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Hate Crime Laws and Sexual Orientation

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This article provides definitions for hate crimes, a summary of national data on hate crime incidents, and descriptions of federal and state hate crime laws. The author presents various arguments in support of and against hate crime laws, and the inclusion of sexual orientation in such laws. The author contends that it is illogical and a violation of the Fourteenth Amendment to exclude sexual orientation from hate crime laws. The perpetrators of hate crime incidents, regardless of the target group, have similar motives and perpetrate similar types of assaults; the victims experience similar physical and psychological harm. Excluding a class of persons who are targets of hate crimes denies them equal protection under the law because the Equal Protection Clause of the Fourteenth Amendment establishes a fundamental right to equal benefit of laws protecting personal security.

Laramie, Wyoming, October 7, 1998: A gay college student was brutally beaten by two men who smashed his skull with a pistol butt and lashed him to a split-rail fence. Five days later, he died while on life support and in a coma after doctors determined they could not perform surgery because his skull was so badly smashed.

New York, New York, June, 20, 1998: Three men are charged with gang assault, and assault and harassment for kicking and beating a gay man while yelling anti-gay epithets.

Ukiah, California, June 5, 1998: Two men were charged with first-degree murder in the beating death of a gay man.

Mount Pleasant, Michigan, April 22, 1998: A car was set on fire and two other cars were spray-painted with anti-gay slurs at Central Michigan University.

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Dixmont, Maine, April 3, 1998: A teacher was threatened and accosted by a parent who used anti-gay epithets.

Durham, North Carolina, June 1997: A man was attacked by a group of men who used anti-gay slurs and vandalized his car.

Cambridge, MA, March, 1997: A flier containing anti-Semitic, anti-black, anti-Asian, anti-Latino, and anti-gay slurs was sent to a newspaper editor at Harvard University's Kennedy School of Government.

Glendale, California, February 26, 1997: A black youth was beaten by a group of youths who believed he was gay.

Atlanta, Georgia, February 21, 1997: A bomb exploded at a gay nightclub and another bomb was found outside the club during the investigation. A group calling itself the Army of God claimed responsibility.

Medford, Oregon, 1995: A lesbian couple who had been active in a defeat of a statewide anti-gay ballot initiative were bound, gagged, kidnapped, and then murdered. The suspect, who confessed, stated, "It was easier to kill them because they were lesbians."

(Sources: "Beating Fatal," 1998; Southern Poverty Law Center, 1997, 1998; and U.S. Senate Committee on the Judiciary)

These incidents are examples of violence toward those who are or who are perceived to be lesbian, gay, bisexual, or transgendered (LGBT). The difference between these crimes and other hate-motivated crimes based on such characteristics as race, religion, or ethnicity, is that in 21 states in the U.S., hate crime laws do not include LGBT persons (Human Rights Campaign, 1998a; National Gay and Lesbian Task Force, 1997). Furthermore, the current federal hate crime law authorizes investigation and prosecution of hate crimes on the basis of race, color, religion, and national origin, but excludes sexual orientation, disability, and gender (Human Rights Campaign, 1998b). Sexual orientation, disability, and gender are also excluded from many of the state hate crime statutes.

This article provides an overview of the status of federal and state hate crime laws. Definitions of hate crimes and national

data on hate crime incidents are provided. This article presents various arguments in support of and against hate crime laws, as well as for the inclusion of sexual orientation in such laws. I support federal and state hate crime laws that include race, religion, national origin, color, sexual orientation, disability, and gender. This article, however, focuses primarily on the inclusion of sexual orientation. I contend that it is illogical and a violation of the Equal Protection Clause of the Fourteenth Amendment to exclude sexual orientation from hate crime laws.

