-Paisley of the suspects, who remain at large. "I hope they give them the full scope of the law because that person went to a gas station, filled up the gas can, drove to the site, poured gasoline on him and then set him on fire. That person had so many opportunities to change [his] mind and ... didn't."

California has the dubious distinction of ranking second, just behind Florida, in the number of lethal and nonlethal attacks against homeless people last year. It recorded 22, but, says Maria Foscarinis, executive director of the National Law Center on Homelessness & Poverty, the actual number of attacks is likely even higher because many are never reported. After a huge increase in 2006 — 65%, some of which is attributed to the video *Bumfights,* in which people who live on the street are pitted against one another — last year still saw an increase of 13%. Street people, says Foscarinis, live "outside, so they can be attacked by anyone for any reason. There are a couple of more subtle factors that are leading to this as well, and one of them is that there are increasingly punitive actions taken by cities against homeless people. So that also sends a message that these people are less than human and that attacking them is O.K."

The attacks on homeless street people are particularly vicious. "They are the most vulnerable people in the country," says Tony Taylor, a research associate at the National Coalition for the Homeless. "Over 1 in 4 attacks that are reported against the homeless end in murder. That's huge compared to one-tenth of a percent of other protected classes," he said, referring to categories of individuals currently protected under federal hate-crime legislation. These crimes typically include bias-motivated violence and intimidation against individuals based on their sexual orientation, race or religion. Being homeless and on the street is not one of the existing categories. In 2006, the last year that FBI figures were available for hate-crime fatalities, three individuals in the protected classes were killed vs. 20 homeless individuals.

Hence, there is a movement to get them covered by existing hate-crime legislation. The Coalition and Law Center are lobbying members of Congress to pass two bills, sponsored by Texas Representative

Eddie Bernice Johnson, which would amend two hate-crime acts. The first bill, H.R. 2216, introduced in Congress on May 8, 2007, seeks to amend the Hate Crime Statistics Act to include crimes against the homeless. This would require the FBI to collect data on crimes against the homeless — data sorely needed by homeless advocates — in order to determine if they are hate-motivated attacks. The second bill, H.R. 2217, introduced on the same date, seeks to include the homeless in the list of classes protected under the Violent Crime Control and Law Enforcement Act of 1994. Both bills have been referred to the House Subcommittee on Crime, Terrorism and Homeland Security.

Foscarinis says the proposed legislation seeks to increase the punishment for hate crimes against the homeless by three offense levels. "At the same time we are lobbying for real solutions, which are housing and social services for homeless people, we have to make sure their lives and dignity are respected," says Foscarinis. "The point of hate-crime legislation to act as a deterrent. It becomes a more serious crime when it's considered a hate crime, and there is a harsher sentence that's imposed. We want to send a message that homeless people's lives are just as valuable as anyone else's life."

That message has certainly been the unintended consequence of McGraham's murder. It has stirred outrage in the wider Los Angeles community. The Los Angeles City Council is offering a $75,000 reward for information leading to the arrest and conviction of the individuals responsible for the crime. But it is the people who actually saw McGraham on the streets over the course of 20 years who have been most affected by his violent end. Poignant notes have been left at a shrine erected at the site of his murder. "You didn't know me but I saw you on my frequent drives ... you touched me so deeply ... I am so sorry such cruelty took your life," read one letter. Another simply stated, "The neighborhood will not be the same without you." McGraham's sister Susanne was touched. "So many times when my family would go to see John, our hearts would be filled with so much sadness. My children wonld feel sad that we were leaving him all alone. I'm very grateful to hear that he was not alone, that his life had an effect on so many people in the neighborhood."

McGraham's death will be prosecuted as first-degree murder, a capital offense, according to Los Angeles Police deputy chief Charlie Beck. Even as she mourned, Susanne McGraham-Paisley said, "The people who did this to him did the cause of understanding homelessness a great service. Because the way in which they killed him and the way in which he died and the community's response has clearly shown that people do have an interest in someone like our brother."

(Click here for Pictures of the Week.)

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13 wthr.com INDIANAPOLIS

Three charged with plan to bomb homeless man's shack

Updated: Jan 14, 2009 1:59 PM EST

New Castle - Police officers interrupted three men before they could hurl Molotov cocktails at a homeless man's campsite in woods behind a church, authorities said.

Brandon S. Bell and Christopher J. Brinker, both 21, and Robert M. Vaughn, 20, were charged Tuesday with possession of a destructive device and trespassing.

The three New Castle men were apparently "out looking for mischief" Sunday night, and the 36-year-old homeless man became a target of opportunity, Deputy Police Chief Scott Ullery said.

The men told officers they went to the man's shack and threw rocks at it to see whether he was inside. They then bought some gasoline and put it inside a jar and a soap bottle and were planning to ignite the homemade bombs when officers interrupted them. The men dropped the firebombs and fled, but officers soon caught them.

Brinker had also dropped his cell phone, which officers found with a recently sent text message: "I'm bouts 2 burn a homeless guys shack down."

The homeless man wasn't injured.

The men were being held Wednesday in the Henry County Jail on bonds of $34,560 each. The destructive device possession charge carries a potential sentence of 20 years to 50 years in prison.

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The Seattle Times Jan. 23, 2009

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Drive-by shooting in downtown Seattle hospitalizes homeless man

By Sara Jean Green
Seattle Times staff reporter

A man who was shot in the face outside of Seattle's Benaroya Hall on Thursday night may not have been the intended target, police said.

The victim, who police described as a homeless man in his 40s, was shot once in the face by someone inside a moving car just before 11 p.m. near Third Avenue and Union Street.

Officers who responded to the shooting found the victim lying on the sidewalk, said police spokeswoman Renee Witt. He was taken to Harborview Medical Center with nonlife-threatening injuries.

The man was listed in serious condition Friday in the intensive-care unit, a hospital spokeswoman said.

Seattle gang detectives are investigating the shooting. Witnesses told detectives that an older red or maroon vehicle, possibly a Ford, had driven by a bus stop near the corner and someone inside the car fired at least four shots, Witt said. The vehicle sped off south on Third Avenue. Officers searched the area, but couldn't locate the vehicle, she said.

Other witnesses said a group of young men, who ran off, seemed to be involved in the incident, Witt said. One of the men from that group later returned to the scene and was detained and interviewed by gang detectives.

Witt couldn't say if the victim may have been an innocent bystander.

"We don't know if he was the intended target," she said.

Sara Jean Green: 206-515-5654 or sgreen@seattletimes.com

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http://www.newsnet14.com/2009/02/02/homeless-man-beaten-set-on-fire-near-utep/

Homeless man beaten, set on fire near UTEP

Posted on 02. Feb, 2009 by Shera Crossan in Shera Crossan

EL PASO — A homeless man suffered burns on 30 percent of his body when he was beaten and then set on fire early Friday near the University of Texas at El Paso, a police spokesman said.

The 41-year-old man, whose name was not released, was flown to the burn center in Lubbock and is expected to live, police said.

"As far as it being a hate crime, we don't know," police spokesman Javier Sambrano said. "What we do know he said he was assaulted by four males, possibly black, who ended up beating him up, poured gasoline on him and lit him on fire."

Sambrano said detectives in the Crimes Against Persons Unit found the spot where the assault took place under the Yandell Drive overpass near West Paisano Drive in an area frequented by transients. After the man was set on fire, he extinguished the flames and sought help at 4:50 a.m. from campus police at UTEP.

An investigation continued late Friday.

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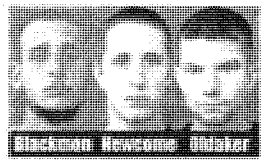
Updated: 7:54 PM Feb 23, 2009

Suspect Admits To Killing Homeless Man; Will Testify Against Others

One of three men charged in the death of a homeless man has pleaded guilty in court this morning. Court documents says the three beat and gutted the victim to teach him a lesson, then "laughed about it."



Posted: 10:24 AM Feb 23, 2009

Blackmon Statement

Newcome Document

Oldaker Statement

Recommend Be the first of your friends to recommend this.

One of three men accused of killing a homeless man in Jacksonville has pleaded guilty, in return for his testimony against the two others.

Jay Oldaker pled guilty to second degree murder before a superior court judge. Oldaker was originally facing first degree murder and now could be sentenced up to 24-1/2 years in prison.

Oldaker, along with 21-year-old Jason Blackmon and 22-year-old Dustin Newcome are accused of killing Mike Kozak last summer.

Court documents say the trio beat Kozak over the head with a pipe, a tree limb, and then used a broken beer bottle to gut him.

Prosecutors offered a plea deal in return for Oldaker's testimony against the other two men and, according to his statements, he had less to do with the murder.

Oldaker remains in jail and the judge ruled, for his protection, that he be kept in a different jail than Blackmon and Newcombe.

Sentencing for Oldaker will be held after he testifies in the other cases.

Previous Story

Jacksonville, NC - Statement from one of three men indicted last week in the murder of a homeless man in Jacksonville over the summer say they did it because they heard the man kissed a young girl.

Newly released statements from the three arrested, 21-year-old Jason Blackmon, 27-year-old Jay Oldaker and 22-year-old Dustin Newcome say they killed 41-year-old Mike Kozak in June of 2008 to teach him a lesson.

The statements are attached to the top of this report. Click on them to read them.

Documents state the trio beat Kozak over the head with a pipe, a tree limb, and then used a broken beer bottle to gut him.

Blackmon's statement reports "Jay picked up a pipe and started beating Mike in the head with it. As he was doing that, the pipe broke and I picked up the broken piece and started beating him in the head also. Dusty started jumping up and down on his midsection and Jay was still kicking him in the head."

Blackmon's statement also says he cut the victim's stomach open and then "reached inside and pulled his guts out. After that was done we all sat down and drank a beer while we laughed and talked about it."

Oldaker's statement says the three men went to the camp and "Dusty put him in a head lock and then Dusty threw him to the ground and JROC stomped him and then Dusty stomped him then I kicked him two or three times in the face then i notice he was not moving I sead that is enoff and then dust stomped on his chest and brock a 40 botel and told JROC to cut his stomick open." Oldaker's statement says he then left the scene.

Police say Newcome adamantly denies being at the camp and participating in the beating of Mike Kozak, saying "he and Mike were friends and he would never do that."