DEFINITIONS OF A HATE CRIME

The Federal Bureau of Investigation (FBI) is mandated to collect hate crime data as part of its Uniform Crime Reporting (UCR) Program. The FBI defines a hate crime as “crime motivated by preformed, negative bias against persons, property, or organizations based solely on race, religion, ethnicity/national origin, sexual orientation, or disability” (U.S. Department of Justice, 1996, foreword). In hate crimes, also referred to as bias crimes, a person or property is intentionally chosen by the perpetrator because of *actual* or *perceived* characteristics of that person or group (Levin, 1998). The National Coalition of Anti-Violence Programs (NCAVP) collects data on anti-gay hate crimes from local and state anti-violence programs. The definition they use for documenting hate crimes based on sexual orientation is “one in which there are sufficient objective facts to lead a reasonable person to conclude that the offender’s actions were motivated in whole or in part by the offender’s bias against lesbian, gay, bisexual, transgender or HIV-positive people” (National Coalition of Anti-Violence Programs, 1997, p. 2).

A hate crime incident can involve more than one offense, victim, or offender. The FBI uses 11 traditional offense categories in its collection of hate crime data: Crimes against persons—murder and nonnegligent manslaughter, forcible rape, robbery, aggravated assault, and intimidation; and crimes against property—burglary, larceny-theft, motor vehicle theft, arson, simple assault, and destruction/damage/vandalism of property. The FBI also reports those offenses not listed in the traditional offenses and identifies these as “other” or “crimes against society.” One offense is counted for each victim of a crime against person. One offense

is counted for each crime against property (i.e., an arson and destruction of property may occur during an incident, that would count as two offenses). The FBI determines the total number of victims in a given incident by summing the number of victims associated with each offense that took place within the incident (U.S. Department of Justice, 1996).

The NCAVP uses definitions consistent to those of the FBI for terms in their documentation forms, except for one notable exception—verbal harassment alone is not a crime in most states (such as anti-gay slurs). NCAVP believes that these offenses should be documented as they contribute to victims' psychological pain and fear and may lead to violent behavior in the future.

HATE CRIME REPORTING AND DATA

FBI Data

There were 8,759 hate crime incidents reported to the FBI in 1996; 1,016 or 11.6% of the total reported incidents, were based on the sexual orientation of the victim making LGBT persons the third-highest target group for hate crimes. Out of the 1,016 hate crime incidents against LGBT persons, there were 1,256 offenses, 1,281 victims, and 1,180 offenders.

The breakdown of the incidents by sexual orientation and gender was as follows: anti-male homosexual, 757 incidents; anti-female homosexual, 150 incidents; anti-homosexual, 84 incidents; anti-heterosexual, 15 incidents; and anti-bisexual, 10 incidents. The locations where most often these hate crimes took place were highways/roads/alleys/streets, and residences/homes. Of the total number of offenses based on sexual orientation (N = 1,256) the breakdown of offenses of crimes against persons is as follows: 2 murders, 222 aggravated assaults, 287 simple assaults, and 472 acts of intimidation. The breakdown of crimes against property: 31 robberies, 6 burglaries, 12 larceny-thefts, 8 arsons, 215 destruction/damage/vandalism, and 1 crime against society (U.S. Department of Justice, 1996).

The FBI data on hate crimes toward LGBT persons have been criticized for a number of reasons, including the reluctance of victims to report to law enforcement agencies, and the fact that local agencies are not required to collect and forward these data

to the FBI. Plans to include questions on hate crimes in the Justice Department's National Crime Victimization Survey may provide additional data, as the crime survey interviews Americans and is thought to be the best available tool for assessing crimes that are typically underreported (Mercer, 1997; "White House Hate Crimes," 1997).

National Coalition of Anti-Violence Programs Data

Hate crimes based on sexual orientation may be more likely to be reported to community-based anti-violence programs. LGBT victims who do not report to the police most often cite these reasons: fear of hostility or mistreatment by law enforcement officials, and fear of public disclosure of their sexual orientation (Herek & Berrill, 1992).

NCAVP reported 2,445 incidents of anti-gay hate crimes in 14 localities across the country in 1997, up 2% from the number of hate crimes reported in 1996 (National Coalition of Anti-Violence Programs, 1997). The highest levels of anti-gay violence occurred in the month of June, when many communities in the U.S. celebrate Pride Month. A high degree of visibility and media attention is correlated with increased reports of anti-gay incidents. A reported increase in the number of anti-gay incidents in March and April of 1997 compared to these months in 1996 has been attributed to the public "coming out" of actress Ellen DeGeneres and her television character Ellen Morgan which seemed to have created a homophobic backlash accounting for an increase in violence toward LGBT persons (National Coalition of Anti-Violence Programs). The NCAVP data show a much higher percentage of reported offenses in the category of offenses against persons versus offenses against property than the FBI data or the Anti-Defamation League data (an anti-Jewish hate crime tracking group).

The 1997 NCAVP report notes a 36% increase in serial incidents from 1996, defined as "continuous violence and harassment by one offender against a single victim over a period of time" (p. 4). Typically, the perpetrators know the victims and the incidents occur in or around the victim's home. There was also a 76% increase in reported offenders who were law enforcement officers, contributing to the reluctance of victims of anti-gay violence to

seek help from the police or file police reports. Of those incidents reported to NCAVP, only 24% were also reported to the local police. The number of victims who did not report the incidents to the police increased by 21% from 1996. In 12% of the cases of those who tried to report the incident to the police, the police refused to take the complaint. Forty-five percent of those who did file a report with the police reported indifferent to hostile treatment by the police.

The NCAVP data show that anti-gay violence in schools and colleges is rising. The number of victims under age 18 increased by 10% from 1996 to 1997, and those between ages 18 to 22 increased by 35%. A large percentage of offenders were reported to be under the age of 22.

NCAVP reported a 36% increase in the number of victims of anti-gay violence who identified as heterosexual, suggesting that the perception of the perpetrator, not necessarily the actual sexual orientation of the victim, puts a person at risk for anti-gay hate crime. The percentage of female victims in the NCAVP cases is 30%. One hundred and two of the victims who reported hate crimes identified as transgendered persons with the majority of those male to female.

In the 2,445 incidents reported by NCAVP in 1997, there were 5,338 offenses documented, of which 1,081 were assaultive offenses. The type of assaultive offenses in order of frequency were: assault without a weapon (N = 576, 11%), assault with a weapon (N = 274, 5%), attempted assault with a weapon (N = 118, 2%), sexual assault/rape (N = 95, 2%), and murder (N = 18, .5%). In 22% of the assaultive incidents, the victim sustained serious injuries "that involve significant pain or bodily injury and usually require medical attention, such as actual or apparent broken bones; actual or probable internal injuries; nerve damage; injuries requiring reconstructive surgery; injuries that keep the survivor from working for any period of time; brain injuries; serious lacerations; and any gunshot wounds. . . . Serious injury is presumed in all rape cases (oral, anal, vaginal)" (National Coalition of Anti-Violence Programs, 1997, Appendix E).

In the incidents involving use of weapons, the most frequently used weapons were bottles, bricks and rocks, followed closely by bats, clubs and blunt objects. Knives and other sharp objects,

ropes and restraints, and firearms were also used. The site of the incident was most often street/public area, private residence, workplace, public accommodation, gay bar, school/college, gay organization/institution, and public transportation.

Although there are problems with accurate and comprehensive reporting of hate crime incidents, the institutionalization of data collection of these incidents has created a method of documenting the existence and prevalence of hate crimes. Additionally, data are used to justify public policy decisions regarding hate crime legislation.