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The Houston Chronicle

February 25, 2009 Wednesday
3 STAR R.O. EDITION

HOMELESS MAN MOURNED 'DIDN'T DESERVE TO DIE LIKE THAT' Joe David Tall lived on the streets for nearly 30 years before being slain in what police are calling a 'thrill kill' HOMELESS: Diagnosed with schizophrenia at age 15

BYLINE: By DALE LEZON, HOUSTON CHRONICLE

SECTION: B; Pg. 1

LENGTH: 649 words

Roses and a small wooden cross mark the spot where a homeless man was killed as he slept on a bus bench at the University of Houston earlier this month.

Joe David Tall, 47, was shot once in the back of the head about 6:30 a.m. Feb. 7. Investigators said they have no suspects and no clues about why he was shot, but added the shooting appears to be a "thrill kill."

The victim's brother, Wade Randall Craven, 48, prayed at the bus stop on a recent night. He said he wished he could have done more to help his brother.

Tall had lived on Houston's streets for nearly 30 years, Craven said, because his mental illness drove him away from his family.

"He didn't deserve to die like that," his brother said.

Experts say Tall was among the 64,000 people homeless in Houston and Harris County during the last five years and that about 2 out of 3 homeless people have a mental disorder.

Often, experts say, families have a hard time persuading loved ones with mental illness to participate in treatment. And the strain of caring for them can be exhausting.

"Even people with as much compassion as you can imagine can just get worn out," said state District Judge Mark Kent Ellis, who handles cases in a court which began operating in 2006 in Harris County to help probationers with mental illness get treatment and complete their sentences.

Happy as a child

Craven said his brother had been a bright, happy child who loved fishing and playing football while growing up in northeast Houston.

But Tall's troubles began when he was diagnosed with schizophrenia at about 15 years old. His family found him treatment, but he became mean as his mental illness grew worse. He left home at about 19 and never had a permanent address after that, Craven said.

Tall rarely visited or stayed in touch with his family. His brother and family members often saw him walking, disheveled and dirty, in northwest Houston and gave him money for meals. They offered to let him sleep or bathe at their homes but he usually

refused.

Craven said his brother rarely ate or slept at shelters because he didn't like them.

"He was against anything that controlled him," Craven said. "I never hated **Joe David** for the way he acted because he had mental problems."

His family knows little more about his adulthood. But his Harris County arrest records dating back to 1991 offer a glimpse into his battle against schizophrenia.

He was sent to state mental hospitals for months at a time because he had mental illness when he was arrested for assaults and minor crimes, such as criminal mischief.

When he was treated at the hospitals and released from the judicial system, he returned to his street life rather than continuing mental health treatment, **Tall**'s family said.

Health professionals say many people with mental illness often don't want to seek treatment or don't know they need it. The public mental health system needs more programs to encourage people to seek help and to provide housing to help them continue treatment.

Refused to seek help

"We know what programs work and there are best practices that could help engage people in services," said Betsy Schwartz, president and chief executive officer of Mental Health America of Greater Houston, a mental health advocacy group.

However, they must be willing to participate in those services.

"Once the person is released from the hospital and the court and is back in his or her life it comes down to their choices," said Emily Palmer, spokeswoman for the Texas Department of State Health Services.

Craven said that he last saw his brother about a year ago. **Tall** was walking on Pinemont in northwest Houston.

His long hair was tangled and his thick beard was matted.

When Craven called his name, **Tall** looked at him and said: "I know you. You're my brother."

Craven gave him some money to buy food. **Tall** thanked him and shuffled away.

"I felt good," Craven said. "I got to help him."

dale.lezon@chron.com

LOAD-DATE: February 25, 2009

LANGUAGE: ENGLISH

GRAPHIC: Michael Paulsen : Chronicle COMPASSION: Amy Ramirez and her son Victor, 8, attend a community candlelight vigil at the University of Houston bus stop where **Joe David Tall**, a homeless man, was killed earlier this month. **Tall**'s family said he had suffered from mental illness since he was a teenager and had refused all offers of help. MICHAEL PAULSEN : CHRONICLE PRAYER: Pastor Brad Fuerst leads a prayer during a community candlelight vigil at the bus stop where **Joe David Tall** was killed. Experts say **Tall** was among 64,000 people living on the streets in the county in the past five years, and that most of them suffered from mental illness. ROBERT DIBRELL : CHRONICLE Map

PUBLICATION-TYPE: Newspaper

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NEWS - LOCAL - TOP STORIES

Published: Thursday, Feb. 26, 2009
Updated: Thursday, Feb. 26, 2009

Comments (11) | Recommend (0)

Homeless people vulnerable to attacks

By BETH BURGER - bburger@bradenton.com

BRADENTON — It remains unclear what led to the brutal beating of a homeless man behind a 14th Street West business.

The bloody attack has been on the lips of local homeless people who stay in the same area.

Daniel A. Case, who had been homeless on and off for about 10 years, was repeatedly beaten with an undisclosed object, according to police. He died from head trauma and was found slumped over, sitting in a chair behind Griggs Plumbing, 1317 12th Avenue West on Monday morning, according to authorities.

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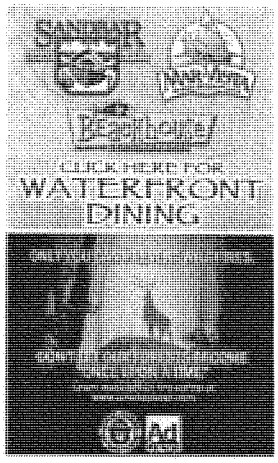

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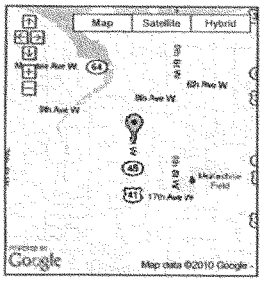


Gallery | Photos from crime scene

Family remembers homeless homicide victim

Charles Franklin, 58, lives on the streets in the same area. Like Case, he eats at the Salvation Army, just across the street from where Case was found. He remembered seeing Case.

"You didn't see (Case) much because he didn't put himself out there to be seen. Someone had to come to him because he always stayed away," Franklin said.

Franklin, who stays outside, said he was going to consider using the shelter for the next few days.

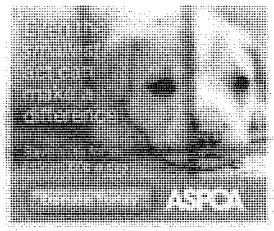
"That could have been me," said Franklin who was waiting outside the shelter before dinner.

Salvation Army Maj. Robert Pfeiffer said the shelter's overnight stays at the 14th Street West location have increased over the past few nights. However, it's difficult to ascertain if it's because of temperatures dipping below 50 degrees or Case's brutal killing, which happened across the street.

Many of those who sleep on the streets or under bridges tucked away are vulnerable to crimes, Pfeiffer said.

"One of the problems you will always have is a segment of the population who does not want to sleep inside. They fall victim to crimes because they are exposed," he said. "They are in areas where if something happens, there's no one to see it."

In exchange for doing light tasks at Griggs



Plumbing. Case was allowed to sleep on a cot tucked away in the rear of the building where he was found dead.

Homeless people, like Case, are also easy targets because they often carry alcohol and cash.

"As the economy worsens and more people become homeless we're going to see a rise in this kind of crime because desperate times will lead to desperate measures," Pfeiffer said.

Franklin also fears there will be more violence involving homeless people.

"With the economy being the way it is and people being so frustrated — and not having work," he said. "People are doing the wrong thing."

Bradenton Police Lt. John Affolter said there are no new leads in the case. A motive has not been determined.

"We're hoping someone will come forward with information," he said.

Anyone with any information about Case's death, can contact Bradenton Police Department Detective Greg Price at 932-9355 or remain anonymous by calling Crimestoppers at (866) 634-TIPS (8477). The Manatee County Gold Star Club is offering up to $10,000 reward for information leading to an arrest in the case.

Beth Burger, criminal justice reporter, can be reached at 708-7919.

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KIMBERCASE wrote on 02/27/2009 10:56:45 AM:

To save the family anymore grief he picked the streets. Its not that he didnt try to get help he tried and help was slow and not many could see the proper help that was needed. Dan had a heart of Gold that was shattered. People to me have become so cold hearted. Life for most is not all peaches&cream nor can they put food on the table. Im sure Dan chose to stay behing the Grigg's Plumbing to leave a open space for another to stay. THANK YOU for standing by Dan and giving him the chance to become a better person. Dan was stubborn and did many things in his own time but We LOVED HIM VERY MUCH AND WILL MISS HIM,RIP HARD CASE LUV US.

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KIMBERCASE wrote on 02/27/2009 10:45:01 AM:

Hello everyone, I want to Thank the ones who cared for Dan and seems to understand why some veterans and others are homeless. And for those who have not a heart may God shed light and understanding on you, you can not judge one until you walk a mile In one's journey & Do unto others as you would want to have done to you. Dan was my husband a good man with strong beliefs and a vietnam vet who felt as if they had been lied to by the goverment and promises were not kept when they came home. Many vets from that time feel this way I work close to them to this day. Dan had pride and loved his country and family very much. His addiction to beer came from dealing with the nightmares he had, on many occasions id wake to him moving furniture to get away from charlie (the bad guys) and being so scared he wet himself and tried to dig a hole to hide in. Yes this is very personal but i felt that to understand how one can become addicited to beer it was to put the dreams to sleep.

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Voice_of_Reason wrote on 02/27/2009 08:26:48 AM:

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1 WOMAN AND 4 MEN SOUGHT IN STABBINGS OF HOMELESS

Gazette, The (Colorado Springs), Mar 6, 2009 by CARLYN RAY MITCHELL carlyn.mitchell@gazette.com

Colorado Springs police are searching for four men and a woman they say stabbed homeless men in attacks in November and January.

On Nov. 18, a 64-year-old homeless man was stabbed in the abdomen, chest and head. His left wrist was cut to the tendon by what appeared to be a saw, police said. The attack occurred at 3100 Century St., near the railroad tracks behind Wagner Equipment in the area of Fillmore Street and Nevada Avenue, police said.

On Jan. 20, a 49-year-old homeless man was attacked after leaving the McDonald's at 324 E. Fillmore St. about 9 p.m. He was robbed and cut on his arms, face and abdomen. The victim was found the next morning in the parking lot of Dewitt Transportation at 3106 Stone Ave., across the street from the McDonald's. He also had road rash, indicating his attackers dragged him.

The victims' names were not released.

The attacks occurred within blocks of Flanagan Park, where police believe the attackers hang out, said detective Pam Konz. The group may also hang out at Roswell Park, just south of Fillmore near Interstate 25.

It is possible the attacks were a form of gang initiation, but neither incident has been officially tied to gang activity, Konz said.

Based on the descriptions and similarities in the assaults, investigators believe they were

committed by the same attackers, Colorado Springs police Lt. David Whitlock said.

In both incidents, the victims described their attackers as Hispanic males in their late teens to early 20s. In the attack on Fillmore Street, one of the attackers, said to be the man who stabbed the victim, was described as a Hispanic male, 5-foot-9- inches to 5-foot-10-inches tall, 17 to 22 years old, with a stocky build, black hair, a round face and a gap between his front teeth. A white woman reportedly took part in the attack in January.

The victim in the first attack was hospitalized for a month. He is now living with friends, Konz said. The victim in the second attack is living with his sister.

The Gazette does not identify the race or ethnicity of suspects when the description provided by police is too vague to identify an individual.

An exception is being made in this instance because a sketch of one suspect was provided, the assaults were committed by a group and because of the danger to the homeless and others.

Anyone with information about the attacks is asked to contact Konz at 444-7233, the Colorado Springs Police Department at 444- 7000 or Crime Stoppers at 634-7867.

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Man sentenced in bat beating

Staff Reports

Saturday, April 5, 2008

A 24-year-old Redding man was sentenced Friday to 10 years in prison after pleading guilty in February to attempted murder in connection with the Dec. 14 baseball bat beating of a homeless man in Redding.

Nathaniel Kem Lloyd, who also admitted causing great bodily injury to then-47-year-old Tony Souza during the attack, must serve 85 percent of his sentence, or about 8½ years, before being eligible for parole, said Deputy District Attorney Kelly Kafel. His 123 days in jail will be applied to his prison sentence.

Souza was in court for the sentencing. He suffered a crushed skull, broken ribs and a collapsed lung in the attack, and also suffers from limited mobility and vision.

Lloyd, who had no significant criminal history, was arrested by police Dec. 20 after striking Souza 10 to 15 times with an aluminum baseball bat in the Parkview neighborhood area, police have said.

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NEWS HOME WATCHDOG

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Bat-wielding assailants brutally beat homeless man

BY KAREN KUCHER
TUESDAY, APRIL 7, 2009 AT 7:59 A.M.

ESCONDIDO – A man sleeping in bushes near a flood-control channel was brutally beaten by two assailants early Tuesday morning, possibly with a baseball bat, police said.

The victim, a man in his 40s, suffered serious head injuries in the attack and was hospitalized in grave condition, police Lt. Neal Griffin said.

Police responded to the area near Valley Parkway and Harding Street shortly before 2 a.m. and found the victim, Griffin said.

Another man who was sleeping in the area told police that two men wearing dark clothing and carrying what appeared to be a baseball bat attacked the sleeping man. Police said the assailants were Latino, and in their early 20s.

After the attack, the two ran away.

"We don't know of any kind of motive at this point. It certainly appears it was unprovoked," Griffin said.

A team of detectives remained in the area Tuesday morning, interviewing possible witnesses.

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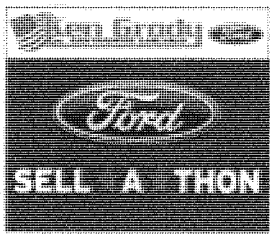

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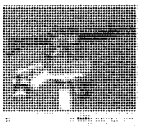

Police: homeless man shot 50 times

Suspects used BB and pellet guns, detectives say

Updated: Thursday, 16 Apr 2009, 3:33 PM EDT
Published : Thursday, 16 Apr 2009, 5:36 PM EDT

The weapons taken from a group of teenagers early Wednesday morning are enough to make any police officer's heart skip a beat -- the three guns, really BB or air guns, were allegedly used to shoot a homeless man who was sleeping on a bench in downtown New Port Richey.

"I think it's the real thing," Sgt. Howard Snyder remarked as he examined the three guns.

Two of the guns appear to be hand guns. The third looks, feels and sounds just like a military issued M-16 assault rifle. The only thing that distinguishes the air guns from the real thing are the orange tips painted on the end.

Sgt. Snyder told Fox 13 that had police encountered the boys with the guns, they would have been treated as real. Police say the boys were driving around New Port Richey overnight Tuesday, into Wednesday morning.

They encountered the man sleeping on a bench at the corner of Adams and Main Streets. The 29-year-old man says he was shot 50 times. Amazingly, he declined medical treatment.

"We don't realize the protection of four walls," said Dan Campbell, a member of Pasco County's Coalition for the Homeless. "The type of people who commit these crimes on the homeless are feeling out of control."

It's not clear what the boys were feeling when they allegedly fired on the man. Jose Casbillo-Gomez is 18 years old, and charged with aggravated battery. His co-defendant, 18-year-old Patrick Pinder, who faces the same charge, was once a member of the Pasco Sheriff's Explorer Post. Shortly after his arrest, he was terminated from the Explorers.

In the meantime, the homeless man has not been seen or heard from since the shooting.

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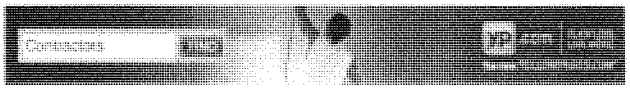

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Police say teens plotted to attack homeless man

By Ryan Sabalow

Saturday, April 25, 2009

Three Redding teens plotted on Saturday to find a homeless man, beat him and take what little he had because "he was an easy target," police said Friday.

And after they beat Timothy Lee Alcorn, 48, so severely that he eventually died from his wounds, they went out and robbed another homeless man on the same day Alcorn's body was found, Redding Police Sgt. Dean Stainberg said Friday morning at a news conference.

Stainberg described Alcorn's beating as brutal in its ferocity. The three teens, ages 15, 16 and 18, armed themselves with weapons and plotted how they'd carry out their attack, Stainberg said.

Two of the boys hid, while the third went down to speak with Alcorn in a wooded area behind Masonic Avenue. When Alcorn's attention was diverted, the other two hit him from behind, Stainberg said.

"The beating was savage," Stainberg said.

The teens dragged their unconscious victim under a bush and left him, Stainberg said.

Alcorn later regained consciousness and was spotted about 10:30 p.m. Saturday by a man on nearby Lake Boulevard, who called police. The witness, Ryon McCullough, 29, said he asked Alcorn, who appeared drunk and was covered in blood, if he was OK.

McCullough called 911 and two officers were sent to the area, but they couldn't find Alcorn, Stainberg said.

The next day, after Alcorn was reported missing, investigators found two blood spots in the area, but they couldn't locate the victim. On Monday, a friend of Alcorn's family, 51-year-old Tom Smitherman of Shasta Lake, found the body and called police.

Stainberg declined to reveal what weapons the teens allegedly used in the attack. He also declined to reveal what the teens allegedly took from Alcorn.

The trio later admitted to investigators that they robbed another homeless man on Monday in the same homeless encampment behind Masonic Avenue, Stainberg said.

The victim in that case hasn't come forward, Stainberg said.

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Anyone with information on the alleged beating and the robbery is asked to call Redding police investigators at 225-4211.

On Thursday afternoon, the two younger boys were arrested at the Redding Library. The 18-year-old, Albert Curtis Sanchez, was arrested about 6 p.m. at a West Street apartment.

Each of the boys likely faces charges of murder, robbery and kidnapping. They're likely to be arraigned on Monday afternoon, said Shasta County District Attorney Jerry Benito.

Prosecutors are still trying to determine whether the two juveniles will be identified and tried in adult court, Benito said.

Benito hinted that the teens likely would be tried as adults, saying at the news conference that his office has a history of prosecuting teens in past murder cases.

"The impact on the victim and the victim's family is the same whether the perpetrator is 17, 15, 16, or 18," Benito said.

Alcorn's mother and father said at the news conference that the death of their son was senseless, and they wept in front of reporters while they described his life.

Hershel Alcorn said before breaking down in tears that his son often gave away his food stamps to families who were worse off than he was.

Timothy Alcorn's mother, Charlayne, said that though her son fought a battle with alcohol, he remained a good Christian all his life.

"It's horrible for us to go through this," she said. "There's no rhyme or reason for it."

Redding Police Capt. Paul Grooms said Saturday's beating reminds him of case he investigated back in 1994 involving a year-old, unsolved beating death of a homeless man.

Paul Edward Jordan, then 28, was driving around in a pickup with two teens when he came upon a "bum" dozing in a sleeping bag, under a railroad trestle in south Redding.

They stopped and Jordan got out of the truck.

He picked up a large stick out of a nearby fire pit, hit Steven George Atchison, the 44-year-old transient, several times and then got back in the truck and drove off.

Atchison died from the head injuries, and was later found dead, still in the bag, by passers-by.

The case went unsolved for more than a year. A tip led Grooms to Jordan, who eventually pleaded guilty to second-degree murder and was sentenced to 16 years to life in prison.

Grooms said Jordan didn't like homeless people in the area and he picked Atchison to

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attack because he was vulnerable.

Reporter Ryan Sabalow can be reached at 225-8344 or at rsabalow@redding.com.

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Another homeless man badly beaten in Redding

By Ryan Sabalow

Originally published 03:47 p.m., April 30, 2009
Updated 03:47 p.m., April 30, 2009

Hidden behind his glasses and under the left side of Jeffrey Smerber's baseball cap brim are a greenish-black bruise and a scabbed-over, inch-long cut next to his eye.

Painful and tender, Smerber's left eye is now forced into a perpetual squint.

"It's gotten better," the 51-year-old homeless man said today after lunch outside Living Hope Compassion Ministries in Redding.

Smerber's injuries may be healing, but he's still reeling from the beating he received on Saturday night, a week after Timothy Lee Alcorn, a 48-year-old homeless man was beaten so badly he later died.