FEDERAL AND STATE HATE CRIME LAWS

Federal Hate Crime Laws

There are four federal laws that specifically address hate crimes: The Hate Crime Statistics Act, The Hate Crimes Sentencing Enhancement Act—Section 280003 of the Violent Crime Control and Law Enforcement Act of 1994, Part C—Civil Rights for Women of the Violence Against Women Act of 1994, and The Church Arsons Prevention Act. The Hate Crime Statistics Act, enacted in 1990 and reauthorized in 1996 (until 2002), requires the Federal Bureau of Investigation to collect statistics on hate crimes on the basis of race, religion, ethnicity, sexual orientation, and disability (the latter as of January 1, 1997) and to publish an annual summary of these statistics. The FBI collects these data from local and state law enforcement agencies; however, local and state agencies are not required to provide these statistics to the FBI, resulting in incomplete counts. In 1996, 84% of jurisdictions did not report any hate crimes in their regions, including those with well-documented incidents of bias-crime (American Psychological Association, 1998). Those states and localities that exclude sexual orientation from their own state laws would not be reporting numbers based on sexual orientation. Furthermore, as noted above, hate crime victims are often reluctant to report bias crimes to law enforcement agencies (Human Rights Campaign, 1998a). Time frames for reporting the data are uneven between jurisdictions.

Congress included in the Hate Crimes Statistics Act a provision that notes: "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" (sec. b(3)). Section 2(b) of the Hate Crimes Statistics Act reads: "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." Obviously, Congress intended for this Act to compile data about bias-related crimes; yet, they did not want the public to misconstrue the Act as supporting homosexuality.

The Hate Crimes Sentencing Enhancement Act directs the U.S. Sentencing Commission to "promulgate guidelines or amend existing guidelines to provide sentencing enhancements of not less than 3 offense levels for offenses that the finder of fact at trial determines beyond a reasonable doubt are hate crimes." This law is the federal counterpart to state hate crime sentencing-enhancement statutes. It applies to person and property attacks that occur on federal property.

The Civil Rights for Women Provision of the Violence Against Women Act (VAWA) provides for the right of all persons in the U.S. to be free from crimes of violence motivated by gender. A person who commits a crime motivated by gender "shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate" (Part C, (b)). In essence, this gives the victim of a gender-bias crime the possibility of compensatory and punitive damage awards. The Civil Rights Clause of VAWA has been challenged in several district and circuit courts with inconsistent rulings on the interpretation of the law.

Influenced by the destruction and/or vandalism of houses of worship, Congress enacted the Church Arsons Prevention Act in 1996. This law makes destruction or damage of religious property a violation of Federal law, and makes actions of private citizens motivated by race, color, or ethnicity that interfere with persons being able to hold or use religious real property without fear of attack, a violation of Federal criminal law. This law also provides for a Loan Guarantee Recovery Fund to be used in cases of damaged religious property due to acts of arson or terrorism. Furthermore, this law authorizes additional personnel, investi-

gators, and technical support personnel to investigate, prevent, and respond to violations of this Act.

Pending Federal Legislation

President Clinton sponsored the first-ever Hate Crimes Summit on November 10, 1997, a gathering of nearly 350 victim advocates, hate crime victims, religious leaders, law enforcement officials, and representatives of Congress and the Justice Department (National Coalition of Anti-Violence Programs, 1997, "White House Hate Crimes," 1997). Clinton launched a campaign against hate and called for passage of the Hate Crimes Prevention Act of 1998 (HCPA) (S. 1529/ H.R. 3081) which would provide authority for federal officials to investigate and prosecute hate crimes based on the victim's gender, sexual orientation, or disability. The Act would allow federal authorities to have jurisdiction in cases where local authorities are unable or unwilling to investigate and prosecute (due to the exclusion of these groups from state hate crime statutes). The bill would also make federal prosecution of hate crimes easier by deleting a current requirement that the crime interfere with the victim engaging in a "federally protected" activity (such as going to school or voting) ("Reno: Expand Hate Crime Laws," 1998; "White House Hate Crimes"). The President announced several initiatives to enhance hate crimes enforcement: assignment of 50 additional FBI agents and prosecutors, creation of a national hate crimes network of U.S. attorneys who would share prosecution strategies and educate the public, increase in monetary penalties for housing discrimination through the Department of Housing and Urban Development, and distribution of a hate crimes resources guide to every school system in the country through the Department of Education (Mercer, 1997).

Challenging the Constitutionality of Hate Crime Statutes

The constitutionality of enhanced sentencing for hate crimes has been challenged in a series of court cases culminating in a U.S. Supreme Court case, *Wisconsin v. Mitchell* (1993). In this case, the respondent argued that a penalty enhancement for an aggravated assault due to the selection of the victim because of the victim's

race, was prohibited by the First and Fourteenth Amendments. The Supreme Court disagreed and held that enhanced penalties for hate crimes are constitutional and do not violate First or Fourteenth Amendment rights.

Other Efforts to Respond to Hate Crimes

In addition to federal legislation, various federal agencies have been monitoring the activities of organized hate groups and prosecuting members of these groups for various crimes (Bensinger, 1992). Furthermore, the primary task of the Community Relations Service, Department of Justice, is to assist communities to respond to hate groups (American Psychological Association, 1998).

State Hate Crime Laws

Forty-five states have enacted hate crime laws (Levin, 1988). Many of these laws have used a model code developed by the Anti-Defamation League. State hate crime laws typically do not create a new crime category; rather, enhanced penalties for the crime committed (e.g., vandalism, assault, arson) would be assessed when the crime committed is proven to be motivated by bias. For example, in the Freedom from Violence and Enjoyment of Legal Rights Act of the State of Illinois, a first violation of the Act carries a penalty of up to one year imprisonment and a \$1,000 fine. A subsequent offense is punishable by two to five years in prison and a \$10,000 fine (Bensinger, 1992).

In summary, the increasing number of federal and state laws regarding hate crimes demonstrates the support for public policies that address this issue. There is not consistency, however, in which groups are protected by hate crime legislation as evidenced by the number of states that exclude sexual orientation from their hate crime statutes.

THE EXCLUSION OF SEXUAL ORIENTATION FROM HATE CRIME LAWS

There are several possible reasons for why sexual orientation has been excluded from some of the state hate crime statutes. Empirical data on hate crimes toward LGBT persons have been collected and reported relatively recently; whereas organizations

such as the Anti-Defamation League have been collecting data for a longer period of time and have been able to use these data to influence public policy. Additionally, societal homophobia could play a part in why sexual orientation has been excluded from hate crime statutes. For example, every year since 1994, efforts to pass legislation that would add sexual orientation to Virginia's hate crime statute have failed. During the 1998 legislative session, the Crime Commission voted not to endorse two hate crime bills that were drafted as a result of their own study on the prevalence of hate crimes committed against LGBT residents. An official from the Attorney General's office testified against the bills by arguing that sexual orientation is connected to pedophilia (Virginians for Justice, 1998). Sexual orientation may be intentionally excluded by the crafters of hate crime legislation as a strategy to increase the likelihood of the bill's passage.

OFFENDERS AND VICTIMS OF HATE CRIMES

Physical and Psychological Harm to Victims

The physical and psychological effects reported by lesbians and gay men who have been victims of hate crimes mirror those reported by persons who experienced hate crimes because of their race, ethnicity, or religion (Barnes & Ephross, 1994). The chances of being victimized because of one's sexual orientation is high. A study of 147 lesbians, gay men, and bisexuals (Herek, Gillis, Cogan, & Glunt, 1997) found that 41% of the respondents had experienced a bias-related crime since the age of 16. Types of crimes reported by lesbian and gays include: harassment, threats (including bomb threats), physical assault, vandalism, arson, murder, robbery, and kidnapping. Attacks against gay men and lesbians are often brutal and gruesome, including repeated stabbing, mutilation, strangulation, torture, and beating (Winer, 1994). The psychosocial effects of these crimes include: lowered self-esteem; feelings of guilt, shame, anxiety, and depression; symptoms resembling posttraumatic stress disorder; anger; withdrawal from the community; fear of injury and crime; less willingness to believe in the general benevolence of people; and on top of this, reluctance to report the crime to authorities due to fear of "secondary victimization" (when others respond negatively to

a crime victim because of her or his sexual orientation) (Berrill & Herek, 1990; Herek, Gillis, Cogan, & Glunt, 1997). Hate crime victims have reported needing as much as 5 years to overcome the psychosocial consequences of the victimization compared to victims of non-bias crimes who report a decrease in psychosocial symptoms within 2 years of the crime (Herek, et al., 1997). The victim of a hate crime is less likely to report the crime to the police than victims of random crimes; this is due, in part, to victims' fears of future contact with the perpetrators (Mjosest, 1998).