Smerber's injuries weren't nearly as severe as Alcorn's but Redding police are nonetheless taking the case seriously.

Sgt. Dean Stainberg said an investigator was assigned to the case after Smerber's beating was reported earlier this week. An officer interviewed Smerber and took pictures of his wounds.

The investigation is continuing and no suspects have been arrested.

But just days after Alcorn's death, police worry there may be a trend of violence toward the homeless.

"Two so close together, I don't remember in all my years here that happening," said Sgt. Bruce Bonner. "We hope this isn't the start of something."

Smerber says he was asleep outside on a discarded mattress Saturday night in south Redding when he was awakened by at least three people attacking him. One of them kicked him in the head.

"I had put my glasses in my hat, like I always do," Smerber said. "My eyes are pretty bad."

Smerber said he got up and tried to follow them, but he passed out mid-run, his head hurt so bad.

Smerber said that earlier Saturday, he'd gotten into a confrontation with three teens

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who had been standing on a train stopped in the area.

"They were throwing rocks at my friend," he recounts. "I said, 'Don't be throwing rocks at my friend, and get off that damn train.'"

He said it was dark and his eyes were too bad to determine whether the rock-throwing teens were the same assailants.

Police say it was three different teens who jumped Alcorn and bludgeoned him to death with a discarded table leg and two metal bars.

The Redding teens, John Hadley Thompson, 15, Albert Curtis Sanchez, 18, and Jared Cory Voss, 16, are charged with murder, robbery and kidnapping. Sanchez and Voss have pleaded not guilty and Thompson is scheduled to enter a plea on Friday.

Police say the teens plotted to rob and beat a homeless person on April 18 and picked Alcorn "because he would be an easy target."

After hitting him around 15 times, knocking him bloody and unconscious, they dragged Alcorn under a bush and left him, police said.

His body was found two days later. The three teens were arrested Thursday, April 23, after tipsters called police.

On Sunday, Alcorn's recent death fresh in their minds, workers at Living Hope Compassion Ministries in Redding were understandably frightened when Smerber arrived bruised and bloody himself.

Jordan Storment, the homeless day center's site coordinator, said he pleaded for Smerber to go to the hospital and file a police report.

But Smerber told him he was afraid that he'd be arrested because of outstanding legal problems. Storment said it was only after police promised not to arrest Smerber that he agreed to speak with them.

Storment said what bothered him most was seeing the normally tough and stoic Smerber breakdown when he described the attack.

"He said 'I was just trying to sleep,'" Storment said. "'What did I do to them?'"

Smerber said that since the attack he no longer sleeps outside. He says he's staying at the Good News Rescue Mission in Redding.

Smerber said he knew Alcorn, but not well. That's not to say he wasn't saddened by his death.

"He never bothered anybody," Smerber said.

Alcorn's death and his attack leaves him worried, both for himself and other homeless people in Redding.

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"I don't know if it's a trend now that young teenagers are out beating up the homeless," he said. "I sure as heck hope it ain't. It ain't right."

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Published: June 03, 2009

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3 Arrested In Beating Of Homeless Man

By

Three men are charged in connection with the beating of a homeless man in Reynoldsburg last month.

REYNOLDSBURG, Ohio -- Three men are charged in connection with the beating of a homeless man in Reynoldsburg last month.

Reynoldsburg police said that on the evening of May 10 and into the morning of May 11, Robert Wirtz was assaulted and sustained serious injuries from the attack.

The incident occurred in the area of Connell's Hardware store on East Main Street, where the homeless victim is known to stay.

Officials investigated and three people have been identified as causing the injuries and have been arrested and/or charged with the offense.

Mike Hutton, 18, of Groveport is charged with felonious assault -- a felony of the second degree.

Tyler Paul, 17, of Canal Winchester, is charged with felonious assault -- a felony of the second degree.

Jeremy Bowman, 17, of Reynoldsburg is charged with felonious assault -- a felony of the second degree.

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Santa Cruz Sentinel.com

As We See It: Young teens charged in brutal murder a sad chapter in gang violence

Posted: 08/05/2009 01:30:09 AM PDT

The arrest of seven people in connection with the April murder of Jose Marie Barajas on the Pajaro River levee is another sad chapter in the ongoing story of gang violence in Santa Cruz County.

It is a tragedy on so many levels.

A homeless man who lived at a camp on the river is dead, the victim of a brutal beating and stabbing.

Three young teenagers, a 15-year-old and two 14-year-olds, are among those facing murder charges with gang allegations. The 15-year-old and one of the 14-year-olds will be tried as a adults.

A 12-year-old boy is accused of witness intimidation and gang allegations.

The refrain of gang violence is becoming all too familiar, from Santa Cruz through Live Oak to Watsonville. At every instance, we ask many of the same questions.

How can we stop it?

Where will it end?

How many lives will be lost?

We need look no further than a few miles to the south to Salinas to see how invasive gang violence can become. The city marked its 17th and 18th gang-related killings of the year this past weekend.

It is not for lack of law enforcement effort or community vigilance that Salinas continues to struggle with gangs. Rather it is indicative of how difficult it is to stop the violence once gangs become established.

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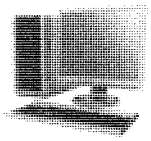

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We have seen that locally as well. Law enforcement continues to crack down on gangs, lawmakers enact stiffer penalties and community members keep greater watch over the activities in

the neighborhoods. All those actions help fight gang activity, but none provides a magic eraser that blots out gangs, and the violence continues.

As we look around this county, we realize how vitally important intervention programs have become. If we are to slow gang violence, we must steer youths away from the forces that draw them to gangs.

Turning youths away from gangs, one at a time, is a long process. And when seven people are arrested for a horrific crime, it provides little solace to think that possibly the number could have been six if someone had been able to successfully reach out to just one of them.

Such intervention may have little impact on gang violence, but it can have tremendous impact on one life. And that is a worthy goal.

The brutal death of Jose Marie Barajas on the Pajaro River levee is a tragedy. So is the fact that lives so young may forever be ruined by falling into the grip of a gang.

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MERIDIAN STAR

August 7, 2009

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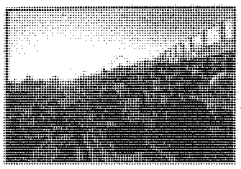
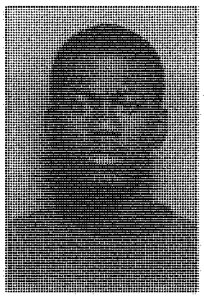


Fair Time

The Queen City Fair celebrated its 10th year opening Monday at the Lauderdale County Agri-Center with cooler temperatures to go along with the change of seasons.

The fair will be open 4 p.m.-10 p.m. this week through Thursday, 4 p.m.-midnight Friday, noon-midnight Saturday, and noon-8 p.m. Sunday.

Arrests made in homicide of homeless man (http://meridianstar.com/local/x1896314089/Arrests-made-in-homicide-of-homeless-man)



Victim's sister has mixed emotions in light of new

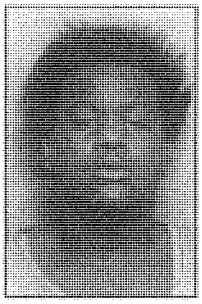
By Brian Livingston
(http://meridianstar.com)

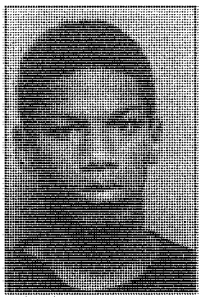
No one said it was easy to be a Christian.

Marie Fanning found herself in a state of flux after getting the news Thursday morning four Meridian males, three teenagers and one 20-year old, had been arrested by detectives of the Meridian Police Department for the beating death of her brother, David A. Caraway.

"On the one hand I'm angry my brother was

killed this way," said Fanning from her Hickory home Thursday afternoon. "If it is determined these people really did do it then I don't want to even look them in the faces. I'm afraid of what I might say. But then again I want to try to forgive them. Nothing is going to bring David back and it is clear to me these individuals, if they are convicted, need help."





MPD Capt. James Sharpe, commander of the Criminal Investigative Division, said the four men who have been arrested in connection with the case were Antonio Chapman, 19, Antshawn Davis, 17 and D'Anthony Davis, 19, all of 2801 Seventh St., and Marcus Anderson, 20, of 2806 Seventh St. All four have been charged with manslaughter and armed robbery. Antshawn Davis was placed on $100,000 bond for each offense. D'Anthony Davis and Marcus Anderson had their bonds set to $50,000 apiece for each offense. Chapman's bond has not been set yet.

According to the press release issued by Sharpe, Caraway's body was found June 30 in an alley behind the Hope Village thrift Shop located at 2716 Eighth St., by a citizen who was walking through the area on the way to work. The citizen stated that Caraway was seen in the alley on the previous morning and it was thought that Caraway was just sleeping. The next morning the citizen saw Caraway lying in the same spot and position and felt that something might be wrong so authorities were notified. Lauderdale County Coroner Clayton Cobler determined that Caraway had been dead as much as two days prior to his body being found.

Detectives with the MPD's Criminal Investigation Division officially classified the death of Caraway as a homicide on July 1.

According to a preliminary autopsy report from the Mississippi State Crime Laboratory, Caraway, 52, suffered superficial, non-life threatening wounds to his head and face area as well as defensive wounds to his hands. It was further determined that Caraway's death was caused by blunt force trauma to the internal organs, which was caused, detectives believe, by a physical assault. Caraway later died due to those injuries.

MPD Chief Benny DuBose said late Thursday information provided by the general public was instrumental in this case as well as in the recent incident in which a young boy was hit by a car.

"In both cases citizens rose up and helped us a great deal," said DuBose. "The patrol officers who have been on the streets also did an excellent job."

Fanning said she tries to be a Christian woman. A retired teacher, Fanning has dealt with thousands of young people from elementary school to high school. She said she felt disturbed as first the suspects were so young and wondered what could have led them to do such a thing to a person as harmless as her brother.

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"I know if they are indicted then there will probably be a trial," Fanning said. "It is so sad they are so young. It is also a small comfort to me they will not be able to hurt someone else."

This case will be presented to the November 2009 term of the Lauderdale County Grand Jury for indictment consideration.