Typical Assailant in a Hate Crime

The typical assailant in a hate-crime incident—no matter if it is motivated by race, ethnicity, religion, or sexual orientation—is a white, male, juvenile or young adult, who is not known to the victim, and not part of an organized hate group (although he may be influenced by the ideology of such groups) (Craig & Waldo, 1996; Herek, 1989; Levin & McDevitt, 1995). Organized hate groups, such as the KKK, Neo-Nazi groups, Christian Identity Movement, Posse, and Skinheads, include lesbians and gays in those groups they term undesirable (Bensinger, 1992). In Georgia, a group known as the Crusade Against Corruption distributed a pamphlet titled "Praise God for AIDS," which included such statements as "AIDS is a racial disease of jews and negroids that also exterminates sodomites" (Herek, 1989).

Motivations of Perpetrators

Studies of motivations of perpetrators of hate crimes demonstrate some consistent types or categories of motivations. In an analysis of 450 hate-crime incidents in Boston and 4,000 nationwide, Levin and McDevitt (1995) found that the motivation of perpetrators of hate crimes can be sorted into three categories. About two-thirds of the perpetrators are "thrill-seekers," who are often bored or alienated youth looking for excitement or power in assaulting someone who is perceived as different. They may travel distances outside of their communities to find someone to assault. About one-third of perpetrators can be categorized as "defensive"; their attacks are directed at a particular set of "outsiders" who have moved into a previously homogeneous workplace, neighborhood, or school. Last, and the rarest type

of attack, are those perpetrated by members of organized hate groups who believe themselves to be the victims of some conspiracy and who have a mission to exterminate the despised group. Research by clinical psychologist Edward Dunbar of 1,459 hate crimes committed in the Los Angeles area between 1994 to 1995, also found that the rarest type of attack (fewer than 5% of the offenders) were by members of organized hate groups (American Psychological Association, 1998).

Although economic downswings have been blamed for increases in hate crimes, recent research by Green, Glaser, and Rich (1998), found that a weak economy is generally not associated with a rise in hate crimes. One form of economic change, however, does typically result in increases in hate crimes—when racial and ethnic minorities first move into a previously homogeneous neighborhood. Offenders in these cases perceive the change in neighborhood demographics as a threat to their traditional way of life.

Research on the motivations of perpetrators of hate crimes based on sexual orientation show similarities to the studies of perpetrators of hate crimes toward other target groups. According to research by Karen Franklin (1988), a forensic psychology fellow at Washington University's Washington Institute for Mental Illness Research and Training, motives underlying hate crimes based on sexual orientation fall into four distinct categories: (1) Self defense—perpetrators perceive the victims as making sexual propositions; (2) Ideology—perpetrators believe they are enforcing a social/cultural norm that condemns homosexuality; (3) Thrill-seeking—perpetrators look for victims because they are restless, bored, and/or want to take risks, be excited, and feel strong; and (4) Peer dynamics—perpetrators want to prove their toughness and/or heterosexuality to friends. In her study of approximately 500 young adults in the San Francisco Bay area, half of the males admitted to some form of anti-gay aggression; 18% admitted to physical violence and threats, 32% admitted to name-calling. Thirty percent of the respondents who did not admit to anti-gay aggression reported a likelihood to do so if they thought the LGBT person was flirting with or propositioned them (the self defense motive).

Comstock (1991) believes that violence against lesbians and gay men is perpetrated by "quite ordinary or average young men within all classes and racial groups" (p. 95). Rather than viewing the young male offenders as simply restless and looking for excitement, Comstock argues that a patriarchal society socializes young males to desire and feel entitled to power and status, which then contributes to the use of violence as a method of power and control.

The motives and type of attacks of the offenders are similar across hate crimes against various groups; the psychosocial effects are similar among the victims. Yet, there are arguments against the inclusion of sexual orientation in hate crime laws, and there are those who oppose the concept of hate crime laws altogether.

PROPONENTS AND OPPONENTS OF HATE CRIME LAWS

A staunch opponent of hate crime laws is the director of New York University's Center for Research in Crime and Justice, James Jacobs. In his writings (See, for example: Jacobs & Henry, 1996; Jacobs & Potter, 1998a, Jacobs & Potter, 1998b), Jacobs and colleagues argue these points: (a) All or much of violent crime involves prejudices and providing for tougher sentencing for certain offender prejudices "elevates the plight and pain of some victims above others and creates a counterproductive competition among groups to have their victimization recognized in hate crime statutes" (Jacobs & Potter, 1998a, p. 31). (b) Hate crime laws assume that an enhanced penalty for bias-related crimes is of greater benefit to the victim than a non-enhanced penalty; yet, the groups chosen for inclusion in hate crime laws do not necessarily benefit from the offenders' increased punishment; victims who cannot prosecute under a bias crime "feel cheated by the lesser penalties their offenders receive" (p. 31); and state laws are inconsistent regarding which groups are included in the law. (c) Hate crime laws are presumed to protect "minority groups" with an assumption that white males are the offenders; yet, most crime is intraracial "and the perpetrator of interracial crime is more likely to be a member of a minority group than a member of the racial majority" (p. 31). (d) Hate crime definitions require a causal connection between the offender's prejudiced motivation

and his or her actions. If in order to prosecute the crime as a hate crime, the crime needs to wholly or predominantly be motivated by prejudice, then there would be few crimes that would fall into the category of hate crime; however, if hate crimes include any crime even partly motivated by prejudice, then nearly all inter-group crime should be classified as a hate crime. Statutes that require evidence of manifest prejudice, an obvious sign such as an epithet, enable those intent on committing hate crimes to avoid being charged with a hate crime by remaining silent during the commission of the crime. (e) Proponents of hate crime laws picture those being prosecuted under the laws as “neo-Nazis committing vicious, ideological driven acts of violence”; yet the laws are “most often enforced against Archie Bunker-type defendants whose prejudice has bubbled to the surface during an argument over a parking space or campsite, or with a neighbor” (p. 31). The persons most often arrested for hate crimes are adolescents who “may well be confused, mentally unstable or sociopathic. But they are not ideologically driven racists” (pp. 31, 39). (f) Those imprisoned for hate graffiti and vandalism may actually learn to become more prejudiced while in prison. Determining which expressions are hate crime graffiti versus ordinary graffiti is difficult, and punishing hate crime graffiti more than ordinary graffiti creates a “sentencing system based upon a subjective hierarchy of the vileness of terms and symbols” (p. 39).

Proponents of hate crime laws argue that hate crimes are a distinct category of criminal offenses and should be punished more harshly than ordinary crimes. Levin (1988) summarizes the reasons why hate crimes are distinct: (a) Hate crimes disproportionately involve attacks against people (7 out of 10 hate crimes) versus attacks against property. Non-hate crimes are directed against persons in only 11 percent of incidents. (b) Hate crimes are more likely to result in injury and hospitalization than assault in general. (c) There is a greater likelihood of multiple assailants, serial attacks, and risk of retaliatory violence in cases of hate crimes than non-hate crimes. (d) Hate crimes punish the conduct as well as the prejudicial motive of the assailant. The government has an obligation to punish and deter discrimination and may do so without violating First Amendment rights as upheld by the Supreme Court. (e) The commission of a hate crime creates fear

and distrust in whole communities in a way that other crimes do not.