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Anchorage Daily News

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Police arrest pair in assault posted online

JAMES HALPIN
jhalpin@adn.com
(08/13/09 21:33:37)

With their video camera rolling, a young white couple threw eggs at an Alaska Native man and kicked him, slinging slurs in what appears to have been a racially motivated assault, police said Thursday. During the attack, the victim held his hand out trying to shake the hands of his aggressors, police said.

The assailants, who were arrested Thursday night, recorded the downtown assault in two short clips and posted them on the video-sharing site YouTube, where detectives downloaded them after getting a tip Aug. 5, police Lt. Dave Parker said. The only apparent motive for the attack was that the man was Native.

"Apparently they were targeting a Native individual," police Lt. Dave Parker said. "They found him and he became the object of their ire."

Charged with assault and harassment are Anchorage residents Robert Gum, 19, and Deanna Powers, 20. They were booked at the Anchorage jail Thursday.

Police would not release the video but described it as being recorded on the streets of downtown Anchorage as the pair confronted the Native man, who was not named. The pair had the items used during the assault, including water bottles and eggs, when the video commenced, Parker said.

The pair threatened the man, threw things at him and used racial slurs, police said. They pushed and kicked the man, police said. He didn't fight back, just asked to be left alone.

The man was apparently not injured badly; he did not report the attack or seek treatment afterwards, Parker said. It took some time to track him down after detectives saw the clips, he said.

The video has since been removed.

After getting the tip, detectives found the video and began a joint investigation with the FBI, police said. Federal authorities investigate hate crimes and the FBI has special units for such cases.

The language used, which officials wouldn't divulge, could elevate the attack to a hate crime, said Denise Morris, president of the Alaska Native Justice Center.

Police say the investigation is continuing and they think there are more victims.

Gum and Powers were charged with fourth-degree assault and harassment, both misdemeanors, and booked at the Anchorage jail with bail set at $500 for Powers and $1,000 for Gum.

Find James Halpin online at adn.com/contact/jhalpin or call him at 257-4589.

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WFTV.com

Police: Stabbing Suspect Had Friend Take Pics

Posted: 4:35 pm EDT August 24, 2009Updated: 6:44 pm EDT August 24, 2009

OCOEE, Fla. -- Documents obtained by Eyewitness News show a homeless man was stabbed in the back seven times, killing him. Police say he was attacked last month by a teenager in Ocoee.

That teen is out of jail, charged with second-degree murder, not first, and he had his buddy by his side during the attack.

Documents that Eyewitness News requested Monday show Hawthorne had his friend take photographs of him just minutes after the deadly stabbing using Hawthorne's cell phone and his friend assured investigators the photos were not taken to brag on the Internet.

AT THE SCENE: Images Near Homeless Camp
INTERVIEW: Man Finds Dying Victim

Hawthorne, 19, had his friend Cameron Milner take seven photographs of him without a shirt on right after he stabbed 31-year-old Joel Boner at his camp in the woods. Investigators say they found the shirt and Hawthorne's other bloody clothes in the washer.

The documents show investigators photographed a laptop on Hawthorne's bed. When they found out the victim had a laptop they got a search warrant and went back for it at Hawthorne's house, but it was gone and still hasn't been found.

Records show, when investigators talked to Hawthorne's friend separately, away from Hawthorne, he told a different story that the victim was actually walking away from Hawthorne when Hawthorne started stabbing him.

Milner said the homeless man "let out his hair from the bun and that must of ticked John off." The victim had no weapon.

The newly obtained records show Hawthorne had problems in high school with fighting before he dropped out and had been arrested for driving drunk and marijuana possession.

Labor Ready, which found jobs for Boner, said he was a hard worker and always polite, very non-confrontational. Hospital records show he had been stabbed more than ten times, seven times in the back.

When police tried to ask him how many people had done that to him, Boner said, "Hurry, I need help!" Those might have been his last words.

The victim begged Hawthorne and Milner to help him, but they left him in the woods to die. Still, Boner walked as far as he could, collapsing outside a 7-Eleven *(see map)*. Health Central is less than a mile away from there.

Hawthorne is on home confinement on $25,000 bond. The judge who set the surprisingly low bond was taken off the case with no explanation.

Previous Stories:

- August 12, 2009: Family Says Homeless Man's Murder Was Hate Crime
- August 10, 2009: Teen Charged With Killing Homeless Man Posts Bond
- July 23, 2009: Teen Charged In Stabbing Death Of Homeless Man

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8/25/09 San Luis Obispo Trib. (Pg. Unavail. Online)
2009 WLNR 16536947

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August 25, 2009

Police investigate Craigslist post that threatened to beat up homeless 'punks' in downtown SLO
Police say man vowed to follow and beat up homeless people asking for money in SLO

Nick Wilson
nwilson@thetribunenews.com

Police on Monday were investigating a Craigslist post by someone threatening to beat up homeless "punks" in downtown San Luis Obispo.

The note in the "Rants & Raves" section dated June 22 expresses anger over begging by homeless people in downtown San Luis Obispo.

The writer, whom police believe is male, said that he planned to drive "you all out of my city" and threatened a "rude awakening" when 15 friends and he start following homeless people to bushes and under bridges.

"We will be beating you and making sure you know we won't take it anymore," the person wrote. "I have nothing to lose, only the peace and sanctity of my home town to gain."

A police search warrant sought the computer user's Internet protocol address to help locate the person.

Police Capt. Chris Staley said police are still trying to contact the suspect and don't believe he is in the county.

The ranter wrote that he had been on the streets and lived the life of a "vagabond."

"I lived it by choice because I needed an extreme in life in order to fully experience all aspects of life," he wrote. "I needed to break away from civilization and travel on my gumption and sense. Never once did I ever ask another person for money."

At the conclusion of the post, the writer notes "Down with Prado. Down with the Shelter. Down with gutter punks alike."

"Prado" refers to the Prado Day Center, located on Prado Road, where homeless people

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can take showers, use phones and do laundry. "Shelter" refers to Maxine Lewis Shelter , an overnight lodging place for homeless women and children.

"This is no joke," the writer said. "This is an all out threat and warning. You will be dealt with."

Staley said police don't believe any physical threats or acts of violence have been carried out.

---- INDEX REFERENCES ----

NEWS SUBJECT: (Social Issues (1SO05); Social Welfare (1SO83); Health, Education & Welfare (1HE31))

INDUSTRY: (Internet (1IN27); Internet Media (1IN67); Online Social Media (1ON38))

LANGUAGE: EN

OTHER INDEXING: (POLICE; PRADO DAY CENTER; SLO) (Chris Staley; Lewis Shelter; Staley) (us; usa; na; us.ca; us.ca.slobis)

KEYWORDS: (NT/NEC)

Word Count: 350
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KTVZ.com Sept. 12, 2009

Bend Teen Arrested In Downtown Attack On Homeless Man

Out of the hospital with wired-shut jaw; police seek public's help in finding assailant

By Kate Paul and Barney Lerten, KTVZ.COM

A 16-year-old Bend resident was arrested Sunday on a first-degree assault charge in a pre-dawn beating Saturday of a homeless man in the Mirror Pond North parking lot downtown, police said.

"Information gathered during the investigation" led to contact with and arrest of Brach Addison Roberts, 16, said Lt. Ken Stenkamp.

Addison was lodged at the Deschutes County juvenile detention facility on a first-degree assault charge.

The victim, Anthony Vegra Tarango, 39, of Bend, was taken to St. Charles Medical Center-Bend but out of the hospital by Saturday night, after doctors had to wire his broken jaw shut.

Stenkamp said the investigation was continuing and asked anyone with information to contact Bend Police at (541) 322-2960 or Deschutes County 911 dispatch's non-emergency line, (541) 693-6911.

Police had turned to the public after Tarango was assaulted by one of four teens who approached him in the Mirror Pond North parking lot in downtown Bend.

Police Sgt. Dan Ritchie said Tarango was in the area shortly after 4 a.m., looking for cans in the fenced trash Dumpster area, when the four teen males approached him.

Tarango told police one the teens, who were carrying skateboards, walked up and first asked if they could have a cigarette.

The next thing Tarango knew, he says he was being hit across the face with a heavy object, then kicked around.

Tarango's girlfriend, Brandy Bennett, who was there at the time, said the attacker broke his jaw in two places and opened a main artery in his cheek.

They say they consider it an "attempted murder."

Tarango and his long-time girlfriend spoke to NewsChannel 21 Sunday, saying the injuries left Tarango unable to eat for now, only to drink with a straw, and that the medical bills made the situation as he looks for a job that much worse.

"I mean, he's not a little guy, and they did this much damage to him," she said. "I could only imagine how much damage they'd have done to someone who's little."

"I hope they learn from this, don't be hurting people," Tarango said, and his girlfriend agreed, calling the unprovoked attack "totally uncalled for."

Witness Jeremy Meade said it was a horrible sight, as Tarango "was pretty much on the ground, like incoherent."

"I mean, I saw him looking up at the guy. He was like, 'You hit me? You hit me?' And like the guy is all, 'No, I didn't hit you,'" Meade said. "I come running over after they take off and I'm like, 'Dude, are you all right?'"

Tarango was taken by ambulance to St. Charles Medical Center-Bend, where he had been listed in serious condition Saturday morning, according to a nursing supervisor. But he was out of the hospital Saturday evening.

Police searched the area of the attack, with the help of a Deschutes County Sheriff's Office K-9 team, Ritchie said, but the suspects were not found.

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Attack sheds light on perils of the homeless

October 18, 2009 | By Annie Sweeney, Tribune Reporter

The attackers came from all directions, as best that Darrick can remember.

It was early, 4:30 a.m on Wabash Avenue between Grand Avenue and Ohio Street. Darrick, 37, who was homeless, was on his way to the "L" so he could nap on a train.

Someone poured a beer on him, then broke the bottle over Darrick's head. Two others joined in, kicking and punching him.

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Darrick suffered a concussion, and his ribs were fractured. He was taken to Northwestern Memorial Hospital.

His mother, alerted to the attack by a reporter, walked into his hospital room the next day. He hadn't seen her in months.

"How'd you find me?" he asked.

She told him, "I'll always find you."

Darrick has been living on Chicago's streets for about eight years. Because of the violent nature of the attack, he is not comfortable sharing his last name. His mother also fears giving out her name.

On any night, about 21,000 people are homeless in Chicago, according to Chicago Coalition for the Homeless figures from 2005, the latest available. Typically, less than one-fourth spend the night in a shelter.

There are no Chicago statistics on attacks on the homeless. Nationally, such attacks are counted only when a person was targeted because he was homeless.

It was not clear whether Darrick's attackers knew he was homeless. Still, experts said he and other homeless people face risk of assaults every day.

"Every now and then, a homeless person commits a crime and it gets a lot of press," said Ed Shuma, executive director of Chicago's homeless coalition. "Homeless people are victimized much more than they are the cause of problems, just because they are vulnerable."

Darrick's mother, who is 54 and lives on a quiet South Side street, said her child is homeless by his choice. His crack-cocaine addiction has twisted a once-vibrant young man into someone she struggles to recognize.

Her son, who has a son himself, once worked at a laboratory. He lived with his girlfriend, watched over his female cousins like a hawk and prided himself on his clothes and jewelry. For fun, he bowled and played dominoes.

"Now he looks like this little old frail man," she said as she sat in the hospital lobby.

Police described last week's attack on Darrick as random. Three Chicago men -- Juan Mendoza, 25, Adrien Brito, 25, and Gilberto Galvez, 22 -- were charged with aggravated battery.

"There was no reason," Darrick said of the attack. According to police reports, the attackers stole his backpack and hurled racial epithets at him.

Fear and surprise registered in his mother's voice when she learned of the attack from a reporter.

"Oh, my God," she said. "I've always worried about that. He is my only child. That's his choice to live like that, because of the drugs. That is the only reason he is not with me."

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March 1, 1992

And while this mother has drawn strict boundaries with her son -- she insists he stop using drugs before he can move home -- she refuses to lose touch with him.

Every now and then, she swings by a downtown corner on her way to work with the U.S. Postal Service. That is where she usually finds her son.

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Talking about the visits makes her smile.

"I still go by his corner," she said. "I stop, I get out. I've got to hug him."

Sometimes he asks her to dig through his closet at home and bring back a coat or a sweater. She gladly does it.

And she continues to wait for the day when her son will have had enough.

"I hope this is a wake-up call that it is so dangerous out there," she said.

The beating has left her son's breathing labored and short. When she first saw him, his neck was locked in a brace. Still, in those hours after her first visit, she doubted whether her son was ready to give up his street life.

A day later, Darrick was discharged from the hospital and was heading to his mother's home, at least for the near future. What the long term holds for him is not as clear.

But he remained confident he will make his way back to his mom's for good.

"That's going to happen," he said. "I don't know when. I ain't gave up yet. I still have a strong mind."

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asweeney@tribune.com

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The Oklahoman's Watchdog Team: Looking out for you.

3 Edmond residents charged in "Bicycle Bob"'s killing

BY NOLAN CLAY
Published: December 19, 2009

The three people accused of involvement in killing Edmond's "Bicycle Bob" were obsessed with serial killers, a prosecutor said Friday.

Connor Adam Mason, 19, and Nikolas David Kerr, 19, were charged Friday with first-degree murder.

Heather Irene Parker, 19, was charged Friday with accessory after the fact of first-degree murder.

Kerr also was charged with possession of marijuana and possession of drug paraphernalia.

All three are from Edmond. They were being held Friday in the Oklahoma County jail.

"The alleged evidence is that this group was infatuated with killers and serial killers and movies and television shows about them," District Attorney David Prater said.

"Bicycle Bob" was the nickname for Dwite A. Morgan, 54, a locally liked, longtime homeless man who regularly stayed in an alley behind an Edmond feed and garden store. His body was found Oct. 18.

Prosecutors allege Mason repeatedly stabbed Morgan and beat him with a hammer Oct. 17 or Oct. 18.

Prosecutors allege Kerr was involved enough to also be charged with first-degree murder. Prosecutors allege he was involved in buying a buck knife and flashlight with Mason on Oct. 11 and in helping Mason search around Morgan's body for the misplaced flashlight. Prosecutors allege Kerr had marijuana and a bong pipe in his apartment when police searched it Dec. 11.

Prosecutors allege Parker disposed of the victim's finger, which Mason gave her as a gift Oct. 18. Her husband, Shaun Parker, notified police Nov. 10 about Mason's alleged involvement.

Police reported several witnesses said Mason admitted the killing. One witness reported Mason "was very excited and happy" immediately afterward and was showing

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off the severed finger.

Shaun Parker told police Mason said he had been planning the killing since May, a police detective reported in a court affidavit.

"Mr. Parker said Mr. Mason also told him the victim had raised up and asked him why he was doing it," the detective reported in the affidavit.

The victim was missing a finger on his left hand, authorities said.

Kerr admitted to police that he and Mason had talked "about, you know, killing people" but he said he never took anything seriously, the detective reported.

Edmond police originally arrested another homeless man in the death and reported he confessed.

A judge on Tuesday dismissed the first-degree murder charge against Travis Monroe Jim, 20, and Jim was released from jail.

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Police: Corvallis street gang suspects paint their faces, carry hatchets

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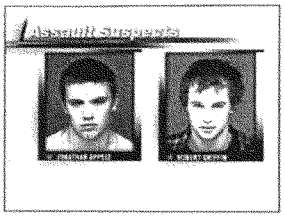
Summary
Two teens arrested for beating homeless people are members of an emerging street gang known for painting their faces like clowns, say Corvallis police.

By Laura Billos KVAL News

STORY VIDEO

Story Published: Jan 11, 2010 at 7:52 PM PDT



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CORVALLIS, Ore. -- Two teens arrested for beating homeless people are members of an emerging street gang known for painting their faces like clowns, say police.

Jonathan Appelt and Robert Griffin told officers they were "juggalos" when they were arrested for three violent attacks on the homeless, said Lt. Tim Brewer.

Juggalos have their roots in a rap group called the Insane Clown Posse. They paint their faces black and white, like ICP members, and sometimes wear clothing or have tattoos of the Hatchetman, an ICP logo.

Appelt had a hatchet similar to one carried by the Hatchetman when he was arrested, said Brewer.

Brewer said the suspects were known to paint their faces black and white, although they were not painted when they allegedly attacked homeless men in October and twice in January.

Corvallis Police Capt. John Sassman classified Appelt and Griffin as the gang's ringleaders. He estimated the Corvallis group had anywhere from two to 10 people in it.

"It is kind of disturbing to have an emerging group that is involved in criminal activity," said Brewer.

The group popped up on the police department's radar last summer when a young man snatched a woman's purse in downtown. She described the suspect as a young man with his face painted black and white.

While the majority of ICP fans, who call themselves juggalos, are not in gangs, some criminal sects have formed.

Corvallis police believe Appelt and Griffin are involved in one of those sects.

"I think any time you have a group of individuals that have a common ideology or intent to commit crimes and identify themselves with a certain type of appearance or dress or following," said Lt. Brewe, "and they're also committing crimes such as these, I do believe that makes them a criminal gang. Not to say that everyone juggalo is a gang."

On Monday, Benton County Chief Deputy District Attorney Christian Stringer to dismiss one count of robbery in the second degree and one count of intimidation in the second degree against each suspect.

According to court documents, "the alleged victim in counts 1 & 2 admittedly lied about the circumstances of the assault, robbery and intimidation. While the police were learning of this new information, Defendant

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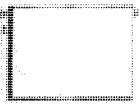
Robert Griffin asked to contact police officers from the jail and subsequently told the police that he had given a false confession relating to that incident."

A grand jury is deciding whether or not to charge Appelt and Griffin with other counts.

Judge dismisses some charges in Anna Nicole case

NEW Jimmy Carter leaves Ohio hospital after 2-day stay



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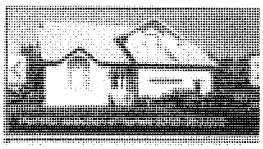

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Man accused of beating homeless

By Rob Parsons/Tri-County Newspapers
2010-04-06 16:36:24

The Hamilton City man charged with beating and robbing a homeless man with a baseball bat is set to appear in Glenn County Superior Court on Thursday.

Wesley E. Stone, 23, is charged with attempted murder and robbery, stemming from the reported Aug. 19 attack of Danny L. Stout beneath the Hambright Creek Bridge on Old Highway 99W, north of Orland.

Witnesses told Glenn County sheriff's deputies that Stout was sleeping on a mattress under the bridge when a man beat him with an aluminum baseball bat and took his wallet, authorities said.

Stout testified during a September preliminary hearing that he was awakened by a man standing over him "flicking a lighter" and said the man proceeded to beat him with a bat.

Stout could not identify his attacker and said he had never seen the defendant before.

Stout was "bleeding profusely" from his head, face, arms and hands. He was taken to Enloe Medical Center in Chico and was released several weeks later, authorities said.

Stout's injuries included damage to his spine and kidneys, deputies reported.

Witnesses testified in September that Stone was seen walking between the bridge and the trailer park with a baseball bat.

Stone was arrested at his home in the Shady Oaks Mobile Home Park a short time later, authorities said.

The Hambright Bridge area is frequented by the area's homeless and transient population and problems between them and residents of the trailer park have occurred in the past.

Stone has several previous drug and battery convictions in Tehama County, court records state.

A four-day jury trial is scheduled to begin April 26.

Stone remains in custody without bail in the Glenn County Jail.

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Prosecutor: Teen bragged about killing homeless man

JOHN C. ENSSLIN
2010-04-28 11:43:18

Days after a homeless man was beaten to death on a pedestrian bridge in Colorado Springs, prosecutors said Taylor Lane Gwaltney told at least 14 other teenagers that he had "killed a bum."

However, none of them came forward to authorities until several days later when a girl told a boy who called police anonymously, Deputy District Attorney Amy Fitch told jurors. Testimony began today in the first-degree murder trial of Gwaltney, 19, in the Feb. 5, 2009 bludgeoning death David Doyle.

Doyle, 55, had been sleeping that night on the pedestrian bridge over Interstate 25 west of Monument Valley Park when Gwaltney passed him, bicycled home and returned to bash his head in as the victim slept, Fitch said.

"He (Gwaltney) told some people that he hit him 16 times. He told some people he hit him enough to kill him," Fitch said in opening statements. She said that after police questioned Gwaltney, he showed a friend a bottle of "interrogation water" that the detective gave him.