Levin answers the critiques of hate crime laws on the basis of the politics involved in enactment of the laws, and that groups fight among each other to get their own group protected. Regarding the former, Levin says "so what? Politics have always played a role in the passage of criminal laws. Society is far better off for politics having played a role not only in the passage of hate crime legislation, but in the enactment of laws on domestic violence, environmental damage and drunk driving" (1998, p. 31). Levin argues that the drive to enact hate crime laws has united groups, rather than cause division between groups. He points out that new coalitions of organizations representing various groups who are targets of hate crimes have formed. Although some groups have been excluded in state hate crime laws, these groups have often advocated for changes in the initial versions of the laws so as to include more groups.

Levin also refutes the idea that it is dangerous for authorities to establish an offender's motives. He notes: "Motive is critical in many areas of the law. Breaking and entering only becomes burglary once it is shown that the offender intended to commit an additional crime while on someone else's property" (p. 39). He argues further: "Criminal law differentiates between seemingly similar conduct in other ways. . . . Carrying a concealed gun on a plane and dealing drugs near schools, for instance, are punished more harshly than the same conduct elsewhere" (p. 39). Lastly, Levin agrees with Jacob and colleagues that the majority of hate offenders are youthful thrillseekers; yet, he believes that strong punishment for the crime is appropriate as a way to send a strong and clear message that the behavior is wrong.

A CASE FOR INCLUSION OF SEXUAL ORIENTATION IN HATE CRIME LAWS

It is illogical to include bias-crimes based on race, color, national origin, ethnicity, and religion in a hate crime law and to exclude sexual orientation. Hate crimes toward persons who are lesbian, gay, bisexual, or transgendered look virtually the same as hate crimes toward persons based on the color of their skin, ethnic

background, or religion. The perpetrators have similar motives; the victims experience similar physical and psychological harm. The U.S. Supreme Court has already ruled on the constitutionality of hate crime laws. Therefore, there is no reason to exclude groups that have been targets of hate crimes.

Excluding LGBT persons from hate crime laws denies them equal protection under the law. It has been argued that the Equal Protection Clause of the Fourteenth Amendment establishes a fundamental right to equal benefit of laws protecting personal security. Laws protecting personal security should be applied evenhandedly to all groups who are similarly situated. Excluding LGBT persons from hate crime laws denies them equal benefits of laws protecting personal security, a fundamental right required by the Equal Protection Clause (Winer, 1994).

In Richmond, Virginia, on October 11, 1997, an African-American male found his car spray-painted with homophobic and racial slurs—one side of the car there were words such as “fagat” (sic), on the other side “nigger” (Virginians for Justice, 1997). This victim had already within the preceding three months experienced trespassing incidents, verbal threats on his life, verbal harassment in the front of his house, and discharges of an unidentified weapon under his bedroom window. According to Virginia’s hate crime statute, the crimes related to prejudice against his race would be investigated and prosecuted as hate crimes; whereas the crimes related to his perceived sexual orientation would not be investigated and prosecuted as hate crimes. Is the racist graffiti on this victim’s vehicle to be taken more seriously and profoundly than the homophobic graffiti? The victim testified as to being in fear and threatened by both the homophobic and racial incidents.

CONCLUSION

Those who desire to advocate for the inclusion of sexual orientation in federal and state hate crime statutes may consider doing the following: collect local and regional statistics on the prevalence and nature of hate crime incidents toward LGBT persons; identify legislators that may be willing to support a bill that would add sexual orientation to a state hate crime statute; find LGBT victims of hate crimes who would be willing to testify at hearings

on hate crime-related bills; solicit persons who could provide expert testimony about hate crimes toward LGBT persons, such as staff at a local anti-gay violence project or LGBT community center; know the typical arguments that opponents will raise and prepare responses to them; and build coalitions with other groups that are targets of hate crimes.

In conclusion, hate crime laws exist on the federal level and in the majority of states. Such laws that provide for enhanced sentencing for bias-related crimes, which punish the offender's motive and conduct, have been found to be constitutional. LGBT victims of hate crimes experience similar types of person and property attacks as well as psychosocial crime-related effects as victims who are targeted because of their race, color, religion, or national origin. Existing hate crime laws should include sexual orientation as a matter of logic and in the spirit of upholding the Equal Protection Clause of the Fourteenth Amendment.

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