Gwaltney's defense attorney, however, told jurors that prosecutors don't have much more than inconsistent high school gossip and unanswered questions.

"This is a case of teenagers being teenagers," Deputy Public Defender Hilary Perry told jurors, asking them to remember how stories evolved in their own high school days.

"You're going to hear that they didn't believe anything that was coming out of Mr. Gwaltney's mouth. They thought he was joking," Perry said. "They're stories are going to be inconsistent at best."

"The district attorney is asking you to return a conviction based upon something said by a bunch of teenagers," she said.

She noted that prosecutors will show the jury a pair of Gwaltney's pants that were spattered with Doyle's blood. But she said the spatter pattern won't prove that Gwaltney was the person who wielded the object that killed Doyle.

When the case is over, Perry predicted jurors will have a number of unanswered questions about the truth of the case.

"And the truth is, the Taylor Gwaltney is not guilty of first-degree murder," she said.

Fitch said there's more than teenage talk to the case. She claims Gwaltney:

* came up behind three school employees on the bridge after police had left and asked, "Did you hear about the murder?" and showed them where the body had been.

* that after his arrest, Gwaltney told another inmate that he had beaten Doyle with a skateboard.

* that a shoebox found in Gwaltney's room was for a type of shoe that matched a foot print found near the crime scene.

The trial marks the second attempt to try Gwaltney in the murder. An earlier attempt in February ended in a mistrial after 4th Judicial District Judge G. David Miller halted proceedings and ruled that a teenager called as a prosecution witness might have potentially incriminated himself.

For more on the trial, visit the Sidebar blog at Gazette.com

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NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY

Statement of National Law Center on Homelessness & Poverty
On Hearing: "Crimes Against America's Homeless: Is the Violence Growing?"
Submitted to the United States Senate Committee on the Judiciary
Subcommittee on Crime and Drugs
September 29, 2010

The National Law Center on Homelessness & Poverty is a non-profit advocacy organization whose mission is to prevent and end homelessness by serving as the legal arm in the nationwide movement to end homelessness. Since 2007, the Law Center has collaborated with the National Coalition for the Homeless and our local partners to advocate for inclusion of homeless persons in hate crimes statutes at the state and federal level. The Law Center also co-authored "Hate, Violence, and Death on Main Street: A Report on Hate Crimes and Violence Against People Experiencing Homelessness 2007" with the National Coalition for the Homeless, which was released in April 2008. The Law Center has also brought this issue of basic human rights to international human rights monitors, including the UN Human Rights Committee in 2006 and the UN Special Rapporteur on the Right to Adequate Housing in 2009. Thank you for this opportunity to submit testimony in support of the Hate Crimes Against the Homeless Statistics Act, which would require the Federal Bureau of Investigation to gather statistics about hate crimes against homeless people.

Unfortunately, hate crimes and violence against homeless people in the United States have become an epidemic, with the number of violent and sometimes fatal attacks against homeless people on the rise. Over the past decade, we have seen brutal and disturbing attacks against homeless persons. These incidents include homeless persons being raped, beaten to death, set on fire, and even beheaded. As reported in a 2010 report by National Coalition for the Homeless, from 1999 through 2010, there were 1,074 attacks against homeless people nationwide, of which 291 resulted in death.[1] These attacks have occurred in 47 states, the District of Columbia, and Puerto Rico. With 43 known deaths, 2009 was the deadliest year for attacks on homeless people in a decade and the second highest since 1999.[2] While some of these attacks have been crimes of opportunity, as unsheltered homeless persons are particularly vulnerable, a significant portion appear to be carried out due to animus toward the victim based on his or her status as a homeless person.

Cities and communities around the country do not have adequate affordable housing or shelter space to meet the need, forcing many homeless people to live outside. In the 2009 U.S. Conference of Mayors Hunger and Homelessness survey of 27 major U.S. cities, cities identified lack of affordable housing and high unemployment as the primary causes of homelessness.[3] In 2009, 76% of the 27 cities surveyed for the Mayors' Survey reported an increase in homelessness and 52% of cities reported having to turn people away from shelter due to lack of space.[4] In fact,

[1] National Coalition for the Homeless, *Hate Crimes Against the Homeless: America's Rising Tide of Violence* at 9 (Aug. 2010).
[2] *Id.*
[3] U.S. Conference of Mayors, *Hunger and Homelessness Survey: A Status Report on Hunger and Homelessness in America's Cities, A 27-City Survey* at 11-12 (Dec. 2010).
[4] *Id.* at 9, 14.

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the Department of Housing and Urban Development's 2009 Annual Homeless Assessment Report (AHAR) notes that on a single night in January 2009, 37% of people who were literally homeless were unsheltered.[5] This means that nearly a quarter of a million people are sleeping on the streets, in their cars, in abandoned buildings, or in other places not meant for human habitation on any given night.[6] When homeless people live outside they are particularly vulnerable to bias attacks.

Amending the Hate Crime Statistics Act to require the FBI to gather statistics about hate crimes against homeless people will help raise awareness of the problem, gather information about these violent incidents, and help localities provide protection for homeless victims. Tracking these hate crimes will provide a fuller picture for both policymakers and law enforcement, which will enable them to better identify ways to prevent such violence and protect people who are homeless. Animus against homeless persons is very real and the threat against them is great. Homeless persons deserve the same protections as other classes of people who have been targeted out of hatred. By including homeless persons under the Hate Crimes Statistics Act, the Senate would send a very clear message that attacks on homeless Americans will be taken extremely seriously and are worthy of law enforcement's and our communities' attention.

As concrete actions to protect homeless individuals from hate crimes have yet to materialize at the national level, several states have passed or are considering legislation to deal with the growing problem of violence and hate crime against homeless persons and to provide law enforcement with tools to address the issue. Six states, as well as the District of Columbia, have enacted laws specifically addressing such crimes against homeless persons.

- In 2004, California passed a law requiring law enforcement officers to receive training about both "crimes committed in whole or in part because of the victims' actual or perceived homelessness" and "[t]he special problems inherent in some categories of hate crimes, including . . . disability-bias crimes, including those committed against homeless persons with disabilities . . . and techniques and methods to handle these special problems."[7]

- In 2005, the Maine legislature amended the sentencing provision in Maine's criminal code to permit courts to take into account for sentencing purposes a defendant's selection of a victim because of the person's homeless status.[8]

- In 2008, Alaska passed a law that lists as an aggravating factor for sentencing purposes a victim's homeless status, if the perpetrator knew or should have known the victim was homeless.[9]

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[5] U.S. Department of Housing and Urban Development, *The 2009 Annual Homelessness Assessment Report to Congress* at 7 (June 2010).
[6] *Id.*
[7] CAL. PENAL CODE § 13519.6(b)(6), (7) (2007) (enacted 2004).
[8] ME. REV. STAT. ANN. tit. 17-A, § 1151(8)(B) (2006) (enacted 2005).
[9] ALASKA STAT. § 12.55.155 (2009) (enacted 2008).

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- Maryland passed legislation in 2009 adding homeless persons to the list of protected classes in the state's hate crimes statute.[10] It was the first state to do so.

- The District of Columbia passed a law in 2009 designating homeless people as a protected class in its bias crime statute.[11]

- In April 2010, Florida passed a law amending the state's hate crime statute to include offenses where there is evidence of prejudice based on the victim being homeless.[12] The law will go into effect on October 1, 2010.

- Rhode Island passed a bill in May 2010 requiring the State Police to collect data on crimes against homeless people and designating homeless persons as a protected class under Rhode Island's hate crime statute.[13]

In addition to these laws, a number of other states, including California, Illinois, New York, Ohio, Oklahoma, South Carolina, Texas, Virginia, and Washington, are currently considering adding homeless persons as a protected class to their hate crime statutes. Other jurisdictions that have taken administrative or statutory measures recognizing hate violence against homeless people include Cleveland, Seattle, and Los Angeles County.

Crimes against homeless persons are violations of the most basic human right – the right to life itself. The U.S. is a party to the International Covenant on Civil and Political Rights, ratified by the Senate in 1994. It requires the government to protect the rights in the treaty, including the right to life, on a basis of non-discrimination, including on the basis of property ownership or other status. The UN Human Rights Committee, which oversees the treaty, has interpreted this right to include a duty to protect homeless persons from death due to exposure to the elements. This right should also extend to manmade threats, such as crimes against them because of their vulnerable living situation. As the U.S. undergoes its first review under the UN Universal Periodic Review this November, and by the Human Rights Committee in 2011, it is particularly timely for the Senate to pass S.B. 1765 as a step toward implementing our obligations under this treaty.

Given the range of states and other jurisdictions that have taken action to address hate crime and violence against homeless individuals, the time is ripe for our federal government to take action on this issue. The Law Center urges the Committee to support Senate Bill 1765. Tracking hate crimes against homeless persons would be a truly commendable step forward in protecting already vulnerable homeless Americans from violent and brutal attacks.

The Law Center looks forward to working closely with the Committee to pass this important legislation. For additional information, please contact our Policy Director, Jeremy Rosen, at (202) 638-3535 or jrosen@nlchp.org.

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[10] MD. CODE ANN., Crim. §10-304 (enacted 2009).
[11] D.C. CODE ANN. §22-3701 (enacted 2009).
[12] FLA. STAT. §775.085 (enacted 2010).
[13] R.I. GEN. LAWS, § 42-28-46 (enacted 2010).

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September 29, 2010

U.S. Senate Judiciary Committee Hearing
Subcommittee on Crime and Drugs
"Crimes Against America's Homeless: Is Violence Growing?"
Written Testimony of Governor Martin O'Malley

Introduction

Mr. Chairman, thank you for allowing me to submit this testimony. I want to especially thank a great public servant for Maryland, Senator Ben Cardin, for his advocacy on this issue and in particular, his introduction of the Hate Crimes Against the Homeless Statistics Act of 2009. This is a critically important issue and one that Maryland has been honored to lead on.

Throughout this nation we have individuals, families and even children, who through no fault of their own are living on the streets trying to survive. The national recession, high unemployment and rampant foreclosures have only added to the number of homeless. With our local, state and federal partners we are working to prevent homelessness through foreclosure prevention and job generating initiatives such as the American Recover and Reinvestment Act. For those who are homeless, we are extending housing services, social services and job training.

Sadly, while we work to protect these individuals, there are those in our society who find it necessary to cause harm for no reason and to prey upon our most vulnerable. A cursory review of the evening news or any city's metro section suggests that violence against the homeless is on the rise, yet due to the continued challenges associated with accurate reporting, the true scope of the problem is unknown. As a society we have an obligation to protect all people in this country regardless of their race, creed, or place in society.

I would like to share with you just a few graphic, but salient anecdotes of crimes against Maryland's homeless. These stories and ones like them convinced me that inaction was not an option. In 1992 a homeless Korean War veteran was killed in Annapolis after being soaked in urine, kicked down a ravine, and called a "worthless bum." In 2001, a group of young men from South Baltimore began beating and robbing multiple homeless individuals, resulting in three

deaths. And on Valentine's Day in 2008, a homeless man was beaten to death while sleeping in an alley in Frederick.

Due to the perceived increase in crime against the homeless and our belief in the dignity of all individuals, Maryland became the first state in the nation to expand our hate crimes law to include homeless people as a protected class and to add stiffer penalties for attacks on the homeless.

Today, I am inspired that other states have followed Maryland's lead and now offer these necessary protections for the homeless, but due to a lack of federal and state laws, data on crimes against the homeless is limited or anecdotal at best. The difficulty in accurately determining the extent of the problem makes Senator Cardin's legislation even more critical. Increased data will allow us to gauge the true scope of the problem and then devote the needed resources to protect these individuals.

In closing, I want to thank this committee again for looking at this important issue. I look forward to working with you and Senator Cardin to ensure we continue to protect the most vulnerable in our nation.

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Remarks from Congresswoman Ileana Ros-Lehtinen
Senate Judiciary Committee, Subcommittee on Crimes & Drugs
Hearing: "Crimes Against America's Homeless: Is the Violence Growing?"
Wednesday, September 29, 2010

I would like to thank Chairman Cardin, Ranking Member Graham and Chairman Specter for holding this timely hearing. Hate crimes against the homeless is an ever-growing reality throughout our nation. The violence and hate that is directed at one of the most vulnerable segments of our society is troubling and tragic. I am proud to be a cosponsor of the Homeless Hate Crimes Statistics Reporting Act. This legislation will amend the Hate Crime Statistics Act to include crimes committed against the homeless. It will help the Attorney General and the Justice Department get a better understanding on these heinous acts and ultimately better positioned to help fight it.

The district that I represent in South Florida is no stranger to these vicious crimes. Last year, the National Coalition for the Homeless published its starling report, *Hate Crimes Against the Homeless: America's Growing Tide of Violence*. According to its findings, 2009 was the deadliest year in a decade for the homeless in America. It documented 177 incidences of crimes against the homeless in Florida. This makes Florida the state with the second-largest incidence of hate crimes against the homeless. Fortunately, there are numerous individuals and organizations across the country that have helped bring these tragedies to light and help those affected. One such individual is Reverend Stephen Braddock. He leads the Florida Keys Outreach Coalition for the Homeless. This organization provides homeless individuals and families with the resources so that they start to rebuild their lives and begin to regain financial and personal self-sufficiency. The Coalition also been instrumental is raising awareness for the fact that hate crimes against the homeless is a reality that is increasing and one that must be addressed.

Although the available evidence points to a worsening trend throughout the nation, I am confident and optimistic that these sorts of crimes can and will be prevented. The first step is to get an accurate and detailed account of these crimes and their natures. The Homeless Hate Crimes Statistics Reporting Act is good start. Congress must continue to act on this and equip local and state authorities with the information and resources necessary to help protect the homeless community. I thank the Committee for their time and thank Chairman Cardin, Ranking Member Graham and Chairman Specter for holding this hearing.

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Statewide Legislation Status of Hate Crimes Against the Homeless

Passed Legislation

Maryland	May 2009—first state to include homeless people to its hate crimes law.
Washington, D.C.	August 2009 added homeless people to its hate crimes law.
Florida	April 2010 added homeless people to its hate crimes law.
Rhode Island	May 2010 added homeless people to its hate crimes law.

Pending Legislation

Alaska	Homelessness is classified as a possible aggravating factor in sentencing associated with a crime, but punishment is variable based on the judge.
California	Pending legislation: AB 2706: Needs Senate approval. It would allow a homeless individual to sue for higher damages if the attack was motivated by hate. SB 110: Focuses on crimes relating to persons with disabilities and provides police training about homelessness.
Illinois	2010, bill was introduced that that would create stiffer penalties for offenders who target the homeless, veterans, active duty members and reservists of the Armed Forces. Instead of facing up to a year in jail, first-time offenders could spend one to three years in prison, while repeat offenders could receive three to seven years in prison.
Maine	2006 passed a law that allows judges to take into consideration a victim's homeless status when considering sentencing for the offender.
New York	2010, bill S08032A introduced that will establish the homeless protection act which classifies certain offenses as hate crimes. Awaiting review by Committee on Codes.
Ohio	2010, bill introduced HB 509 that will allow prosecutors to increase penalties those found guilty of attacks or intimidation of homeless people.
South Carolina	Bill H4091 did not pass but is expected to be reintroduced in June 2010. It would amend the South Carolina Code of 1976 by adding a two-tiered penalty system for assault and battery on a homeless person.
Virginia	HB 844, which would include homeless status as a protected class, creating harsher punishments, allowing homeless people to seek damages for harassment, and requiring the State Police to include violence on homeless people as hate crimes in data collection. Referred to the Committee for Courts and Justice.
Washington	Adding homelessness to a list of aggravating factors that could lead to an increased sentence. Pending passage by the Human Services and Corrections committee in the Senate.

Testimony
of
Richard Wierzbicki
Commander, Hate Crimes/Anti-Bias Task Force
Broward County Florida Sheriff's Office

Before the
Subcommittee on Crime and Drugs
Committee on the Judiciary
United States Senate

Hearing Entitled
"Crimes Against America's Homeless: Is the Violence Growing?"
September 29, 2010

I am honored to testify today on behalf of the Broward County Florida Sheriff's Office. Sheriff Al Lamberti sends his regards and has submitted a statement for the hearing record.

I am a long-standing member of the nation's law enforcement community with over 32 years of public service and can attest to our profession's interest in advancing strategies that enhance the prevention, investigation, and prosecution of crimes committed against the homeless population, including crimes motivated by bias. Rigorous and widespread collection, reporting, and analysis of bias-motivated crime data is one such solution. That is what the Hate Crimes Against the Homeless Statistics Act (S. 1765), introduced by Senators Ben Cardin (D-MD) and Susan Collins (R-ME), would accomplish. That is why the Broward County Sheriff's Office, the largest accredited Sheriff's Office in the United States, supports the legislation.

As a law enforcement officer, I have dealt with crimes committed against homeless people motivated by bias. For example, James Cunningham, a 54 years old homeless man, was attacked in Pompano Beach in October 2009. The attack was recorded on video and posted on YouTube by one of the offenders. The video showed two attackers shoving, taunting, and dragging Mr. Cunningham down a street by the ankles as two others held his arms and laughed. And in June 2010, Johnny Warden, a 68 year old homeless man, was attacked in Lauderhill. Mr. Warden was standing outside a convenience store when two men repeatedly punched and kicked him and then stomped on his head.

These dramatic incidents reflect the intensity of bias that some hold against people experiencing homelessness. Many other lower order incidents against homeless people occur routinely, but escape attention in part because the victims may not report them out of a belief that law enforcement officers will not investigate them sufficiently, or equally troubling, because members of the general population have come to accept victimization as an inevitable consequence of homelessness.

Use of crime statistics generally is a staple of effective law enforcement practice. The availability of data about bias-motivated crimes is instrumental in inspiring community action to protect various population groups subjected to bias and is critical to law enforcement agencies for developing plans of action, deploying resources, and measuring our progress.

Take our experience in Broward. I lead the Hate Crimes/Anti-Bias Task Force created in 2008 by Sheriff Lamberti as a direct response to data in the Florida Attorney General's annual hate crimes

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report, which indicated that our county led the state in reported hate crimes. The data told us where the crimes were occurring, who was being targeted, and why they were being attacked. Based on the data, we were then able to decide how and where to deploy resources to combat hate. For example, the data revealed that several houses of worship were vandalized with offensive symbols associated with hate. We responded in part by co-hosting and implementing a "Keeping your Religious Institution Safe" seminar for clergy and congregation members.

Regrettably, our Attorney General's hate crimes report – no different than similar reports in other states – did not tell us anything about bias-motivated crimes against the homeless population, because such data is not collected as part of uniform crime reporting – even though those of us who have worked the beat know full well that such crimes occur. By lacking such data, our task force simply could not plan a meaningful response to bias-motivated crimes against the homeless population.

The true extent of bias-motivated crimes against the homeless population will never be known if we do not achieve multi-state reporting of such crimes through the existing national hate crime data collection and reporting system. Passage of the Hate Crimes Against the Homeless Statistics Act would remedy these gaps in information and consequent deficiencies in law enforcement practice.

From an operations standpoint, I foresee no difficulty arising from the inclusion of the homeless population as a covered group by the federal Hate Crimes Statistics Act. In Broward it would amount to a simple addition of a check box on the offense report indicating a hate crime and the particulars of the victim noted in the body of the report. Further, the addition of the homeless population to the Hate Crimes Statistics Act will in no way impede efforts to collect and report data on bias-motivated crimes committed against currently covered groups.

Finally, one side benefit of the legislation is that it will undoubtedly raise law enforcement agency attention to these crimes and in doing so generate more positive interaction between law enforcement and the homeless community. For example, in light of the recent inclusion of homeless persons to our Florida hate crime statute, St. Petersburg College is developing a course on homelessness for law enforcement officers. Officers receiving the training will be better able to identify homeless people and strengthen interpersonal techniques to encourage them to report crimes.

In conclusion, it is my strong conviction that it must become standard practice for all law enforcement agencies to vigorously collect data on the number and types of incidents of bias-motivated crimes against homeless victims. When the homeless population is left out of national hate crime data collection and reporting, we fail in our responsibility to protect all Americans equally.

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